

Costs Lawyer Standards Board
Centurion House
129 Deansgate
Manchester
M3 3WR

Office: 0161 214 7904
Email: ceo@clsb.info

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Consultations Section
Legal Services Board
7th Floor, Victoria House
Southampton Row
London WC1B 4AD

Consultation: Approaches to Quality

Dear Sirs,

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?*

Since CLSB took over the role of approved regulator on 31 October 2011, no conduct complaints have been received by CLSB and no service complaints have been received by LeO. As the question is experience based, the CLSB therefore feels unable to answer.

Question 2: *Would it be helpful if the regulators approached issues of quality by looking separately at different segments of the legal services market?*

Only where they are relevant (similar/overlap) to avoid a cost without real benefit. For example, LeO advises the main cause of complaint is legal costs. It's the Costs Lawyer who drafts the bill (based on the file) and may argue it in court. This can lead to a perception that it is the Costs Lawyers fault that a bill is considered by a lay person to be excessive, when the failure to explain costs and keep clients informed of cost during the course of proceedings falls to the Solicitor.

Which segments do you perceive as being the greatest risk to consumers?

Risk should be based on fact not perception, statistical analysis surely provides a factual answer.

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

As each regulated profession is different in its role, the approved regulator should be allowed to make their own informed decisions based on various factors such as risk and cost/benefit as each challenge presents itself. This should not be prescriptive.

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?

The balance will be different in each of the regulated professions, one defined approach would not be effective across the board.

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 (APIL) Accreditation), consumer education and competition in the marketplace. How far do you think these external factors can be effective in tackling the risks to quality that exist?

External incentives and drivers have to be thought through by each profession as to whether, in reality, they would indeed deliver the required result. Significant cost could be incurred for no real benefit.

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

By providing such information yes, consumers would be able to make more informed decisions. That said, who would provide the information and in what format?

Based on suggested “*information about performance*” then in our view LeO would be best placed to provide this by way of service complaint data where a finding has been made, and has not been appealed within its defined timescale. Whilst this would provide a more sure foundation for publication, it would not be without implications including:

- Liability would attach to published data, increasing LeO’s exposure.
- Practitioners would be more likely to challenge consumer complaints to avoid a bad service complaints record.
- LeO’s financial risk would increase, the cost of which would no doubt be passed on to practitioners who would then have to pass it on to the consumer.

Further, we do not believe such an approach should be considered across the whole of the legal regulated community. Each profession should be considered individually as Costs Lawyers, for example, have mainly professional clients rather than litigants in person.

Any suggestion of rating legal practitioners would be far too dangerous a way forward. “Information” should be factual, wholly supportable if challenged in a court of law and without opinion.

Question 7: What do you believe are the greatest benefits of such transparency?

Informed decisions by the lay consumer.

What are the downsides and how can these be minimised?

Increased legal exposure, financial exposure and cost.

Question 8: The table 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?

A more comprehensive table, not an example table, should have been presented under this question.

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

This would differ across the legal regulated professions. Cost/benefit must be considered at all times with a justifiable model to avoid change simply for the sake of it.

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

In our view, it is not the role of the LSB to tell approved regulators how to regulate. The LSB is the oversight body and should they start to go down the line of prescriptive measures the lines will become blurred and their independence in their oversight role questionable. It would also raise the thorny question whether it is indeed right that practitioners in the legal regulated community fund both their regulator and the oversight regulator.

I hope the above assists in understanding our position on the questions raised.

Yours faithfully,

Lynn Plumbley
(Chief Executive)