



The Law Society

legal services

COMMISSION

Assuring and Improving the Quality of Legal Aid Services

Joint LSC/TLS Working Party

December 2008

Assuring and Improving the Quality of Legal Aid Services - Joint LSC/TLS Working Party

1. Introduction

1. This is the report of the Quality Working Group (QWG) that was set up in May 08 as part of an agreement between the Legal Services Commission (LSC), The Law Society (TLS) and the Ministry of Justice (MoJ) following the Court of Appeal's judgment on the LSC's Unified Contract. This report is co-authored by the LSC and TLS with the agreement of the wider QWG members.
2. The group was tasked with reviewing the quality assurance processes and procedures affecting legal aid providers, particularly the LSC's outlined quality framework published in December 2007 – Assuring and Improving Quality in the Reformed Legal Aid System.
3. The QWG started work in April 2008, and were asked to complete its work no later than 31st October 2008 and a report to be published no later than 31st December 2008 setting out its considerations, findings and recommendations. The QWG agreed that a further review of the recommendations (due no later than 14th February 2009) was not required in light of the agreement of the recommendations reached in this report by all parties.

Background

4. Legal aid plays a central role in the justice system, helping to protect and safeguard the rights of over 2 million people every year, including some of the most vulnerable people in our society. Legal aid providers play a fundamental role, working to deliver legal aid services to their clients and deliver an effective justice system that the public can trust.
5. The LSC is committed to ensuring that quality remains at the heart of the reformed legal aid system and that clients can rely on receiving a quality assured service regardless of their location or the practitioner that they see. Quality is also a priority for the regulators of, and the representation bodies for, the profession. The Solicitors Regulation Authority's purpose is "to set, promote and secure in the public interest standards of behaviour and professional performance necessary to ensure that clients receive a good service and that the rule of law is upheld." The Law Society is committed to promoting the delivery of legal services that are of an appropriate level of quality and standard. As such all parties share a common interest in ensuring clients receive a quality service and are committed to working together to develop a quality assurance system that meets this aim.
6. The LSC currently uses a variety of quality assurance mechanisms including Peer Review, the Specialist Quality Mark and where appropriate category specific accreditation. The SRA, TLS and individual network bodies also monitor the quality of legal services through methods such as the Code of Conduct, Accreditation and quality standards such as Lexcel.

Working group membership

7. The QWG consisted of representatives of the following organisations:
 - The Legal Services Commission (LSC)

- The Law Society (TLS), including practitioners
- Ministry of Justice (MoJ)
- Advice Services Alliance (ASA)
- Solicitors Regulation Authority (SRA)
- Institute of Advanced Legal Studies (IALS)
- Resolution

Purpose

8. The purpose of the review was to address the concerns of legal aid providers regarding the effectiveness and proportionality of the quality assurance mechanisms by conducting a review of those processes and procedures. The scope of the review was set out in the Deed of Settlement between TLS, LSC and specifically in the terms of reference set out in Appendix 4 of the deed provided at **Annex A**).

Objectives

9. The working group was asked to consider whether the current LSC quality framework:
- Assures and, over time, improves the quality of advice and representation provided to clients
 - Is objective and fair
 - Provides appropriate levels of assurance and value for money for the taxpayer
 - Ensures that the elements within the framework operate in an integrated fashion, without duplication
 - Meshes effectively with other systems (e.g. Lexcel)
 - Is proportionate; and
 - Has the confidence of the profession, regulators, representative bodies and LSC
10. In addition the group was asked to consider the issues of where future responsibility for the ownership of quality assurance should properly lie.
11. The LSC and MoJ are working with others to develop a Quality Assurance Scheme for Criminal Defence Advocates (QAA). This multi-agency initiative comprises representatives from the LSC, MoJ, the Bar Council, Bar Standards Board, TLS, SRA, Judiciary, Crown Prosecution Service and other key stakeholders. As a result the quality of advocates is outside the remit of the working group and will not be considered.

2. Summary of review

Key findings

12. Outlined below are the key findings of the QWG:
- Collaboration through the QWG was extremely useful to explore and discuss quality assurance developments and issues and should be continued
 - The objectives set for the review of the LSC quality framework were long-term aims and should be part of ongoing work between all the parties

- Any future quality framework should incorporate other mechanisms (not just LSC's), thereby reducing instances of direct intervention, duplication and bureaucracy.
 - At a future date providers will elect the quality standard of their choice that demonstrates the necessary requirements for the LSC e.g. Lexcel or SQM.
 - We should organise to establish through research, whether a relationship exists between peer review outcomes and the accreditation profile of organisations, to establish if possible how they can work together to provide an additional quality assurance tool, possibly used instead of other tools to gain benefits such as avoidance of duplication and bureaucracy within the future quality framework.
 - The QWG agree that Peer review is currently the best available mechanism that exists to measure directly the level of quality that is received by clients. The QWG agreed that feedback from peer reviewed organisations should be sought and shared with TLS, SRA, ASA, IALS to ensure the process remains a robust quality assessment and where necessary improvements are made to the process.
 - The QWG have reviewed the LSC's updated peer review process and this will be sent for wider consultation in early 2009.
13. The QWG agreed that the objectives set out for the quality framework, were long-term aims and should be part of ongoing work between the LSC, TLS and other members in the future, initiating through the discussions of the group and continuing beyond the formal close of the QWG at the end of October 08.
14. It was agreed that the focus of the QWG would be on the current quality framework more specifically Peer Review and the Specialist Quality Mark as these were the areas that most directly affected providers and where particular concern lay.

3. The Review in Detail

Quality Framework

15. The LSC's published document (Assuring and Improving Quality in the Reformed Legal Aid System, December 2007) set out the quality framework and the quality mechanisms which are described below:
- Specialist Quality mark (SQM)
 - Peer Review (PR)
 - File Assessment Quality (FAQ)
 - Quality Monitoring (e.g. Quality Profiles)
 - Quality Assurance for Advocates (QAA)
 - Improving Quality Initiatives
16. The LSC set out its position regarding what it needed from a quality assurance framework. The document at **Annex B** – sets out the LSC's approach to Quality, this was circulated to the QWG.
17. The LSC recognises that the regulatory and representative bodies monitor and/or assess the quality of legal services or individual technical competence through

methods such as Accreditation schemes and quality standards such as Lexcel. The NfP sector has other quality assurance mechanisms such as those of Citizens Advice and Shelter.

18. It is the view of the QWG that the future quality framework should incorporate other mechanisms (not just LSC's). Thereby reducing instances of direct intervention, duplication and bureaucracy. To illustrate this further, a matrix at **Annex C**, sets out the quality assurance systems and assessment tools that are currently available and may become available in a combined approach to the overall quality framework in the future, which will support the long-term aims of the QWG. The items shown on the matrix are not exhaustive, for example the QWG may consider other quality assurance systems/processes that will give some level of quality assurance, such as self-assessment or other emerging quality assurances that can be used instead of existing tools.
19. For the purposes of legal aid contracts in 2010 the LSC quality framework will require providers to comply with the SQM, and achieve a peer review rating of 3 (Threshold competence) or above. In addition to this the LSC are seeking to use additional criteria relating to quality for the award of new contracts to help distinguish between bids. For civil categories these criteria are outlined in the 'Civil Bid Rounds for 2010 contracts' consultation (October 2008). Any additional criteria for crime contracts will be outlined in its associated consultation. Any further work of the group will not affect 2010 contracts, but may be incorporated into the approach for 2013 contracts for example the use of Lexcel as an alternative standard to the SQM.

The Specialist Quality Mark (SQM)

20. Currently all legal aid providers hold the SQM. It is recognised that many requirements of the SQM are also found in Lexcel and therefore the QWG believes that providers at a future date should be able to elect the quality standard of their choice that meets necessary requirements for the good quality management of legal aid providers. The LSC are working to ensure that the SQM and Lexcel are comparable so that from 2013 Lexcel is a sustainable alternative to the SQM.
21. The LSC are currently updating the SQM, and are consulting with key members of the QWG before the new version is released. The update will take into account the future direction of the quality framework as set out in this report. It is not intended to increase the standard, but to simplify, update and prepare for future use.
22. The revised SQM will be available by early 2009.

Peer Review (PR)

23. The QWG was asked to consider whether Peer Review could be further developed to improve confidence in the process. It also considered whether the process for challenging the findings of peer review was satisfactory.
24. The Law Society was keen to address perceived issues with the process such as the consistency of the process, and provided the working group with their concerns. The group spent many hours exploring the detail of the concerns to ensure that each of them was addressed fully. All parties were keen to ensure that Peer Review was seen to be a robust tool. It became clear as part of the review that it was difficult to obtain empirical evidence to substantiate perceived issues with the peer review process from which to base an assessment. These

concerns together with responses from the Institute of Advanced Legal Studies (IALS) as appropriate are listed at **Annex D**. We have received feedback from the NfP sector expressing the view that the procedures adopted to eliminate bias, standardise assessments, address potential conflicts etc. seem to be sufficiently thorough to minimise any risk of unfairness.

25. It was agreed that to support the PR process the introduction of a feedback mechanism to enable providers to share their concerns with the TLS, SRA, IALS, ASA and the LSC. Currently, knowledge of providers' concerns is based on only anecdotal evidence. The mechanism will capture providers' experience of the review from the actual findings. The results will be used to continually improve the operation of peer review both in terms of procedures and the substantive nature of peer review itself. The results will also be reviewed periodically by the LSC, IALS and TLS to look for trends. This feedback mechanism will be introduced in early 2009.
26. The peer review process was published in 2005. Since then the LSC has sought to update the process document to enable better understanding and clarity of peer review. Therefore, the LSC has facilitated with IALS an update of the peer review process, which will be ready for wider consultation to coincide with the Phase One Fee Schemes consultation (planned February 09). The QWG have reviewed the document and have fed into the updated process.
27. The QWG have agreed to consider the relationship between peer review outcomes and accreditation profiles of providers, to establish if possible, how they can work together to provide a comprehensive picture of competence and reduce any unnecessary burden on providers.
28. Accreditation and peer review are measurements of competence; robust accreditation can evidence the competence of an individual practitioner whilst peer review looks (after the event) at the competence of the entire organisation.
29. If a link between accreditation and good peer review outcomes is established—this will be considered by the members of the future QWG and may be incorporated into a future quality framework, that can rely more on accreditation as a quality assurance tool than it is currently being used. It is hoped that the research into this will possibly bear other benefits to providers, representative bodies/regulators and the LSC to help avoid duplication and bureaucracy for example if a provider has an accreditation profile that gives some quality assurance (evidenced through research) the LSC could consider extending the validity of a Peer Review result beyond the current 3-years. This work is in its early stages and will initially concentrate on the family accreditation schemes. The category of family has been selected as there are established accreditation schemes and a significant body of peer review results with which to compare. Annex E outlines that initial research that will be conducted by early 2009. Where appropriate this work will be extended to other categories of law

Ownership of Quality

30. The Terms of Reference of the working group included the consideration of the future ownership of quality assurance. It was agreed that this was not the appropriate forum to discuss and make decisions on this issue.

4. Recommendations of the QWG

31. Outlined below are the recommendations made by the QWG

- Continue to work collaboratively where appropriately as a group or key members of the group to secure long-term objectives. This includes the timely sharing of information, developments and where possible reaching agreement on quality framework issues.
- Work to introduce Lexcel as an optional quality assurance standard as soon as practicable and at the latest by 2013
- Introduce a formal peer review feedback mechanism to ensure its continuing robustness and to improve processes. This will include periodic review by key stakeholders
- Establish through research, whether a relationship exists between peer review outcomes and the accreditation profile of organisations, with a view to establishing whether accreditation can be used as a quality assurance tool that can be used instead of other quality assurance tools (or visa versa). Initial work conducted in early 2009.
- For the next few months (up to March 09) the QWG will continue to focus on Peer Review Feedback and research into Accreditation. After that date we will schedule further meetings to meet the longer-term aims of the review of the Quality Framework. We commit to ensuring that all key representative bodies (including category specific groups) are communicated with for their input and feedback when appropriate. The LSC will continue to publish the QWG's minutes on the LSC website.

LSC'S APPROACH TO QUALITY

Purpose

1. This paper outlines the LSC's current approach to quality assurance within the context of legal aid reform and the objectives of the joint LSC/Law Society quality working party.
2. The quality assurance mechanisms that we use (or plan to) are as follows:
 - Peer Review
 - Specialist Quality Mark (SQM)
 - File Assessment Quality (FAQ)
 - Quality monitoring (e.g. Quality Profiles)
 - Quality Assurance for Advocates
 - Improving Quality Initiatives
3. SRA, the Law Society, BSB and individual network bodies also monitor/assess the quality of legal services/individual technical competence through methods such as the Accreditation and quality standards such as Lexcel.
4. There are also quality standards in the Not For Profit sector such as those of Citizens Advice and Shelter.

What we need from quality assurance

5. We need a single integrated quality assurance (QA) framework for the profession, regulators and LSC that satisfies the objectives of the joint LSC/Law Society quality working party.
6. Our view is that, in practice this using the full range of Quality Assurance mechanisms (not just LSC tools) that meet our needs; thereby reducing instances of direct intervention currently experienced by providers and avoiding additional or duplication of controls. We want to identify and describe the minimum standards we want providers to meet and the ways they can demonstrate they have met them e.g.:
 - Compliance with a recognised quality standard
 - Evidence of provision of good quality of advice
 - Evidence of technical competence (e.g. accreditation)
 - Evidence of professional services
 - Compliance with KPI on outcomes
7. We need a quality assurance framework to include an independent direct assessment of the quality of advice. For our purposes we require a system, like Peer Review, that directly measures quality. In the short term it is difficult to envisage an alternative to peer review though we do not discount the possibility that in the future peer review could be superseded. Particularly if competence based accreditation schemes/panels such as Resolution, The Law Society Family Panel, CLAS, IAAS etc are extended across all legal aid categories **and** include an element of direct quality measurement on real client cases. This coupled with accreditation at supervisory levels (covering skills and technical legal competence) may deliver the outputs we require.

Accreditation

8. Robust and objective accreditation schemes play an important role in improving and assuring quality.
9. It is our intention to utilise accreditation schemes as a requirement to deliver legal aid of a particular type or category of law. We would want to see accreditation across all legal aid categories.
10. Effective supervision is key to driving ever-improving standards of services. We would like there to be objective criteria for assessment of supervisors within each category of law for the purposes of accreditation, including how best to evidence experience and expertise in the process of supervision (as opposed to the technical skill of the supervisor). We have confirmed the views expressed here in response to SRA's consultation on accreditation earlier this year.

How we plan to use peer review

11. The current roll-out of peer review is linked to the planned implementation of best value tendering. It is the current intention that all providers will receive a peer review to ensure they have attained an acceptable level of quality before being allowed to bid on price. This is the process that is currently underway for crime providers, but is, of course, subject to future consultation on BVT.
12. For civil organisations, BVT will not commence before 2013. Therefore full roll-out of Peer Review is expected to start from 2011 (allowing for the 3-year shelf-life of Peer Review). In the meantime, we will continue to use peer review as a measure of quality of advice and representation being provided to clients. We will carry out reviews on a random or targeted basis. It is envisaged that Peer Review activity will remain at fairly low levels for civil, until reviews are required for BVT purposes.

How we plan to use the other LSC quality tools

13. **SQM** - All legal aid providers hold a quality management standard, currently this is the SQM, however many requirements of the SQM are also found in Lexcel. We envisage working to identify the comparability of quality standards such as Lexcel with the SQM, with a view to identifying one common standard, managed and maintained by the profession. As part of this we will look at ensuring inclusion of NfP agencies as they are doing the same work under the same contract and should be subject to the same level of standards.
14. **File Assessment Quality (FAQ)** – for low value contracts (under £50K) to be used as a gateway quality assessment for BVT. Potentially there is value in it being used by the profession as a self-assessment mechanism or as a Quality Assurance tool by the regulators. However FAQ was developed specifically for contractual purposes so may be of limited value to the profession.
15. **Quality Monitoring** – Quality Monitoring is incorporated into our remote monitoring systems, also known as Quality Profiles. These are of particular value to Relationship Managers for managing contracts. We will be reviewing the indicators and data parameters this summer.
- 16 **Quality Assurance of the Bar**- The Quality Assurance for Advocates (QAA) project is wholly outside of the review. This leaves the element relating to the Quality Mark for the Bar (QMB). We aim to develop a similar solution outlined for the SQM, i.e. work to make BARMARK match our needs. We will work in collaboration with the Bar Standards Board regarding this.

17 **Family Mediation Quality Mark (MQM)** - the main quality tool in place for Family Mediation contract holders. Any framework will consider the appropriate mechanisms to continue to assure their quality.

Improving quality

18 We are committed to use the wealth of information emerging from peer review to share with the profession with a view to meeting our commitment to improving quality generally across the entire supply base. We are currently doing this with the 'Improving Quality' guides and workshops.

Quality Assurance Working Group Matrix of tools to assess quality

This matrix sets out the different quality assessment tools for providers/practitioners and the performance areas each measures:

Performance Management Areas	LSC				Non LSC		
	Peer Review (1/2/3)	FAQ	QAA	QP	Accreditation ^{1 2}		
					Accreditation schemes generally	Examples of specific schemes	
					AVMA	Resolution	
Quality of Advice	✓	✓	✓	✓	✓	✓	
Client Care	✓	✓	✓			✓	
Professional Service ³	✓	✓	✓			✓	
Technical Competence	✓	✓	✓		✓	✓	
Good Management Practices ⁴	✓		✓			✓	
Equalities and Diversities			✓				
Risk Management	✓	✓	✓	✓		✓	
Continuous Improvement	✓	✓	✓		✓	✓	
Effective Supervision	✓	✓	✓	✓	✓ ⁵	✓	
Effective Signposting and Referral						✓	
Client Feedback						✓	
Use of Experts	✓					✓	

Strong measurement/indicator
 Some level of measurement/indicator e.g. proxy

¹ Overall the indicator for Accreditation concerns the individual however in Immigration accreditation is mandatory in order to conduct publicly funded work.

² It is recognised that not all accreditation schemes are alike or assess/measure the same areas. The matrix shows the measurements of schemes overall, and gives examples of the performance areas certain schemes measure. SRA operate 12 schemes applicable to different areas of publicly funded work, their breakdown is not shown here. They have been asked to provide the information, and when this is available the matrix will be updated accordingly.

³ Professional Service incorporates referrals, customer service, access to fee earners.

⁴ Good management practices include: People Management, Business Management, Financial controls, organisational Standards, File maintenance/record keeping, Agent management and quality control (such as experts etc).

⁵ For immigration practitioner's accreditation is a strong indicator, as all supervisors must pass a supervision module.

**Matrix of Quality requirements/standards providers/practitioners
can meet (or have to meet)**

The matrix below sets out the quality requirements/standards providers/practitioners can/or have to meet and the areas each covers:

<u>Performance Management Areas</u>	LSC			Non LSC		
	SQM	KPIs outcomes	Uni/GC Contract	Lexcel	Practice Qualifications	CPD
Quality of Advice	✓	✓		✓		✓
Client Care	✓		✓	✓	✓	✓
Professional Service ⁶	✓		✓	✓	✓	✓
Technical Competence	✓	✓	✓			✓
Good Management Practices ⁷	✓	✓	✓	✓		✓
Equalities and Diversities	✓		✓	✓		
Risk Management	✓			✓		✓
Continuous Improvement	✓			✓		✓
Effective Supervision	✓		✓	✓		
Effective Signposting and Referral	✓		✓			
Client Feedback	✓					

⁶ See footnote 2.

⁷ See footnote 3.

Quality Assurance Working Group

**Responses from The Institute of Advanced Legal Studies
and the Legal Services Commission to
The Law Society's concerns about peer review.**

Quality Assurance Working Group:

The Law Society's concerns about peer review and responses from the Institute of Advanced Legal Studies and the Legal Services Commission

Introduction

Law Society General Concerns

Peer review was originally conceived of as a quality improvement mechanism but its significance has now developed well beyond this as the LSC have the power to impose contract sanctions against providers who do not achieve a specific peer review rating. The 'punitive' potential of peer review will be increased if the LSC proceed with Best Value Tendering (BVT) as it is proposed that a minimum rating category 3 will be an essential requirement for being able to tender for a contract.

Whilst Peer Review grows in significance for providers, there are also growing concerns about the fairness and objectivity of the peer review process. This paper presents a brief outline of those concerns.

IALS Comment

1. The Peer Reviewers see their role as being involved in the maintenance and assurance of quality and bringing up the level of quality where this is necessary. They are blind to the purpose of any individual review, but are very aware of the context which affects them as it does all other practitioners. Reviewers and IALS are pleased to answer any issues of concern about the process and attempt to remedy any problems which are found.

LSC Comment

2. Peer Review is one of the tools the LSC use to monitor provider performance. During the original consultation on peer review we outlined the uses of peer review including its use as a gateway assessment to contracting schemes where providers may have to demonstrate a defined level of competence, peer review for BVT is one such assessment.
3. The LSC is committed to listening to the concerns and issues raised by the profession to ensure that confidence in peer review, as an objective and fair process is maintained. If through the course of the Quality Working Group review specific changes are identified as necessary to ensure the continued integrity of the peer review process we will take steps to ensure these are incorporated into any new LSC contracting process.

Specific Concerns

TLS Concern

Family law may be one legal aid category but it consists of a number of specialist areas such as care proceedings, domestic violence and ancillary relief issues. The concern is whether a generalist family peer reviewer has the skills to review specialist cases and whether a specialist peer reviewer has the skills to review cases outside of their specialist area. To what extent are peer reviewers particular skills matched up with the providers case profile?

Response from the IALS:

4. Family law is a good example of this problem, though it is beginning to appear in other legal aid categories as well. In short, we listen to our reviewers in terms of what is necessary. At the point at which they tell us it will no longer be possible to have generalist family lawyers carry out reviews we will have to break down the subject into further sub categories. We have tried not to do this until now because of the further complexity of arranging peer reviews under such circumstances. Where it is clear from a provider's set of files that a specialist family lawyer is needed we do attempt to organise such a specialist. Any peer reviewer is able, once having commenced a review, to decide that they do not have sufficient expertise to complete that review and they can ask for a specialist to carry it out.

Response from the LSC:

5. For some Family peer reviews it may be necessary to allocate reviews to peer reviewers who are specialists in an aspect of Family work. For example, if a Family peer review file sample contains predominantly children matters because the organisation being reviewed specialises in this work (rather than a mixed sample of domestic violence, finance, divorce and children files), a peer reviewer who is on the Children Panel will be allocated to conduct the review. The LSC hold details of peer reviewers who are on specialist panels, this information is used to allocate peer reviews to specialists where the need arises. In practical terms, if 8 or more of the first 15 files on a Family file sample file, relate to a particular type of work (e.g. children work in Family), the peer review will be allocated to a peer reviewer who is a member of the relevant specialist panel (e.g. Children panel). All family peer reviewers are aware of this process and as a final safety net, all family panel members understand that they should not review a specialist providers' work, if they do not have the requisite specialist qualifications.
6. It should be noted that the LSC contracts are for the whole of the Family category, we do not contract separately in specialist categories within family law. We expect providers to deliver the full range of advice services in the family category.

TLS Concern

There are concerns about the consistency of peer review as between peer reviewers. We are aware that IALS have systems for monitoring peer reviews for consistency but there may be issues as to how robust this system is.

Response from the IALS:

7. Consistency is a crucial issue in independent peer review and this answer is therefore presented in extenso. Consistency is addressed in the system of independent peer review through attention to methods of selection, training and monitoring of reviewers and the setting of objective criteria for assessment.

The problem

8. Formal and informal legal education is varied and quite individual. There is a considerable variety in the approaches and content of "Qualifying Law Degree" courses taught at Universities. Many do not take a Qualifying Law Degree but have the advantage of a non-law degree and a one year conversion course before they take their Legal Practice Course to qualify to become a solicitor. Each of these courses can be different in approach and may have some differences in content.

9. Trainee solicitors will “sit in with”, and experience directly, the work of a number of solicitors, probably between 3 and 10. During this last experiential and formative period they will be significantly moulded into particular forms of practice approaches. These can be quite individual, depending on the nature of the practice and the tendency of the trainee Supervisors with whom they interact. After this, as qualified solicitors, they may practice for the rest of their working lives with little critical interaction from colleagues or supervisors. The nature and the result of such training is therefore highly individual and very varied.
10. A consistent approach among those carrying out Peer Review is therefore both a difficult and crucial part of the process. This was well recognised in the first attempts at Peer Review undertaken with the assistance of the Law Society in 1994 - "Such measures of quality as exist are contingent on the assessors' (clients or peers) notions of what constitutes quality and these remain largely subjective and unarticulated." (Sherr, Moorhead and Paterson (1994) at p 82)
11. Concern for consistency is therefore shown throughout the new peer review process. Consistency is sought through selection of appropriate peer reviewers, training and assessment and criteria use to ensure a common starting point, monitoring to spot any worrying patterns of marking behaviour, ongoing training and continuous monitoring to ensure consistency throughout.

Selection

12. Peer reviewers are selected based on a level, depth and range of personal experience of specialisation, and supervision in the required area of work. This ensures that they have experience of fairly assessing the work of a number and range of other fee earners, preferably in different contexts and that they are fully aware of any issues arising in the practice area. Evidence of open-mindedness to alternative methods and practices is also critical in selection.
13. All successful peer review applicants are subjected to a rigorous short listing procedure, an interview and test review and must pass a Peer Review of their own work at the level of at least a 2 (Competence Plus), before beginning the training process.
14. Selection at these high standards is aimed at ensuring that all peer reviewers are starting from a strong experiential background, and share similar personal expectations of the levels of competent work which can be expected in their specialism.

Training

15. If selected the new peer reviewer undergoes two full days of training. The training is led by the Institute of Advanced Legal Studies, with input from existing and experienced peer reviewers and some operational information from the Legal Services Commission. When this form of training was begun in 2002-4 representatives from the Law Society, Advice Agencies Alliance and subject specialist groups were invited to attend and comment and have time alone with new peer Reviewers. During this training new peer Reviewers are given an understanding of the history and reasoning behind the peer review methodology to ensure as full an understanding as possible of the process. They are briefed on the criteria used during a peer review and the 5 point rating scale. Each criteria and each of the 5 levels of quality (from Failure in Performance (5) to Excellence (1)) are discussed and new peer reviewers have the opportunity to raise questions and discuss issues. They are then given the opportunity to apply these criteria and ratings to some real files. These exercises are performed in

groups of new and existing peer reviewers. Although the accent is towards carrying out this work individually, the discussion following between all those present begins to ensure more of a consistency of both application and understanding. There is a rigorous discussion of any differences between the members of the panel, with the aim of agreeing how they would all wish to decide even on minor issues. There is an active training session in writing a short report and coming to an overall grade and an explanation of the overall position that providers are given the benefit of the doubt if there are differences in opinion.

Assessment

16. Upon completion of these first two days of training the new peer reviewer performs two full peer reviews on sets of actual provider files (often referred to as their first Consistency Exercises). These files have already been reviewed by experienced peer reviewers. Upon completion of the Consistency Exercises, the reviews conducted by the experienced and new peer reviewers are compared by a senior panel member or by IALS to see to what extent the same file grades and provider grades were awarded. They also check that similar issues are raised and treated in a similar manner. The new panel member will also have the opportunity of discussing the reviews with the experienced peer reviewer concerned. Upon satisfactory completion of two such consistency reviews the peer reviewer will then join the panel. Some new reviewers fit into the system fairly quickly and their first reviews are immediately found to be consistent with those of other reviewers. Where this does not happen, new reviewers are given further reviews to carry out and further training and discussion with more senior reviewers until they achieve consistency. Such reviewers might also then be monitored closely in their early reviews.
17. In the rare case that they do not achieve consistent ratings after (say) 4 or 5 attempts, they may be dropped from the panel.

Criteria

18. The peer review criteria which are used by the peer reviewers to assess each file (and were drafted by the first set of peer reviewers together with the researchers who worked on "Quality and Cost") were designed themselves to encourage a consistent approach by ensuring that the same key issues form the basis of all reviews. In the initial 1994 test which is reported in "Lawyers – The Quality Agenda" wide ranging views were expressed until the criteria were drafted, thus narrowing and more clearly articulating the field of enquiry and assessment. The peer review software requires that they be considered in relation to each file and then overall scores are assessed for each provider.

Monitoring

19. The peer review process is monitored constantly in two ways: through the continuous monitoring and review of peer review reports, and through two forms of statistical analysis of peer review results. There is also the important corrective effect of representations from providers when grades below competence are being awarded.
20. When each peer review report is completed it will be examined and monitored by IALS or a senior panel member (SPM). IALS or the SPM will examine the report both to check that it adequately justifies the provider grade that has been awarded and that the report has been well enough written to assist the provider in understanding clearly the reasons behind any particular grading. If there are any concerns with the grading or the Report these will be returned to the peer reviewer for further work or comment. This provides a mechanism which attempts

to ensure that issues are dealt with in a consistent way by all peer reviewers and serves both as a check to prevent individual providers being sent an unjustified grading, and as a feedback mechanism giving the peer reviewer an indication if he or she is giving inconsistent marking on specific issues, or not sufficiently explaining or justifying a particular grade or issue noted.

21. Where new panels of reviewers are being built in new subject categories the views of the first peer reviewers are allowed to form a nucleus of agreement before joining other reviewers into the group. This is effected by organising that all of the first set of reviewers (e.g. the first 4 reviewers in a particular subject category) all review the same sets of providers' files until they are gaining agreement across the group on how to deal with different issues and how to mark particular approaches. This can articulate and cement a coherent view into place which is then easier to agree with additional reviewers when they join the group.
22. After the first two years of Peer Reviewing an overall consistency exercise was carried out to monitor whether all peer reviewers in crime could be consistent in reviewing the files of 2 out of 3 particular providers. A remarkable consistency in grading was found and this was also an instructive exercise through which was learned the importance of keeping all reviewers informed through six monthly updates and having ample opportunity to agree any differences.
23. The continuous process of monitoring can now involve an initial peer reviewer, an SPM and someone from IALS in working on and agreeing a provisional Report for a 4 grade. Subsequently when representations come in, a further Peer Reviewer and a second IALS person or SPM will be involved in considering the Representations together with the original files, and then validating the final report. This process, involving a whole cadre of reviewers and validators, also tends to ensure a larger consistency of approach across the system.
24. IALS also prepares quarterly reports detailing a number of statistics for individual peer reviewers, and highlighting any areas of concern raised by those statistics. These statistics are provided to peer reviewers at six-monthly update training sessions.

The statistical measures used are:

25. "Grade distribution". This presents the proportion of providers being awarded each grading (e.g. the percentage of providers receiving a Grade 1 etc). This is calculated for the whole collection of peer reviews, for subject panels and for individual reviewers where a sufficient number of reviews has been carried out. This allows IALS to check that the grades awarded are spread appropriately and allows comparisons across the panels and within panels.
26. "Average Provider Grade": This is a simple measure of the average grade awarded by a reviewer across all his or her reviews. It allows for a quick and easily interpreted comparison with other peer reviewers, the subject panel and the whole body of peer reviewers.
27. "Self Consistency": This is the extent to which the average provider grades awarded differs from the average grade across the sets of 15 files reviewed. Whilst peer reviewers have some discretion to award provider grades higher or lower than the average of the file grades, it is expected that they will not do so often significantly more in one direction than the other (i.e. not mark providers up more frequently than marking them down or vice versa). This measure allows IALS to identify peer reviewers who may be using their discretion inappropriately.

28. "Inter-Reviewer Consistency": This is the difference between the average provider grade of the panel or peer reviewer and the average provider grade of all peer reviews. This measure allows IALS to identify peer reviewers and panels who appear to be applying a harder or easier standard when awarding provider grades.
29. "Hard and Easy marker boundaries": For both Self Consistency and Inter-reviewer consistency descriptive statistics (mean and standard deviation) are calculated taking into account all scores for all peer reviewers. These are then used to calculate a band 1.3 standard deviations above and below the mean score for each measure (In a normal distribution approximately 80% of scores would be expected to lie within this band, and 10% would be expected to lie above and below the bounds of this range respectively). Scores falling outside of this band are flagged for attention.
30. Where a peer reviewer is thus identified as a hard or soft marker on any measure this will be raised at the next training session. Where a peer reviewer has been identified as a "hard" marker s/he will not be used to validate any grades of 4 or 5, and any of his or her reviews which come up with a 4 or 5 will have to be repeated by a less harsh reviewer before the mark can be fairly assured. Discussions are held with both hard and soft markers with a view to bringing them closer towards consistency of marks. A promise has been made that no provider will suffer as a result of having been marked down by a harsh marker.

Ongoing training

31. Peer review subject panels meet every six months. These meetings are attended as far as possible by all peer reviewers carrying out reviews in the subject area.
32. At these update meetings peer reviewers are given a presentation on the statistics described above and are also given individual statistical reports showing their own grades. At the presentation areas of concern are highlighted and areas for discussion suggested. Peer reviewers who have been highlighted as soft or hard markers receive feedback on this issue.
33. Peer reviewers can also put on the agenda for discussion any issues which have caused them concern or difficulty. These can include, for example any differences of opinion between reviewers and SPMs arising out of validations or responses to representations, specific work approaches and practices, or changes in legislation or funding. This provides a forum for the panel to clarify issues and formulate a consistent approach. At the update meeting there will usually be an exercise during which the panel members will look individually and collectively at some files or reports and discuss their approaches, again to ensure consistency.
34. These update meetings are therefore vital in guiding peer reviewers to stay within a statistically acceptable range of marks, as well as encouraging a common approach to marking. In this way they address both quantitative and qualitative aspects of consistency.

Specific questions about "benchmarking"

35. In addition the LS have asked for "information about how the benchmarks are set, how peer reviewers assess against the benchmarks and what controls are in place to ensure that all peer reviewers are operating to the same standards."
36. As will be seen the approach adopted has been to provide a set of criteria to guide the peer reviewers through the review, along with a 5 point scale of ratings which is supported by indicative descriptions for each rating (these are included

in the Appendix below). These descriptions are advisory rather than prescriptive. This allows the accommodation of diverse approaches rather than setting an ideal approach against which providers are marked. The intention is to bring up the standard of inadequate work, not to standardise all work.

37. Controls to ensure peer reviewers operate to the same standards are described more particularly in the paper above.

Summary

38. Peer review is a complex process rather than an isolated file marking exercise, as can be seen especially in its constant approach to consistency.
39. The strength of the approach of Independent Peer Review to consistency is the diversity of its mechanisms. It uses selection, training and assessment to encourage and ensure a commonality of approach to the task; and use of criteria as well as ongoing training to maintain this approach, and monitoring as both a safety net and a training tool. The individual process of monitoring, validation and representation response adds to the overall system of selection, training and instrumental objectivity with the intention of ensuring across the board consistency.

TLS Concern

There is also a question about consistency over time. Will the standard be absolute or relative to the prevailing level of work at any given time. In other words will the standard fall as work carried out reflects the limitations imposed by fixed fees and generally declining remuneration rates.

Response from the IALS:

40. The question of whether the standards are absolute or relative is interesting and difficult, but it is one which the reviewers have had to discuss often in the last 2 years. It is their decision how they grade. Some might say that a dichotomy is inappropriate. The reviewers adopt a slightly more nuanced position, maintaining reference to the rating guidelines whilst incorporating an understanding of the environment in which practice occurs. This ability to show an understanding of practice issues has always been considered to be one of the strengths and justifications for using current practitioners. Statistically it seems the peer reviewers decide on what they see in front of them on the files they review and do not obviously change their view of quality with changes in funding policy. Politically they will voice their views in a very similar way to their peers.

TLS Concern

Problems arising from the LSC's refusal to accept appeals against category 3 findings. At the present time this may not have any real practical significance, although it could do in the future, for example in a competitive bid round. Would it be preferable to just have 'pass' or 'fail' outcomes?

Response from the LSC

41. The LSC allows representations against a peer review result where the outcome may impact on a provider obtaining or retaining an LSC contract. Currently providers are required to obtain a peer review rating of 3 or above to satisfy the quality requirements for entry to BVT. As a result representations are currently accepted on peer review ratings of 4 (Below Competence) or 5 (Failure in Performance).

42. Currently in effect there is a pass/fail result to peer review (either PR3+ is a pass or a PR4- is a fail). When the representations process was originally introduced the LSC was considering setting the quality threshold at a peer review rating of 2 (Competence Plus) or above as part of the Preferred Supplier process which necessitated representation on peer review ratings of 3 or below. Given the shift in the LSC's purchasing strategy to competitive tender (quality status required - PR3) representations are not considered necessary for PR3s as there is no practical significance when balanced out with the cost of representations and peer reviewer resource that it takes up.
43. Last year, the LSC looked into the benefits of changing the process from a 5-scale rating to pass/fail – a recommendation was made to keep the current 5-scale rating for the following key reasons:
- Providers would not be able to evidence improvement in quality (since previous review)
 - The LSC would not be able to quality assess candidates to become peer reviewers
 - Flexibility would be lost to take into consideration higher quality providers in future contracting systems.
 - The costs of changing the process from 5-scale to pass/fail would outweigh the benefits/costs of maintaining the existing scheme or the cost incurred in changing the existing scheme.
44. If in the future the LSC does require a higher quality rating (PR2) from their providers (there are currently no plans to do this), they will be given the opportunity to make representations on PR3s. It is hoped that with time, we will see an overall improvement in the PR ratings, as providers incorporate the learning from their first peer review and make use of the improving quality guides and workshops that are available. Initial research from IALS shows that improvements are made on second reviews.

TLS Concern

Potential conflict of interest situations under BVT. BVT is likely to increase the number of firms seeking out of area contracts. In this situation the current arrangement for peer reviewers to come from a different geographical area to the provider may be insufficient to prevent a conflict of interest arising, as it will probably be open to firms to bid for out of area contracts.

Response from the IALS:

45. Prior to a review, providers are given a list of potential reviewers. They are asked to indicate any reviewers with whom they would have a conflict and they may address this issue as they wish. It will be open to the provider to exclude a peer reviewer based in an area in which they are bidding.
46. Where a provider from outside the peer reviewer's area has expressed an intention to bid within the peer reviewer's area, this information will not be known to the peer reviewer. Therefore the peer reviewer will not be aware of a conflict of interest (although the firm being reviewed may), and their marking should be free of bias from this source.
47. If every reviewer will have a conflict with every other supplier as a result of national contracts we will need to consider how the presumption of conflict rules should operate and will take advice from the Law Society and others as to how to handle this problem.

TLS Concern

Peer review measures past rather than current performance, and the longer the gap between peer reviews, the less the likelihood of the file sample being representative of current work.

Response from the IALS:

48. Peer review considers closed files. In previous research it was found that different lawyers carried out different tasks at different stages of a case. Although some tasks are more time or event bound, others are not. For this reason, and the need not to intrude upon live files, the files, which are requested, are all closed, but they should be files closed within the past year. It would be possible for providers with large numbers of matters to be asked to provide files which had been closed in the last six months, but this may not be appropriate for particular subject categories or for particular providers. We do not believe that the time lag involved currently is a problem in assessing the work of a provider. If working practices have changed within a year or particular staff have gone, it is possible for a provider to make representations (in relation to a below competence mark) which outline the situation. In any event a peer review rating is currently considered valid by the LSC for three years.

TLS Concern

Under the BVT proposals it is envisaged that for new firms there would be a provisional peer review based on the peer review rating of the supervisor or senior partner's previous firm. This could have some inappropriate consequences in situations where for example, a competent practitioner leaves a firm with a poor peer review rating to set up a new firm, or where an incompetent practitioner leaves a firm with a high peer review rating to set up a new firm.

Response from the LSC:

49. The BVT proposals explore possible ways to allow new competition into the market. The points raised regarding the LSC's latest proposals/suggestions are noted, it is difficult at this stage to see how the entry criteria can be 100% infallible, but at the same time allow new entrants into the market place. The LSC welcomes further debate on this and is keen to work with the QWP to obtain other alternative proposals.

TLS Concern

Peer review does not measure the quality of advocacy which could be the main element of the service to the client, particularly in criminal cases. This may not be a problem if advocacy issues are addressed elsewhere in the quality matrix, e.g. through accreditation.

Response from the IALS:

50. Peer reviewers are not present in the lawyer's office when they interview clients, at the police station, at court when talking to the other side or the prosecution and they are not present in court or tribunal when advocacy occurs. Reviewers do not overhear telephone calls of the lawyers concerned, nor can they assess their bedside manner. It would be both intrusive and expensive to set up a process which captured all the live work of the practitioners concerned. However, the files are a very good record and should be a record of what has happened in any matter. Because files are shared between more than one practitioner, practitioners go on holiday, go into hospital or even go under a bus, it is essential that a proper record is kept of what happens on any file. Proper information must also be presented to clients to explain to them what is happening and to provide

them with advice on the law and procedure relating to their matter. It is clear from a file when advocacy has been properly prepared and when good results are consistently obtained across a number of files. It should be noted that advocacy is likely to be separately assessed under a different system in the future.

APPENDIX

Extract from Legal Service Commission (Nov 2005) Independent Peer Review Process.

http://www.legalservices.gov.uk/docs/civil_contracting/Independent_Peer_Review_Process1105.pdf

Definitions of the Ratings

2.17 The criteria are marked on a sliding (in research terminology “Likert”) scale (1–5), and, in some cases, with Yes/No. For each civil file peer reviewed, an overall assessment of quality is made with a 1–5 rating. For crime files, an overall rating of 1–5 is given for each stage of the case (Investigation Stage, Magistrates Court Stage and Crown Court Stage), followed by an overall assessment of quality for each file.

2.18 Following the review of a sample of files for a supplier, an overall rating (using the 1-5 rating) is given for the quality of legal advice and work. A separate rating is given for the value for money assessment.⁶

2.19 The ratings are as follows:

- Excellence (1)
- Competence Plus (2)
- Threshold Competence (3)
- Below Competence (4)
- Failure in Performance (5)

2.20 The ratings definitions describe the work of the supplier as reviewed by the peer reviewer over a number of files.

2.21 Where a supplier’s work is rated as Below Competence (4) or Failure in Performance (5), this indicates that the work falls below that required by Clause 3.2 of the General Contract⁷ Standard Terms, which states that:

“You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately. Your Claims must be true, accurate and reasonable.”

2.22 The definitions of the ratings are as follows:

Excellence (1)

2.23 Indicators of Excellence in the standard of work include:

- Clients' instructions are fully and appropriately recorded.
- Communication, advice and other work are tailored to each individual client's circumstances.
- Clients are all advised correctly and in full.
- All issues are progressed comprehensively, appropriately and efficiently.
- There is a demonstration of in-depth knowledge and appreciation of the wider context.
- There is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for clients.
- The supplier adds value to their cases, taking a fully proactive approach.
- There are no areas for major improvement.

Competence Plus (2)

2.24 Indicators of Competence Plus in the standard of work include:

- Clients' instructions are appropriately recorded.
- Advice and work is tailored to individual client's circumstances.
- Clients are advised correctly and in full.
- Issues are progressed comprehensively, appropriately and efficiently.
- Tactics and strategies are employed to achieve the best outcomes for clients.
- The supplier adds value to cases and takes a proactive approach.

Threshold Competence (3)

2.25 Threshold Competence is the standard that meets that required by Clause 3.2 of the Contract Standard Terms.

Indicators of Threshold Competence in the standard of work include:

- Clients' instructions are appropriately recorded.
- There is adequate but limited communication with the client.
- The advice and work is adequate although it may not always be extensive and may not deal with other linked issues other than the presenting issue.
- There may be areas that the supplier will need to address in order to progress towards Competence Plus (2) or Excellence (1).

Below Competence (4)

2.26 Peer review demonstrates that contract work has been conducted below the standard which clients are reasonably entitled to expect from a solicitor, and in breach of Clause 3.2 of the Contract Standard Terms.

Indicators of Below Competence in the standard of work include:

- Information is not being recorded or reported accurately.
- Communication with the client is sometimes of poor quality.
- The advice and other work is inadequate.
- Some cases are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or other work is sometimes inadequate.
- There are lapses below the required standard.

Failure in Performance (5)

2.27 Peer review demonstrates that contract work has been conducted substantially below the standard which clients are reasonably entitled to expect from a solicitor and substantially below that required by Clause 3.2 of the Contract Standard Terms (a fundamental breach as described in the contract). Additionally, there has been at least one major or complete failure to conduct work to this standard.

Indicators of Failure in Performance in the standard of work include:

- Information is not being recorded or reported accurately.
- Communication with clients is often of poor quality.
- Cases in general are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or work is often inadequate.
- There is a detrimental service to clients, or there is no meaningful service at all, or there is a service that leads to potential prejudice for the client.

The relationship between peer review outcomes and accreditation profiles of providers

Purpose

The QWG have agreed to look into the relationship between peer review outcomes and accreditation profiles of providers, to establish if possible how they can work together to provide a comprehensive picture of competence without unnecessary burden on providers. If a link between accreditation and good peer review outcomes is established– this will be considered by the members of the future QWG and may be incorporated into a future quality framework,

Structure of Research

A pilot will be conducted in one category of law to establish whether there is a relationship between peer review and accreditation, if so what that relationship is. The QWG agreed that initial analysis should be conducted in the Family category of law, largely due to the fact that there will be sufficient peer review outcomes (over the last 12 months) to use as a benchmark to compare accreditation against.

Additional information will be sought from providers or other parties, to establish per supplier, the following:

- Accreditation profile (how many staff Accredited/not accredited)
- Accreditation type (Resolution/Family Panel or Advanced Family Panel).
- Experience of Non-Accredited Staff (presumably Post Qualification?)

It was agreed that family lawyers (from TLS/LSC etc) are approached for their input into what other information may be relevant to ask, before a final set of questions are agreed.

The research will be based on a hypothesis drafted by Avrom Sherr and agreed by the QWG. This will take into account the specific issues that members feel need to be considered as part of this research.

What do we do with the findings of the research?

It is not known what the findings of the research will show. However, if a linkage is proven between peer review outcomes and the accreditation profile of the supplier – it is possible that in the future quality framework, accreditation can be actively utilised as a quality assurance tool along with other tools that provide levels of quality assurance such as the SQM, LEXEL or Peer Review – and visa versa. An example was explored during the meeting – where if the accreditation profile of a supplier is at a level that gives quality confidence then a peer review may not be necessary every 3 years, but say every 5 years instead. Alternatively, SRA could accept a peer review rating of a supplier as assurance rather than an individual accreditation ‘test’ or portfolio test. Therefore, this research could lead to real benefits to the

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