

## **Legal Services Commission's Response to the Solicitors Regulation Authority's (SRA) consultation on 'Proposals for a review of professional accreditation schemes'**

### **Introduction**

The Legal Services Commission (LSC) is an executive non-departmental public body sponsored by the Ministry of Justice. With an annual spend of around £2bn, we are responsible for the delivery of civil and criminal legal aid services and the development of the Community Legal Service. We help over two million people in England and Wales every year.

The LSC is committed to ensuring that clients have access to quality services that meet their needs, and that providers deliver quality, value for money and client focused services. As a result the LSC welcomes the opportunity to respond to this consultation.

### **General comments**

The LSC welcomes the SRA's steps to adopt a clear, consistent strategy to accreditation, and the identification of solicitor competence and quality assurance as a key priority. Accreditation schemes can play an important role in improving and assuring the quality of legal advice and representation provided to clients providing that they are appropriate, objective and robust. It is particularly important that the panels are consistent and competency based rather than just experienced based to ensure open entry into the legal aid market.

The LSC believes these standards should apply to all solicitors. It is our intention to continue to utilise accreditation schemes as a requirement to deliver legal aid of a particular type or category of law, and as supervisor standards within some categories. As a result we want to engage fully in the development process to ensure that the schemes link effectively with the LSC's contractual requirements to improve and ensure quality for clients. We would also like clarification on what timescales are indicated by the short, medium and long term plans referred to in the consultation.

We would like to see SRA open up accreditation to non-solicitors, not-for-profit agencies and Family Mediators and would support the development of a general supervision standard that sits above each category. We would also like to see accreditation opened up to Family Mediators as we see this as an important step towards the separation of regulation and representation in the mediation profession as it has been for solicitors.

The LSC believes that peer review should apply to all practitioners, not solely legal aid providers. SRA should take this into account when considering the role of peer review as part of its development of a comprehensive quality assurance strategy for practitioners.

**Specific comments**

Our answers to each question are at **Annex A**.

If you would like to discuss any aspect of the LSC's response in more detail please contact Jennifer Will, Project Manager (Quality Standards), on 0207 7590385.

Yours sincerely

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## Annex A

### Question 1

- To determine which accreditation schemes should remain within the SRA's scope, and what further areas of law, if any, should be considered for inclusion at a later date
- To determine the future of any schemes which the SRA concludes are not within its scope
- To establish a coherent approach to accreditation
- To provide assurance to the SRA, and therefore the public, that accredited practitioners have been assessed as competent in the areas of law where accreditation schemes exist

**Are the above objectives comprehensive and appropriate?**

Yes

No

Please explain your reasons.

Any move towards a strategic approach to accreditation, particularly where the primary focus is on the protection of the vulnerable client and support for an efficient justice system is supported.

The LSC supports the SRA's overall approach of proportionality, removing barriers to competition and the protection of public interest.

There should however be a further objective around the SRA working with other regulatory bodies such as OISC to ensure consistency for accreditation / quality assurance for all practitioners working in an area of law, including those who are non-solicitors working in non-solicitor organisations.

### Question 2

**Do you agree that a suite of accreditation schemes run by the SRA in all areas of law is undesirable?**

Yes

No

Please explain your reasons.

The LSC would expect accreditation schemes to be run in all areas legal aid work to ensure a general level of competence. The focus should be on obtaining consistency within the existing schemes, and then developing a framework against which additional schemes can be introduced later. However please see response to question 10.

### Question 3

**Do you agree that the SRA's role in accrediting solicitors should focus primarily, in the public interest, on the protection of the vulnerable client and supporting an efficient justice system?**

Yes

No

Please explain your reasons.

As a regulator the client and public interest prioritisation by the SRA is desirable, and it is incumbent on all those involved in the justice system to contribute towards its efficient operation. The SRA also has an important role in the avoidance of unnecessary barriers to competition (as per the proposed strategic framework, paragraph 15).

### Question 4

**Which, if any, of the SRA's existing schemes do you think fall within the scope suggested in question 3 (to protect vulnerable clients and support an efficient justice system, in the public interest)?**

Every category of law has the potential to feature a vulnerable client and therefore within the scope suggested by question 3, however there are particular areas where the likelihood of encountering such clients is more likely.

#### Immigration and Asylum

Clients in this area of law can be amongst the most vulnerable in society; at real and immediate risk of loss of liberty or life and are often not in a position to make an informed judgment about the quality of legal advice that they receive.

The Immigration and Asylum Accreditation Scheme (IAAS) was introduced in 2004 and was made mandatory for all individuals providing publicly funded immigration and asylum advice in 2005. The scheme was introduced to address the concerns over the quality of advice provided by a significant minority of advisers undertaking publicly funded work.

The scheme has driven up standards of publicly funded immigration and asylum legal advice and ensures that members of the public and clients can be confident that all individuals providing legal advice under an LSC immigration contract have been subject to rigorous and independent quality assessment. It also ensures that members of the public have access to information on quality assured practitioners in their area.

There is a clear public interest in an accreditation scheme that protects this vulnerable client group.

### Mental Health

The Mental Health Review Tribunal should be within scope and should be reviewed in light of new legislation. However the review should result in it being broadened from Mental Health Review Tribunal to Mental Health and include Mental Capacity issues. It should also include assessment of advocacy skills, which are a key element of competence in this category (since most work relates to the MHRT).

### Question 5

**Are there any areas of law which fall within the scope suggested in question 3 (to protect vulnerable clients and support an efficient justice system, in the public interest) where the SRA does not currently operate an accreditation scheme?**

Yes

No

If yes, please give details.

The LSC would expect accreditation schemes to be run in all areas legal aid work to ensure a general level of competence. The LSC particularly interested in areas where there are vulnerable people such as community care and welfare rights.

The LSC also believes that accreditation should be applied to all solicitors, whether working in legal aid or for private clients.

See also answer to question 2.

### Question 6

**Do you think that the SRA should also operate accreditation schemes in areas of publicly funded law in order to facilitate the requirements of procurers, where appropriate?**

Yes

No

Please explain your reasons.

The LSC believes that any accreditation scheme should be owned by the profession and administered by the regulatory bodies where possible. This is the model that has been successfully adopted with the mandatory IAAS scheme. Overall the LSC monitors the quality of providers rather than individuals so the robust accreditation of individual practitioners provides the LSC with enhanced quality assurance.

The LSC has a duty to take all appropriate steps to address issues concerning the quality of the services provided to legally aided clients. This may include the use of compulsory accreditation schemes, particularly in areas where some services are delivered through exclusive contracting arrangements.

The LSC may wish to include accreditation as part of the bid criteria for new contracts for services, however this will be dependent on the appropriateness, accessibility and frequency of assessment. With regard to the Criminal Defence Services, the LSC would seek to reflect SRA accreditation requirements for its contracts. Arrangements would also have to be sufficient to facilitate the needs of potential new entrants to the market.

We support the review of the Children Panel but would like to see that happen quickly to support the recommendations of the Care Proceedings Review. We are also concerned as to the ageing population of the current panel and would support the SRA in promoting a new panel, especially any promotion of adult representatives on the Panel who are significantly underrepresented at the moment.

Any accreditation scheme administered by the SRA should be developed through discussion and cooperation with other regulatory bodies and should be consistent and compatible with schemes administered by other regulatory bodies wherever possible. This should include co-ordination over any published lists of accredited advisors so that consumers have easy access to all accredited advisors (and not limited to those who are also registered with the SRA).

## Question 7

**Should the SRA be concerned with accrediting solicitors in any areas of law which fall outside of the scope proposed in questions 3 and 6 (to protect vulnerable clients and support an efficient justice system, in the public interest, and to facilitate the requirements of procurers)?**

See the response to question 5

## Question 8

**Do you agree that the SRA should retain the current non-compulsory approach to accreditation schemes until the issue has been fully considered as part of the wider quality assurance debate?**

Yes

No

From the client and quality perspective we believe that it is important for all practitioners to be accredited, whether legal aid practitioners or those undertaking non-publicly funded work.

Accreditation schemes need to be fluid and reflect the normal career progression of a practitioner. This would ideally encompass assessment at probationer, practitioner and expert/senior practitioner levels, reflecting the different skills and experience required at the different levels.

It would not be appropriate to require practitioners undertaking complex cases to be accredited at the same level as less experienced practitioners routinely working on straightforward matters.

Accreditation schemes that reflect these different levels will not create a barrier to entry or result in all schemes being set at the lowest level. This staged approach has worked well in the immigration panel and we would want to ensure that this approach remained and was repeated across the categories of law.

The LSC would wish to avoid a situation where a practitioner, who fails an accreditation scheme necessary to perform publicly funded work, is able to provide legal advice to clients on a private paying basis. For example whilst accreditation under IAAS is not compulsory for private practitioners, it is compulsory for any adviser undertaking publicly funded immigration and asylum work.

In areas such as asylum where a client's life and liberty are often in danger there is a clear need for transparent quality assurance for legal advisers, whether publicly or privately funded. This is particularly so as this client group is unlikely to be well placed to make an informed judgment about the quality of legal advice that they receive. We would wish to avoid a situation whereby a practitioner who fails IAAS and is therefore prevented from performing publicly funded work is able to provide legal advice to clients on a private paying basis. We would expect the SRA to consider this concern when reviewing the accreditation approach.

## Question 9

**Do you agree that all accreditation schemes should be based on a set of clear and transparent competence standards?**

Yes

No

Please explain your reasons.

The LSC welcomes a system that focuses on competence rather than solely the breadth or length of experience, to provide assurance of quality for the client. It is essential that these standards are clear and consistent to ensure that practitioners, funders and regulators are aware of the standards required.

The development of the competence standards should be discussed and consulted on with relevant stakeholders, including the LSC. This should include other regulatory bodies to ensure (where possible) that they are consistent and compatible with schemes administered by other bodies.

### Question 10

**Do you think that it is possible to identify a set of generic standards which would be common to all accreditation schemes?**

Yes perhaps

No

Please explain your reasons.

Accreditation schemes overall should remain tailored to each category of law to reflect the different challenges and complexities faced in each area. The LSC recognises the need for specialisation and this is reflected through the category specific peer review panels and supervisors standards in the SQM.

However it may be possible to identify certain generic standards for example Supervision, Client Care and Case Management. The LSC would particularly welcome the development of generic supervisor and case management accreditation schemes to sit above every category of law. We would like to see this in development as soon as possible and would want to engage with SRA on their production.

### Question 11

**Is it desirable for applicants for accreditation schemes to be assessed against these competence standards rather than on the basis of their length of experience or size of caseload?**

Yes

No

It is desirable for accreditation assessments to be made against competence standards; the size of an applicants' caseload and length of experience in isolation does not demonstrate competence. Also measuring standards on the basis of an applicants' length of experience or size of caseload alone could form a barrier to new entrants and have a disproportionate impact on other groups.

## Question 12

**Do you agree that the SRA should set accreditation at competent practitioner level?**

Yes  See below  
No

Please explain your reasons.

Please see response to question 8

Accreditation should denote competence. The schemes should be fluid and reflect the normal career progression of a practitioner, encompassing assessment at probationer, practitioner and expert/senior practitioner levels. We would want to see this across the board for all categories of law, as ideally all practitioners should be competence assessed.

It is in the client's best interests that any advisor they see is competent to handle their case, regardless of experience/level of accreditation, therefore each stage of accreditation should denote competence to operate at that level.

Traditionally we have relied on accreditation schemes in certain categories of law to denote technical legal knowledge at a particular level. For example, we considered that the Clinical Negligence panel demonstrated the appropriate technical legal supervisory knowledge and skills required to supervise publicly funded cases. We would be reluctant to lose this type of 'expert' level with any revision to the scheme. Equally we would not want to lose the probationer level of accreditation evidenced in the IAAS scheme.

Additionally as the LSC is committed to continuous improvement of quality of advice and representation we would want to encourage, and see the SRA encourage, those practitioners who wish to advance to a higher level of accreditation.

## Question 13

**Do you think that the SRA should be concerned with setting a higher or specialist level of accreditation?**

Yes

No

Please explain your reasons.

Please see response to question 8 and 12.

There is a need for higher levels of accreditation as mentioned in question 8 and 12. Accreditation schemes should encompass assessment at probationer, practitioner and expert/senior practitioner levels, reflecting the different skills and experience required at the different levels.

The SRA should focus on all these areas in the review of the schemes.

Where the LSC uses mandatory accreditation in the context of its contracting arrangements it may identify areas / types of work where it is appropriate that only advisers with a higher or specialist level of accreditation perform in order to protect the needs of the client. This is the position with current immigration contracts and attached schedules and LSC work restrictions stipulate that some kinds of work can only be done by caseworkers of a certain level. The LSC intend to continue to maintain work restrictions according to the level of accreditation so we would expect the SRA to maintain this level of accreditation.

We also require supervisors in certain categories of law to be accredited at a specialist level (such as Immigration and Clinical Negligence). It is therefore essential that the schemes continue to provide higher/specialist levels of accreditation.

#### Question 14

**Do you think that the SRA should consider setting an introductory or probationer level of accreditation in some areas of law?**

Yes

No

Please explain your reasons.

See response to question 8, 12 and 13

Accreditation schemes need to be fluid and reflect the normal career progression of a practitioner, reflecting the different levels. It is in the client's best interests that any advisor they see is competent to handle their case, regardless of experience

The IAAS probationary level of accreditation allows an individual who has registered as a probationer and passed the probationary exam to undertake limited publicly funded work before full accreditation is achieved. The LSC would expect this facility to be maintained to avoid dis-incentivising new entrants.

### Question 15

**Do you agree that the role of the SRA, as a regulator, should be to set the standards for assessment of practitioners rather than to prescribe the format of assessments or to provide the assessments itself?**

Yes

Maybe, see comments below

No

Please explain your reasons.

Any method of assessment needs to be robust, objective and consistently applied. The LSC agrees that the SRA must set the assessment standards and ensure that they achieve this.

The LSC is supportive of the desire for a common approach to the model of assessment to be adopted by accreditation schemes and particularly welcomes the focus on integrating equality and diversity requirements into the standards.

In order for procurers such as ourselves to make use of the outcome of accreditation schemes, the SRA must be able to demonstrate that regardless of the type or range of assessment methods used for a scheme that standards are of a consistent level and that they are maintained.

However a key risk of utilising a range of assessment types and providers is that the process could result in one assessment being easier (or perceived to be easier) than another. Any validation process must have checks and balances to ensure that any assessment is of the appropriate standard. Ongoing checks would also be required to ensure the continued maintenance of standards.

### Question 16

**Is it desirable for all organisations providing assessments for the purposes of accreditation to be subject to a set of common principles and standards which will be set and monitored by the SRA?**

Yes

No

Please explain your reasons.

See answer to Question 15

### Question 17

**Will a robust monitoring regime implemented by the SRA against a common set of principles and standards provide assurance that consistency is being achieved across assessment organisations and that standards are being upheld?**

See answer to Question 15

### Question 18

**Do you agree that all accredited practitioners should be subject to re-accreditation after a fixed period of time?**

Yes

No

Please explain your reasons.

The LSC agrees that all practitioners should be re-accredited after a fixed period of time. Continuing assessment of competence is essential in ensuring the provision of good quality advice. Given the significant legislative and practice changes in many categories of law e.g. Crime and Immigration in recent years and the likelihood of more change in the future, re-accreditation is essential.

A re-accreditation process, particularly if coupled with fluid accreditation at different practitioner levels, would also support individual professional development.

The LSC recognises the importance of re-assessment to ensure the provision of good quality advice, the peer review process, which incorporates reassessment every three years, reflects this.

### Question 19

**Should the re-accreditation process seek to assess:**

Practitioners' up to date knowledge only

Practitioners' up to date skills only

Both practitioners' up to date knowledge and skills

None of the above

Comments:

The re-accreditation process should be proportional, seeking to assess both knowledge and skills where appropriate. This process may not need to cover all professional skills demonstrated at entry level.

The process should utilise modern, accessible and cost-effective processes.

#### Immigration and Asylum

The SRA should allow sufficient time from the introduction of the IAAS re-accreditation scheme for candidates to sit examinations, possible including a re-sit opportunity, before the expiry of their accredited status. Practitioners should also have the opportunity to comment on the re-accreditation scheme.

#### **Miscellaneous.**

At Paragraph 15, the SRA has stated that a key principle of the review's strategic framework is: "assurance that accredited practitioners are of appropriate character and suitability". Whilst the LSC agrees that it is essential that all practitioners should demonstrably be of "appropriate character and suitability" the SRA should be mindful of how this is defined in respect of its accreditation schemes. This definition should be agreed with other relevant regulatory bodies.

IAAS is open to non-solicitors working in non-solicitor practices who are not regulated by the SRA and are therefore not eligible to be included on the SRA's Register of Accredited Advisors. These advisors are still "accredited" by virtue of having passed the relevant SRA accreditation assessments. These advisors may also be have been acknowledged as being of "appropriate character and suitability" by their own regulatory body (notably the OISC).