

Annette Cowell  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ



18 October 2013

Dear Ms Cowell

### **Transforming Legal Aid: Next steps**

The Panel's response to the previous consultation focused on the initial proposal to remove client choice of provider in criminal work, reflecting our statutory remit to focus on the regulatory implications of the proposed legal aid changes. Since the principle of client choice has been restored, we have confined our comments on the current consultation to related issues, namely quality assurance and transparency about provider performance.

Before turning to the substantive policy issues, I would highlight a missed opportunity in relation to the consultation response document, at Annex B. The Ministry of Justice received nearly 16,000 responses to its initial consultation document – a significant number. However, by our calculations, the document summarising these responses names just ten individual organisations, none of whom represent citizen or consumer interests. While it would of course be impossible to reflect the views of all organisations who responded, the summary appears to have been highly selective in its reference points. Such a decision doesn't encourage public confidence in the fairness of the process and undervalues the contributions made by citizen and consumer groups, many of whom made substantial submissions yet with far limited resources than were available to organisations representing the legal profession.

On the first substantive issue – quality assurance – we are pleased that price will no longer be an award criterion, but providers will be expected to demonstrate that they have the right capacity to deliver services at the right quality. We are also content with the strengthened core obligations that applicants must meet and confirmation that the peer review process will be continued. It is important that quality assurance includes elements addressing both organisational sustainability and technical competence. Some new elements, such as ensuring adequate caseworker supervision, are welcome. We would have liked to see ideas, such as the maximum caseload limits, as proposed by Roger Smith OBE, explored further. Complaints data and other consumer feedback tools remain an omission. We would also caution against automatically relying on accreditation schemes as offering reliable indicators of quality. The Panel has previously

examined a selection of such schemes<sup>1</sup> and found mixed results, including weaknesses in the Criminal Litigation Accreditation Scheme (CLAS) referenced in the consultation. The Legal Services Board has asked the Panel to revisit the progress made by accreditation schemes in the two years since this study and we are due to begin this work shortly.

The Legal Aid Agency will collect data on peer review scores, success rates and potentially other useful information about individual providers. The Panel considers that taxpayers and consumers have a right to know about the past record of the lawyer they are considering using to defend their liberty. Restoring the principle of consumer choice is undermined if the Government does not give people the information they need to make a fully informed decision about which provider to use. The core obligations set the minimum quality requirements, but opening up performance data would encourage providers to compete on quality above this threshold. Further, as recipients of public funds, such transparency would provide a valuable accountability tool.

This approach would be consistent with wider Government policy aims. For example, the BIS strategy on empowering consumers states that the Government will: “*Set an expectation that regulators, Government departments, regulated businesses, and public service providers to be open as a default position. They should continue to free the complaint and performance data (in particular on individual businesses) they already own unless they have a good reason to do otherwise*”.<sup>2</sup> The Open Data Strategy has identified the growth opportunities and consumer benefits that could be achieved by unlocking information held by public bodies, for example it might enable the emergence of comparison websites in the sector. Transparency is also a core theme of the Open Public Services white paper. As a result parents, patients, passengers and others now have access to rich datasets which are enabling them to make better decisions and which is encouraging improved performance by providers.

As a first step, we encourage the Legal Aid Agency to publish a list of the types of performance information that it will hold about individual providers and then to consult on which data it intends to make publicly available.

Yours sincerely,



Elisabeth Davies  
Chair

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<sup>1</sup> Legal Services Consumer Panel, *Voluntary Quality Schemes*, November 2011.

<sup>2</sup> BIS, *Better Choices: Better Deals – Consumers Powering Growth*, April 2011.