



Voluntary quality schemes in legal services

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CONTENTS

1	Summary	1
2	Voluntary quality schemes in legal services	3
3	Essential characteristics	6
4	Scheme assessment	10
5	Issues for regulators	19
6	Conclusions and Recommendations	22
	Annex 1 – LSB request and Project approach	23
	Annex 2 - Best practice self-regulation	26
	Annex 3 – Data Sought	28
	Notes	30

1 Summary

The role of voluntary quality schemes

- 1.1. Voluntary quality schemes (VQS) are an optional form of accreditation that lawyers can obtain to demonstrate they meet specific quality standards or have specialist expertise. In May this year, the Legal Services Board asked us to:
 - Identify the characteristics that VQS must have to give consumers confidence that they are a robust and reliable indicator of a good legal services provider; and
 - Using these characteristics as criteria, measure a selection of existing schemes against them and provide a view about whether, as currently designed, each operates in a way which is likely to give consumers confidence in the quality of participating providers.
- 1.2. The Panel sees the potential for VQS to be used as a 'choice tool' by consumers, empowering them to make informed choices and encouraging lawyers to compete on quality. Currently these schemes are used by some large purchasers of legal services, but rarely by individual consumers. If this is to change, consumers need to be confident that VQS are credible signals of quality, as research indicates that people are confused about what quality schemes signify and worry they are industry marketing ploys rather than genuine guarantees of quality.

Findings on the schemes

- 1.3. Drawing on consumer research and best-practice in self-regulation, we identified ten essential characteristics that VQS need to demonstrate in order to enjoy consumer confidence, under three headings:
 - Scheme operation, such as entry requirements and ongoing competence checks;
 - Consumer information and feedback, such as consumer-facing publications and complaints processes; and
 - Scheme development, such as review processes and lay input.
- 1.4. Thirteen schemes were selected in order to cover a range of scheme operators and legal areas. Characteristics related to day-to-day operations were met to the greatest extent. Many perform well in relation to entry requirements, reaccreditation and having systems in place to deal with poor practice.
- 1.5. There was less success in other areas. Most notably, there are few practical checks on technical competence, little lay input in the design and operation of schemes and minimal collection and use of consumer feedback. Moreover, schemes are not validated and so offer no proof that they are delivering on their quality claims: that members are specialists offering added value beyond the minimum requirements of regulators. Finally, information available for consumers about the schemes, and the ease with which it can be found, is by and large quite poor.

Wider issues

- 1.6. The report is primarily aimed at scheme operators, but identifies a series of wider issues of interest to regulators:
- Participation and competition issues – in practice VQS can become mandatory to access certain parts of the legal services market; this situation is developing in the conveyancing market for solicitors. Whilst the Panel supports efforts to raise standards, this risks market players and not the regulators being the guardians of entry standards. This goes against independent regulation principles and may unduly restrict competition if the requirements set by large purchasers are too high;
 - Risk-based regulation – VQS can provide valuable information for approved regulators about members and vice versa which should be shared.

There is also potential for approved regulators to consider membership of VQS within ‘earned recognition’ policies which provide firms with a positive risk score and reduce inspection frequency. However, regulators must first be sure that VQS are a reliable risk indicator; and

- Independent accreditation of VQS – ultimately, schemes face an uphill battle to tackle consumer scepticism and gain widespread awareness. Elsewhere, independent organisations provide a form of endorsement for similar schemes, thus carrying a seal of approval from a trusted source. The legal services sector should consider the benefits and drawbacks of bringing in such third-party accreditation. However, this is only likely to work if it is initiated by the industry rather than being imposed from outside.

Recommendations

The Panel’s advice to the LSB is as follows:

- Scheme operators should undertake a detailed self-assessment against the essential characteristics set out in this report. In particular, there are four main elements of schemes which need attention:
 - Measures that assess actual competence, such as spot checks or mystery shopping, should be used to ensure ongoing competence;
 - Clearer consumer information, which should be made more easily available;
 - Lay input and consumer feedback should be included to a greater extent into scheme development and review; and
 - Data should be collected, analysed and published to validate scheme claims and inform ongoing review processes.
- Regulators should collect data on scheme membership and examine how membership of credible schemes could be recognised within risk-based regulation.
- Scheme operators and the LSB should consider the advantages and drawbacks of developing an independent accreditation scheme for Voluntary Quality Schemes.

2 Voluntary quality schemes in legal services

Introduction

- 2.1. Following our report on quality in legal services¹, the Legal Services Board (LSB) asked us to provide further advice on voluntary quality schemes (VQS). The LSB's request² has two parts:
- Identify the characteristics that VQS must have to give consumers confidence that they are a robust and reliable indicator of a good quality legal services provider; and
 - Using these characteristics as criteria, measure a selection of existing schemes against them and provide a view about whether, as currently designed, each operates in a way which is likely to give consumers confidence in the quality of participating providers.
- 2.2. VQS are an optional form of accreditation that lawyers can obtain to demonstrate they meet specific quality standards or have specialist expertise. Whereas regulatory standards should offer consumers assurance about the minimum quality levels of advice and service they can expect from lawyers, VQS set enhanced standards over and above these requirements.
- 2.3. VQS are one form of 'choice tool' that the Government is promoting within its Consumer Empowerment Strategy.³ This strategy is designed to put greater information into the hands of consumers to help drive growth and secure a power shift from businesses to citizens and communities. The Panel's Consumer Impact Report⁴ identified promoting consumer empowerment as a key challenge for the legal sector. Most people lack knowledge about the law, use legal services infrequently and often at times of distress. This makes it difficult for them to judge quality and make informed choices between many seemingly similar providers.
- 2.4. VQS can contribute to turning this power balance around by assisting consumers to drive competition in the market through informed decisions and active purchasing. In addition, VQS can benefit consumers by clarifying what they can expect from their lawyer and by promoting competition between firms above the minimum quality threshold set by regulators.
- 2.5. However, although VQS have the potential to help consumers, they equally pose risks if they are not reliable and robust. In a worst case scenario, VQS could provide false or misleading quality signals, which may result in consumer mistrust or lead to consumer detriment. Studies from other

sectors have found that consumers are confused about what quality schemes signify and concerned they are awarded by industry, making them marketing tools rather than a genuine guarantee of quality. Whether justified or not, these concerns are likely to transfer to VQS in legal services, with the result that consumer usage may be blunted. The challenge therefore is to find ways of ensuring that VQS are credible, so that consumers can be confident about using them in the legal services market.

What are voluntary quality schemes?

- 2.6. We have identified at least 20 VQS operating in the legal services market. Although they cover different aspects of legal practice and operate in a range of ways, they also share some common features:
- Being designed to signal that their participants are ‘better’ than others in the market;
 - Having a consumer-facing ‘quality mark’ that allows consumers to identify those providers who are members; and
 - Requiring some form of assessment/accreditation in which members make an active decision to participate.
- 2.7. The above features are important; they differentiate VQS from other types of initiatives which lawyers may voluntarily participate in, such as membership of professional associations and joint-marketing initiatives.
- 2.8. The majority of VQS focus on specific practice areas, such as personal injury, family law, or clinical negligence. The Law Society operates many of these, alongside professional associations, such as the Association of Personal Injury Lawyers (APIL), and special interest charities, such as Action against Medical Accidents (AvMA). Given research indicating the importance to consumers of obtaining specialist advice, and the challenges consumers face in identifying high quality providers, the report concentrates on this type of scheme.
- 2.9. The other main type of scheme relates to practise management and includes Lexcel, operated by the Law Society, the Bar Council’s Barmark, and the Legal Services Commission’s Specialist Quality Mark. A range of generic schemes are also present in the market, such as Investors in People and ISO standards.
- 2.10. Solicitors dominate scheme membership, although accreditation is often available to other professionals, such as Fellows of ILEX or barristers. As far as the Panel is aware, other than Queen’s Counsel appointment, there are no practice area VQS focused on advocacy or specifically for barristers. There are none for licensed conveyancers, with entry to the Law Society’s Conveyancing Quality Scheme (CQS) restricted to those employed in solicitor firms.
- 2.11. Few schemes are targeted directly at unregulated lawyers, with Society of Trust and Estate Practitioners (STEP) accreditation the main exception. APIL and some Law Society schemes offer some accreditation to non-lawyers, however this is mostly limited to employees within law firms.
- 2.12. The emphasis on ‘voluntary’ is important; VQS serve a distinctly different purpose from mandatory accreditation schemes, such as the Quality Assurance Scheme for Advocates (QASA). Whereas QASA is being introduced to ensure all advocates meet additional requirements before being able to provide criminal advocacy services, the accreditation provided by VQS is an optional enhancement. Therefore, VQS are not a substitute for regulators setting necessary minimum entry standards to

protect consumers as they do not, by definition, apply to the whole market.

How are VQS used

- 2.13. The limited evidence available indicates that few consumers use VQS directly to help them choose lawyers. Although 70% of the general population in England and Wales are aware of quality marks in the economy, only 5% look for them when purchasing legal services, compared with 31% when purchasing electrical goods or 17% when purchasing building services.⁵ Thus, although some consumers see quality schemes in legal services as potentially useful for reducing the ‘pot luck’ nature of picking a lawyer, actual awareness and usage are low.
- 2.14. This may be changing, however. The Panel’s research shows that quality is becoming an important consideration in individuals’ purchasing decisions. Specialist expertise outweighs price as a choice factor with 63% of people stating that a provider being a specialist was a very or fairly important factor.⁶ The Quality Solicitors initiative, the heavy investment and promotion of the CQS, and the Law Society’s current ‘Choose Quality Advice’ campaign all signal that quality is seen to be important in competing for individual purchasers.
- 2.15. A number of consumer-facing organisations also recommend that their service users look for lawyers accredited under certain VQS. Key examples occur in the public and third sector: Cafcass strongly recommends that people use a Law Society accredited Children’s Panel member,⁷ the charity Scope recommends people considering cerebral palsy clinical negligence cases look for law firms that have accredited Law Society or AvMa members,⁸ and Rethink, a charity focussed on mental health, recommends that people look for solicitors with Law Society accreditation.⁹
- 2.16. Usage and awareness is different for larger consumers, such as banks, and intermediaries who select lawyers for their clients. For example, the Legal Services Commission (LSC) requires voluntary accreditation as a condition of public funding. Discussions with the Council of Mortgage Lenders and insurers suggest that membership of specialist schemes is seen as a signal that a firm takes its activities seriously, although it is unlikely to be the sole factor in choosing whether to instruct a firm. Equally, some claims management companies use these schemes to identify solicitors they will allow on their panels. For example, the National Accident Helpline has told us that membership of schemes is very important to them, with all firms needing to have at least one APIL and one Law Society Personal Injury Panel member.
- 2.17. This analysis suggests that even without individual consumers being able to recognise schemes, large purchasers and intermediaries are able to filter the market to deliver equivalent benefits to their service users.

3 Essential characteristics

Introduction

- 3.1. This chapter describes the essential characteristics that VQS should have to command consumer confidence. To identify these, we drew on three main information sources:
- As the design of VQS should be informed by consumer preferences and behaviour, we considered evidence in existing consumer research;
 - Established best practice in the design of self-regulatory schemes; and
 - We held a workshop with scheme operators to learn from their experience and seek their views around how we can best ensure consumer confidence.

Learning from consumer research

- 3.2. The Panel's previous research explored what quality in legal services means to consumers and their assumptions about quality assurance.¹⁰ A standout finding was that consumers assume all solicitors are competent and, importantly, that 'someone' is making sure this is the case. Underlying this assumption is a belief that a combination of entry requirements and ongoing checks would deliver professionals who had the right knowledge and skills. When asked what kinds of quality assurance mechanisms could deliver this, consumers were particularly supportive of regular competence checks, compulsory Continuous Professional

Development (CPD) and publication of regulatory information.

- 3.3. The same research also provided insight into consumer concerns about quality marks, including:
- Schemes are potentially open to manipulation. Consumers were worried about representatives bodies running these schemes in the interests of providers rather than consumers;
 - It is very difficult to raise a scheme's profile sufficiently so that the majority of consumers will recognise it; and
 - Schemes need to focus on individuals rather than the firm. It is the individual who is most important in terms of providing an efficient, empathetic and knowledgeable service.
- 3.4. These findings indicate some clear consumer demands: robust entry requirements, ongoing competence checks, transparency, independence and a consumer focus underpinning the scheme.

Best-practice in self-regulation

- 3.5. Best-practice in self-regulation has been the subject of numerous studies and research. Consumer organisations, regulators and Government departments have all considered this question and developed frameworks and checklists for what self-regulatory initiatives should look like. For example, the National Consumer Council, Consumer Focus and Which?

have each identified the key features of consumer-focused self-regulation. Similarly, the Office of Fair Trading, Ofcom, and Trustmark have identified the factors that contribute to the success of self-regulation (including accreditation schemes). A summary of this work is set out in Annex 2.

- 3.6. Another important source is the criteria published by the LSB as part of the development of QASA. The LSB found that a robust and credible scheme would need to meet seven key principles: independence, consistency, differentiation, tailored assessment, compulsory participation, limited exceptions and periodic reaccreditation.¹¹ Although some of these are more relevant to a mandatory scheme, others, such as re-accreditation and independence, are equally applicable to voluntary schemes.
- 3.7. The extent to which the best-practice criteria apply to different types of self-regulatory initiatives vary, but there is significant consensus on a number of features. In particular, it is apparent that transparency, consumer awareness, robust standards and clarity of objective are essential. Equally, some form of independent involvement, ongoing review, and adequate resourcing are fundamental elements of good practice.

Essential Characteristics

- 3.8. Drawing on this evidence, Table 1 sets out the ten characteristics which the Panel considers essential to ensure consumers have confidence that a scheme is a robust and reliable signal of quality. The characteristics are divided into three groups:
- Scheme operation, such as entry requirements and ongoing competence checks;

- Consumer information and feedback, such as consumer-facing publications and complaints processes; and
 - Scheme development, such as review processes and lay input.
- 3.9. These groupings allow the schemes to be considered from three angles: how the scheme operates; what the consumer sees; and whether there is any testing of what is being delivered. Such triangulation is essential; even the best-designed scheme will only be as reliable as its implementation.
- 3.10. Consumer confidence relates as much to a scheme appearing to be independent and robust, as to whether it actually delivers good quality legal advisors. In particular, the third grouping of characteristics has been identified to help indicate whether there are processes in place to support sound delivery, such as resourcing, review and validation processes.

Table 1: Characteristics to give consumers confidence

CHARACTERISTIC	DESCRIPTION
SCHEME OPERATION	
Relevant and transparent entry requirements	<ul style="list-style-type: none"> • Entry requirements need to reflect what the scheme claims to deliver. Accreditation requirements should be transparent, objective and closely related to the scheme focus. • As a signal of higher quality, entry requirements should demand more than the regulatory obligations already placed on providers. • Whilst specific entry requirements will vary between practice areas, both technical and softer client care skills should be covered. • The assessment process should require robust evidence, ideally independently verified, with scope for applicants to fail.
Structured re-accreditation	<ul style="list-style-type: none"> • Membership should not last indefinitely. • Members should need to renew their membership to demonstrate that they continue to meet the required standards.
Diverse and ongoing competence checks	<ul style="list-style-type: none"> • Consumers need to be sure that scheme participants were not only competent at entry but continue to be competent as long as they hold accreditation. • Proactive and reactive competence checks should occur throughout membership. • Whilst these could be undertaken in a range of ways, checks should ideally involve some independent review of cases or advice.
Structured sanctions and disciplinary process	<ul style="list-style-type: none"> • Schemes need a transparent and structured disciplinary framework. • Schemes need to provide an incentive for maintaining high standards and loss of accreditation should be a real risk for participants. • There should be clear communication pathways with regulators. If a scheme operator becomes aware of serious issues which affect not only eligibility for membership, but wider breaches of regulatory standards, this needs to be raised with regulators.
CONSUMER INFORMATION AND FEEDBACK	
Targeted, understandable and easily available scheme information for consumers	<ul style="list-style-type: none"> • Schemes need to be promoted to consumers; consumers can only make an informed choice about whether to use a scheme member if they are aware of the scheme and understand what membership means. • Schemes need to be accountable and transparent about their operations. • Consumers must be able to easily access plain English information about the scheme, its membership and what they can expect from accredited members.

Clear and accessible consumer complaints and feedback processes	<ul style="list-style-type: none"> • Consumers need clear mechanisms for complaining or providing other feedback. • Consumers should be encouraged to raise issues about members who fail to meet the expected standard. • Consumer concerns should be investigated and addressed if required (see sanctions and disciplinary processes). This is distinct from regulatory complaints rules or access to the Legal Ombudsman.
SCHEME DEVELOPMENT	
Use of lay input	<ul style="list-style-type: none"> • Whilst most voluntary schemes will be industry run, lay input is important and can be an important signal of independence. • Different, non-industry viewpoints should be incorporated at various stages, particularly during reviews.
Incorporates consumer needs and views	<ul style="list-style-type: none"> • Schemes need to reflect what is important to consumers when they choose lawyers. • The mechanisms for considering this are likely to vary, depending on the size and resources for each scheme, but could include taking account of published research or cost-effective consumer feedback mechanisms.
Scheme effectiveness monitored and periodically reviewed	<ul style="list-style-type: none"> • Schemes need to make sure that their processes and systems deliver the calibre of legal service providers they claim. Cost-effective testing of whether there are differences between members and non-members (e.g. in terms of advice quality, complaints, etc) would help validate schemes. • Schemes may need to adapt to a changing market or to changing consumer needs and expectations. Periodic review should assist with ensuring this is the case, and could consider any, or all, of the criteria in this framework.
Adequate resourcing	<ul style="list-style-type: none"> • Schemes need the resources to be implemented effectively. • Schemes need to have adequate staffing and support to enable them to undertake scheme management, including assessments, checks and monitoring, administration and disciplinary processes.

4 Scheme assessment

Introduction

- 4.1. This chapter delivers the second half of the LSB's request by assessing a selection of VQS against the essential characteristics described in the previous chapter.
- 4.2. Research indicates that consumers value specialist advice, but at the same time face challenges in identifying high quality providers. We therefore decided to concentrate on schemes which accredit expertise in particular practise areas, such as personal injury or family law. Table 2 (overpage) lists the 13 schemes assessed. We selected these to cover a range of operators and legal areas. Additionally, we looked for schemes where consumers are particularly at risk of being vulnerable or which covered the most commonly used legal services.
- 4.3. Detailed information on each scheme was collected from websites and through requests to scheme operators. To verify accuracy and interpretation, the Panel shared the collated data with operators in advance of the assessment. The same information was collected on each scheme, (for a full list of the data sought see Annex 3). We are grateful to the scheme operators for their constructive attitude and cooperation during this process.
- 4.4. Each scheme was assessed individually using the scale in table 3. The Panel provided all scheme operators with the opportunity to review its findings and offered them a right of reply in relation to factual accuracy.

Table 3: Assessment scale

	Scheme meets criteria
	Scheme mostly meets criteria but is missing a couple of key aspects
	Scheme partly meets criteria
	Scheme meets very few aspects of criteria
	Scheme does not meet criteria

- 4.5. Our assessment is based on the way schemes are operating at present. We recognise that a number of schemes are under review, and that changes are therefore likely to be made. Whilst we have acknowledged upcoming amendments, we have not factored these into our assessment except for two cases where a change is already being piloted or tested: APIL's new competency framework and the Law Society's new consumer website. Where we know schemes are currently under review, we have included a '#' symbol in the assessment box.
- 4.6. The purpose of the assessments was to identify shared features and highlight strengths and weaknesses across the schemes as a whole, rather than undertake a full-scale review of each scheme or to provide endorsement for any particular schemes.

Table 2: Schemes selected for assessment

Scheme Name	Who can join?	Number of members ¹ (solicitors in brackets where known)	Estimated no. of potential members ²	Coverage (%)
APIL accreditation	Paralegal, solicitors, Fellows of ILEX (FILEX) and barristers	1290 (1138)	13094	8.7%
AvMa specialist panel member	Solicitors, FILEX	180 (180)	3260	5.5%
Queen's Counsel	Barristers, Solicitor advocates	1324 (6 HCAs) ³	21771 ⁴	6.1%
Resolution accredited specialist	Solicitors, FILEX	1539 (1449)	13633	10.6%
STEP – full member	No restriction	3700 (2590)	19872 ⁵	13%
The Law Society (TLS) Children	Solicitors, FILEX	2055 (solicitor breakdown unavailable)	5695	36%
TLS Clinical negligence	Solicitors, FILEX	342 (solicitor breakdown unavailable)	3260 ⁶	10.5%
TLS Conveyancing Quality Scheme	Solicitor firms	500 firms ⁷	5713 ⁸	8.7%
TLS Criminal Litigation Panel	Solicitors	7001 (solicitor breakdown unavailable)	13786 ⁹	50.7%
TLS Family law/Family law advanced	Solicitors, FILEX	2251 ¹⁰ (solicitor breakdown unavailable)	13633	16.5%
TLS Immigration and Asylum	Solicitors, employees of solicitor firm (including non-solicitors) or organisations regulated by OISC and with an LSC contract.	1635 (solicitor breakdown unavailable)	3579	45.6%
TLS Mental Health Review Tribunal	Solicitors, FILEX, and non solicitors must be employed by a solicitor.	372 (solicitor breakdown unavailable)	1654	22.4%
TLS Personal Injury	Solicitors, FILEX	962 (solicitor breakdown unavailable)	13094	7.3%

Table notes

1 - All statistics are sourced from scheme operators as part of this project and were correct as at August 2011 (unless otherwise stated). They relate to individual members except for CQS.

2 - These are rough estimates based primarily the number of solicitors who state they practice in this area (Law Society 2010). Other sources are as shown.

3- Estimate based on the Bar Council, Bar Barometer, March 2011 and the number of employed barristers and solicitors with higher advocacy rights that have been appointed as QC since the 2008-09 round (no earlier statistics available).

4 - Based on the Bar Council, Bar Barometer, March 2011 and SRA data on number of HCAs - 6,501

5 - This is based on the number of solicitors who state they undertake wills and probate as well as Trusts work. The actual number of individual undertaking this work is likely to be lower, but we do not have the cross-over data.

6 - Number of solicitors who state they work in medical negligence

7 - Solicitor's Journal, 22 August 2011,

http://www.solicitorsjournal.com/story.asp?sectioncode=2&storycode=18852&c=3&eclipse_action=getsession

8 - Estimated from SRA figures provided as part of the Regulatory Information Review

9 - Very hard to estimate as not categorised in same way, given criminal negligence accreditation is for duty solicitor and magistrate work. The estimate is based on for the number of solicitors who state they work in crime general motor and juvenile, as well as fraud. However, the actual number could be lower as there is likely to be some overlap.

10 – 1541 standard members and 710 advanced members

- 4.7. Whilst some comparison inevitably occurs, the purpose was not to rank the schemes in relation to each other. The Panel did not attempt to determine the 'best' way of meeting the criteria, recognising it is likely the desired outcomes could be achieved in different ways, provided scheme systems are robust. Moreover, although we were able to assess whether or not schemes had certain process (eg. sanction systems), we faced limitations in the extent to which we could assess how effectively these processes are implemented.
- 4.8. QC Appointments highlighted to us the differences they see between their role and the other schemes in this report. In particular QC Appointments noted that its purpose is limited to considering applications, making recommendations of appointment, and potentially recommendations for its removal. The Panel recognises that some of our criteria are not reflected in the design of the QC Appointments, which meant that a 'red' mark was the only possible rating. However, we decided to include QC Appointments because, although the majority of clients will be experienced professionals (namely solicitors), the QC mark is also promoted to individual consumers as a badge of excellence for advocates and as such has the effect of encouraging consumers to select QCs over other types of advocate. In this context we consider that our criteria are relevant to an assessment of whether the QC mark provides consumers with a reliable indicator of the quality of advocacy provided by those holding this title.

Overall findings

- 4.9. A summary of the assessment is shown in Table 4 (over page) and the full assessment sheets for each scheme are published separately on our website.¹²
- 4.10. By applying a mark to the assessment scale (5 points for green down to 1 point

for red), we ranked the overall extent to which characteristics are met, shown in Table 5.

Table 5: Achievement of characteristics

CHARACTERISTIC	RANKING
Relevant and transparent entry requirements	58
Structured re-accreditation	49
Structured sanctions and disciplinary process	48
Scheme effectiveness monitored and periodically reviewed	39
Diverse and ongoing competence checks	39
Clear and accessible consumer complaints and feedback processes	39
Targeted, understandable and easily available scheme information for consumers	33
Incorporates consumer needs and views	29
Use of lay input	28
Adequate resourcing	Not assessed

- 4.11. There is a clear division between the inward and outward-facing elements of the characteristics. Overall VQS are most successful in the operation of schemes, in particular having relevant and transparent entry requirements, reaccreditation and dealing with poor practice by members, although mechanisms to check ongoing competence are less prevalent. The schemes are less successful in involving lay input in the design and operation of schemes and using consumer feedback. Moreover, although many schemes are supposed to help consumers find specialist legal advisors, the information available for consumers, and the ease of finding it, needs improvement. This is perhaps unsurprising given VQS are industry-run, but the consumer-facing elements are important features.

Table 4: Scheme Assessment

	Relevant and transparent entry requirements	Structured re-accreditation	Diverse and ongoing competence checks	Structured sanctions and disciplinary process	Targeted, understandable and easily available scheme information for consumers	Clear and accessible consumer complaints and feedback processes	Use of lay input	Incorporates consumer needs and views	Scheme effectiveness monitored and periodically reviewed	Adequate resourcing
APIL	Green	Light Green	Yellow	Green	Green	Light Green	Green	Light Green	Yellow	Not assessed
AvMA	Green	Green	Light Green	Green	Green	Yellow	Yellow	Orange	Yellow	Not assessed
QC	Green	Red	Red	Orange	Red	Red	Green	Red	Yellow	Not assessed
Res.	Light Green	Green	Light Green	Green	Yellow	Light Green	Red	Yellow	Yellow	Not assessed
STEP	Light Green	Yellow	Orange	Green	Yellow	Yellow	Green	Orange	Yellow	Not assessed
TLS Children #	Green	Green	Yellow	Yellow	Orange	Yellow	Red	Orange	Yellow	Not assessed
TLS Crim. Litigation #	Green	Red	Orange	Yellow	Red	Yellow	Red	Orange	Yellow	Not assessed
TLS Clin. Neg. #	Light Green	Green	Yellow	Yellow	Orange	Yellow	Red	Orange	Yellow	Not assessed
TLS CQS #	Light Green	Yellow	Light Green	Green	Light Green	Yellow	Orange	Yellow	Yellow	Not assessed
TLS Family #	Light Green	Yellow	Yellow	Yellow	Orange	Yellow	Red	Orange	Yellow	Not assessed
TLS Immigr. #	Green	Light Green	Yellow	Yellow	Red	Yellow	Red	Orange	Yellow	Not assessed
TLS Mental Health #	Light Green	Green	Yellow	Yellow	Orange	Yellow	Red	Orange	Yellow	Not assessed
TLS PI #	Light Green	Green	Light Green	Yellow	Orange	Yellow	Red	Orange	Yellow	Not assessed

- 4.12. The criterion that proved most difficult to assess was the extent to which schemes were resourced. Although almost all schemes have some dedicated staff or oversight unit, the Panel was not able to judge whether this was sufficient.
- 4.13. The following sections consider these findings in more detail.

Scheme operation

Ensuring competence

- 4.14. Most schemes have detailed entry and re-accreditation requirements. With the exception of Resolution, entry and re-accreditation information is available on scheme websites, providing a good level of transparency about what applicants must do to apply for schemes and allowing consumers to see what added value membership of VQS should be able to offer.
- 4.15. In particular, almost all schemes publish the expected competencies or standards that an applicant must meet. For example, a number of the Law Society Schemes (such as the Immigration and Asylum Panel), APIL and the Queen's Counsel Appointments Panel clearly set out what they expect members to demonstrate. This level of detail is important; it enables those outside the schemes to understand not only the information an applicant is *asked for* when they apply but also how this information *will be judged*, and what specific level of skills and expertise a scheme expects from an accredited lawyer.
- 4.16. Given that schemes promise specialist expertise, ensuring members remain competent is of vital importance. Periodic re-accreditation and continuing professional development (CPD) requirements are the main ways this occurs. Given the annual SRA CPD requirements are not linked to practise area, it is important that specialist scheme requirements are more focused.
- 4.17. We found that most schemes have area-related CPD requirements and a process for verifying this is undertaken. However, not all the Law Society schemes have CPD requirements that go beyond the Solicitors Regulation Authority's general rules.
- 4.18. There are few processes that go further than CPD in terms of assessing the actual competence of professionals. The exceptions were mystery shopping of accredited firms (not individuals) by APIL and limited random monitoring visits for firms accredited under CQS. The Panel recognises this kind of competence verification can be difficult and resource intensive but its value is clear from the mystery shopping exercise carried out for our investigation into will-writing services, in which 1 in 5 wills prepared by both solicitors and unregulated will-writers were failed by an expert panel.¹³
- 4.19. It is also concerning that 12% of firms assessed in the LSC's peer review process between April 2009 and January 2011 were found to be either below competence or failed, despite specialist accreditation being a requirement for some LSC contracts.¹⁴ A zero failure rate is unrealistic, but the scale of assessments in these low grades raises questions about the extent or effectiveness of competence monitoring within VQS.
- 4.20. Another important question is what happens when someone is no longer competent? Expulsion is the ultimate sanction. Although the Panel would not have expected this sanction to be used frequently, it is important for it to be used when necessary, and is seen to be used. The coverage of the schemes assessed is considerable: ranging from 8-50% of solicitors practising in the relevant field.¹⁵ Almost all schemes have expelled members on a small number of occasions

in the last 5 years. The exception is the Law Society, which has not expelled anyone from any of its schemes in the last 12 months, or seemingly in the last 5 years. This is surprising given that the Law Society schemes have the largest market coverage and VQS accreditation is often a condition of legal aid contracts.

4.21. Equally, the Panel is concerned where expulsion cannot occur. The almost impossibility¹⁶ of appointees losing a QC title is the Panel's primary concern about the Queen's Counsel scheme. Although the entry requirements introduced in 2005 should mean that new members are competent at appointment, this does not necessarily mean consumers can be sure that a QC will remain as competent in five, 10 or 20 years. It could be argued that this is countered by Codes of Conduct, and by reputation risks, but the Panel is not convinced these are a sufficient guarantee of quality. The introduction of the QASA in criminal law demonstrates that regulators see a need for accreditation and ongoing competency checks in at least one part of advocacy. Moreover, even if a QC-appointed advocate were assessed through QASA as not being competent to practise at the most senior levels of advocacy, they would still be able to hold their title. Given QC appointments are designed to signal 'excellence', it is unclear why they should not be subject to review, especially when they are likely to be one of the more recognisable 'brands' in legal services.

Consumer information

Promoting schemes to consumers

4.22. Even the best scheme will only be useful if consumers are aware of it. Members and scheme operators have a role in building consumer awareness. The Panel was encouraged that helping consumers to identify specialists was included in the

Consumer-orientated scheme objectives

- **APIL** – “to provide the consumer with a recognisable independent kitemark of expertise and specialism.”
- **Law Society (all schemes)** – “to ensure consumers are easily able to identify legal practitioners with proven competence in given areas of law; and help consumers make informed choices.”
- **Law Society (CQS)** – “provide assurance to...consumers and clients that members meet CQS standards...and increase client recognition of quality standards in residential conveyancing.”
- **Resolution** – “offering...the public a reliable means of identifying practitioners who are recognised as having special competence in the area of family law and practice.”
- **Queens Counsel** – “offering a fair and transparent means of identifying excellence in advocacy in the higher courts.”
- **AvMA** – “to be a specialist referral panel for AvMa's clients.”

objectives or aims of almost all the schemes reviewed (see Box). One way this can occur is for scheme operators to undertake broad public awareness campaigns; this is an approach used by APIL and planned by the Law Society. Individual members can also raise awareness through the use of the associated quality mark on their firm's website and signpost to further information. For example, APIL and Resolution have promotion packs that members can give to consumers.

4.23. However, whilst the above steps are important, consumer scepticism around professional bodies and their

independence makes it unlikely that promotion by scheme operators and members alone will be sufficient to develop consumer confidence. Complementary promotion and recommendations from other, independent sources is likely to help consumers differentiate marketing from quality assurance. As noted previously, this already occurs to some extent; a number of charities and some public sector bodies recommend that their service users look for specific schemes when choosing a lawyer. However, although helpful, this information is not available to consumers in a structured way or for all areas of law. Moreover, it is not clear what, if any, evaluations of VQS are made by these organisations.

Clarity and accessibility

- 4.24. Consumers are unlikely to know exactly what a quality mark means. There needs to be information that allows consumers to see what lawyers need to do to gain accreditation and what they can expect from a member. This information should be both understandable and easy to find.
- 4.25. A factor which strengthens the need for transparent consumer information is the primarily individual nature of accreditation;¹⁷ consumers need to understand whether it is the firm, or only a single person within the firm, who has been accredited. For example, when a consumer sees a quality mark on a firm's website or in their window on the high street, they may assume that all services and advice will be of a specific quality, or that all advisors in a particular area will be equally expert. Such assumptions do not reflect the considerable variation within VQS around how firm processes are considered. Information is needed to avoid consumers making choices on the basis of an incomplete understanding of accreditation or misplaced confidence in providers.
- 4.26. There are some good practice examples of consumer information. Almost all schemes offer a 'search for an expert' function, and a small number have dedicated consumer areas: APIL's website has a section that explains what accreditation means, what to look for and what to expect, AvMa's website includes a section of choosing a solicitor, and the new '*Law Society approved*' website is designed for consumers and is likely to be useful once it is publicised (although it does not currently explain what choosing a scheme member will mean for a consumer in most cases).
- 4.27. A few schemes have developed separate, plain English publications, such as APIL's consumer charter and the Law Society's client service charter for CQS. AvMa also has an online questions and answer section for service users. However, our impression is that this information is limited overall and the bulk of scheme documentation is targeted at potential scheme members rather than consumers of legal services.
- 4.28. Even where consumer-facing information is available, it can be challenging to find it. A key example is complaints. Although it is welcome that almost all schemes have a complaints process that allow individuals to raise a concern about a member (the exception being QC appointments), locating information about this is often difficult and counter-intuitive. Details were almost exclusively included in professional-facing publications, such as accreditation requirements or professional standards pages, rather than on consumer pages or the contact us sections of websites.
- 4.29. A further limitation is that, although the Panel is aware that some schemes provide hard copies of consumer documentation through organisations such as the Citizens Advice Bureaux, the bulk of the information is online. This limits which consumers are able to obtain information and may mean that some potential consumers, especially

those who are more vulnerable, may not be able to access information that could inform their legal choices.

Scheme development

Reflecting consumer needs

- 4.30. For schemes to become a stronger factor in consumer choice, they should reflect user needs and expectations. This means that consumer views should be considered and incorporated into scheme design, operation and review processes. Obtaining consumer views does not always need to involve new consumer research as there are many existing studies to draw on. This is an area for improvement; other than some research undertaken by APIL which is now quite old, there was little evidence that consumer research is informing the development of schemes.

Drawing on lay input

- 4.31. Lay input is another important way of ensuring that schemes work in the consumer interest, and is strongly encouraged by a range of bodies, including Which?, the former National Consumer Council, and the OFT. Whilst professional input is important for getting the details right, lay involvement can bring greater objectivity and fresh perspectives, influence organisational culture and bolster public confidence. However, despite these benefits, lay input was found to be very limited and this characteristic was met to the least extent.
- 4.32. Notwithstanding the above finding, there were a small number of examples that illustrate that lay stakeholders can be involved: the Queen's Counsel Appointments Panel includes lay members and a lay chair, APIL's independent Academic Quality Council is involved in the development of accreditation standards, STEP involves lay people in disciplinary

hearings and qualification reviews, and the Law Society's CQS Assessment Panel has lay members, although their role seems to be limited to solely reviewing borderline applications. Such input is a good starting point; it shows lay stakeholders can have a valuable role. The Panel hopes all schemes will consider ways of ensuring greater lay participation at all stages, from scheme development through to disciplinary processes.

Do schemes deliver what's on the label?

- 4.33. Many schemes have measures focused on individual practitioners, and the Panel was pleased that reviews appear to have been, and continue to be, undertaken. However, there are few mechanisms that test whether schemes as a whole meet their quality claims: that members are specialists offering consumers added value beyond the minimum required by regulators. Validating exercises of this sort could do much to address consumer scepticism about the value of VQS membership and inform periodic operational reviews.
- 4.34. Some schemes collect data that could help answer this question, although it is not published. For example, the CQS scheme requires members to collect and submit complaints data on a six monthly basis, AvMa members must provide client satisfaction and feedback data as part of re-accreditation and the Law Society seeks information from the SRA and Legal Ombudsman, again as part of the re-accreditation process for some schemes.
- 4.35. Developments in technology provide opportunities for schemes to obtain feedback directly from clients in a cost-effective way. A few schemes told us that they consider such feedback, but only APIL has an obvious and formal process for consumers to leave comments, with a specific page in its consumer section that asks about individuals' experiences. CQS

documentation notes there is a consumer hotline, but we were unable to find the number or any further information.

4.36. Validation is also not an issue for scheme operators alone. The way in which data is collected by the Legal Ombudsman and the SRA means that the Panel was unable to examine whether members of schemes have say, fewer complaints made against them or fewer appearances at the Solicitors Disciplinary Tribunal.

4.37. We would like to see progress in three areas. First, all schemes should collect a range of data that can be used to validate whether their quality claims are meaningful. This should include direct feedback from consumers and the complaints data to be published by the Legal Ombudsman from April 2012. Second, this information (such as sanctions applied) should be published in aggregate form, so that consumers can have greater confidence in VQS - enabling schemes to have more sway in consumer choice of lawyer. We consider such 'proof of the pudding' would also make VQS more attractive to potential members. Finally, regulators should record membership of VQS as part of their data collection. This would allow external organisations, such as the Panel, to independently validate whether schemes are delivering on their claims by comparing outcomes with the non-accredited parts of the market.

Conclusions

4.38. The assessment suggests that whilst schemes do very well in relation to some aspects, such as entry requirements, more work is needed to ensure that the stringency of entry is maintained throughout membership. This report did not provide the opportunity to do an in-depth review of each scheme and we recommend that scheme operators assess themselves against the Panel's criteria to

further explore where their schemes could be improved, and incorporate this into existing and upcoming review processes.

4.39. In particular, there are four main elements of schemes which need attention:

- Measures that assess actual competence, such as spot checks or mystery shopping, should be used to ensure ongoing competence;
- Clearer consumer information, which should be made more easily available;
- Lay input and consumer feedback should be included to a greater extent into scheme development and review; and
- Data should be collected, analysed and published to validate scheme claims and inform ongoing review processes.

5 Issues for regulators

Introduction

- 5.1. This report is aimed primarily at operators of VQS to share good practice and highlight areas where improvements could bolster consumer confidence. However, some issues for regulators have emerged from this work, which this chapter briefly considers.

VQS participation and competition issues

- 5.2. Membership of VQS is not essential to offer the relevant legal services and, as shown in Table 2 (p12), there is wide variation in the levels of scheme participation. Two practise areas are also notable in their absence from any form of accreditation: both employment and landlord and tenancy law are practised by over 10,000 solicitors¹⁸ (as well as unknown numbers of unregulated providers) but are subject to no specialist requirements or quality schemes.
- 5.3. The Panel does not consider a target for market participation in VQS would be appropriate. If schemes are genuinely trying to differentiate 'better' providers within the wider market, then lower levels of coverage may be appropriate. At the same time, there needs to be enough members to make scheme promotion and operation financially viable and to provide consumers with meaningful choice.
- 5.4. However, extremely high levels of coverage, whilst not inherently a problem, do pose a number of questions, including whether the bar is being set sufficiently high to differentiate the market and whether the scheme could have adverse impacts on competition. This latter issue particularly emerges in relation to those VQS where membership becomes mandatory to access certain parts of the legal services market.
- 5.5. The most obvious example is in publicly funded work. Through its requirements, the LSC has effectively become an additional regulator of publicly funded legal services providers, setting standards and requirements that go beyond approved regulators' standards for specialisation and practice management. There is a strong consumer interest argument for this approach given that legal aid is targeted at the most vulnerable in society and public bodies must ensure they are spending taxpayer money appropriately.
- 5.6. A different example is the situation emerging for solicitors and access to large parts of the conveyancing market. The CQS is being marketed by the Law Society as a scheme that firms '*ignore [at their] peril*',¹⁹ and the Council of Mortgage Lenders has stated that it anticipates this accreditation will become a 'pre-requisite' for firms to access lenders panels.²⁰ Indeed, Santander has announced that CQS would be a requirement for new firms applying to join the panel although this alone would not guarantee a place.
- 5.7. The Panel is supportive of efforts to promote high standards in conveyancing. Our concern is this could end up creating a situation in which market players and not the SRA effectively become the regulators in relation to entry standards. This could adversely affect competition if these standards are set too high. The criteria that

lenders set for entry might not be the same ones which regulators working in the consumer interest would impose. Such ‘regulation by the back door’ also lacks transparency and it goes against the principle of independent regulation of the legal profession which consumer organisations have fought hard to achieve.

- 5.8. These developments might suggest that the SRA needs to tighten regulation of solicitors in this field in order to address the legitimate concerns of lenders. If this is the case then it is appropriate for the SRA to take the necessary steps having regard to the regulatory objectives, which industry participants are not bound by. On a more general point, it is striking that VQS are only prevalent in the solicitor market. This may simply reflect the dominant role of solicitors in delivering services targeted at individual consumers, but it might also reflect a lack of confidence among market participants around the extent or adequacy of regulatory controls for certain activities.
- 5.9. Finally, for some legal activities solicitors compete with other types of regulated and unregulated businesses. In the case of Santander, the Council of Mortgage Lenders has assured us that licensed conveyancers will not be precluded from entering its panel. However, this case illustrates the potential danger that solicitors could gain an unfair competitive advantage should access to panels in this and other areas of law become limited to certain professional groups. The LSB and the competition authorities should remain vigilant to ensure this does not happen.

VQS and risk-based regulation

- 5.10. VQS are industry initiatives, but they can also provide valuable information for approved regulators about the activities of providers and vice versa. Open communication pathways between regulators and scheme operators are likely to be of particular benefit in a risk-based

regulatory system. Scheme operators, by focusing on a specialist area, are likely to have in-depth knowledge of the issues and challenges in a specific field. This should allow identification of systemic issues in a sector that regulators may not be aware of, as well as ‘early warning signs’ about individual firms who may be removed from schemes. Equally, regulators might have information which might cast the continued membership of a scheme into doubt.

- 5.11. More broadly, the Department for Business, Innovation and Skills has noted the potential value of regulators formally recognising the activities which ‘good’ businesses undertake to support compliance.²¹ Membership of credible VQS, particularly those that consider firm processes as well as individual practise, are a potential type of ‘earned recognition’ that, in the context of legal services regulation, could provide firms with a positive risk score and reduce the frequency of regulatory inspections. Although it is not the role of regulators to promote schemes and encourage membership, this sort of approach would provide a tangible incentive for firms to join credible VQS, as well a signal to consumers about which schemes are deemed more credible than others. The obvious prerequisite is that regulators must be confident that VQS membership is a reliable risk indicator.

Independent accreditation of VQS

- 5.12. The starting point of this report was the need to address consumer scepticism about the reliability of VQS as a quality indicator rather than a marketing ploy. We have highlighted some areas where VQS should improve. Beyond this, there are steps that the schemes could take to build consumer confidence, in particular transparent validation that they deliver on their claims and clearer and more targeted information provision. However, it is

unclear whether these measures alone would be sufficient to gain consumer trust. There is also the additional problem of building widespread consumer awareness of VQS so they have a real influence on purchase decisions.

- 5.13. Elsewhere in the economy, independent organisations provide a form of endorsement for similar schemes. These remain industry initiatives but carry an independent seal of approval from a trusted source. For example, the Office of Fair Trading (OFT) approves voluntary codes of conduct across different sectors under the Consumer Code Approval Scheme (CCAS). The Council for Healthcare Regulatory Excellence, an oversight regulator similar to the LSB, is looking to approve certain voluntary registers in the health professions.
- 5.14. In normal circumstances it would be open to VQS in legal services to seek code approval from the OFT, but it has closed the application process to new members following proposals to merge the OFT and the Competition Commission to create a single Competition and Markets Authority. The Government is consulting on a future home for consumer codes, with the British Standards Institution, which operates the Kitemark scheme, being a lead candidate. However, this issue is unresolved and it is unclear on what timescale any new arrangements will be implemented.
- 5.15. Given this uncertainty, it is worthwhile to consider sectoral solutions. The approved regulators might develop schemes, but this would need to overcome the competition issues described above and could upset the delicate balance of separation between regulation and representation functions. Furthermore, each approved regulator establishing separate accreditation schemes would be confusing for consumers and involve duplication of effort. The LSB is another candidate as the Clementi Review envisaged a role for it to work with trade bodies to raise quality standards and approve non-statutory voluntary regimes.²² Section 163 of the Legal Services Act gives the statutory basis for such an initiative.²³
- 5.16. The Panel leaves the desirability of such a development as an open question. An independent accreditation scheme could provide VQS with the added credibility and visibility that enables them have a greater impact on consumer choice. On the other hand, it would involve extra costs which industry would bear and there is a question of whether raising standards above the regulatory minimum should be left to the market. There is also the possibility that the growth of consumer feedback websites generated by the market will reduce the need for VQS, although these will focus on service issues rather than technical issues, which consumers cannot assess.
- 5.17. The LSB and approved regulators have a stake in stimulating choice tools that can empower consumers to drive up standards in the legal services market. Ultimately, however, we suspect that an accreditation initiative forced on VQS will not succeed. The Panel concludes that demand for an independent seal of approval should come from within the legal sector, if after reflecting on this report it considers such assistance would be of benefit.

6 Conclusions and Recommendations

- 6.1. Our vision is a market where everyone can access high quality and affordable legal services that meet their needs. Our focus is on empowering consumers to drive competition in the newly liberalised market. We see that VQS have the potential to contribute towards our vision by helping consumers to make informed choices, but first awareness of the schemes needs to be raised and consumers must have justified confidence in using them.
- 6.2. The Panel understands that some of the schemes assessed were developed originally as tools for marketing or to facilitate access to legal aid contracts, rather than to help drive consumer choice. Such a starting point may mean that the more consumer-focused elements need to be retrofitted, but this should be possible.
- 6.3. The VQS in the market have many good features and the improvements and wider recommendations set out on the following page should enhance their value. Our interest is to see such schemes thrive and we would be happy to work with scheme operators and regulators to move forwards.

Recommendations

The Panel's advice to the LSB is as follows:

- Scheme operators should undertake a detailed self-assessment against the essential characteristics set out in this report. In particular, there are four main elements of schemes which need attention:
 - Measures that assess actual competence, such as spot checks or mystery shopping, should be used to ensure ongoing competence;
 - Clearer consumer information, which should be made more easily available;
 - Lay input and consumer feedback should be included to a greater extent into scheme development and review; and
 - Data should be collected, analysed and published to validate scheme claims and inform ongoing review processes.
- Regulators should collect data on scheme membership and examine how membership of credible schemes could be recognised within risk-based regulation.
- Scheme operators and the LSB should consider the advantages and drawbacks of developing an independent accreditation scheme for Voluntary Quality Schemes.

Annex 1 – LSB request and Project approach

LSB request



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25 May 2011

Dear Dianne

Request for advice on quality schemes

I am writing on behalf of the LSB to request further advice from the Legal Services Consumer Panel ('the Panel') about quality schemes. This request is in line with recommendation 3 of the Panel's advice about consumer perspectives on quality provided in November 2010.

The consumer research carried out by the Panel suggests that individual consumers do not commonly make use of quality marks when choosing a provider. However, we recognise that existing voluntary quality schemes may provide reassurance to bulk and institutional purchasers. They may also enhance the quality of provision in some areas of the legal services market, to the extent that they provide a framework for providers to develop and maintain specialist skills and knowledge.

We agree with the Panel that quality schemes must be robust and deliver what they promise. We therefore request that the Panel provides advice that:

- identifies the characteristics that voluntary quality schemes must have to give consumers confidence that they are a robust and reliable indicator of a good quality legal services provider
- taking these characteristics as criteria, measure a selection of existing schemes against them and provide a view about whether, as currently designed, each operates in a way which is likely to give consumers confidence in the quality of participating providers.

As part of their work on reviewing education and quality assurance mechanisms, approved regulators will need to assure themselves that their regulatory arrangements achieve an appropriate balance between compulsory regulatory requirements designed to enforce minimum quality standards, and voluntary schemes designed to recognise quality standards which exceed those minimum standards.

In our response to the Panel's previous advice on quality, published in May 2011, we set out LSB's approach to quality over the 2011/12 business plan period. We 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.

The Panel's advice on quality schemes will inform the development of the 'toolkit' of potential regulatory interventions. It would be helpful to have the advice by the end of November 2011, to enable it to be reflected in the LSB's overall work programme on quality assurance which we anticipate will be complete by the end of Q4 2011/2012.

Thank you in anticipation for the Panel's continued input to this important project.

Yours sincerely

Chris Kenny
Chief Executive

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Project approach

Background

- 6.4. The Panel's 2010 report *Quality in legal services* made 6 recommendations to the LSB, including the need to identify the characteristics of robust quality schemes and measure existing schemes against these criteria.
- 6.5. The LSB published its response to this report in May 2011 and has sought further advice on quality schemes. Specifically, the LSB has asked the Panel to do two things:
 - identify the characteristics that voluntary quality schemes must have to give consumers confidence that they are a robust and reliable indicator of a good quality legal services provider;
 - Using these characteristics as criteria, measure a selection of existing schemes against them and provide a view about whether, as currently designed, each operates in a way which is likely to give consumers confidence in the quality of participating providers.

Project approach

- 6.6. In preparing this advice, the Panel's approach has involved four main components:
 - Reviewing consumer research and literature relating to self-regulation, quality standards and quality schemes;
 - Collating detailed information on schemes through websites and information requests to scheme operators;
 - Holding a workshop with scheme operators; and
 - Speaking with a range of stakeholders, including the Office of Fair Trading, the Council of Mortgage Lenders, the National Accident Helpline, the Ministry of Justice and the Legal Services Commission, as well as reviewing the websites of organisations that refer service users to quality schemes.

Annex 2 - Best practice self-regulation

OFT (2009) – factors that contribute to the success of self-regulatory initiatives	Which? - Key features of a successful self-regulation scheme	OfCom good practice criteria	Office of Fair Trading conditions for a quality marks
The systems, processes and outcomes must be really understood and transparent	Transparency	Transparency	Transparent in a way that has regard to the sophistication and experience of consumers
There are clear policy objectives to show how quality problems will be addressed	Clear objectives, including a consumer focus	Regular review of objectives and aims	Awarded according to clear, relevant and objective criteria
There is public awareness of the scheme and consumer-focused provision of information and publicity	Promotion of the scheme	Public awareness	
Independent non-industry stakeholders are involved and have the opportunity to influence	External consultation	Involvement on independent members	
Adequate and sustainable resources are allocated to the regime	Adequate funding	Adequate resource commitments	
	Effective monitoring, inspection and reporting	Audit of members and scheme	Quality of performance is appraised in a continuing basis

			Can be lost as well as won
There are clear rules that, at a minimum, ensure compliance with the law and do not restrict competition		Non-collusive behaviour	Does not distort competition
There are well designed effective sanctions	Robust sanctions	Enforcement measures	
There is an effective redress system	Adequate redress	System of redress in place	
There are clear procedures for complaints			
The scheme has wide coverage which ensures influence on the market as a whole	High take-up in the sector	Significant participation by industry	
	Robust Standards	Clarity of processes and structures	
There are suitable governance arrangements within a dedicated structure	Strong independent governance		
Private interests are aligned with public interests			
Setting of rules utilises industry knowledge			
Businesses are offered assistance to achieve compliance			
There is genuine commitment to the initiative from strong industry leadership			

Annex 3 – Data Sought

General Scheme Information

What speciality does it cover?

Who can join? (eg. solicitors, barristers, ilex members, para-legals, others? etc)

Individual or firm accreditation

Number of members

Number of solicitor members (if applicable)

Rate of growth over last 5 years? Eg. static no. of members, increasing?)

Stated scheme objectives

Multiple levels of accreditation?

Logo that only members can use?

Length of accreditation

Is re-accreditation required?

Initial application fee

Re-accreditation fee

How many applications are received each year?

How many fail? Or what percentage of initial applications each year fail?

What percentage of revalidation/reaccreditation applications fail? (time frame?)

How many expulsions/terminations in last 12 months?

How many expulsions in last 5 years?

Internal scheme processes

Application process and entry requirements?

Revalidation or re-accreditation requirements?

Other requirements of maintaining accreditation? Ongoing competence checks?

Who does the accreditation and re-accreditation assessment?

Is there lay input into accreditation or re-accreditation?

Is there a disciplinary process?

Scheme Development

What are the support/resourcing arrangements? Eg. dedicated unit, team etc

Is there any lay input into the scheme management or development? When and how?

How are consumer views considered in scheme development

Is there a regular periodic scheme review or monitoring process?

When was the last time the scheme was reviewed?

Are there any validation or testing processes (eg. checks of whether members have less complaints)?

Consumer information and feedback

Is there a consumer complaints process?

Where is information on complaints processes found?

Other than complaints are there any other consumer input/feedback mechanisms?

Are there consumer-facing publications or website-pages?

How is the scheme promoted to consumers?

Notes

¹ Legal Services Consumer Panel, *Quality in Legal Services*, November 2010.

² See Annex 1 for the LSB's letter and a short note on our methodology.

³ Department for Business, Innovation and Skills and Cabinet Office (2011) *Better Choices: Better Deals – Consumers Powering Growth*, April 2011, <http://www.cabinetoffice.gov.uk/resource-library/better-choices-better-deals>

⁴ Legal Services Consumer Panel, *Consumer Impact Report 2011*, June 2011.

⁵ Legal Services Consumer Panel, *Tracker Survey*, June 2011

⁶ Legal Services Consumer Panel, *Tracker Survey*, June 2011

⁷ http://www.cafcass.gov.uk/the_law_about_children.aspx

⁸ <http://www.scope.org.uk/help-and-information/cerebral-palsy-and/clinical-negligence>

⁹ http://www.rethink.org/living_with_mental_illness/rights_and_laws/how_to_get_legal_adv.html

¹⁰ Legal Services Consumer Panel, *Quality in legal services*, November 2011.

¹¹ Legal Services Board, Letter to the Joint Advocacy Group, May 2010:

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20100505_qaa_letter_final.pdf

¹² <http://www.legalservicesconsumerpanel.org.uk/ourwork/QualityAssurance.html>

¹³ Legal Services Consumer Panel, *Regulating will-writing*, July 2011.

¹⁴ Legal Services Commission, Peer Review Outcomes April 2209- January 2011:

http://www.legalservices.gov.uk/civil/how/mq_peerreview.asp

¹⁵ See Table 3, p12

¹⁶ Under extreme circumstances, the QC appointment can be removed by the Queen under the Great Seal on the advice of the Lord Chancellor.

¹⁷ The exceptions are CQS, which is offered on a firm-basis only, and APIL accreditation, which can be obtained on both a individual and a firm basis.

¹⁸ <http://www.lawsociety.org.uk/secure/file/185304/e:/teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/catsofwork10-v1.pdf>

¹⁹ Law Society, Press Release, 1 June 2011:

<http://www.lawsocietymedia.org.uk/Press.aspx?ID=1454>

²⁰ Law Society Gazette, 4 April 2011: <http://www.lawgazette.co.uk/news/cml-predicts-quality-scheme-will-become-prerequisite-conveyancers>

²¹ Department for Business, Innovation and Skills, *Transforming Regulatory Enforcement: Freeing up business growth*, A Discussion Document, June 2011: <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-989-transforming-regulatory-enforcement-consultation.pdf>

²² Legal Services Board, *Enhancing consumer protection, reducing regulatory restrictions*, July 2011: p61

²³ Legal Services Act 2007, s163

The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.

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