

Quality in Legal Aid
SQM Outsourcing
A Discussion Paper

June 2009

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Annex 1: Impact assessment

Introduction

Over the years, the LSC has become a 'quasi regulator' for legal aid services. The LSC has developed quality tools (usually in close co-operation with representative bodies) to address what it saw as gaps in regulation by the profession. In particular, professional regulation had created no:

- widely used quality management standards
- compulsory category specific requirements on individual expertise or overall quality of advice.
- measures to assess advocacy, which the LSC is addressing separately through the QAA project

The current position places ownership of quality with the Commission, rather than with providers and regulators where it properly belongs. It also places the costs of quality assurance with the Commission, largely as an administrative expense. Whilst this may have been inevitable during the development phase, it is not a sustainable or desirable position. It has however benefited legal aid clients by giving them often greater assurance of quality than do the current requirements of the regulators for legal advice in the private market.

The LSC does not want to lose these benefits and is determined to procure quality services for its clients. It is this determination that has led to the development of quality standards for legal aid work, such as the quality mark and peer review. The LSC will maintain the standards it requires of providers, and where possible improve the quality of work it procures – principally through the requirements of legal aid contracts, which we will continue to audit. However, as a major purchaser of legal services, we want to rely on independently verified quality standards to give assurance that our basic requirements are met. Regulators should play the leading role in setting standards covering both systems and legal competence. Making quality an issue of general professional and regulatory standards improves assurance for all users of legal services and widens the pool of providers that will be in a position to bid for legal aid work.

This paper provides information on the LSC's plans for quality assurance in legal services, and frames a discussion on the LSC's proposals regarding the implementation of an outsourced contract for delivery of audits of the Specialist Quality Mark.

The key areas for discussion are:

- how the SQM will be outsourced between 2010 and 2013.
- the impact of placing the costs of quality on providers, including the equalities impact assessment

Supervisor standards (which from April 2010 will move from the SQM to the LSC's contract) are part of the 2010 contract consultation. The new Prison Law supervisor standard is being consulted on separately.

Policy Context

1. As a commissioning organisation, the LSC needs to be able to demonstrate a balance between securing access for clients, value for money and a commitment to quality. Within a procurement context, the LSC needs an approach to quality that tackles:
 - Timing: It must be possible for all bidders to be assessed against the relevant standard (whether by the LSC or an external body) in the timeframe of a procurement process.
 - New Entrants: The LSC must make decisions about new entrants as well as current providers. New entrants can provide new services and stimulate the market, but there is always risk in any bid round process; and should they prove to be unsatisfactory after they have obtained contracts, it will often not be possible for us to go back to previous providers.
 - Cost: Quality assurance must be affordable, both for the LSC and our providers, and should not add too much to the costs of undertaking procurement.
2. The LSC identifies five different aspects of quality.
 - (a) **Quality of Processes:** Does the provider have the right management systems in place to deliver quality services?
3. Quality standards such as ISO and Chartermark are an accepted part of the quality landscape in most industries, but have been slow to gain currency in the legal sector. They demonstrate that an organisation has the right processes in place to prevent common causes of poor quality service. Poor supervision and file review have a particularly strong correlation with bad peer review results; these are areas covered by legal quality standards. Quality standards have the great advantage of being able to be assessed in advance of awarding a contract, but do not look directly at the advice delivered.
4. Quality standards with direct application to the legal sector are the **SQM, Lexcel** and **QM4Law**. Assessments are delivered by non-lawyers, at a cost proportional to the size of the organisation being assessed, so are relatively inexpensive. The Quality Working Group recommended that LSC allow Lexcel as an alternative to the SQM as soon as possible. The LSC has now updated the SQM to enable this to happen, and has taken the opportunity to bring other aspects of the standard up to date.
 - (b) **Quality of advice:** Is the legal advice that the provider gives accurate and timely, given the instructions that they have taken from the client? Is the representation they give clear and compelling?
5. Quality of advice is directly assessed through **accreditation** (for individual lawyers), and **peer review** (for whole organisations). Accreditation uses lawyers to set examinations, conduct interviews, or examine portfolios etc but incorporates examination systems with questions and model answers set by lawyers, although not necessarily marked by them.
6. Peer review uses lawyers to assess case files against defined criteria. There is inevitably an element of subjectivity involved, so mechanisms to achieve consistent assessments are an essential part of the process.
7. Linked to the concept of quality of advice is **expertise** – does the provider 's staff have the necessary qualifications, skills and legal knowledge to provide effective advice? Accreditation, professional qualification requirements and LSC contract supervisor standards measure this element.

(c) The client experience: How does the client perceive the service they receive? Does it meet their expectations?

8. Clients' choices already shape the legal aid market by affecting the amount of legal aid work each provider does, and the LSC wants to build on this mechanism. Empowering clients to share their experience and make informed choices has been effective in the context of social and health care, and potentially has an important role to play in legal services too. The Commission wishes to build its understanding of clients' expectations through its client and public engagement strategy.

(d) Additional Service features: Does a provider offer services in a way that exceeds the LSC's minimum requirements?

9. LSC is seeking to provide services that better meet clients' needs by securing additional features through the bid round process. Where providers offer extended opening hours, outreach, or multiple categories of law (for example) clients will benefit from improved access services. Additional service features have been built into the consultation proposals for the **civil bid round process**.

(e) Delivery in line with contract: Does a provider deliver the service required by the LSC's contract?

10. For the LSC, a key aspect of a quality provider is that they deliver the services specified in their contract, e.g. by meeting performance indicators. Delivery is monitored by reference to **key performance indicators** and other management information the LSC collects. New contract KPIs for 2010 have also been put forward for discussion.
11. Where a provider's performance falls below that required, it will result in a contract manager intervening, initially by discussing performance with the provider and helping plan for improvement, and ultimately (where performance does not improve) applying contract sanctions.
12. Demonstrating each of these aspects of quality imposes some administrative burden on the LSC and its providers, and it is important to prioritise between them. It also leads significant costs for the LSC, which spent over £3.2m on quality tools in 2008/09, including £2.7m on peer review and approximately £500,000 on reimbursement of accreditation costs.
13. Some of the quality tools the LSC uses test the same aspect of quality. In some areas of law, greater reliance can be placed on a particular tool, which may be less applicable in another category. With these considerations in mind, the Commission has made the following decisions:

To take a tailored approach

14. The LSC will adopt a more proportionate, tailored approach to quality assurance using a category-by-category approach that takes into account the different factors that drive quality and provide assurance in each. Such factors will include the availability of accreditation, the effectiveness of KPIs as a measure of performance, the ability of clients to determine the quality of the service they are receiving, and any controls inherent to the legal process (e.g. arising from court processes).

To amend the role of Peer Review

15. Peer review is an important tool that directly measures the quality of legal advice and will remain a key element of the LSC's quality strategy. However, because it relies on closed cases, peer review cannot easily be applied to new entrants in bid rounds, and so does not

control one of the key risks the LSC faces when tendering new work. Across all categories, more than 95% of providers so far reviewed have received an initial peer review rating of three or higher. Since 2005, out of 2,341 confirmed peer reviews, only 3 have resulted in a score of 4 or below – although some providers that received an initial 4 or 5 choose not to complete the process. Whilst this is reassuring and shows that the provider base is operating at an appropriate level of quality, it is clear that continuing with a policy of reviewing all contracts every three years would represent an unjustified burden on providers as well as poor value for money. In practice, the focus of the reviews has been on crime, and resource considerations have therefore meant that numbers of peer reviews in civil have never approached the levels that would be required to review every contract during its lifetime.

16. As part of the tailored approach to quality, peer review will in future be used on a risk based and random sampling basis, principally on live contracts rather than being incorporated into bid rounds. We will maintain the requirement to achieve at least peer review category 3 if audited, as this equates to the obligation in the Unified Contract Standard Terms to perform work with reasonable skill, care and diligence. If other intelligence indicates that there are problems within a particular category, or we consider that risks are increased, we may look to increase the volume of peer reviews in that area (as we have already indicated that we will do in the mental health category).
17. Where the LSC is developing new approaches to contracting, or contracting for highly specialised services, we will continue to focus peer review resource on these areas. After the initial Best Value Tendering pilot, the requirement for a peer review rating of three will not be an entry requirement but it will remain a contractual requirement for those successful in the tender to deliver work at or above this standard, and we will ensure that we apply an appropriate level of peer review resource to contracts let by this method.
18. We will need to discuss the issue of the transfer of the costs of peer review over the longer term with the profession. We do not propose that providers we require to have a peer review as a part of obtaining or maintaining the contracts to be let in 2010 should have to meet the cost. Representative and regulatory bodies may have views on the extent to which peer review should be used and funded by the profession in future. In the short term our change of approach to peer review will enable us to respond to calls from providers to make educational peer reviews available on a fee-paying basis to those who want them. The LSC will also explore whether the existing “improving your quality” guides and workshop materials could be developed into a self assessment tool that will give providers a level of assurance about how a peer reviewer might rate their work.

To work with the profession and regulators to improve and extend accreditation

19. The LSC believes that accreditation is a good tool for legal professionals and organisations to demonstrate competence or expertise in their chosen areas of law. We will promote the development of accreditation, to provide up front assurance of quality of advice in procurement exercises. We will work with accreditation bodies to develop schemes that fulfil our requirements. Where robust accreditation is in place, which includes a clear, regular reaccreditation process, this may act as a partial alternative to peer review as a measure of the legal expertise of providers.
20. The current system, where accreditation is in large part required only of legal aid providers, is not ideal. It positions accreditation as a special requirement imposed by the LSC, rather than a general standard that all legal services providers should be eager to demonstrate their expertise to their clients. It is an anomaly of the current system that an individual who fails the accreditation requirements to undertake publicly funded work in a particular category of law can still take on work for private clients. Accreditation should be a general matter of professional standards and regulation.

21. At present the LSC offers to reimburse some or all of the cost of accreditation that is obtained in order to meet LSC contract requirements. This scheme promotes the view that accreditation is a special requirement of legal aid work. The scheme is not taken up by all accredited individuals, and in line with the decision to outsource the SQM, the LSC will phase out its current system of reimbursement from 2010. Separate discussions will take place on the impact of this change with the representative bodies concerned.

To outsource the SQM and permit Lexcel as an alternative

22. The LSC has paid for auditing the SQM (and its predecessor LAFQAS) since their inception. Whilst this may have been inevitable in a transitional phase and to embed the standards, the position should be that a provider seeking to bid for public money should be able to demonstrate its own quality. As a matter of practicality, the need of the LSC to live within its administrative budget has meant that SQM auditing has been scaled down in a way that may not be sustainable over the longer term. As an alternative to outsourcing the SQM, the LSC considered whether it would be feasible to stop requiring that its providers hold a quality management standard, given the assurance about quality of advice it receives from other sources. However, systems such as ISO 9001 are required in many other areas of service delivery and abandoning the current requirement would be a retrograde step, given the improvements in service that have been brought about by the SQM and its predecessor. It is widely considered that audited quality systems make providers more efficient and sustainable, and pay for themselves over time.

23. We also considered whether Lexcel could be used as a complete replacement for the SQM, but because of the potential for capacity issues and the fact it is not available to Not for Profit providers decided not to suggest this approach.

24. It will remain a compulsory requirement for all legal aid providers to hold quality management standard. For contracts awarded in April 2010, Lexcel will be accepted as an alternative to the SQM. The LSC will map any other quality management standards that are developed against the SQM to check they satisfy our requirements. We will maintain the SQM but outsource the delivery of audits to an external body on a fee-paying basis. All providers must possess an up to date quality management standard that they have paid for in time to be awarded contracts in April 2013.

Proposals for discussion

25. Within the context of the overall direction of the LSC's policy, there are a number of issues that would benefit from discussion with representative bodies and providers:

- how the SQM will be outsourced between 2010 and 2013.
- the impact of placing the costs of quality on providers, including the equalities impact assessment

Comments are invited on each of these issues.

26. The LSC has made minor changes to the supervisor standards, which currently form part of the SQM but which in future will be included within the LSC Contract. These standards are being consulted on formally as part of the discussions on the LSC contract and have been amended with input from peer reviewers. Key points about the changes are:

- They are not intended to affect how demanding the standards are, but to ensure that they are up to date and reflect the current composition of workloads and priority areas for a supervisor to understand.
- New supervision routes are proposed within Actions Against the Police and Consumer to reflect divisions between different areas of work that fall within these categories.
- Consultation is under way on a supervisor standard for Prison Law in Crime, but the proposed standard is included here for information.

The implementation process for SQM outsourcing

27. The LSC proposes to outsource the SQM to one or more independent audit bodies with effect from the end of September 2010 at the latest. This will enable all providers to obtain an audited quality management standard that they have paid for by September 2012. The outsourcing process will be similar to that pursued in 2008 with the General Quality Mark, but will take place within the framework of EC Procurement Legislation.

28. The key dates in the timeline are:

Publish Contract Notice in OJEU	02/11/2009
Receipt of Expressions of Interest	09/12/2009
Issue Invitation Tender	15/01/2010
Receive responses to ITT	24/02/2010
Contract award (letter of intent)	24/04/2010
Contract confirmation & readiness for service (Formal contract Completion)	29/04/2010
Contract go live	01/08/2010

29. Operational issues we are currently considering include:

- (a) Whether to seek one outsourcing body or several. Using one will make it easier to ensure consistency of approach and quality of audits, and ensure there is a single clear pricing structure. Using several will may enable competition to keep down the price of audits, allow different pricing models to be used that may benefit different providers,

and help ensure there is capacity to deal with peaks in demand. The LSC favours using several outsourced bodies.

- (b) Whether to place the responsibility on providers to register their interest with the outsourcing body of their choice, or provide all outsourcing bodies with the contact details of current SQM holders and task them with signing up providers. Leaving the responsibility in the hands of providers risks some failing to register for an audit, impacting their ability to take part in the bid round for 2013 contracts. Tasking outsourcing bodies with this work means that providers may receive several contacts from different bodies about the availability of audits
- (c) How to encourage early take-up of audits. A risk in moving to a system where providers pay for their own audits is that they may all choose to delay incurring costs by waiting until the last opportunity to register for an audit. This will create scheduling problems for the outsourcing body(ies), and may result in some providers being unable to obtain an audit. This risk would be reduced if outsourcing bodies are tasked with signing up providers.

The impact of placing the costs of quality on providers, including the equalities impact assessment

- 30. The direct costs of the LSC's proposals for providers are low. An SQM audit for a provider that already holds the standard is likely to cost between £900 and £1800 for most organisations, once every three years, although for the largest the cost may be higher, since it is likely to take longer to undertake an audit. An Equalities Impact Assessment of outsourcing the SQM is attached at Annex 1.
- 31. LSC provider organisations controlled by BME lawyers are on average smaller than those controlled by white lawyers, but there is no significant difference in legal aid fund take between the two groups. There should therefore be no difference between groups in terms of the effect of this measure on the sustainability of the legal aid contract. However as it appears that BME firms may have a greater reliance on legal aid income, it could be argued that this may affect their ability to meet the cost of an SQM audit. The amounts concerned are not large, but the LSC will seek to mitigate this specific issue by ensuring that the pricing structure for audits means that small providers can obtain audits at lower cost than larger ones.
- 32. The impact of phasing out the reimbursement of accreditation costs is difficult to estimate. By no means all organisations with LSC contracts whose fee earners obtain accreditation claim reimbursement of the costs. The impact on an individual provider will depend on its accreditation profile, and will be greater for those in Crime, Family, Mental Health and Immigration than for any other categories. The reimbursement is up to £470 per accredited fee earner.
- 33. The impact will also be affected by decisions on the part of the Law Society, Solicitors Regulation Authority and other accreditation bodies. Re-accreditation processes are anticipated in Crime and Immigration, which would trigger an increase in costs to providers. Accreditation bodies also set the cost of obtaining accreditation, and may choose to review the price in the light of the LSC's decision to end reimbursements.
- 34. In view of the very limited information about numbers of accredited fee earners and claiming behaviour, and because of uncertainties over reaccreditation and cost, it has not been possible to conduct an impact assessment of the proposal to phase out reimbursement of accreditation costs at this stage. As we will continue funding until at least April 2010, this issue does not affect the forthcoming bid round. Its impact in the next contract period will depend on external decisions on reaccreditation and pricing. An equalities impact assessment screening will be carried out before any change is implemented, and further assessment carried out if needed.

This impact assessment work will be discussed with representative bodies before any change is made.

35. The overall cost to providers of an SQM audit is very low in relation to their fund take. For even providers with a small legal aid contract, the cost of quality assurance would represent only 1-2% of annual legal aid income, and for many larger providers much less. Any potentially discriminatory impact can be controlled through the way that the costs of audits are determined.

Mitigation of financial impact

36. As well as addressing the specific potential for a discriminatory effect on BME-owned providers, the LSC is concerned to mitigate the total cost to providers of paying for quality assurance. The greatest cost to providers of quality assurance is the fee earner time that must be spent on non-chargeable work. The overall policy described above includes a number of significant administrative savings for providers:

- (a) The frequency of SQM audits is reduced from annual to every 3 years, reducing by two thirds the fee earner time to be spent interacting with the LSC on this issue
- (b) The SQM is moving from an "office" to a "firm" basis – so for providers that have several offices which all employ the same quality systems, only one SQM audit will be required covering the application of the whole system
- (c) Allowing Lexcel to be used as an alternative to the SQM means that providers that hold Lexcel will no longer need to invest time in monitoring SQM compliance
- (d) Moving peer review onto a sampling and risk based approach will reduce the frequency with which many providers could expect to be subject to the process, especially in crime, reducing the administration costs to them in gathering and sending files, dealing with peer review reports and making representations where needed. The frequency of peer reviews will be lower where there is effective accreditation in place.

37. Whilst these factors will significantly offset the direct costs of quality assurance, the LSC is also looking at ways in which the administrative burden on providers could be further reduced to offset any increase in costs. These possibilities, mainly around the rules relating to Legal Help, are being explored as part of the contract negotiations being conducted separately.

38. The Legal Help proposals relate to civil work. For Crime providers, the roll out of BVT will enable firms to factor in the cost of quality assurance (and savings from the reduction in compliance costs arising from the changes to peer review and SQM) when they set their bid price. This reduces the need to propose separate admin savings to offset their quality assurance costs, but the LSC is willing to consider any similar options for savings that might be feasible.

Next Steps

Date	Quality Action
Before 1 April 2010	<ul style="list-style-type: none"> • Informal consultation with representative bodies regarding changes to quality assurance • Selection of providers for Peer Review moves towards sampling approach. • Peer review panels and process refined to fit new approach
1 April 2010	<ul style="list-style-type: none"> • Lexcel permitted as alternative to SQM • New Contract KPIs come into effect • New Contract Schedules come into effect • Peer Review sampling approach implemented • Review Accreditation reimbursement
During 2010 contract 1 August 2010 Late 2012	<ul style="list-style-type: none"> • Work with regulators and representative bodies to develop and improve accreditation schemes • Work with LSB to encourage wider adoption of quality assurance across the legal sector • Evaluate any new quality standards • SQM Outsourced audits commence • All bidders for 2013 contracts must have an audited quality standard they have paid for, at least to the preliminary “paper-based” stage
1 April 2013	<ul style="list-style-type: none"> • Further new contract terms introduced, building on 2010 developments

Initial Equalities Impact Assessment: Outsourcing Specialist Quality Mark auditing

1. Introduction

The Specialist Quality Mark (SQM) is a quality assurance standard, developed by the Legal Services Commission, for providers that deliver complex legal help in specific areas of law, including representation in court by formally trained professionals.

Until now the LSC has managed and resourced the process of auditing against the standard. It is now proposed that this process is outsourced to external licensed providers. The full cost of the audit will be borne by the organisations being audited rather than the LSC.

The Legal Services Commission (LSC) is required to assess the impact of policies from an equalities perspective. This initial impact assessment reviews the available evidence on how outsourcing of the SQM audit function will impact on the groups that will be affected to determine whether there is any potential discriminatory effect on the grounds of: race, disability, gender and age.

It allows us to assess whether a policy proposal is likely to have an adverse affect and if so to identify the changes required to ensure that the proposal does not unlawfully discriminate. It also enables us to demonstrate the potential benefits for equality target groups arising from a proposed policy or project.

2. Background

The SQM standard was launched in 2002 and aims to demonstrate that organisations are well managed, provide good levels of client care and have systems in place to ensure delivery of good quality advice. It was developed to help ensure that:

- Members of the public in need of specialist legal advice could be certain of receiving a quality service: and
- The LSC could be confident when procuring legal advice services that the organisations with whom they were contracting offered a good levels of service

Since 2002 compliance with the Specialist Quality Mark has been a requirement for organisations that have, or are seeking to gain, a Legal Services Commission Contract.

In 2008 the LSC agreed a new quality framework based on the premise that quality of advice should be assured, accredited and regulated from within the profession. Instead of the LSC both setting and auditing against suitable standards for procurement we propose that the legal profession should bear responsibility for its quality, and that relevant legal services regulators should take the lead in setting and assessing quality. The LSC will then outline the minimum standards required for the services they wish to purchase and the ways these can be demonstrated.

There are other equivalent legal services quality standards available, the main one being Lexcel, which from 2010 will be accepted by the LSC instead of the SQM. However, there is no alternative quality standard available to some organisation wishing to obtain a Unified Contract e.g. many third-sector organisations. Nor do all these standards cover all the current requirements of the SQM. It is therefore considered necessary to retain the SQM for at least the foreseeable future.

The SQM is currently being updated to reflect changes in nomenclature and developments in practice. It is not intended that the standard will be raised or lowered through this process. The most noticeable change will be the removal of any legal aid specific components, to the 2010 Unified Contract. In future the SQM will be a generic standard, rather than being specific to particular areas of law bringing it into line with Lexcel and enabling alternative quality standards to be accepted.

When the SQM was launched the LSC conducted annual full SQM audits of all provider offices, costing the LSC over £750 for each office brought into the scheme and more than £200 a year after that. More recently it has fully audited new applicants only, whilst checking key aspects of the standard as part of wider contract management.

Because the LSC relies heavily on the SQM as a precondition of awarding contracts, it is essential that the standard is credible, which relies on it being regularly and fully audited but will rely on the SQM assurance obtained through normal contract visits.

For the award of unified contracts in 2010, the LSC will provide an SQM audit for new providers or will accept Lexcel as an alternative if already obtained by the provider. The LSC will not re-audit existing SQM holders as part of the bid process, but will rely on the SQM assurance obtained through normal contract visits.

The LSC's current approach may not provide the necessary level of assurance in the long term; and it would not be affordable to greatly increase the level of SQM auditing. Outsourcing the process will deliver the assurance the LSC requires, and will spread the cost across providers. It will also place greater responsibility for quality upon providers themselves.

For the award of unified contracts in 2013, providers will need to arrange and fund their own audits against a suitable standard.

The LSC has already outsourced the auditing of the General Quality Mark, the new audit process commenced in April 2009. The Equalities Impact Assessment conducted on this has informed our plans, in particular our proposed impact mitigation, for the SQM outsourcing.

3. Objectives and Benefits

The objectives of outsourcing the SQM are to:

- Maintain the SQM to provide a standard for third-sector legal advice services, a competitor for Lexcel and to ensure that there is a standard that we are certain meets our requirements that we can use to benchmark others.
- Appoint an external body or bodies to audit the SQM, including the Telephone Advice standard on a fee-paying basis during 2010.
- Maintain (and where possible improve) the consistency of audit results compared with the service provided in house by the LSC, through careful contract management based on reliable, useful management information.
- License the body or bodies in a way that delivers good quality and value for end users e.g. by creating a competitive market in SQM auditing, as well as competition between the SQM and other quality standards.
- Ensure that by 1 April 2013 all LSC funded providers hold a quality standard obtained or audited privately, whether the SQM or other standard assessed as suitable by the LSC.
- Place upon providers the responsibility for maintaining the standard and obtaining re-audits as necessary, at least every three years, at their own expense.
- Ensure that any representations or appeals, including charges for such, will be a matter for the provider and the auditor.

- Ensure that the costs incurred by providers for the audit process is proportionate. We will seek methods to mitigate the impact on providers e.g. by stipulating that prices must vary in proportion to the size of the organisation being audited.
- Ensure that audits can be delivered by non-lawyers with appropriate training and will take no longer than audits conducted by the LSC i.e. typically 1.5 days for a post QM audit and report.

The benefits of this will be to:

- Remove the costs for auditing against the standard from the LSC budget
- Ensure that both solicitors and third-sector organisations have a suitable standard against which they can be independently assessed to demonstrate that they provide a well managed service.
- Encourage providers to take ownership for their own assessment of quality
- Maintain assurance for both members of the public and the LSC as a commissioning body that legal aid services are well run and capable of delivering high quality.
- Promote the development of new quality standards and competition between them

4. Groups that will be affected (Stakeholders)

The main sectors affected by these plans are:

Stakeholder	Main Impact
Existing SQM Holders Solicitors and Third-Sector organisations	Will have to fund and take responsibility for arranging suitable re-assessment of quality prior to 2013 contract bid round and maintain assessment every 3 years. A post SQM audit is expected to cost between £900 and £1750 Providers with multiple offices will incur reduced administration costs through only having to accommodate one audit for the whole organisation every three years.
Potential SQM Holders Solicitors and Third-Sector organisations	Will have to fund and take responsibility for arranging accreditation prior to the 2013 bid round and maintain assessment every 3 years. The cost is expected to be between £2100 and £3150 to gain accreditation.
SQM holders/potential holders who wish to gain accreditation but do not have a legal aid contract Solicitors and Third-Sector organisations	These providers will need to fund and take responsibility for gaining accreditation or re-accreditation should they wish to continue to hold the SQM standard in the future.
Employees of SQM holders	No direct effect It is possible that certain groups may be more likely to be employed by firms managed and controlled by people of a similar background. Since we have concluded that there will be no disproportionate impact on any of the provider groups assessed within this EIA there should be no impact on the employees of such firms.
Clients	No direct effect

	Firms will not pass on the cost burden of the SQM audit onto their clients as their fees will be funded by legal aid. In terms of access it is possible that clients may choose providers who are managed and controlled by people of a similar background. We do not hold any data that supports this view and we have concluded that there will be no disproportionate impact on any of the provider groups assessed within this EIA that would then impact on client access.
Representative Bodies	No direct effect

5. Source of Information

The Legal Services Research Centre (LSRC) collects detailed information about the diversity of people working in firms with legal aid contracts through a survey sent to all service providers. This is used to inform the LSRC annual diversity report, which contains information about ethnicity, gender, age, and disability in the legal aid sector. The most recent report is the eighth annual diversity report, published in 2009.

The main sources of information that we have relied on to support the conclusions in this impact assessment are taken from this report, together with legal aid fund spend information held on all our live contracted providers.

In addition the LSC will consult informally on the EIA. The EIA will be posted on the LSC website for 6 weeks and our providers will be notified via the LSC update. In addition we will share the EIA with key legal advice services representative bodies including: ASA Law Society, LAPG and other practitioner groups and will specifically discuss our findings at meetings with each of the groups.

The specific data referred to where relevant can be found in annex A.

6. Relevance of equality strands

Under the proposal there will be a charge for audits of the SQM. The biggest impact will be on firms with lower legal aid fund take, as the percentage cut into their profit margins will be greater. If that charge were to fall disproportionately heavily on firms from one equality strand, the effect of the policy might be indirectly discriminatory. The approach taken in this report to assessing impact is to compare the likely annual cost of an audit (i.e. the audit cost divided by three) with the fund take of providers, looking for diversity groups that might be affected disproportionately.

	Yes	No	Not known
Age	X		
Disability	X		
Gender	X		
Race	X		
Religion or belief		X	
Sexual orientation		X	

Race

12% of providers with the SQM are owned or managed by BME groups.

BME firms are more likely have fewer fee earners – 75% of BME controlled have under 10 fee-earners as opposed to 62% of white controlled firms who have under 10 fee-earners.

However, looking at fund take, such firms are represented equally in each fund take band. Despite the smaller number of fee earners they are not over represented in the lower earning bands. For example:

- Overall 9% of BME controlled firms earn between 0-10k .
- Overall 12% of BME controlled firms earn between 11-24k

This shows that although BME owned or managed organisations are more likely to be smaller in size than white owned or managed firms, there is much less difference in the size of their legal aid fund take.

We do not hold any data on overall fee income, but it appears likely that legal aid forms a greater proportion of the fee income of smaller BME firms. This could mean that they would have to pay a greater proportion of their total fee income towards attaining and retaining the SQM; they would not be able to subsidise the cost from private fee income. To mitigate this risk we intend to ensure that the fee structure for obtaining the SQM takes account of the size of the organisation being audited. For example we may use a sliding scale of charges, based on the number of fee-earners and/or number of offices. This should mean that smaller BME firms will pay less for an SQM audit than larger firms.

Overall we believe that the steps that we will take to mitigate the impact as outlined in detail in 7 will mean that there will not be a disproportionate effect on BME owned and controlled firms.

The detailed data is presented in Annex A table 4.

Gender

22% of providers with the SQM are owned or managed by Women, 18% have split ownership.

Firms owned or controlled by women are just as likely to have under10 fee-earners as male controlled firms – 24% for male or female controlled firms.

When looking at fund take, there are some differences in the percentage fund take of female owned and controlled firms as opposed to male owned and controlled firms:

- 16% of female controlled firms earn between 0-10k.
- 27% of female controlled firms earn between 11-24k although
- 28% of female controlled firms earn between 50-99k

This data is presented in detail Annex A table 4.

A greater proportion of female owned and managed firms earn over 25k which will mean that it would be very unlikely that they would pay more than 2% of their fund-take towards their SQM audit.

Overall whilst female owned or managed organisations will be affected by the plans, it does not appear that this will be disproportionate.

Disability

Only 1.1% of providers with the SQM are owned and managed by people with disabilities or a long-term illness. Annex A table 3.

This figure is too low to provide any meaningful analysis. We do not believe that the proposals will have any differential impact with those in control of SQM providers based on them having a disability or long-term illness.

Age

The Legal Services Research Centre holds information on the age of people in control of providers with the SQM. This data is presented in Annex A table 4.

We do not believe that the proposals will have any differential impact with those in control of SQM providers based on their age.

Religion and Belief and Sexual Orientation

The LSC does not hold any information on the religion and belief or sexual orientation of people in control of publicly funded legal services so we cannot perform any kind of meaningful analysis. However, we do not believe that any of the current proposals will have any differential impact on people based on their religion and belief or sexual orientation,

7. Mitigation of Impact Overall

We have considered options to minimise the impact on all organisations and believe that these will support all groups through the introduction of the proposals.

Cost

A charge will be introduced to undergo the audit process for the SQM. This cost will need to be met by the organisation applying for or holding the SQM. The main means by which costs can be mitigated firstly by minimising them, and secondly by varying the charge in a fair way that reflects the work involved in the audit and the provider's ability to pay.

The expected cost range for initial accreditation will be between £2100 and £3150, to go through the several stages to obtain the SQM standard and between £900 and £1750 for a post –SQM re-accreditation audit.¹

The overall cost will therefore depend on whether a provider is being audited for the first time or whether they are applying for re-accreditation. The size of the firm and the number of locations may also have an impact on the resources required to deliver the audit i.e. the larger the firm and the greater the number of individual offices it has the more time will be needed to complete the audit.

To mitigate the increased burden on providers, particularly smaller firms we propose to implement the following:

- The LSC will only require a re-audit every three years. The original SQM standard envisaged that re-audits should take place every year.
- The LSC will ensure that costs for audits take into account cost drivers. This may be done by asking audit bodies to propose a sliding scale of charges, perhaps based on the number of fee-earners within the organisation, the number of offices to be audited or the amount of time the audit is predicted to take.
- The LSC will ensure there is competitive, transparent pricing of SQM audits to ensure the fact that third-sector organisations, which cannot choose Lexcel, have an affordable standard.
- Providers that do a mix of work funded by Legal Aid and other sources of funding will be able to choose whether to apply for the SQM for their whole organisation or just in regards

¹ The exact cost will be set as part of the tender process for outsourcing the accreditation of the SQM. The estimate is based on an initial assessment taking between 3.5 and 4.5 days and 1.5 to 2.5 for a re-accreditation depending on the size of the organisation.

to their legal aid contract. This could in some instances mean that only a small proportion of the overall number of fee-earners needs to be taken into account. This may be of particular benefit to some NFP sector organisations who may have a large number of fee earners working on various funding streams

- We will seek to specify the audit costs for the lifetime of the contract for the SQM accreditation body, so that costs are transparent.
- We will run a competitive process to award contracts to an SQM accreditation body(ies) in order to deliver lower prices.
- We will ensure that the audit body(ies) offer flexible payment terms

Timing of introduction of proposals

Clearly the timing of the introduction of these proposals will have an impact. This is why the LSC has decided that providers will not need to have arranged and funded their own audit against suitable standards until the 2013 unified contract bid round.

For the award of unified contracts in 2010, the LSC will provide an SQM audit for new providers or will accept Lexcel as an alternative if already obtained by the provider. The LSC will not fully re-audit existing SQM holders as part of the bid process, but may verify aspects of compliance.

We will seek ways to ensure that the audit workload is spread across the period from 2010-2012. We will explore the best way to ensure this with representative bodies.

Changes to the SQM standard

The SQM is in the process of being reviewed and updated so that it will become a more generic standard for legal advice.

The legal aid specific requirements, including the supervisor standards, will be removed and incorporated within the contract specification for the 2010 contracts. This will mean that the standard will no longer be category specific.

This will make it simpler and quicker for new and current holders to evidence their compliance with the standard.

The SQM will also now be awarded by firm, not an office as was previously the case. This change will reduce bureaucracy for providers, as they will only be required to have one set of policies and procedures for the whole of their organisation, which can be assessed by way of one audit.

It will be the responsibility of providers to ensure that all of their offices delivering legal aid understand and comply with the requirements of the SQM and that they nominate an office to store central records and have a process for sharing this information.

Choice of quality standards

By providing a choice of standards that will evidence quality e.g. Lexcel or SQM it is hoped that the competition will help to ensure that costs remain realistic and affordable and that the development of alternative competitor standards are encouraged.

8. Use of contractors

Our procurement process to select SQM audit bodies will comply with the LSCs equality and diversity procurement guidance.

To help ensure compliance as part of our ongoing contract management procedure we will require the provider to monitor and report to the LSC on the number of applications for accreditation and

results from an equalities perspective. We will also require that they seek regular feedback from providers and monitor any complaints from an equalities perspective.

9. Conclusion

Despite some differences evidenced in the data for race and gender we have concluded that the proposals do not unlawfully discriminate against providers on the grounds of Age, Disability, Gender and Race.

There is potentially a difference in impact depending on the legal aid income of a provider, but because there is no correlation between fund take and diversity, there will be no differential impact on providers on the grounds of race, gender, disability and age. Because of the process that will be followed in tendering for audit contracts, and the duties that will be placed upon audit bodies, we conclude that the proposal will not discriminate either directly or indirectly.

To mitigate the potential impact on organisations with smaller fund take, the LSC will take steps to ensure the charges are clear, relate to the size of the organisation being audited, and that flexible payment arrangements are in place.

A full impact assessment is not required on this proposal.

We will continue to monitor the impact of the policy for next three years. In addition to reviewing the equalities monitoring data on our providers to ensure that there are no major changes we will require our contracted SQM accreditation provider to monitor applications, results and complaints from an equalities perspective.

ANNEX A:

The source of all of these tables is the Legal Services Research Centre.

Table 1

This table shows the proportion of offices with an SQM and a positive fund take that have a majority White British, BME and Split ownership and control in 2008.

		White British	BME	Split	White British	BME	Split
Fund Take	Firm Size	Count			Row %		
Up to £10k	Sole	3	0	0	100	0	0
	2-5	42	5	1	88	10	2
	6-10	13	2	0	87	13	0
	11-15	5	0	0	100	0	0
	16-40	9	1	1	82	9	9
	41-60	2	0	0	100	0	0
	61-100	1	0	0	100	0	0
	101+	1	0	0	100	0	0
	Total	76	8	2	88	9	2
£11k-£24k	Sole	8	1	0	89	11	0
	2-5	48	9	0	84	16	0
	6-10	25	2	0	93	7	0
	11-15	15	2	0	88	12	0
	16-40	8	1	0	89	11	0
	41-60	1	0	0	100	0	0
	61-100	5	0	0	100	0	0
	101+	1	0	0	100	0	0
	Total	111	15	0	88	12	0
£25k-£49k	Sole	20	2	1	87	9	4
	2-5	84	14	4	82	14	4
	6-10	56	10	2	82	15	3
	11-15	27	2	0	93	7	0
	16-40	39	1	2	93	2	5
	41-60	16	0	0	100	0	0
	61-100	6	0	0	100	0	0
	101+	1	0	0	100	0	0
	Total	249	29	9	87	10	3
£50k-£99k	Sole	25	5	0	83	17	0
	2-5	139	25	8	81	15	5
	6-10	107	13	5	86	10	4
	11-15	33	4	1	87	11	3
	16-40	59	6	1	89	9	2
	41-60	19	0	0	100	0	0
	61-100	20	0	0	100	0	0
	101+	1	0	0	100	0	0

£100k- £499k	Total	403	53	15	86	11	3
	Sole	44	9	3	79	16	5
	2-5	384	80	29	78	16	6
	6-10	323	55	22	81	14	6
	11-15	128	17	6	85	11	4
	16-40	140	10	7	89	6	4
	41-60	33	0	1	97	0	3
	61-100	20	0	3	87	0	13
	101+	8	1	0	89	11	0
Total	1080	172	71	82	13	5	
£500k- £999k	Sole	4	0	0	100	0	0
	2-5	48	6	1	87	11	2
	6-10	111	19	12	78	13	8
	11-15	94	12	2	87	11	2
	16-40	74	4	2	93	5	3
	41-60	10	1	0	91	9	0
	61-100	3	0	0	100	0	0
	101+	2	0	0	100	0	0
	Total	346	42	17	85	10	4
£1m-£1.9m	Sole	0	0	0	0	0	0
	2-5	4	0	0	100	0	0
	6-10	13	3	6	59	14	27
	11-15	25	8	4	68	22	11
	16-40	48	11	1	80	18	2
	41-60	4	0	0	100	0	0
	61-100	2	0	0	100	0	0
	101+	2	0	0	100	0	0
	Total	98	22	11	75	17	8
£2m-£2.9m	Sole	0	0	0	0	0	0
	2-5	0	0	0	0	0	0
	6-10	0	2	0	0	100	0
	11-15	1	0	0	100	0	0
	16-40	9	4	2	60	27	13
	41-60	3	0	1	75	0	25
	61-100	2	0	0	100	0	0
	101+	2	1	0	67	33	0
	Total	17	7	3	63	26	11
£3m+	Sole	0	0	0	0	0	0
	2-5	0	0	0	0	0	0
	6-10	0	0	0	0	0	0
	11-15	0	0	0	0	0	0
	16-40	2	1	0	67	33	0
	41-60	1	0	1	50	0	50
	61-100	1	0	0	100	0	0

	101+	2	0	0	100	0	0
	Total	6	1	1	75	13	13
Grand Total		2386	349	129	83	12	5

Table 2

This table shows the proportion of offices with an SQM and a positive fund take that have a majority male, female or split ownership and control in 2008.

Fund Take	Firm Size	Male	Female	Split	Male	Female	Split
		Count			Row %		
Up to £10k	Sole	2	1	0	67	33	0
	2-5	37	8	3	77	17	6
	6-10	9	1	5	60	7	33
	11-15	0	2	3	0	40	60
	16-40	4	2	5	36	18	45
	41-60	2	0	0	100	0	0
	61-100	1	0	0	100	0	0
	101+	1	0	0	100	0	0
	Total	56	14	16	65	16	19
£10k-£24k	Sole	6	2	0	75	25	0
	2-5	35	13	8	63	23	14
	6-10	17	6	3	65	23	12
	11-15	11	6	0	65	35	0
	16-40	6	3	0	67	33	0
	41-60	1	0	0	100	0	0
	61-100	3	2	0	60	40	0
	101+	0	1	0	0	100	0
	Total	79	33	11	64	27	9
£25k-£49k	Sole	12	5	4	57	24	19
	2-5	54	24	23	53	24	23
	6-10	43	12	13	63	18	19
	11-15	19	6	4	66	21	14
	16-40	13	18	12	30	42	28
	41-60	5	11	0	31	69	0
	61-100	1	3	2	17	50	33
	101+	0	1	0	0	100	0
	Total	147	80	58	52	28	20
£50k-£99k	Sole	19	9	2	63	30	7
	2-5	100	39	35	57	22	20
	6-10	87	15	22	70	12	18
	11-15	28	7	3	74	18	8
	16-40	27	28	11	41	42	17
	41-60	3	13	3	16	68	16
	61-100	4	13	3	20	65	15
	101+	1	0	0	100	0	0

	Total	269	124	79	57	26	17
£100k-£499k	Sole	27	22	7	48	39	13
	2-5	297	92	105	60	19	21
	6-10	266	59	74	67	15	19
	11-15	104	21	25	69	14	17
	16-40	116	24	17	74	15	11
	41-60	18	10	5	55	30	15
	61-100	9	9	5	39	39	22
	101+	6	3	0	67	33	0
	Total	843	240	238	64	18	18
£500k-£999k	Sole	2	1	1	50	25	25
	2-5	35	10	9	65	19	17
	6-10	105	17	20	74	12	14
	11-15	70	20	20	64	18	18
	16-40	58	11	11	73	14	14
	41-60	9	1	1	82	9	9
	61-100	3	0	0	100	0	0
	101+	1	0	0	100	0	0
	Total	283	60	62	70	15	15
£1m-£1.9m	Sole	0	0	0	0	0	0
	2-5	4	0	0	100	0	0
	6-10	17	2	3	77	9	14
	11-15	26	7	4	70	19	11
	16-40	41	12	7	68	20	12
	41-60	2	1	1	50	25	25
	61-100	2	0	0	100	0	0
	101+	2	0	0	100	0	0
	Total	94	22	15	72	17	11
£2m-£2.9m	Sole	0	0	0	0	0	0
	2-5	0	0	0	0	0	0
	6-10	0	1	1	0	50	50
	11-15	1	0	0	100	0	0
	16-40	8	6	1	53	40	7
	41-60	3	1	0	75	25	0
	61-100	2	0	1	67	0	33
	101+	1	0	2	33	0	67
	Total	15	8	5	54	29	18
£3m+	Sole	0	0	0	0	0	0
	2-5	0	0	0	0	0	0
	6-10	0	0	0	0	0	0
	11-15	0	0	0	0	0	0
	16-40	3	0	0	100	0	0
	41-60	2	0	0	100	0	0
	61-100	0	1	0	0	100	0

	101+	2	0	0	100	0	0
	Total	7	1	0	88	13	0
Grand Total:		1793	582	484	57	22	12

Table 3

This table shows the proportion of offices with an SQM with majority ill/disabled, non-ill/disabled, and split ownership and control in 2008

Majority control in 2008	N	%
Ill/disabled	21	1.1%
Non-ill/disabled	1802	97.7%
Split	20	1.1%
Total:	1843	100%

Table 4

This table shows the proportion of offices with ownership and control by age of those with ownership and control

Age	2008	
	Solicitors	NFPs
18-24	0.2	0.8
25-34	10	9.8
35-49	46.7	38.9
50-59	34.1	32.6
60-64	7.7	8.6
65-70	1.1	5.3
70+	0.4	4