

# Quality in legal services

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Response to advice from the Legal Services Consumer Panel

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## Introduction

1. In July 2010 we commissioned the Legal Services Consumer Panel ('Consumer Panel') to provide advice on consumers' perceptions of quality and what they understand of the range of assurance measures and titles across different strands of the profession. The Consumer Panel published its final report on 11 November 2010. We thank the Consumer Panel for its work in producing the report and welcome the advice and six recommendations for further action by the Legal Services Board ('LSB') and the approved regulators ('ARs').
2. We agree that there appears to be a mismatch between consumer expectations of regulation and the safeguards that regulation provides in practice. It is therefore important that the LSB works with ARs to ensure that the risks posed to consumers by quality issues in the market are understood, and appropriately and proportionately addressed.
3. This response outlines our strategy in relation to quality assurance and identifies the work we intend to do over the 2011/12 business plan period. We will work with ARs to implement this strategy, and as part of this work will consider and take forward the specific recommendations made by the Consumer Panel.
4. We welcome the Consumer Panel's suggestion (at recommendation 3) of further advice on the characteristics of robust quality schemes and an assessment of how current schemes measure up against these criteria. We will make a formal request for this advice shortly.

### How does quality relate to our regulatory objectives?

5. Ensuring regulation imposes appropriate minimum competence standards for Authorised Persons ('APs') and the wider workforce is directly relevant to the achievement of the following regulatory objectives ('ROs'):
  - RO4 – Protecting and promoting the interests of consumers
  - RO6 – Encouraging an independent, strong, diverse and effective legal profession
  - RO8 – Promoting and maintaining adherence by Authorised Persons ('APs') to the professional principles (including maintaining proper standards of work).
6. LSB also has a specific duty under s.4 of Legal Services Act 2007 ('the Act') to assist in the maintenance and development of standards in relation to both the regulation of APs and the education and training of APs.

7. In addition to the direct relevance to these objectives and the specific duty, quality assurance also links to several other LSB workstreams, including:
- Widening access to the legal services market – there has to be a minimum standard of quality to ensure effective competition in the market; otherwise price competition could lead to an unacceptable reduction in quality
  - Improving access to justice: rationalising the scope of regulation – implicit in the notion of access to justice is the requirement that consumers have access to appropriate advice from those who meet minimum competence standards
  - Securing independent regulation – there has been a long-standing debate around whether quality assurance above entry-level qualifications should be a regulatory or professional membership concern. More broadly, appropriate regulatory safeguards will reinforce the independence of professional regulation as a whole by removing the need for supplementary schemes (for example those imposed by the LSC and CPS) in the absence of regulator-led alternatives.
8. LSB's role is to ensure ARs have in place appropriate and proportionate regulatory arrangements to ensure minimum quality standards are enforced in the legal services market. However, it is for individual ARs to determine the best approach in the context of their own regulated market and an appropriate risk assessment. This paper sets out the work that LSB will do to assist ARs in this task.

## What is quality?

9. The concept of quality in legal services is not easy to define and currently there is no identified or accepted benchmark for quality in terms of what a quality product or quality firm should or will look like.
10. Quality in the context of legal services should ultimately be judged by the quality of the outcome for the consumer – whether the service provided meets the consumer’s objectives (including whether it offers them value for money). Quality of outcome will depend on:
  - the technical quality of legal advice (for example in terms of accuracy and completeness, as well as the absence of manifest errors)
  - service quality in terms of how the legal advice is being delivered to the consumer (i.e. client care).
11. Our objective is to enable consumers, wherever possible, to take an active role in making informed choices about the appropriate level of quality for them. Our research suggests that consumers feel able to judge whether providers offer a good level of client care, but they feel less able to judge so-called ‘technical quality’. ARs should consider how better information could be made available to consumers about ‘technical quality’, and also what additional regulatory tools are required to underpin consumer judgements about an appropriate provider. We acknowledge that the concepts of quality of outcome, technical quality and service quality will often overlap, and any attempt to draw a clear distinction between them would be artificial.
12. The recent report on consumer outcomes commissioned by the LSB provides a valuable insight into consumers’ perceptions of what they believe the legal profession should deliver (see Annex A). The specific outcomes highlighted in the report provide a useful tool to support the development of regulatory approaches by the LSB and the ARs, and link closely to the aspects of quality mentioned in the paragraph above.
13. In terms of technical quality the consumer outcomes report indicates that consumers should receive independent, good quality advice. Providers must act with independence and integrity, maintain client confidentiality and have appropriate resources, skills and diligence.
14. In terms of ‘service quality’, the consumer outcomes report indicates that initial communication should ensure the consumer receives appropriate information and advice which enables them to make an informed decision about whether, and how, to use a legal service. Ongoing communication is

also important as the consumer should be consulted on key decisions in a timely way and to be actively kept informed of progress. Service quality will also include compliance with equality obligations in the delivery of services.

15. In terms of quality of outcomes, the consumer outcomes report indicates that consumers should receive the best possible advice, which takes account of their individual circumstances. The consumer must be consulted at each key decision-making point in the case and be provided with clear and useful advice which allows them to decide the course of action most likely to deliver their preferred outcome given the circumstances.
16. We also need to consider how consumers are influenced by overarching marketing tools used by companies or firms to define quality. Anecdotal evidence suggests that a number of companies are currently using branding or marketing techniques to introduce their own quality labels. This makes it all the more important to assure minimum competence standards for businesses that are currently defining and branding their own definitions of quality.

### **The relationship between quality and value for money**

17. In many cases there will be a trade-off between quality and the cost of delivering the service, which is one factor driving the price charged to the consumer. It would be inconsistent with the regulatory objectives to focus on driving up quality standards without considering the impact this might have on the value for money obtained by consumers. Higher quality standards may imply higher costs for suppliers, and these may translate into higher prices for consumers.
18. However, it is important to recognise that there is not necessarily a direct correlation between price and quality, and lower price does not always imply lower quality. For example, a provider might invest in technology, and this may enable it to offer a high quality service at a lower price than competitors offering an equivalent level of service quality. Consumers should have sufficient information to make informed judgements about which product they would like to buy, and at what price.
19. If regulatory requirements aimed at driving up quality standards are defined primarily in terms of the inputs applied, rather than outcomes achieved, this could have an adverse impact on the regulatory objectives. In particular, it could limit the scope for price competition, be contrary to the interests of consumers and adversely impact access to justice.

## The role of regulation

20. In determining an appropriate regulatory response to quality standards, ARs will need to take account of both the nature of the service being provided and the different types of consumers in different areas of the legal services market. For example, some parts of the market, such as corporate and commercial firms, will serve sophisticated repeat clients who have the knowledge and resources to satisfy themselves about quality (and the ability to pursue a claim for breach of contract or professional negligence, or move their business elsewhere, if the service is not provided to an appropriate standard). By contrast, in some other areas of the market, the nature of the services being provided means that consumers are likely to have much lower levels of knowledge about legal services and/or be disempowered – leaving them less well placed to make judgements about quality. Therefore, the appropriate regulatory approach to quality will vary depending on the nature of the service provided, the profile of consumers, and the potential consequences of receiving a poor quality service.
21. There is a range of work LSB is already doing that will help inform these decisions including research on market segmentation, and work on developing regulatory standards and rationalising the scope of regulation.
22. The objective of regulatory controls on quality should be to ensure that regulated services are delivered to a clear ‘fit for purpose’ quality standard, but not ‘gold-plated’ in a way which restricts access or inflates prices unnecessarily. This is a difficult balance to strike, and is made more challenging by the absence of research evidence about the quality issues that need to be addressed.
23. In addition to imposing minimum quality standards, requiring the provision of better information for consumers about the quality of the service being offered will enable them to make better informed judgements about the appropriate balance between price and quality given their individual circumstances and budget. Consumers may want to pay more for a higher quality of advice and service, but the Consumer Panel research suggests that at present individual consumers often base such decisions on either personal recommendations (which may not always be reliable or based on a full understanding of the service offered) or superficial indicators such as the location and appearance of offices.
24. The LSB considers that the ARs’ regulatory role in relation to quality assurance should focus on :
  - defining and enforcing minimum competence standards (both in relation to ‘technical’ quality and service quality)

- ensuring better and more comprehensive information is available to consumers to enable them to make informed choices about their purchasing decisions (and be able to differentiate between different service offerings at different prices).

25. Quality issues can be addressed in part through the review of legal education ('education review') which is being jointly delivered by the three largest ARs, the Solicitors Regulation Authority ('SRA'), Bar Standards Board ('BSB') and ILEX Professional Standards ('ILEX PS'). However, we must be clear that quality issues among lawyers who are already qualified will not be addressed through changing initial training / entry requirements. The quality assurance for advocates ('QAA') scheme is one example of how ARs are responding to perceived quality issues, but more work is needed to inform decisions about the extension of the scheme beyond criminal advocacy and the use of similar schemes in other areas of the legal market. Consideration also needs to be given to how regulatory tools more broadly can be used to ensure minimum standards of competence.

26. Quality issues and risks to quality in the legal services market need to be better understood and then addressed appropriately by the ARs. There is a range of possible information sources (for example complaints data, regulatory monitoring / compliance data, data on professional indemnity insurance claims, and qualitative and quantitative research covering consumer and suppliers' perspectives and outcomes). There is also a range of regulatory tools that might be deployed to deliver the right consumer outcomes, either 'across the board' or as targeted responses in particular areas of risk.

## Our strategy for quality assurance

27. Assessing risk and deciding on appropriate targeted responses in particular areas of the market is the task for the ARs. However, as oversight regulator, our strategy will be to challenge and support ARs in this task, and provide a framework for assessing and addressing these issues in a consistent and coherent way across the whole market.

28. Over the 2011/12 business plan period, LSB's work on quality will focus on developing the analytical framework for deciding appropriate regulatory interventions in relation to quality assurance. This will be achieved by:

- developing a better understanding of quality risks in the legal services market
- producing a toolkit identifying the regulatory tools/interventions that could be used to ensure minimum quality standards and their pros and cons
- developing a framework for assessing risks to quality to enable targeted responses.

29. The LSB and ARs must be satisfied that the training of lawyers and systems to ensure ongoing competence are fit for purpose and that the quality of advice is not compromised by commercial pressures. Consumers should also have access to information about the service they are purchasing to enable them to make an informed choice between different potential suppliers. The LSB will therefore challenge ARs to set out their approach to quality assurance and identify areas for improvement. Ultimately the success of ARs in addressing quality issues will be judged by the steps they have taken to:

- identify and assess the risks to quality in their regulated market
- deploy regulatory interventions to address these risks
- evaluate the effectiveness of these interventions.

30. LSB's work on whether will writing should be regulated will be an early opportunity to test such an approach.

### Developing an understanding of quality risks

31. It is important to identify research already undertaken by the legal sector and academics on quality issues. LSB will engage with a range of legal academics and those with experience in dealing with similar regulatory issues in other sectors (including financial services and healthcare). This will ensure we develop our understanding of the research already undertaken in relation to legal services and lessons that can be learned

from other regulators. We also plan to conduct a literature review of existing research and evidence in this area.

32. The focus of this exercise will not primarily be on gathering new evidence about quality in the provision of legal services – this is the role of the ARs. Rather, it will be focused on reviewing existing research and defining an approach to gathering further evidence.

### **Toolkit of regulatory interventions**

33. We envisage that these discussions and the literature review will help inform an exercise identifying the range of potential regulatory interventions to address quality risks, and the ‘pros and cons’ of each. For example, these interventions might include:

- entry requirements (academic, vocational training etc)
- training requirements placed on individuals (e.g. CPD requirements)
- accreditation requirements placed on individuals (e.g. QAA-style scheme in particular areas)
- training / accreditation requirements on entities (e.g. entity is responsible for ensuring workforce is appropriately trained and competence assessed)
- publication of complaints data
- price comparison websites
- customer review websites (e.g. ‘Trip Advisor’ style websites)
- requirement for service or client care information to be supplied in a specified standard form (e.g. similar to ‘Key Facts’ in financial services)
- focusing on quality in supervision activities, both generically and in cases of specific concern.

34. The ‘toolkit’ of potential regulatory interventions will have a clear focus on the various approaches to ensuring quality in the workforce and the quality of advice to consumers, rather than other entity standards focused on internal systems (for example, practice management standards or ISO9000 etc). However, this quality ‘toolkit’ will not be developed in isolation. It will be aligned with the wider work LSB and ARs are doing on developing regulatory standards and rationalising the scope of regulation.

### **Framework for assessing risks**

35. It is proposed that the framework for identifying and assessing risks to quality is developed using the research and information gathered through the work on understanding quality issues and developing the toolkit. We consider that ARs should adopt an approach towards quality assurance

which is outcomes-focused. There should be a presumption in all areas of the market that there are adequate ways of ensuring that lawyers **are** competent to provide the services that they hold themselves out as competent to provide. In determining what is required to achieve this, ARs will need to consider the nature of the services being provided, the risks associated with the provision of poor quality services, and the relative sophistication of consumers. In those segments of the market characterised by a generally sophisticated client base, it may be that regulators do not need to put in place any particular requirement because sufficient information is already available to enable consumers to make informed purchasing decisions.

36. The framework will provide ARs with an approach to identifying and assessing quality risks, helping to inform decisions about where they should prioritise the development of more comprehensive regulatory requirements – for example, the development of mandatory accreditation schemes.

37. We will seek the input of the Consumer Panel to this work.

## Responses to Consumer Panel Recommendations

38. A detailed response to each recommendation is set out in Table 1 below.

**Table 1: LSB’s detailed response to the Consumer Panel recommendations**

| Consumer Panel Advice  | LSB Response   |
|--|--|
| <p><i>Recommendation 1</i></p> <p>The quality of legal advice needs to be better understood and actively monitored. This should involve academic research and build on existing good practice techniques such as file review and peer review</p> | <p>We consider this recommendation to be closely aligned with our anticipated work programme on quality assurance in 2011/12.</p> <p>We will consider this recommendation further through information gathering and research based tasks, including a toolkit exercise, literature review and risk assessment framework. As part of the literature review, we see great value in conducting an exercise to identify good practice techniques in terms of the quality of legal advice which may include file review and peer review. This may involve enlisting the help of ARs to target best practice examples.</p> <p>We will consider in conjunction with the ARs, the possibility of the joint sponsorship of further academic research.</p> |

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| <p><i>Recommendation 2</i></p> <p>Approved Regulators should harness consumer power to exert reputational pressure on lawyers to maintain quality standards. They should publish, in an accessible form, appropriate information about the quality of legal advice</p>            | <p>We will challenge ARs to encourage transparency by providing consumers with information that signifies quality. For example, this could include: publicising complaints data; reviewing the use of quality tools; and improving the accessibility of information through mediums such as comparison websites and targeted information leaflets for consumers to highlight questions to ask when looking for a lawyer.</p> <p>We will commission further work from the Consumer Panel on existing quality schemes and quality marks (this is highlighted further in the response to recommendation 3 below).</p> <p>The Legal Ombudsman is developing its approach to publicising complaints data on lawyers and we will discuss with them how the information they gather and publish could best be harnessed by consumers.</p> |
| <p><i>Recommendation 3</i></p> <p>Quality schemes must be robust and deliver what they promise. The LSB should ask the Legal Services Consumer Panel to identify the characteristics of robust quality schemes and measure existing schemes against these criteria</p>            | <p>We agree to commission further work from the Consumer Panel on existing quality schemes and quality marks.</p> <p>It is intended that this work will help inform the assessment framework on how to judge quality and the 'toolkit' exercise described above.</p> <p>We have agreed with the Consumer Panel that this work will be commissioned in Q1 2011/2012 and delivered by the end of Q3 2011/2012.</p>   |
| <p><i>Recommendation 4</i></p> <p>Consumers need to be able to distinguish between regulated and unregulated lawyers. The LSB should examine how best to achieve this as part of its work on reserved legal activities including the feasibility of a single regulatory badge</p> | <p>We will consider this recommendation further through our work on the future scope of regulation. This will explore the feasibility of introducing a single regulatory badge and/or other ways for consumers to distinguish between regulated and non-regulated legal services, and identify the extent to which such an approach is also relevant to the regulation of individual lawyers.</p>  |

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| <p><i>Recommendation 5</i></p> <p>Continuing professional development requirements need strengthening – the LSB should review these arrangements across the sector as soon as possible</p>   | <p>We will ensure continuing professional development (CPD) requirements are addressed either as part of the education review or as a separate project. We note that BSB already has a significant programme of work in this area and that the SRA is planning to review CPD requirements ahead of the education review.</p> |
| <p><i>Recommendation 6</i></p> <p>The LSB should lead a debate on more far reaching ways of ensuring competence across the sector, including licensing by activity and periodic reaccreditation. This should take lessons from other sectors that have faced similar issues.</p> | <p>We will propose to the three largest ARs (SRA, BSB and ILEX PS) that this recommendation is considered as part of the education review and, to the extent that it is not covered, identify appropriate interventions by the LSB to address any gaps.</p>  |

### **Timeline of further commissioned research**

39. We will formally commission the Consumer Panel to take forward recommendation 3 of the quality in legal services report to identify the characteristics of robust quality schemes and measure existing schemes against these criteria. We will make a formal request for this advice shortly.
40. Our preliminary discussion with the Consumer Panel Manager has outlined the commissioned research to be delivered by the end of Q3 2011/2012. It is intended that this research will help inform the LSB's overall work programme on quality assurance it is anticipated will be complete by the end of Q4 2011/2012.

## Annex A: Consumer Outcomes

Legal Services Board: Development measures for consumer outcomes for legal services – A report of research carried out by Opinion Leader, March 2011

### The outcomes – final iteration

#### **Transparency**

- **Consumers can make comparisons and informed choices between providers based on clear, useful information about the services provided and their costs**
- **What it means:** providers give clear, accurate and jargon-free information that allows consumers to compare providers and make informed choices without the need to discuss their case in detail.
- **What it does not mean:** will not define how or the exact range of information that should be delivered unless necessary in specific circumstances to protect consumers.

#### **Initial communication**

- **Consumers receive appropriate information and advice which enables them to make an informed decision about whether and how to use a legal service**
- **What it means:** at the outset the provider gives potential consumers appropriate information and advice which allows them to make a decision about the appropriate action given their circumstances.
- **What it does not mean:** will not define what information or advice should be provided, or in what format, unless necessary in specific circumstances to protect consumers.

#### **Ongoing communication**

- **Consumers are consulted on key decisions in a timely way and actively kept informed of progress**
- **What it means:** providers proactively communicate with clients to manage expectations and highlight any significant changes to projected costs, timelines, strategy and likelihood of success.
- **What it does not mean:** does not specify how, what or the frequency with which a provider should communicate with a consumer.

### **Professionalism and integrity**

- **Consumers receive independent, good quality advice**
- **What it means:** providers act with independence and integrity, maintain client confidentiality and have the appropriate resources, skills and diligence.

### **Timeliness**

- **Services are delivered to agreed timelines with no unnecessary delay**
- **What it means:** the provider sets out and agrees with the consumer the projected timeline for the key actions in the case and delivers against them unless changes are agreed in light of changing circumstances or external factors force delay.
- **What it does not mean:** will not provide a matrix of acceptable or normal timelines for different types of cases or prescribe the points at which the provider should communicate with the consumer.

### **Alignment with consumers' best interests**

- **Consumers receive the best possible advice, which takes account of their individual circumstances**
- **What it means:** at each key decision-making point in the case the consumer is consulted and provided clear and useful advice which allows them to decide the course of action most likely to deliver their preferred outcome given the circumstances.
- **What it does not mean:** will not provide a matrix of the best possible advice in different circumstances or when and how the consumer should be consulted.

### **Complaints**

- **Consumers are aware of the opportunity to complain, and their complaint is treated seriously and handled fairly and efficiently**
- **What it means:** providers make clear to consumers that they have a right to complain and the process involved including the opportunity to complain to the Legal Ombudsman. Providers have an effective internal procedure for resolving complaints in the first instance and cooperate with complaints considered by the Legal Ombudsman and regulators. Providers learn from complaints that they have received to improve practices.
- **What it does not mean:** does not prescribe what an effective internal complaints system must look like other than in relation to certain requirements for signposting to the ombudsmen.