



Quality Assurance Joint Working Group

Minutes

Date: 24 June 2009

Chair: Patrick Reeve (LSC)

Attendees: Shanta Bhavnani (ASA)

Avrom Sherr, (IALS)

Carol Storer (LAPG)

Geoff Mountjoy, Peter Jones, Louise Collins, Jennifer Will, Stephen Dodds (LSC)

Karen Finlay (MoJ)

Karen Mckay (Resolution)

Richard Miller, Linda Lee, Rodney Warren, Clare Jarratt, Wendy Hewstone (TLS)

Minutes: Grazia Trivedi (LSC)

Apologies: Clare Gilligan (SRA)

LSC's quality assurance strategy update – Proposals for 2010 and beyond

PR welcomed everyone present and invited attendees to introduce themselves.

PR stated that the LSC had become involved as a quasi-regulator of legal services because of three key gaps in the legal regulation system:

1. Lack of widely used quality management systems, including supervision requirements
2. Lack of category-specific competence requirements, such as accreditation
3. Lack of standards for Advocacy that can be measured

Conceptually, these requirements ought to apply to all legal services, not just publicly funded ones, and properly sat with providers, representative bodies and regulators, both at the level of basic competence, as well as schemes to demonstrate higher levels of capability. It was right that the profession should bear the up-front cost of assessing and ensuring basic standards of quality. The LSC had pushed forward quality standards, but it was no longer appropriate or affordable to continue take the lead.

PR reiterated that quality was a high priority for legal aid and that accreditation had an important role in avoiding below standard services. LL's view was that, over the years, only the most committed providers remained in legal aid. Problems in the past had been due to firms that dabbled in legal aid, and the providers that remained strove to maintain high standards.

The two main quality tools managed by the LSC were the Specialist Quality Mark and

Peer Review.

Specialist Quality Mark (SQM) and Accreditation Panels

The SQM was not now being fully audited by the LSC, which reduced the assurance the standard gave. This position could not be maintained, and the only feasible option was to pass on the cost to providers. An important element of the SQM was that it required evidence of effective systems of supervision and supervisors' individual competence. In particular, the SQM made accreditation compulsory for supervisors, where schemes were available.

LL said the Law Society (TLS) was reviewing the existing accreditation schemes. She was reluctant to see new accreditation schemes introduced, or schemes made compulsory. LL thought compulsory accreditation would reduce the supplier base, causing severe shortages in certain geographical areas where supply is low; she drew on Housing law as an example.

PR said that the LSC had been contributing towards the costs of some accreditation schemes. LL added that TLS did not have the funds to reduce accreditation costs. RW expressed concern at what he perceived as the LSC wanting to shift the financial burden of quality assessment.

PR said that it wasn't the LSC's intention to be precipitate in relinquishing the financial burden onto providers. There would be no cost to providers for accreditation required for the 2010 contract. SQM auditing would be outsourced from the summer of 2010, and it would be a requirement for obtaining a contract in 2013 that a provider had an independently audited quality standard they had obtained themselves. Nothing had been yet decided about paying for a peer review. Concern was raised that at the limit this could mean a provider having only one assessment within a six-year period and consideration should be given to the impact on quality.

Peer Review

Although just 8% of civil providers had been peer reviewed, a much larger proportion of crime providers had been reviewed due to the imminent introduction of Best Value Tendering (BVT). Overwhelmingly peer reviews resulted in a score of Threshold Competence and above, which indicated that it wasn't cost effective to review every single provider every three years.

A category of law such as Clinical Negligence could be exempt from peer review because good accreditation was already in place and the outcomes achieved were easily measurable. Other categories such as Housing or Benefits did not have any accreditation in place, and outcomes were harder to assess, therefore peer review would remain necessary to assess quality.

LL said that a risk assessment should be done to prevent money being wasted on low risk categories. PR added that effective supervision drove quality up in any category, and that the accreditation status of a firm might be considered as part of its risk profile.

Impacts

RW asked the LSC for help to work out the economics of this new process to understand how it would affect the stakeholders and whether it is the best way forward. In particular he wanted to know:

**AP1
PJ**

- What the impact on providers' profitability would be
- What impact the shifting of costs onto the profession would have on the supplier base
- Whether the difference between the cost of paying for external auditors and that of carrying out audits with in-house auditors was so great as to justify outsourcing the process.

PR replied that an impact assessment had been done and was available on the LSC website. LL said that profit margins ought to have been considered in the impact assessment.

KM asked whether a 'full' consultation would be done about the SQM outsourcing. PR said that an informal consultation would be undertaken because of the limited impact of the changes, which would affect providers bidding for 2013 contracts. PR asked the group to read the Impact Assessment and the Discussion Paper, the latter was circulated to the group, both of which were available on the LSC's website (http://www.legalservices.gov.uk/civil/qm/specialist_help.asp#future) and send their comments by 30 July. However, in view of the other issues currently under consultation, some flexibility would be available on response time, provided this was notified to the LSC.

AP2
All

LL expressed concern about the short time given to the group to consider what is proposed, circulate the information to their members and gather comments and responses. PR said that a timetable had to be adhered to and, in view of the fact that the changes principally affected 2013 contracts, sufficient time had been given to make adjustments and plan ahead.

Outsourcing the Specialist Quality Mark

PJ said that the first aim of the planned changes was to take forward a recommendation of the Quality Working Group report and allow Lexcel as an alternative to the SQM in 2010. In reaching the decision to propose outsourcing the SQM, the LSC had considered:

- Whether to stop requiring a quality management standard
- Whether to rely on existing external quality standards

The first option would be a backward step in terms of quality. The second option was not considered feasible by the LSC particularly given that Lexcel was not available to NfP providers. The SQM was currently not audited to the LSC's satisfaction due to lack of resources. The only other option the LSC considered viable was for auditing to be outsourced and paid for by providers. PR added that from 2010 Lexcel accreditation would be accepted in place of the SQM.

The aim was to keep the cost of the audits to a minimum and would depend on the size of the firm. Based on experience of the General Quality Mark, small organisations would pay around £1,000, larger ones around £1,800, and very large organisations perhaps paying a bespoke price. Decisions still had to be made about the definition and structure of the charges and on what they should be based. The group was invited to express their views on this.

Clarification was sought on the LSC's intention regarding the wording focusing on the LSC offering the SQM to an entire practice. JW confirmed that this would be optional and focus was primarily on those parts of the organisation providing legal aid services.

The LSC's aim was to reduce the cost significantly by introducing a 3-year cycle of audits. Furthermore, the introduction of the SQM audits was being introduced alongside a reduction in peer reviews, with the aim of reducing the amount of time providers had to spend getting files ready and sent to Regional Offices. In addition, the potential reduction in administration costs for the LSC would be a feature of the 2010 contract, to become operational from August of that year, and this would give providers sufficient time to adjust to the shift in costs in relation to paying for the SQM accreditation. PR reiterated that

- Providers would not need to start paying for SQM audits until August 2010 at the earliest
- An outsourced SQM or Lexcel audit would be needed to comply with the requirements of the 2013 contract

Impacts

RM said that although each individual cost might not amount to a big amount, the result of cumulative charges would be considerable and should be worked out. PR said that it wasn't yet known how the peer review process would be paid for and managed in the future. It would remain a quality tool to be used when the standards of a firm gave reason for concern and needed to be assessed. LL mentioned that accreditation in Prison Law should be a priority. PJ said that discussions with TLS over the supervisor standard in this category were being pursued separately on this topic.

RW referred to paragraph 17 in the Discussion Paper and asked whether a peer review score of 3 would remain a requirement for providers bidding for BVT in the two pilot areas of Manchester and Bristol. RM asked whether providers outside the pilot bid zone could enter their bids as well. RW said that the pilot should run its course to ensure lessons were learned before it was applied to the rest of the country. RW also asked, 'why continue with peer review when it is so expensive?' PR said that providers in the pilot areas would be peer reviewed in readiness for BVT. Subsequently it would not be the case that all firms were peer reviewed before contracts were awarded. The current provider base had been seen to perform at 3 or above. Key risks from BVT were new bidders (who could not be peer reviewed in advance) or changes in behaviour after BVT contracts were awarded – and both were better dealt with by peer review afterwards.

RM asked what checks would ensure the quality of service of post 2010 entrants. RW expressed concern about maintaining equality in the market place once the BVT process had started. SD said that 75% of crime firms with a contract had already been peer reviewed, which would help ensure competition could come on a consistent basis from anywhere in England and Wales. It was stressed that performing at 3 or above at all times would remain a requirement of contracts after award and peer review would focus on risk areas.

Changes to the SQM

JW said that the aim was to make the standard more generic and invited comments from members of the group, who had had a preview of proposed changes prior to the meeting. LL asked whether the SQM would be awarded to a whole firm or to individual offices. She also asked how mixed legal aid/commercial offices would be dealt with. JW replied that accreditation covered the parts of the firm that did legal aid work and only personnel involved in legal aid work within an office would be included. She added that it might be possible to do an audit of all legal aid personnel belonging to several offices within a firm at the same time. PJ said that it would be crucial for the firm to demonstrate that effective supervision is in place across the organisation. CJ said that with Lexcel the supervision was assessed across the firm. PJ said that auditors would have to use their

<p>judgment to appraise the standard of supervision within a framework of guidance.</p> <p>A consistency process would be put in place to ensure a true outcome. SB said that a sensible and consistent approach was important. JW reassured the group by saying that the LSC would train the auditors and provide guidelines to insure a fair process. Auditors will be asked to look for evidence that showed providers met the standard's requirements. SB asked whether auditors would look at files. JW said yes, they would. RM expressed concern about the process being a burden to the firm but PJ said that efforts would be made to prevent this. LL asked whether outsourcing was cost effective. PR said that LSC would find out how much it would cost to start auditing properly again with in-house auditors.</p> <p>JW said that by 2013 every provider that wanted a contract would have to be audited. The SQM standard would continue to be a requirement for contract holders because it continued to be effective, but Lexcel was a viable alternative. The proposed changes to the standard should not impact on providers. Duplications had been removed, the wording had been improved, and sections of it had been incorporated into the contract specifications. CJ said that consideration had to be given to the impact of cost on providers and that clarification was needed on both the structure and assessment processes to provide a clear outline of implications for providers. Also, Lexcel accreditation was a yearly assessment while SQM audits were to be done every 3 years. CJ asked what consideration had been given to the impact on quality and how the LSC may be looking to harmonise the two standards to make them compatible and accreditation consistent, to ensure a fair approach.</p> <p>LL expressed concern about where the quality benchmark was to be set. Providers wished to maintain quality but remuneration was less and less. Higher standards could not be expected for less pay. PR said that the benchmark for quality standard hadn't been raised through the changes proposed. LC stressed that the LSC would continue to set standards at the appropriate level in the interests of clients – it is up to providers whether to bid for work but if they do it has to be of the right quality.</p>	<p>AP3 PJ</p>
<p>Accreditation Research</p> <p>AS gave a very brief update on the result of the research carried out to find whether there was a correlation between accreditation profile and peer review results.</p> <p>257 family providers were sent a questionnaire and 18% of them returned it. AS said that the questionnaire was too detailed and slightly confusing, which he thought had affected response rate and data quality. Analysis of the results indicated that there was no correlation between the number of accredited advisers working at a firm and the peer review score. However, the proportion of fee earner time spent on legal aid work did correlate with a higher score at peer review. AS stated that accreditation had not yet been proved a meaningful measure of quality.</p> <p>In response to points made about the low number of Below Competence scores in peer review, AS commented that it appeared that practitioners did understand what peer reviewers, who are themselves practitioners, were looking for when reviewing files. This meant that Peer Review had an effect more generally than just on those providers reviewed.</p> <p>AS said that a more formal report on the outcome of the accreditation research would be made available to the group.</p>	<p>AP4 AS</p>

<p>Measuring and monitoring quality assurance</p> <p>SD informed the group of the changes that had taken place in the way the LSC organised its quality assurance work. The LSC had listened to providers' concerns and had amalgamated all the teams that did work related to quality monitoring and assurance, such as peer review, file assessment, and Specialist Quality Mark. This reduced the need for interventions with providers, eliminated duplication of work and ensured a better service to providers. The team created for this purpose was called Provider Assurance and it was estimated that it would take approximately a year to complete the process of amalgamation.</p>	
<p>AOB</p> <p>PR proposed that the group continue to meet, and might go beyond the current scope of discussing the technical aspects of quality assessment, in order to engage in a wider debate about quality in legal aid. A forum didn't at present exist for this purpose and it would be useful to discuss:</p> <ul style="list-style-type: none"> • What the future held for legal aid quality assurance and what improvements could be made • The impact of changes in legal aid on quality • What standards were necessary to ensure clients got a good service • How did we feel about changes and what we would like to see happening <p>PR added that it would be a positive step for the existing QWG to be joined by the Legal Services Board (LSB), to consider the relationship between quality and regulation. LL said that only 6% of the provider base worked in legal aid. This was such a small proportion that it was not appropriate for the LSB to become involved in QWG. PR disagreed because legal aid impacted on the lives of many people, LSC being the single biggest purchaser of legal services. General changes to the legal system had far-reaching consequences for legal aid clients, who had a legitimate interest in expressing views on regulation, as did LSC on their behalf and on behalf of the taxpayer. LC added that the development of Quality Assurance for Advocates involved all stakeholders and standard holders. LL expressed doubt about the need for the LSB as a super-regulator, to be involved in a detailed debate on quality and indicated that TLS would need to think carefully about any proposal to invite LSB to join the group. TLS would consider whether to withdraw from the QWG if LSB were invited. PR said that it was important that TLS remain in the group.</p> <p>AS asked whether the proposed forum should be political in nature and not just concerned about quality and whether this should be a forum for debate about a wider spectrum. RM proposed that separate QWG meetings be set up to tackle strategic rather than operational issues.</p>	
<p>Next meeting</p> <p>It was decided that the next meeting would take place in early September, by which time responses to the publication of the EIA and Discussion Paper would have been received and considered.</p>	<p>AP5 PJ/GT</p>

Summary of actions points

	Action Points	By Whom	By When
AP1	Respond to RW's requests for information	PJ	17 July
AP2	Send comments to qualitymark@legalservices.gov.uk about the EIA and Discussion Paper.	All	30 July
AP3	Find out how much it would cost the LSC to start auditing for SQM standard	PJ	Next meeting
AP4	Report on the outcome of the accreditation research	AS	Next meeting
AP5	Set up QWG Meeting for September	GT	30 July

Next meeting;

Date: Monday, 7th September 2009

Time: 2.30pm to 4.30pm

Venue: LSC, 4 Abbey Orchard Street, London SW1P 2BS

Room: 3C