

## **Legal Services Commission response to the Legal services Board consultation “Approaches to Quality”**

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Thank you for providing the LSC with an opportunity to respond to this consultation.

The Legal Services Commission (LSC) is a non – departmental public body sponsored by the Ministry of Justice (MOJ). The LSC is the biggest single purchaser of legal services in England and Wales with a current annual spend of just over £2billion. We are responsible for the delivery of civil and criminal legal aid.

We are pleased to be given the opportunity to respond to “Quality: A Consultation paper”. We agree with the LSB that Quality should be the responsibility of the regulators, but also believe that the profession should also share this responsibility. We believe that Quality assurance should be paid for up front by providers that want to deliver legal aid services. When considering what the relevant quality mechanisms should be in place the LSB should be mindful that they are proportionate, so as to not impose any additional cost to providers beyond that required to assure quality at the required level.

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

In our experience, the most common quality problems which are noted in peer review<sup>1</sup> rating 4 and 5 reports are poor client care. This issue is linked to poor communication i.e. the provider has not kept the client informed in relation to their case. The other reoccurring issue is that the client has been given incorrect legal advice by the provider, which could be linked to poor supervision.

**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?**

Legal aid services span different segments of the legal services market (e.g. solicitors firms, barristers chambers, and not for profit organisation), however we consider that all of the segments of legal aid should be considered together to prevent any issues of quality

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<sup>1</sup> The peer review process is a quality assessment tool administered by the LSC, which directly measures the quality of advice and legal work carried out by legal aid service providers. The peer review process is delivered using a risk based approach. A risk based peer review might be triggered by a contract manager contacting the peer review team with concerns that they have about a particular service provider.

impacting on the consumer. We would expect the same level of quality for legal aid clients regardless of the segment of the legal services market providing the service

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

We believe that it is important that quality risks are identified, and that consideration is given to any impact that such risk might have on the client and the providers.

To ensure that regulatory action to promote quality outcomes does not hinder the innovation of quality, it is important that the regulator is clear about the standards they require and what the implications will be on the individual or legal entity if these requirements are not met. This information should be clearly communicated to the relevant legal entity including the cost of regulation, the relevant timescales included to meet the requirements and how often these requirements will be reassessed.

The regulatory body should also reassess their requirements and consider whether the quality risks they have previously focussed on are still relevant or whether additional risks should now be considered. The LSB's framework should also consider any sanctions that the regulatory body has in place and whether these are proportionate.

An additional way to encourage quality outcomes and the innovation of the profession is to develop best practice guidance or training events for the all legal services and individuals seeking to meet or retain the relevant requirements of the regulatory body.

**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?**

We believe that there needs to be an equal balance between entry controls (i.e. quality standards), on-going risk assessment and targeted supervision which are most effective in tackling the risks to quality identified.

The LSC currently require a number of quality controls from entry of the contract and throughout the life of the contract. An entry requirement of our contracts is that the legal services provider must already hold or commit to achieve one of our recognised quality standards (i.e. currently the Specialist Quality Mark, Mediation Quality Mark or the Law Society's Lexcel Practice Management Standard) prior to the contract start date. The LSC will continue to consider alternative quality standards to those currently accepted as part of our contractual entry criteria for future tender rounds. The legal service provider is then required to ensure that they undertake the required re audit of each standard throughout the life of the contract.

We require a number of generic and category specific requirements for an individual to meet to be considered as a supervisor for the purposes of our contracts. The generic supervisor requirements state that the individual being required to undertake a specific number of case involvement hours in the relevant category of law; completion of an approved training course covering key supervisory skills no earlier than 12 months prior to completion of the form; and completion; completion of level 3 and National Vocational Qualification (NVQ) standard in supervising no earlier than 5 years prior to completion of the supervisor standards form.

There are also additional specific supervisor requirements such as evidence that the individual has undertaken a range of cases as specified in the category specific supervisor standard forms. Some category contract specifications e.g. immigration and Mental Health require a supervisor to be accredited (and subsequently re-accredited) by a relevant panel membership scheme. Accreditation is a good way to ensure good quality of an individual and helps mitigate the risks of technical competence, service competence and the service of quality.

Although quality standards are a good indication of how a legal service provider operates, we also believe that ongoing- risk monitoring is important. The LSC currently monitor risk by operating a targeted risk based Peer Review process and contract compliance audit to ensure that the quality of advice a client receives by the legal services provider is of a competent level, and that the Legal services providers is still meeting the terms of their contract in relation to the delivery of quality.

**Question 5: Quality can also be affected by external incentives and drivers. Some examples include voluntary schemes (for example for Association of Personal Injury Lawyers (APIL) 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?**

We believe that consumer education, competition and voluntary schemes in the market place are important and effective to improving quality. In our experience both competition in some of our contract tender rounds and consumer education such as improving quality workshops have both helped to improve the quality demonstrated by a legal service providers.

The LSC rely on a number of external quality incentives and drivers as entry criteria for an LSC contract. As stated above we believe that a good supervision is a powerful factor to tackle poor quality, particularly where the individual is required to undergo accreditation and or reaccreditation.

We also believe that file review is an effective way to ensure that work is being correctly undertaken by the caseworker and to ensure that they are providing good quality of advice to the consumer.

**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?**

The LSC have previously published an overall picture of peer review ratings received per category ([http://www.legalservices.gov.uk/docs/cds\\_main/PeerReviewOutcomesJan2011.pdf](http://www.legalservices.gov.uk/docs/cds_main/PeerReviewOutcomesJan2011.pdf) ).

We intend to publish further information regarding providers who have final peer review results in the near future.

We also update the name and contact details of the legal services providers who hold either the SQM or MQM quality standard on to the Community Legal Advice legal advisor finder

which is currently available on the DirectGov website (<http://legaladviserfinder.justice.gov.uk/AdviserSearch.do> ).

If the LSB were to consider publishing information about the performance of different legal services providers in relation to quality it should be with the view of what is in the public interest. It would act as an incentive to improve the quality of advice and services that they currently provide. However the regulatory bodies would need to be clear on what information they will publish on quality and how this information will be published and what the information means to the client.

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

As stated in our response to question 6, we believe that there is a potential benefit to publishing quality performance data in relation to a provider increasing the level of quality that provide. However, the possible downsides to this is that the public do not understand what the information is stating and then only want to be seen by those legal services providers who produce an “excellent” quality service and not go to Legal services providers offering what is deemed to be a competent advice service.

**Question 8: The table (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?**

We agree with the examples of how risks to quality can be mitigated and the relevant interventions that can be taken by the regulators to ensure this. However in relation to “matching the consumer and their needs to the right legal service and the right legal service provider”, any comparison websites developed by the regulatory intervention would need to be clear whose responsibility it is to undertake this matching exercise, i.e. a requirement of the LSC contract is that the Legal Services Provider has a process in place to signpost and refer a client to an appropriate legal services provider where they cannot meet the need of the client.

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

The LSC believe that the following interventions by regulators are likely to have a significant impact upon quality:

- Entry Requirements
- Accreditation schemes/ minimum competency assurance
- Evidenced/ accredited quality marks
- Fitness to practice investigation and sanctions at individual and firm level.

We consider all of these interventions to be important as they allow quality to be regulated from the start of an individual’s career all the way through.

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

We believe that the LSB should only act as a facilitator to the Regulatory Bodies and comment on the development of regulatory action to be taken by them in relation to addressing quality risks. The development of any regulatory actions to address quality risks should be the responsibility of the regulatory bodies.

**Further information**

If you have any queries about this response, please do not hesitate to contact Cate Jolley, LSC Consultation Coordinator on [cate.jolley@legalservices.gsi.gov.uk](mailto:cate.jolley@legalservices.gsi.gov.uk).

Yours sincerely

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