

Approaches to quality

Summary of responses to consultation and LSB response

September 2012

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Executive Summary

1. The legal services market has faced significant challenges for a number of years to ensure that the quality of legal services is maintained. Little evidence has been collected on its success, but that which has been collected has led to significant questions about the success of regulation in this respect.
2. The purpose of the 'Approaches to quality' consultation paper¹ was not to gather evidence on the quality of legal services, but to generate a discussion on the kinds of interventions that might assist regulators, with the aim of developing proposals as to what steps, if any, should be taken.
3. The range of suggested regulatory interventions to address quality risks (Appendix A) have been endorsed by respondents. There was also broad support for the LSB meeting its role as an oversight regulator by challenging and supporting the regulators through their development of a framework or toolkit for assessing or addressing quality issues, tailored to their respective regulated cohorts.
4. The Board's considered view is that while entry controls and education and training requirements can be important tools in mitigating quality risks, they are not in themselves sufficient for ongoing quality assurance and the full range of regulatory tools need to be utilised at both individual and entity level. We have therefore identified the following key themes in relation to the management of quality risks:
 - provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist
 - development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis
 - using an outcomes focused approach to ensure regulatory interventions drive an improvement in quality standards without hindering innovation
5. This reflects the importance of the profession, consumers and regulators all playing their part. We also recognise the role that competition can play in improving quality, particularly through increasing choice and raising service standards. The importance of clear reliable information, that is widely available to

¹ Approaches to quality consultation, March 2012 - http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/20120311_approaches_to_quality_consultation.pdf

all participants in the legal services market, is therefore important in achieving a position where quality issues can be readily identified and the appropriate decisions taken in response to them.

6. By improving the information available on the quality of legal services we anticipate that providers will be encouraged to focus on the areas of their work in need of improvement and consumers will be able to more easily identify the outcomes they can expect.
7. This does not however remove the responsibility of regulators who are ultimately accountable for ensuring that individuals and entities are competent to deliver the services they are authorised to provide. In fact, the majority of interventions proposed in the consultation are actions for regulators. While entry controls and tools targeted at individuals are primarily concerned with technical competence, regulation has an important role to play in both the utility of advice and service.
8. If the regulators are going to deliver effective quality assurance, their approach needs to be consistent with better regulation principles. This means regulatory decisions must take account of where issues exist and be targeted, appropriate in nature and proportionate in scale to the risks involved. We believe it is also crucial for regulators to focus on the desired outcomes of regulatory activity, acting in a manner that supports innovation and allows market structures to function efficiently, whilst incentivising providers of legal services to meet the needs of consumers and serve their interests. Care is needed to avoid regulatory regimes that overly complicate or restrict activities in legal services that are not the target of a regulatory intervention or where risks to consumers are already appropriately managed.
9. We agree that it is not for the LSB to prescribe in detail regulatory action by approved regulators to address such quality risks, acknowledging the very strong linkages with our work on regulatory standards that have been identified. We therefore look forward to seeing evidence of the issues identified in this paper being addressed in the action plans developed for the regulatory standards work, which will continue to be assessed against delivery of the regulatory objectives.
10. Under the themes identified we have developed success criteria by which we will hold regulators to account. These can be found in the 'Next Steps' section of this document. Where there are specific overlaps with the current year's regulatory standards self-assessment framework, progress will be considered as part of this year's self-assessment process. However we expect approved regulators to take account of all criteria as part of the ongoing development of their action plans.
11. Overall, regulatory action in relation to quality risks needs to be outcomes-focused, evidence based, proportionate and targeted through appropriate segmentation of legal services. It should include a full assessment of risk and

consideration of the principles of better regulation (Appendix B), taking particular care to avoid hindering innovation and where possible encouraging it. This also reflects the criteria in the regulatory standards self-assessment process.

12. The role and importance of regulatory interventions to support innovative and market driven legal services has been endorsed by respondents. It is essential that the activity of regulators is clearly driven by research indicating the need for it, and that any actions remain proportionate to the risks involved. As the legal services market develops, the need for regulators to be flexible, aware of the challenges faced in their regulated communities and able to make evidence based decisions in relation to them, will be dominant factors for them. We will increasingly expect the approved regulators to demonstrate that they are meeting these tests.

Introduction

13. The LSB has been set up to reform and modernise the regulation of legal services in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. We aim to achieve this by pursuing our regulatory objectives² and providing regulatory oversight for the frontline approved regulators³.
14. In considering our approach to quality, the LSB has sought and received advice from the Legal Services Consumer Panel on a number of issues. We have also talked to legal academics and those with experience of dealing with similar quality concerns in other sectors.
15. As we stated in the consultation paper, the legal services market in England and Wales is in a state of change with business models becoming more diverse at a time when regulation is to be less burdensome and take greater account of the principles of better regulation. Regulatory interventions therefore need to be proportionate and targeted while providing high levels of assurance.
16. Regulators of legal services providers have historically assured technical competency on the basis of educational attainment and requirements for entry to the professions. While these requirements arguably provide a valuable proxy in the absence of robust quality measures, it is difficult to accept that they serve as indicators for all aspects of quality assurance and that there is not a need for the use of a wider range of regulatory tools impacting on individuals and entities.
17. Three dimensions of quality - technical competence, service competence and utility of advice - have been identified as the areas where problems will exist. Regulators have a particular role in addressing technical issues where consumers may be at a particular disadvantage due to information asymmetry. However, the benefits of a more effective use of information and evidence will not only provide a valuable tool in the assessment of risk for regulators but also in improving consumer awareness of issues and quality standards. The more consumers are able to choose and use legal services with confidence, the less prescriptive regulation should need to be and the more effectively the regulatory objectives should be able to be secured.
18. A number of themes and actions relating to quality issues are established throughout this document, which have received widespread support. Essential to these is the importance of effective assessment and management of quality risks

² As set out at Part 1 of the 2007 Act.

³ The approved regulators as listed at Schedule 4 to the 2007 Act are The Law Society of England and Wales, the General Council of Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, The Master of the Faculties.

in legal services and we are encouraged to see a recognition of this along with an outcomes focused approach to addressing issues in relation to quality among the approved regulators.

19. The consultation ran for a 12 week period which ended on 1 June 2012. There were 15 responses to the consultation from approved regulators, representative bodies, scheme operators as well as the Legal Ombudsman and the Legal Services Consumer Panel. The list of respondents can be found at Appendix C and their full responses can be read on the following page on our website:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm

20. This response document provides a summary of responses to the specific questions we asked and the Board's response to them. It also sets out proposals for next steps and success indicators.

Consultation comments and LSB response

Summary of responses

Question 1: In your experience, when consumers do not receive quality legal services, what has usually gone wrong? Where problems exist, are these largely to do with technical incompetence, poor client care, the service proving to be less useful than expected by the client – or something else?

21. Client care, technical competence and utility of advice were generally believed to be interrelated. However, a number of responses suggested that client care and technical competence were the key determinants of quality in legal services, with utility of advice being an output directly related to the other two issues.
22. Some responses stated that it was difficult for consumers, with little or no experience of the legal process, to measure the quality of legal services. Commenting on their experience, Action against Medical Accidents said “clients have often not been aware of the extent to which they were receiving poor legal services having unquestioning trust in the legal profession as professionals and also having no context against which to compare the quality of advice”. When considering technical competence this was said to be sometimes the case even after the event. The Legal Services Consumer Panel (the “Consumer Panel”) suggested that there is insufficient evidence about the technical quality of legal advice due to the limited number of studies and a lack of transparency by public agencies holding such data.
23. The response from the Chartered Institute of Legal Executives (CILEX) and ILEX Professional Standards (IPS) was typical in expressing the opinion that where problems with quality exist they are usually to do with poor client care. A common failure identified being the client and provider not communicating effectively. This was reflected by data in the Legal Ombudsman response which highlighted that between April 2011 and March 2012, the most common service complaints they received concerned costs (16.9%), poor communication (16.8%) and not following instructions (16%). A number of respondents saw the provision of a breakdown of the data held by Legal Ombudsman to regulators as an important tool in informing their approach to risk and supervision.
24. The Bar Standards Board (BSB) expressed the view that consideration of quality should not be limited to the experience of consumers or clients, believing that this fails to take into account the wider issues of quality in relation to the whole legal system including the needs of the court and the proper administration of justice.

25. The importance of managing consumer expectations was highlighted in responses from the Law Society and the City of Westminster and Holborn Law Society with regards the usefulness of services as well as more generally. In particular, the need for clear communication on what can be delivered from the outset and throughout the provision of legal services, were identified as important. Issues such as costs, timing and unexpected delegation of work were also seen to have a key impact on the consumer assessment of quality.
26. Further comments were made highlighting specific areas that impacted on quality, such as where consumers received services from non-specialist providers and issues in relation to supervision. Concerns were expressed that a wide interpretation of the function of supervision, and a lack of understanding of its role in both protecting clients' interests as well as in mentoring and professional development, caused issues in relation to quality.

LSB response

We are grateful to respondents for these comments which generally echo the LSB's concerns in relation to the importance and connections between all three dimensions of quality - technical competence, client care and the utility of service. In response to comments about consumers' ability to assess quality, we believe that there are clear quality issues, whether technical, service or utility related, where consumers can make a judgement as to the quality of service they have received if they have access to the right information and support.

The LSB believes that quality problems can occur across all three areas. However the way in which they manifest or need to be identified is likely to be different. For example, consumers may struggle to spot technical competence and report high levels of satisfaction for example in relation to will-writing where research indicates significant quality problems. We consider that regulatory tools have a clear role in relation to technical issues, while competition and market led incentives can have a strong influence on service and utility issues as providers compete to provide services that meet consumer needs.

Question 2: Would it be helpful if the regulators approached issues of quality by looking separately at different segments of the legal services market? Which segments do you perceive as being greatest risk to consumers?

27. The value of looking separately at different segments of the legal services market when considering issues of risk to quality was widely endorsed by respondents. While it was felt that there would naturally be some core generic standards applying across all legal practices and professions, there was seen to be a need for some segment-specific standards and requirements. The BSB stated in its

response that, with a broad definition of a consumer, specific consumer segments require specific solutions and “regulators should assess risk by sector and services provided in order to establish what risks are most prevalent in each sector and therefore what should be demonstrated to mitigate these risks”.

28. While themes may develop which support a more consolidated approach, many respondents considered that specific consumer segments required specific solutions or measures. It was suggested that regulators were well placed to assess risk by sector and services provided, establishing what risks are more prevalent and the measures needed to mitigate them.
29. Views were also expressed on how the approach to quality would vary depending on the profile of the consumer. In its response, the Solicitors Regulation Authority (SRA) referred to the difference in asymmetries of information in the bulk consumer market and the corporate client market being a “strong indicator” of the level of risk. The BSB suggested that “services provided direct to lay clients are higher risk than those provided on a referral basis where a professional client will provide an additional level of quality assurance”. It was stressed that more data to assess the levels of risk in different segments was needed.
30. The OXERA framework was identified as a useful starting point for market segmentation; however, in its response, the Consumer Panel stated that there are “risks when attaching broad labels to groups of consumers who are not homogenous in make-up”. The need to consider quality both in terms of who is providing and receiving the service was seen as key.
31. CILEX and IPS’ response identified high risk market sectors as those that involve large amounts of money, have limited quality indicators or involve vulnerable clients. Segmentation through risk was seen as a way to help regulators define what needs to be measured in order to target activity in the right areas. Other suggestions for potential areas of market segmentation included the type of legal activity (reserved and unreserved) and consumer. The majority of respondents believed that complaints data would be a valuable tool when considering levels of risk but that this would need to be carefully analysed to ensure it was correctly understood.
32. In its response, the Consumer Panel suggested that regulators should focus primarily on the technical elements of quality as lay consumers lack the ability to judge technical quality and competitive forces will have a limited impact on it. A role was identified here for regulators to enhance transparency around the performance of providers in a way that would be meaningful for consumers.
33. Some of the difficulties with segmenting groups were raised by respondents. In particular, The Law Society had concerns over any attempt to define or identify

vulnerable clients, as vulnerability is “not necessarily a homogenous or static group or status”. Defining vulnerability by looking at specific demographics was also seen as problematic. This echoed the concerns of the Consumer Panel.

34. While it was widely believed that the greater asymmetries of information present in the bulk consumer market compared to the corporate client market is a relatively strong indicator that risks in this sector are greater, difficulties were identified with an approach of simply splitting private and business consumers. The SRA commented that “many small and medium enterprises share more characteristics with private consumers than they do with major corporates”.
35. The Legal Services Commission’s (LSC) response stressed that it would expect “the same level of quality for legal aid clients regardless of the segment of the legal services market providing the service”. Further comments were made supporting quality of services being judged, assessed and accredited on an equal ground so that, whoever the client chooses, a profession-wide set of standards are adhered to.
36. The City of Westminster and Holborn Law Society response expressed concern that due to the fluidity of legal practice, there is a serious danger of segments becoming outdated and that focusing only on specific specialist areas may potentially mean issues outside of them are missed. It also felt it was dangerous and misleading to differentiate too much between commercial and private clients. Society members who are in-house solicitors expressed particular concern, at the possibility of lower standards of regulation for work done for their employers – as “it is impossible for them to be sophisticated consumers of legal services in all areas”.
37. An increase in the active selling of services into the private consumer market was seen as a further area of risk to the utility of advice element of quality. The SRA suggested that the “miners’ compensation schemes, personal injury work generally, PPI compensation claims and stamp duty land tax avoidance schemes all have some common characteristics in this area and have presented new challenges that, historically, regulators have not faced”.
38. The Tunbridge Wells, Tonbridge & District Law Society thought that it was inappropriate to make generalisations about specific sectors posing certain levels of risk to quality. Instead, it felt price was often a good indicator of risk, giving an example of the difference between a face to face service and a cheaper more general service. The Society believed intervention by regulators based on market sector risks created a far too complex regulatory environment.
39. When considering segmentation and risk assessment a number of respondents commented that outcomes focused regulation would have an important role in any assessment.

LSB response

The need for segmentation by type of risk was identified by the majority of respondents as a key tool for addressing quality issues. We agree with the BSB that it is important for regulators to assess risk by sector and service provided, in order to identify what the appropriate steps to mitigate the risk are. However, concerns were expressed in relation to availability of the data needed.

We hope that the work that the Legal Ombudsman is undertaking to ensure the information it holds can be published in a meaningful and useful way, will assist in the segmentation of the legal services market when looking at quality issues. We were also pleased that the OXERA framework was highlighted as a possible tool for segmenting quality risks.

Regulators have an important role to play in improving the collection and availability of data as well as improving transparency of such information for consumers. This is relevant both in terms of data at the aggregate level for their regulated community as a whole or for groups within it, but also at the granular level in encouraging and, where appropriate mandating, greater transparency by individual entities. For example, voluntary accreditation schemes are of potential assistance in the assessment of risk in different segments of the market and through better sharing of information between regulators and scheme operators, they can potentially play an important part in risk assessment. We therefore encourage regulators and scheme operators to work together to ensure that meaningful information can be shared wherever possible.

While we accept the view that there may be some circumstances where quality should be assessed on absolutely comprehensive and identical grounds, the LSB believes segmentation of different areas of the legal services market is essential to ensure regulatory action can be effectively risk based and targeted, so as to meet the better regulation principles. As highlighted in the SRA response, certain market developments can introduce particular risks. For regulation to avoid unnecessary burden and costs it must be targeted at areas presenting most risk. As identified in a number of responses, the development of outcomes focused regulation has a critical part to play here. We will therefore be looking for clear evidence of action in this regard.

Question 3: How can regulators ensure that regulatory action to promote quality outcomes does not hinder (and where possible encourages) innovation?

40. The SRA suggested that the identification by regulators of additional quality assurance mechanisms (beyond the general educational, authorisation, and supervisory controls already in place) across all sectors and across all three aspects of quality would not be based on risk, was not proportionate or targeted and was likely to stifle innovation and development. In addition, it was most likely to be at considerable cost. Instead, the SRA's approach would be to "target

additional intervention only on those areas where there was evidence that a risk to consumers justified regulatory intervention”.

41. It was also suggested that additional intervention should only be in areas where there is evidence of problems existing. The extent that they are a risk to consumers and the way in which the market provides the services, justifying proportionate regulatory action to address them. Stability and certainty were seen as important, with regulators needing to make clear what standards are essential and permanent. The City of Westminster and Holborn Law Society believed that regulators should keep other interventions to a minimum.
42. The Council of Mortgage Lenders’ response suggested that regulatory action to promote quality “need not stifle innovation” but that it requires flexibility and a good knowledge of the sector. This knowledge and input from key stakeholders would enable areas of risk to be identified and mitigated against. It believed that “sound entry criteria, continuous monitoring, and targeted intervention” were sufficient tools to ensure the profession is made up of suitably competent and ‘fit to practise’ individuals, whatever the innovations.
43. The ability of regulators to make informed decisions in relation to specific areas of the legal profession, and not to be restrained by prescriptive requirements, was also seen as essential in ensuring innovation is not hindered.
44. The Consumer Panel made the point that while regulation protects high quality law firms from being undercut by poor quality rivals, overregulation is not in the consumer’s interest, since it can “limit choice, dampen innovation and raise prices”.
45. The Consumer Panel suggested the following areas where regulation could be made more flexible, without reducing quality:
 - linking training content to reserved activities or nature of work undertaken by most lawyers (e.g. minimal mandatory will-writing elements - no need for someone setting up a will-writing business to have to undergo the full solicitor training regime)
 - entry barriers mirroring quality risks and providing flexible employment options (e.g. an activity-based authorisation regime)
 - shift towards entity-based regulation while preserving individual responsibility to allow employers greater freedom to innovate when securing an appropriately trained and supervised workforce
 - enabling diverse pathways into the legal workforce including non-degree routes, for example, building on existing models such as those for chartered legal executives

It said that it expected reforms in these areas would be widely considered within the Legal Education and Training Review.

46. The Law Society, SRA, BSB, the Consumer Panel, CILEX and IPS all felt that outcomes-focused regulation allows firms greater freedom to design businesses while the need to provide high quality advice remains. In addition, it gives regulators scope to explore earned recognition policies and allows proportionate inspection regimes for businesses that demonstrate good internal quality controls. An example of consumer research in the food arena providing support for this principle, subject to the proper regulatory oversight, was also referenced by the Consumer Panel.

LSB response

We welcome the responses to this question. As stated in the consultation document, we believe that having regard to the principles of better regulation (Appendix B) is essential for the approved regulators to fulfil their responsibilities in relation to the regulatory objectives effectively.

The LSB therefore considers that a distinction needs to be made between mandatory regulation in relation to quality and market led incentives such as voluntary quality schemes. In this regard it is essential that the burden of regulation does not hinder, and where possible, encourages innovation. Responses clearly show that this view is, in the main, endorsed by the respondents. The development of more risk based and outcomes focused regulation can do much to ensure that this is the case. The LSB would expect approved regulators to fully consider the implications of regulatory developments both in encouraging and inhibiting innovation, and display how they have done this. Supporting market driven solutions to issues in relation to quality should also have a beneficial effect on innovation and development, in addition to ensuring costs do not become prohibitive.

We agree with the Consumer Panel that there are clear links here with the Legal Education and Training Review and await with interest the final report in December 2012. Where quality is difficult to measure, education and training requirements provide a valuable proxy for regulators but there are important questions to consider in relation to continued competency, for example the role of CPD and whether this and entry requirements alone are sufficient. We strongly believe that whilst these regulatory tools are vital, they are in no way enough and the full range of tools available to regulators needs to be utilised at both individual and entity level.

The SRA commented that the identification of uniform quality assurance mechanisms across all sectors and across all three aspects of quality would not be based on risk, proportionality or targeted action, and would be likely to stifle innovation and development. We would agree, suggesting that a key challenge in a changing legal services market is the identification of appropriate regulatory interventions that can be targeted at the areas of legal service provision causing concern. We would additionally expect that where there is no evidence of risk or concerns, regulatory interventions are reduced or removed entirely.

Question 4: What balance between entry controls, on-going risk assessment and targeted supervision is likely to be most effective in tackling the risks to quality that are identified?

47. Most respondents believed that all of the requirements were equally important and that ongoing risk assessment is crucial to tackling the risks to quality identified. A general view was also expressed that a balance is needed between regulatory intervention and the proper operation of a liberalised and competitive market. The Costs Lawyers Standards Board believed that “one defined approach would not be effective across the board” and that any balance between these regulatory tools would be different in each of the regulated professions. It saw the correct balance as being dictated by identified risk and therefore evolving over time. A number of respondents stated that the balance will depend on the risk profile of the provider and consumer.
48. The SRA felt that entry controls, supported by effective systems for ongoing assurance of competence, are most likely to be effective in assuring proper standards of technical competence, and that targeted supervision can be effective in addressing risks to technical competence and utility of advice. It also suggested that consumer empowerment, to the extent that it reduces asymmetries of information, can be effective across all dimensions of quality.

LSB response

As can be seen from the summary, respondents generally identified that entry controls, ongoing risk assessment and targeted supervision are all equally important in tackling quality risks and that there is a need for a balance between them. We agree with the SRA that entry controls, supported by effective systems for ongoing assuring of competence are needed. However, it is essential that the balance is informed by an ongoing risk assessment rather than a one size fits all approach.

We believe that identifying this balance is an important challenge, key to which is ensuring that the information to support effective risk assessment is available and used. Information should also be made available to consumers in an appropriate format. This is reflected in the discussions we are having with approved regulators in relation to the regulatory standards work.

As acknowledged in our response to question 3, the Legal Education and Training Review will also provide an important framework for approved regulators to consider the role of entry controls in addressing quality risks.

Question 5: Quality can also be affected by external incentives and drivers. Some examples include voluntary schemes (for example the Association of Personal Injury Lawyers Accreditation), consumer education and competition in the market place. How far do you think these external factors can be effective in tackling the risks to quality that exist? Which external factors do you think are most powerful?

49. Consumer education, competition and voluntary schemes in the market place were all viewed as important and effective tools to improve quality. Action against Medical Accidents believe these external factors can help enable consumers to select an appropriate advisor as well as increase consumer understanding of how the legal process works so that they can recognise and challenge poor legal services.
50. An issue was identified with the increasing number of quality marks and other forms of 'badging' which were seen to make it difficult, from a consumer's perspective, to identify which are meaningful in terms of finding an appropriately qualified and experienced advisor to deal with a legal problem. In relation to this, it was said to be essential that the public is educated on the existence of recognised accreditation schemes. The Association of Personal Injury Lawyers believes doing this would ensure members of the public "have the correct tools to make informed decisions".
51. There were a number of respondents who felt that voluntary accreditation schemes would promote further competition within the marketplace as more power surrounding informed choices will be handed over to the consumer. However, in order for these to be a truly effective means of tackling risk and to be of value in its assessment, the BSB believes they must be supported by proper regulatory and supervisory arrangements. For instance, a scheme should be required to be "accredited or otherwise assured by the regulator and address the correct risks".
52. Encouraging providers to take an interest in quality and to address quality risks themselves was seen to be central to any new supervision strategy, for example,

accreditation with a suitable voluntary scheme being a relevant factor when establishing a provider's risk profile. The prospect of less intrusive supervision would then serve as a potential incentive to demonstrate provision of a high quality service where risks are mitigated. In addition, in an increasingly competitive marketplace in which fees are falling in many areas, the BSB felt that "the ability to gain work through demonstrating and marketing quality are likely to be some of the most potent drivers".

53. The City of Westminster and Holborn Law Society expressed some concern that the importance of education and training requirements for entry into the profession should not be downplayed and that while some voluntary schemes are better at promoting quality than others, they can "all too easily serve more to promote lawyers rather than to increase their competence". It also added that these voluntary accreditation schemes were not always appropriate for all areas of law, on the basis that some areas lend themselves more readily to categorisation than others.
54. A number of responses did suggest that these schemes can be effective and have been shown to be effective in other sectors. It was felt that accreditation schemes and comparison websites have the potential to help people make more informed choices, but both face credibility issues that regulators would need to work with providers to deal with. However, it was widely suggested that these schemes are best worked out by the market rather than regulators.
55. The SRA commented that, as in other sectors, these schemes will primarily be "market driven in highly competitive consumer sectors or consumer driven, rather than regulator driven". It suggested that the reason these approaches have not emerged in the legal services sector to the same degree may be due to the fact that, traditionally, legal services have not been commoditised, making comparison difficult, and that there has been a lack of diversity in competition, etc. However, it was acknowledged that as identified in the paper, these market conditions are rapidly changing.
56. The Consumer Panel response quoted from its report on voluntary quality schemes, which found that "only 5% of consumers currently use such schemes to help them choose lawyers. By contrast, large purchasers such as lenders, insurers and the LSC take more notice and the benefits can be expected to filter down to individual users".
57. In addition, the response from the Consumer Panel suggested that the role of consumer education when choosing and using lawyers is likely to be more powerful in respect of the service dimension of quality. Education of consumers on the technical aspects of quality being uncertain due to the expertise required and because legal services are rarely used. However, initiatives around transparency of provider performance were viewed as important as market

mechanisms have limited ability to tackle technical quality risks. Further, the Consumer Panel believed an emphasis was needed on activity-based authorisation to safeguard quality before the event, in addition to the need for post-authorisation i.e. revalidation and Continuing Professional Development (CPD).

58. Potential harm to competition, as an unintended consequence of intervention through the need for accreditation with an external scheme, was highlighted by the Consumer Panel. The Law Society stated that “unless there is real evidence that a sector, as a whole, has significant problems with quality of services, such that they make it right for the regulator to take action, then the regulators should not prescribe schemes but should encourage voluntary schemes”.

59. In their response, the Council of Mortgage Lenders suggest that unless schemes are able to demonstrate a positive impact on the quality of the service, and promote competency beyond the basic level needed, accreditation will “not provide a suitable differentiation for the consumer in terms of quality”. In addition, the accreditation of large numbers of firms potentially indicates a bar that is set too low.

60. The Consumer Panel suggested that earned recognition policies, so long as they carry legitimacy, have the potential to “free up limited regulatory resources to focus targeted supervision on the highest risk areas”. The Food Standards Agency's research was endorsed by the Consumer Panel as a useful guide, indicating that consumer support is conditional on the regulatory oversight model sitting on top.

LSB response

The LSB believes that voluntary accreditation schemes, consumer education and competition, can all be effective tools to tackle quality risks. We agree with views expressed by respondents that there is a role for voluntary accreditation schemes in increasing the information available to consumers of legal services.

It is also our view that regulators have a role in facilitating an increased use of these 'choice tools' and that they should consider how they, and other similar devices, can be more effectively used to assist in the delivery of the regulatory objectives. Regulators and consumers must have confidence that these schemes address the correct risks and we believe that schemes and regulators need to work together to solve issues of credibility.

However, as we have said in our response to the Consumer Panel, we consider that a scheme's strength partly lies with them being market driven rather than directly within the ambit of the regulators. And we fully endorse the comment from the BSB that competitive pressures will be a key driver in providers demonstrating quality through accreditation with schemes.

When considering voluntary accreditation schemes and other 'choice tools' such as comparison websites, we endorse the standards and essential characteristics identified by the Consumer Panel in their reports on voluntary quality schemes and comparison websites in legal services. For schemes to be of value, we believe that there must be assurance of the standards and processes applied and that the Consumer Panel proposals provide a sound basis for doing so. They also provide a potential mechanism to ensure continuous improvement through schemes reviewing themselves against the standards on a regular basis. To be of value and avoid the possibility of stifling innovation, schemes should focus on the measurement of outcomes achieved rather than process put in place.

It can be seen that with an improved understanding and use of these schemes by regulators, there is real potential for them to play an important part in risk assessment. Before they can be effective in this however, it is essential that regulators assess schemes, establishing how useful they can be in guaranteeing competence. When making this assessment much will depend on the rigour of the process leading to scheme membership as well as regulatory re-accreditation with it. Where these tests are satisfactorily met and credibility is established by regulators, accreditation with schemes could help inform decisions, for example, those taken in relation to supervision prioritisation.

Work is needed to build upon the activity undertaken with approved regulators in relation to 'choice tools'. Following the Consumer Panel's advice on price comparison websites, we asked the approved regulators to provide us with their response to the report and with an update on any action planned. We also asked that specific consideration be given to making professional registers available to schemes.

Later this year, the LSB will be asking the Consumer Panel to provide advice on the extent to which the respective parts of the regulatory system do currently, and should, help consumers to choose and use legal services. This project will enable us to bring together these strands of thought and understand further which external factors are most powerful in the legal services market.

Question 6: Another possible tool for improving quality is giving consumers access to information about the performance of different legal services providers. How far do you think this could help to ensure quality services? How far is this happening already?

61. A number of respondents saw the provision of performance information as an important step in helping to ensure quality services. The Legal Ombudsman stated in its response that "it is important for consumers to have access to

information as it enables them to make informed choices”. Consumer education was highlighted as a very powerful tool in legal services due to the strong influence of recommendation on consumer choice. In addition, the Consumer Panel believed the role of peer pressure, sense of profession and subsequent desire to maintain a good reputation, would all exert a positive influence on providers’ behaviour.

62. Responses also indicated that there was consumer demand for information on legal services. Consumer Panel and Legal Ombudsman research was referred to which indicated that consumers believe publishing complaints data would enable them to find ‘good’ solicitors and enhance solicitor accountability. In addition, it would encourage providers to improve their service.
63. The Council of Mortgage Lenders commented that “performance measures could potentially be valuable in tackling the well-established problem of information asymmetry in the legal services market, where often the provider is far better able to judge quality of the service provided than the client”. Having access to reliable information was seen as essential in enabling consumers to make informed choices. In the Legal Ombudsman response, it referred to the Department for Business Innovation and Skills’ view, that complaints information published by Ombudsmen and regulatory bodies can help consumers to make better informed choices. The Legal Ombudsman explained that this is a key area of its work with a number of developments planned for the future.
64. The difficulty in legal services with comparing like for like and an unbalanced view of complaints was raised. It was suggested that performance information could easily be misleading without additional context due to issues such as: different areas of work giving rise to different levels of complaints; legal issues necessarily involving two sides of an argument; confidentiality issues affecting what information is available in relation to a complaint; and the different ways complaints are handled (e.g. the difference between complaints from large commercial clients and private consumers).
65. The Law Society expressed strong reservations about publishing complaints data. It sees complaints as representing “a very tiny proportion of the total transactions” and is sceptical as to whether due to the nature of legal services (where for instance, a perfectly proper result can result in dissatisfaction for a consumer) information such as that held by the Legal Ombudsman, “will prove more misleading than helpful to consumers”.
66. There were also concerns raised about the potential issues that might arise if regulators become involved in comparing services between different providers. However, it was seen that some kind of profession-wide drive to educate consumers about what they can expect from lawyers, how they can choose the

best option for them, and what they can do if the service they receive falls short of this, would seem sensible.

67. The Consumer Panel referred to the Financial Services Authority's decision to publish complaints data and quoted the following comment made by them - "If firms change their behaviour in light of complaint publication, the benefits to the consumer may be realised independently of consumers' use of the available information. To change firms' behaviour it is not necessary that the information is important to a large proportion of consumers; it may be enough either that a sizeable minority of active consumers use the information, or that firms feel that the publication of unfavourable complaint numbers will damage their reputation".

LSB response

See response to question 7

Question 7: What do you believe are the greatest benefits of such transparency? What are the downsides and how can these be minimised?

68. When considering benefits, respondents believed transparency would drive up standards. The LSC stated that publishing performance data would "act as an incentive to improve the quality of advice and services". In addition, transparency was seen as providing a benchmark for practitioners as well as demystifying legal services and supporting consumers in making informed choices.

69. In the BSB's response, it was suggested that a service which "successfully collected lay client feedback, as well as feedback from professional clients, could provide some useful evidence to inform regulatory action and regulatory policy".

70. In its response, the Legal Ombudsman confirmed that publishing and sharing information about its work is an important part of the process to drive improvements in the legal profession. It added that information on the performance of service providers could assist in identifying the risks and the areas where further evidence is required. However, it cautioned that any plans to share information need to be proportionate and "to maintain a balance between producing information that is helpful to consumers and ensuring there is not a negative impact on the legal profession".

71. A potential downside identified by some respondents was the lack of meaningful data when it came to feedback on legal services, due to the inclusion of qualitative judgements rather than quantitative data. The SRA suggested that websites which have attempted to compare legal services "have lacked

credibility” and that this was not helped by the difficulty in creating a forum enabling objective reporting against a common agreed framework of outcomes. The SRA added that this was particularly so in a sector where information asymmetries make initial lawyer selection as well as post event assessment of the utility of the outcome difficult. Further downsides identified were increased costs as well as increased legal and financial exposure.

72. While there were seen to be costs to data collection, the possibility of false economies was highlighted by the Consumer Panel. It was suggested that problems which would otherwise be visible may not be identified and potentially continue due to a lack of transparency.
73. A number of respondents believed that great care needed to be taken with the publication of data and ensuring important contextual information is provided alongside it. The Legal Ombudsman gave an example of the need to consider how smaller firms, and those working in areas of law which are more likely to attract complaints, may be disproportionately affected.
74. The Consumer Panel’s response made the point that objections must be evidence based and the starting point should be a presumption of transparency. It believed that regulators should not fall into the trap of not publishing data because it may be misinterpreted; perfect information was an impossible aim.
75. The Consumer Panel quoted from Lord Hunt’s review into whether the Financial Ombudsman Service should publish complaints data - “Economic theory tells us that the availability of accurate information to consumers helps to make markets as a whole work more effectively, irrespective of whether every piece of information is understood perfectly by each and every individual...the reputational risk of being perceived to be withholding data would exceed any danger of possible misinterpretation in the short-term”.

LSB response to questions 6 and 7

It is encouraging that responses generally agreed that increased transparency of performance information in legal services would help to improve standards although respondents were unable to provide many examples of where this is happening already. Respondents also identified the ongoing issues with information asymmetry in legal services which could be addressed in part by improved information provision.

Complaints data, such as that which Legal Ombudsman has indicated it will shortly be publishing, is a valuable source of information in the assessment of performance and areas of risk. Regulators need to ensure that they use such information in the management of quality issues and we will continue to expect to see evidence of this in the regulatory standards work.

As suggested by respondents, we believe information providing a full picture of quality needs to be collected from a variety of sources and given context to ensure it is credible. We agree with the Consumer Panel that publication of performance information would have a positive influence on providers' behaviour, through a sense of professionalism and a desire to maintain a good reputation.

Consideration should of course be given to the impact transparency may have, with particular care taken with regards any potential unforeseen effects. We do however believe that there must be a presumption of transparency and that concerns over misinterpretation should not prevent publication. We disagree with The Law Society's comment that information may prove more misleading than helpful. We therefore fully endorse the sentiments in the Hunt Report, quoted by the Consumer Panel. We note that this is reinforced both by growing experience of developing consumer friendly ways of presenting complex data in fields such as healthcare, and by thinking behind open data initiatives developed by the UK and other governments to enable a wide range of commentators to have access to raw data to develop evidence and broader analysis for wider audiences. Withholding information until consumer literacy has reached a stage where the majority of consumers can fully understand the bulk of the data is, by definition, a self-defeating strategy.

Moreover we believe, as has been expressed in other responses, that there is consumer demand for more information on legal services and whether transparency results in consumers fully understanding all of the information available to them or merely part of it, it is important that they are able to obtain the information they want. Regulators should therefore allow other people to find a way of using the data.

More specifically, we would also encourage further consideration in the legal services market more generally, of the role that voluntary accreditation schemes and price comparison websites could have in relation to increasing the information available to consumers.

Question 8: The table below (Figure 3) gives some examples of how risks to quality can be mitigated and actions that can be taken by regulators to ensure this happens. Can you suggest any other actions that can be taken?

76. The examples of quality risks and suggested regulatory interventions provided in the paper were generally seen to provide a comprehensive list. It was suggested that rather than using a specific regulatory intervention to a specific risk, regulators are likely to apply a mix of measures.

77. The SRA stated that authorisation, supervision and enforcement activity and risk assessment and prioritisation formed an essential part of its work, as well as commenting that the Legal Education and Training Review it has jointly commissioned, is directly addressing “qualification and entry routes and requirements which go to the heart of the assurance of “technical quality””.
78. Action against Medical Accidents suggested that complaints and disciplinary systems need to be far more transparent and responsive to the concerns raised by consumers, and providers need to be more willing to recognise where their service has failed. They felt that from the consumers’ perspective “the legal profession can still appear immune to challenge”.
79. It was also suggested by the Association of Personal Injury Lawyers that regulators should be able to carry out consumer satisfaction research on an ad hoc basis through voluntary agreement. “Consumers would have confidence in a legal service provider that participated in such a scheme and potentially give it a competitive advantage”.
80. The Consumer Panel commented that it is important not to over rely on one type of intervention and the key is to find the right mix. It believes that while comparison websites may help to match consumers and their needs with the right legal service/provider, it may be some time before these are widely used and have overcome some credibility issues.

LSB response

See response to question 9

Question 9: Which of the possible interventions by regulators do you think likely to have a significant impact upon quality outcomes?

81. In its response, the SRA expressed the view that “regulatory intervention is most necessary, and most likely to be effective, in providing an assurance of technical competence in all its manifestations in the table”.
82. The Consumer Panel response stated that “technical aspects of quality are best tackled through the authorisation regime, both at entry level and to assure ongoing competence through CPD and revalidation mechanisms and the sanctioning regime”. It was suggested that the work of the Legal Education and Training Review will have an important part to play in the development of regulatory tools dealing with the ongoing mitigation of risks in this regard. The

Consumer Panel also believes that service and utility dimensions of quality are best tackled through transparency of performance data to harness competitive forces, with other risk-based approaches such as “earned recognition” also being part of the mix.

83. CILEX and IPS believe that “interventions that naturally fall within outcomes focused regulation, such as entry and authorisation requirements, outputs based CPD, risk profiling, market segmentation and consumer engagement” are likely to have a significant impact upon quality outcomes.
84. The BSB suggested that “effective risk-based supervision, combined with mechanisms for gathering consumer feedback and input, will allow for the development of a strong evidence base on the quality of service” enabling targeted and effective responses to address quality risks.
85. The Law Society expressed the view that “unless there is major evidence of serious risks that require regulatory action, the role of the regulator should be to work with the professional bodies to identify ways of addressing concerns”.

LSB response to questions 8 and 9

We note that, in general, respondents see the table of examples of quality risks and suggested regulatory interventions in the paper as relatively comprehensive. It is for regulators to consider what other tools and interventions may also be useful in mitigating quality risks and the mix of regulatory actions they should take; however, specific examples of the way in which regulators are already using these tools, were not provided.

We support the BSB’s comments on combining effective risk based supervision with mechanisms to gather consumer feedback, agreeing that these elements are essential in establishing a sound evidence base to assess quality in legal services. It is expected that future assessment by regulators will highlight further quality risks for which they will need to identify suitable regulatory interventions.

As has been expressed in responses to questions throughout the consultation document, it is the general opinion of respondents that regulators can have the most impact on technical issues of quality. We agree that this is an area where regulators have significant responsibility but we do not accept that it is the only aspect of quality that regulators should consider, particularly given the comments made in response to the consultation that service is the most common area of consumer complaint. It is important that regulators also consider their wider responsibilities in relation to the assurance of quality in legal services.

Whilst we agree with The Law Society view that regulators should work with professional bodies to address areas of concern, we would further suggest that all parts of the legal services sector should undertake steps which will allow market forces to work as effectively as possible in the facilitation of improvements to the utility and service elements of quality. To this end, the provision of information to consumers allowing them to have far greater confidence in legal services and the decisions they make in relation to them is paramount and we will expect to see evidence of this in the regulatory standards work.

Question 10: To what extent should the LSB prescribe regulatory action by approved regulators to address quality risks?

86. Some respondents believed that prescribed regulatory action by the LSB would have the benefit of ensuring greater consistency across the regulators including setting the standards that users of legal services have a right to expect. It also being felt that this action should be developed through consensus among the regulators. Action against Medical Accidents stated in its response that it believes “a very important role for the LSB would be to ensure greater consumer input into legal regulation across all the regulators with a view to refocusing the key priorities to achieve better consumer protection”.
87. However, the majority of respondents feel that the LSB should not prescribe regulatory action to address quality risks. The Bar Council’s response was very clear in its answer to this question, stating that the LSB should “not at all” prescribe regulatory action.
88. The BSB stated that each regulator should be left to develop its own approach to identifying and addressing quality risks, with regulators “given space and time to consider and develop additional tools”. The BSB’s response suggested that research into the effectiveness of various quality measures and methods to identify trends across the legal services market, should be undertaken, with the aim of producing a 'tool kit' of guidance and advice which regulators should consider but not be compelled to use.
89. A number of comments supported the maintenance of a dialogue between the LSB and the regulators. The SRA’s response suggested that the LSB should “maintain a dialogue with the regulators and be prepared to intervene on specific issues where there was a demonstrable failure in regulation by specific regulators on specific issues; but only in those circumstances”.
90. In its response, the Consumer Panel repeated the quote from the Decker and Yarrow report which suggested that quality risks are the strongest justification for regulation. The Consumer Panel believed that quality assurance should be a

high priority for the LSB and that, whilst recognising that the regulators operate in different contexts, it “would expect the LSB to require consistency of approach”.

LSB response

Addressing issues of quality in legal services is an area of clear importance for all regulators, including the LSB, as we share the responsibility for meeting the regulatory objectives set out in the Legal Services Act 2007. As explained in the consultation document, it is for each regulator to assure quality standards through their own regulatory arrangements; we have provided the table of examples at Appendix A as a starting point for action.

The LSB will continue to have a role in assuring that appropriate and consistent action is indeed taken by regulators, monitoring the evidence for and the effectiveness of the various quality measures and methods used across the legal services sector. We will look to do this through our work on regulatory standards, challenging regulators to consider how they can effectively meet the regulatory objectives and ensuring that their work on quality assurance includes and maintains sufficient consumer focus.

The success criteria we have identified provide the basis for assessing progress in relation to quality specifically, but where there are overlaps with the current year’s regulatory standards self assessment framework we will consider progress as part of this year’s self-assessment process. However we expect that regulators take account of all criteria as part of the ongoing development of their action plans.

Next Steps

91. This paper has established the importance of the following three key areas when addressing issues in relation to quality in the legal services market:
- Provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist
 - Development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis
 - Using an outcomes focused approach to ensure that regulatory interventions drive an improvement in quality standards without hindering innovation
92. As we have outlined, at this time it is not appropriate for the LSB to prescribe, in detail, how quality risks should be addressed, acknowledging the very strong linkages with our work on regulatory standards that have been identified. We therefore look forward to seeing evidence of the issues identified in this paper being addressed in the action plans developed for the regulatory standards work, which will continue to be assessed against delivery of the regulatory objectives.
93. With regard to quality assurance specifically, we have developed the following success criteria under the themes identified by which we will hold regulators to account. Where there are specific overlaps with the current year's regulatory standards self-assessment framework, progress will be considered as part of this year's self-assessment process. However we expect that regulators take account of all criteria as part of the ongoing development of their action plans.
- 94. Provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist**

Positive indicators

- Regulators publish information held on quality issues directly and, where appropriate mandate entity level publication, both in terms of specific research and more granular routine information (including information on disciplinary action)
- Regulators make available information on individual and entity level authorisation, including details of specialism, panel membership and quality marks where applicable
- Information sharing between approved regulators and providers of legal services "choice tools", for example professional registers made available to price comparison websites

- Regulators use consumer feedback information in assessment of quality risks where appropriate
- Regulatory arrangements support the provision of performance information

Negative indicators

- Regulators fail to publish provider level information
- Regulators make information available in a way that is inaccessible or incomprehensible to consumers
- Regulatory arrangements prohibit the provision and publication of performance information

95. Development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis

Positive indicators

- Regulators conducting targeted research to understand quality issues and identify risks
- Liaison with organisations that could assist in the assessment of risk, including the Legal Ombudsman, bulk purchasers such as the Crown Prosecution Service (CPS) and LSC or providers of voluntary quality schemes
- Different authorisation requirements and supervisory approaches according to risk, based on appropriate evidence

Negative indicators

- Regulators show little evidence on which to base the approach
- Regulators using only complaints data to inform risk assessment
- Uniform approach to quality assurance
- Quality assurance reliant only on entry and authorisation requirements

96. Using an outcomes focused approach to ensure regulatory interventions drive an improvement in quality standards without hindering innovation

Positive indicators

- Utilising a wide range of regulatory interventions, to address different types of quality risk
- Exploring how 'earned recognition' schemes might be used to assist regulatory decisions regarding authorisation and ongoing supervision while

ensuring the advantages of market led quality assurance mechanisms are not lost

- Reducing regulation where no evidence of quality risks

Negative indicators

- Additional regulation where it is not justified by risk
- Predominantly rules based regulation and high levels of prescription with no clear evidence base
- Unnecessary intervention in market led quality assurance mechanisms
- Regulators focus solely on technical quality risks

97. Overall, regulatory action in relation to quality risks needs to be outcomes-focused, evidence based, proportionate and targeted through appropriate segmentation of legal services. It should include a full assessment of risk and consideration of the principles of better regulation (Appendix B), taking particular care to avoid hindering innovation and where possible encouraging it. This reflects the criteria which we have set for the regulatory standards self-assessment but there are specific implications for quality assurance that regulators should take account of.
98. As we have discussed throughout this paper, quality assurance is not only a matter for regulators. Market-led approaches such as voluntary quality schemes and the role of bulk purchasers such as the CPS and LSC play an important part in assuring quality and driving up standards. Consumer 'choice tools' such as price comparison websites can also help address issues with information asymmetry between providers and consumers by providing a range of information including consumer feedback.
99. In support of the ongoing consideration of the role of voluntary quality schemes in the legal services market, we encourage the scheme operators to utilise the findings in the Consumer Panel report and to take important steps towards a more robust process of continuous improvement. We also encourage the Consumer Panel to conduct a further review of the schemes at an appropriate point to see whether there has been any change.

Appendix A

Examples of quality risks and suggested regulatory interventions

Quality risk mitigation	Regulatory interventions
Demonstrating basic / initial skills and knowledge necessary to be fit to practise	Entry and authorisation requirements
Demonstrating contemporary knowledge and awareness of practice	Outcomes focused / assessed CPD / authorisation
Demonstrating contemporary competency and ability to practise	Accreditation schemes / minimum competency assurance
Assured quality or competency of defined aspects of service provision	Evidenced / accredited quality marks
Identifying patterns or pockets of practice at the two extremes of the normal distribution curve; targeted regulation	Trend data e.g. complaints, market outcome data
Removing sub-standard competency or behaviours not acceptable for public protection	Fitness to practise investigation and sanctions at individual and firm level
Informing professional development, standards and ethics	Closing the virtuous circle – feeding the learning from outcomes in to standards and training
Matching the consumer and their needs to the right legal service and the right legal service provider	Comparison websites and consumer help or choice support information
Targeted regulation; informing professional development, standards and ethics	Risk profiling / predictive characteristics of high risk practice (failing or innovative practice)
Quality assurance and service development triggers, co-regulation	Consumer satisfaction feedback / consumer co-regulation
Targeted regulation, earned recognition/self-regulation	Oxera framework to segment market for customer feedback / develop a trusted source of comparative data for targeted intervention

Appendix B

Quality assurance – suggested best regulatory practice

Better regulation principle	Purpose
Proportionate	Reducing the burden, ensuring effective functioning in the market whilst protecting the consumer
Accountable	Cost benefit justification and a robust and compelling case to introduce, achieving the objective at the least cost and with the least coercion and with clear, transparent, time-bound evaluation
Consistent	Enabling a firm basis for decisions by consumers to choose suppliers confidently and suppliers to invest and innovate with a proper degree of certainty
Targeted	Remove existing regulation that unnecessarily impedes growth whilst seeking to modernise and improve compliance methods
Transparent	Consulting with those affected and being clear about how effectiveness will be monitored

Appendix C

List of respondents

Association of Personal Injury Lawyers

Action against Medical Accidents

The Bar Council

Bar Standards Board

City of London Law Society

Costs Lawyers Standards Board

Legal Services Consumer Panel

Council of Mortgage Lenders

Legal Ombudsman

Legal Services Commission

Chartered Institute of Legal Executives and ILEX Professional Standards

Solicitors Regulation Authority

Tunbridge Wells, Tonbridge & District Law Society

The Law Society

City of Westminster and Holborn Law Society