

## **The Legal Services Commission (LSC) response to the Working Together for Advice consortium consultation on Draft Quality Standards for Generalist Advice**

### **Section 1: Introduction**

1. 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. The LSC has significant experience in the development of quality standards having developed the family of Quality Marks, which includes standards for specialist and generalist advice.

### **Section 2: General Comments**

2. We welcome the advice sector's commitment to quality assurance as demonstrated through the development of this standard. As a funder of legal services, not a regulator, the LSC views the clear commitment of consortium members to the delivery of quality as an important and positive development.
3. It is clearly the responsibility of each and every provider to ensure that the services that they deliver are of the very highest quality and this standard will offer one way providers can demonstrate this.
4. Within the framework of regulation as set out in Clementi and the Legal Services Act, it is a regulatory function to establish and assure minimum standards. The representative bodies that are developing this standard will need to recognise the challenge of separating representative and regulatory functions, as other members of the legal services sector are doing. We look forward to hearing how the sector intends to tackle this.
5. We know that driving quality standards is as much about encouraging competition, new entrants and innovation, as it is about individual quality assurance tools. The consortium will have to be careful that the standard and the way that it is applied does not freeze the market from new entrants and developments. Careful consideration will need to be given as to how the standard will apply to new start-ups or innovations in service provision. In particular the application of the quality of advice element of the standard which is a retrospective assessment. The consortium may also want to consider how funders of advice services may want to make use of the standard.
6. Our response to this consultation focuses on what is in the best interests of clients. We believe that clients' interests have been well served by the GQM, and so have looked at how this new draft standard compares.

- Structure of the standard
7. The standard as it is currently structured is not as user friendly as it could be. Our experiences of developing the family of Quality Marks, coupled with feedback from Quality Mark holders, is that organisations want requirements or criteria that clearly outline what they need to do. For example, what as a minimum should a policy or process cover and how frequently it should be reviewed? This approach supports organisations to meet the requirement.
  8. We do not believe the split between processes and documents is helpful, as it is often not clear what the relationship between the two is, or where there is no corresponding document whether the process itself needs to be documented. We would recommend that the consortium look at restructuring the requirements to simplify it for the user, perhaps adopting a structure that breaks down the requirements into their aims and evidence required.
    - Requirements
  9. We believe the GQM is a good standard for the provision of generalist advice and we are pleased to see that many of its elements have been incorporated into the draft standard. However as the structure is quite different from the GQM it is difficult to clearly understand the relationship between the two. A comprehensive mapping document could be produced outlining the similarities and differences between them to explain the relationship to advice agencies.
  10. The requirements of the standard in many places are quite generic and as such open to interpretation. In its current form, and without sight of any associated guidance, it is not clear what specifically organisations are being asked to evidence to meet the standards. Nor is it clear what auditors will deem as good and bad practice, or how the criteria will be applied in a consistent way across organisations. For example the standard in Section 2 asks for a written complaints policy and procedure, but there is no detail about what it should contain as a minimum.
  11. Specific comments relating to standards themselves are outlined in Section 4 of this response. We have looked at how comparable the new standard is to the GQM. There are key areas, particularly around caseworker experience and supervisor requirements that are not included in the Service Standards. We view these requirements as essential to give clients assurance that the people advising them are capable and experienced. In its current form we do not believe the new standard is comparable with the GQM, and would hope these areas are addressed in subsequent drafts.
  12. Answers to specific questions are outlined in the sections below where appropriate and should be read in the context of our general views.
  13. We strongly welcome this initiative and the commitment to quality assurance and continuous improvement it evidences. We hope you find these comments constructive in the further development of the standard.

### **Section 3: Quality of Advice Standard**

#### **1. Is it clear what the standard is trying to achieve?**

1. The LSC currently uses a direct quality of advice assessment for specialist legal providers – Independent Peer Review –in conjunction with other quality assurance tools such as the Specialist Quality Mark and accreditation so we are supportive of the approach being taken here.
  2. To provide greater clarity to the purpose of the standard it would benefit from being split so that a description of the standard and its aims (with the focus on ensuring good quality of advice to clients) is followed in a separate section with a description of what criteria organisations are required to meet, thereby making it clearer what organisations are expected to do – and what clients are entitled to expect (see also response in paragraphs 7 and 8 above).
  3. There are clear links between quality of advice and quality management processes and procedures, in particular supervision and file review. The standard would benefit from indicating linkages between the Quality and Service elements and how they inter-relate. For example, the quality of advice standard should indicate that the criteria should be used to conduct internal assessments (as required for the section on Case Management).
  4. The standard does not include a description of how the criteria should be applied, how they will be assessed, or what constitutes a pass or fail. This will make it difficult for organisations to gauge their own compliance, and know whether they are ready to apply for the standard. We understand that there will be a pilot to test different mechanisms for the quality of advice element of the standard, but in order for the section to be applied consistently, organisations will need to understand where the level is set. The method of assessment employed will also significantly affect the costs of maintaining the standard.
- 2. Do the different criteria, which make up the standard adequately cover all of the aspects of advice giving?**
5. The criteria outlined in the standard are clear and follow a sensible order; however there are areas we believe are integral to quality of advice that are not reflected in the current draft. We would recommend that the Quality of Advice Criteria are expanded to include the following:
    - **Advice given:** was the advice legally correct and appropriate to client’s case? The current criteria include whether the advisor has identified the correct options but do not ask whether the advice given was correct.
    - **Communication and client handling skills:** timeliness of communication and advice in situations where casework is conducted rather than one-off advice, confirmation of advice in writing where appropriate.
    - **Conflict of interests:** has the advisor checked that there is no conflict between advising a particular client and any other work that the organisation has already taken on?
  6. The LSC uses a direct quality of advice tool – Independent Peer Review (IPR) – as part of our quality assurance approach. Experienced legal practitioners use a series of criteria to assess the quality of work on case files. Whilst the tool is used for

specialist advice providers the criteria themselves are generic. It may be helpful to look at the PR criteria when considering the points made above. Copies are available on the LSC website: [www.legalservices.gov.uk](http://www.legalservices.gov.uk) >Community Legal Service > Quality and Performance> Peer Review

**3. What do you think are the practical challenges of assessing quality of advice within your service?**

7. We are not an advice provider however we have an insight into the challenges around introducing a quality of advice process, and charging for quality assurance processes from our work with the GQM and Independent Peer Review. These areas are outlined below:

- The cost of the assessment process will obviously be a challenge for organisations. Costs must be proportionate and affordable (please see our comments in Section 11). It will be to the advantage of the new standard if it is made clear as far in advance as possible how it is envisaged that audits and development will be paid for when the standard goes live.
- The impact of the results – organisations will be concerned about what impact the results of a quality of advice assessment will have on their organisation. For example what action will be taken if there is a poor result, will the results need to be disclosed to third parties e.g. funders. The standard must be clear about the possible outcomes of an assessment and what obligations an organisation has once they have committed to going through this process.
- Ensuring an organisation wide understanding of the process, what it means for the organisation and individuals to ensure full participation and secure continuous improvement.
- Fear that the assessment will be used to single out individuals and that the assessment will be biased. To alleviate these concerns it will be important that the file sampling methodology used is robust
- Concerns over the credibility of those conducting the assessment
- File management issues – files off site, confidentiality
- Selling the benefits of the assessment in the context of service constraints

8. Whilst these areas are challenging in the most part they can be overcome by ensuring that the assessment process robust, clear, transparent and documented in detail. To further overcome any reservations from advice providers it will be important to actively promote the benefits of the assessment, highlighting why it is important for clients and advice services.

**4. Please look at the definitions in the glossary of the accompanying Draft Standards Document. Do you agree with:**

### **a) The definition of advice the definition of casework**

9. Yes. The definitions are consistent with those of the General Quality Mark.

### **b) The definition of information**

10. The definition would be clearer if it started “*A service should give clients the information they need...*”. At present it reads as a description of an “information only” provider.

11. The definition should incorporate the fact that a service has a responsibility to ensure that the information they are giving is correct, particularly in circumstances where clients are signposted to alternative service providers.

12. It may be appropriate to capitalise “information” when it is used in the sense meant in this definition, since at present the word is used in different ways through the document.

## **Section 4: Service Standards**

1. The LSC would like to suggest some additions/amendments to the standards:

### Case and Enquiry Management

2. Whilst the standard outlines processes for allocating casework to advisors according to their level of competence there are no obligations with regard to caseworkers’ experience. The LSC would expect to see such requirements in place to ensure any client accessing a casework service receives advice that is correct and is most appropriate to their problem and circumstances. This is most likely to be achieved where caseworkers have a specified depth and breadth of experience, or competence. It was for this reason that the GQM contained requirements for organisations applying for the casework level to demonstrate that their caseworkers are competent to undertake casework in the relevant category(ies) of work (requirement D5.1).

3. It is not clear whether or how the standard intends to incorporate the casework criteria. It is our understanding that the current GQM casework standards are to be used – perhaps this intention could be reflected in the text? We welcome this but would want to see them used to achieve the same aims – that of ensuring that caseworkers and/or supervisors have the necessary knowledge and experience to provide good advice to clients.

### Access, Client Care and Community Relationships

4. Currently the standard has no requirements relating to the provision of independent advice. We believe that all organisations should have processes in place to ensure clients receive independent advice. Where run by a management committee, the committee should also demonstrate its independence. This is particularly important where the service is provided directly by a local authority or other public body. Organisations should be required to demonstrate that services are provided solely in the interests of clients.

### Governance

5. The standard should specify the level of professional indemnity insurance cover required by organisations.

### Planning

6. The 3-year plan should be expanded to include an explanation of the service's funding strategy, level of service provided and methods of delivery.

### Financial Management

7. This section would benefit from clarity regarding the timescales for financial planning. At present the standard refers to 'over the period concerned', it would be better if this was clearer regarding stipulated timescales for example

*"x process/procedure should be reviewed regularly, and not less than once every six/twelve months"*

### People Management

8. The standard is very light on requirements relating to supervision, and particularly the skills required for supervisors. It is not sufficient to only require organisations to have processes to supervise staff. At a minimum, it should be a requirement that these processes be adequate, specified in relation to a set of minimum requirements.
9. Supervision, particularly legal and technical competence of supervisors, is fundamental to the provision of good quality of advice for clients. This has been borne out through Peer Review, where poor ratings often have their root in failures around effective supervision, alongside other areas such as file review and client care. Whilst these findings are based on reviews of specialist work they can equally be applied to generalist advice provision. The incorporation of a quality of advice standard and assessment does not negate the need for effective supervision; supervision is in fact integral to the operation of a quality system. We would want to see requirements along the lines of D4.1 of the General Quality Mark reflected in the standard.
10. Ensuring quality of advice is a major aim of a legal quality standard. In order for this standard to be seen as comparable to the GQM these areas will need to be addressed, particularly around caseworker experience and supervisor requirements.

## **Section 5: General Questions**

1. Please see answers in Section 2 above

## **Section 6/7: Quality of Advice Assessment Methods**

- **External Assessment**
- **Self Assessment with external verification**

### General Comments

1. We have used Independent Peer Review, as one of the means of ensuring that legal aid clients are receiving a quality service from specialist advice providers
2. Quality of advice assessment:
  - ensures that clients are receiving a good service,
  - supports individual agencies to identify their strengths and areas for improvement, and
  - aids continuous improvement
3. Additionally quality of advice assessment provides a unique opportunity to access a wealth of information directly related to the quality of legal advice and information given to clients. Using the findings from the body of peer review reports, Independent Peer Reviewers have produced guides and run workshops to support specialist advice providers to improve their quality. This has been a powerful tool to aid continuous improvement. We would hope that consideration is given to maximising the benefits of a quality of advice scheme through use of the findings to support the advice sector as a whole.
4. Our view is that external assessment, via tools such as auditing, accreditation or peer review, is the best mechanism to assess quality of service provided to clients. This approach offers an independent assessment of work, whereas purely in-house assessment could be perceived by clients, funders or other interested parties to be constrained by non-quality considerations e.g. service constraints, bias, resources, conflict of interest etc, all of which will be important to the organisation but not the focus of the client themselves. It also allows best practice information to be gathered as discussed above. Self-assessment alone would limit the ability to do this, but is clearly a much more economical and less intrusive way to assess organisations.
5. The self-assessment option proposed alleviates the concerns raised above through the inclusion of external verification. It would be still stronger if self-assessment was supported by randomised external audits. If this option is adopted the process must ensure that the files for verification are not the choice of the individual agency but that of the external assessment body to ensure that there is no selection bias.
6. The use of self-assessment may make it difficult to ensure the consistent application of the criteria. Instead of a pool of external assessors regularly conducting reviews, an internal assessor may review on an infrequent basis, making it more difficult to ensure that the tool is used correctly. Self assessors will need to be supported by written guidance, and would also benefit from telephone or e-mail support.

### Process for quality of advice assessment

7. The consultation does not outline how the standard will be applied i.e. what constitutes a pass or fail, the frequency of assessment or how assessors will be selected and trained. In order to comment in further more information on the process is required. However any quality of advice process should include the following as a minimum:

- **Scoring mechanism** - what constitutes a pass or fail, how the criteria are applied
- **Competent assessors** - individuals with appropriate skills and qualifications to conduct quality of advice assessments with objectivity and fairness
- **Recruitment and selection process** – robust recruitment and selection process to ensure the right people are selected for the role of assessor
- **Training** - all assessors are trained in the application of the criteria and the reporting of findings
- **Appropriate file samples:** including sample size and stratification that ensures the validity of the result
- **Consistency and monitoring processes:** to ensure the integrity of the tool and the results

#### Person specification

8. A key aspect of any quality of advice assessment mechanism is the competence, ability and consistency of those undertaking the review.
9. Experience in a category of law may make a person competent in that area but does not guarantee that they have the skills necessary to assess others work and feed outcomes back. As a result we believe that any individual undertaking this role, whether an internal or external assessor, should as a minimum either:
  - A supervisor, with a minimum of 2 years' experience in that role
  - Or
  - An experienced casework/advisor that has been trained in the assessment of work and how to feed results back.

### **Section 8/9/10: Additional Assessment Methods**

- **Observation**
- **Mystery Shopping**
- **Client Interviews**

1. When looking at the benefits of alternative assessment methods it may be helpful to look at the work conducted by Richard Moorhead and Avrom Sherr in 'Quality and Cost – Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot' (Moorhead, Sherr et al. 2001)<sup>1</sup>.
2. A central feature of the Quality and Cost research was the comparison, and triangulation, of different methods for measuring the quality of professional service.

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<sup>1</sup> This report is available from The Stationery Office (website: [www.tso.co.uk](http://www.tso.co.uk)).

Peer review was developed and used as a means of assessing aspects of quality of work, along with:

- Brief Case – a system for recording information about type of case and case outcome
  - Model client visits (the lay assessment of service by model clients)
  - Outcome measures
  - Client satisfaction surveys
3. Whilst this was focused on specialist advice, the findings could be helpful when considering the tools for generalist advice agencies.
  4. Client experience is an important element of a quality service, and obtaining client feedback is an important way of measuring this. However as a tool to assess quality of advice it is not the strongest approach. Clients may not be in a position to assess whether they have received the right advice, and their view of quality will often be affected by their perception of the outcome of their case. Where it is a powerful tool is looking at client handling skills e.g. the appropriateness of communication with the client, whether the client felt understood etc

## **Section 11: Cost of Delivery Options**

### **1. Which are your favourite methods of delivery.**

1. As outlined in section 6 and 7 above external assessment offers many benefits when conducting quality of advice assessments. Self-assessment is the most economical, but carries with it a range of risks, which must be controlled through training, guidance, support – and the prospect of external audits taking place from time to time.

### **2. Please rate the extent to which you agree with this question.**

*“It’s important that the new quality mark provides advice services with access to a range of assessment methods which will suit their organisation”*

2. The attraction of a range of assessment mechanisms is clear as it offers organisations choice. However of primary concern should be the interests of the client and ensuring that whatever tool is used ensures that they will receive good quality of advice.
3. If all tools deliver the same results for clients there is no reason why multiple routes to meet the standard cannot be allowed. However to enable this all the tools must be mapped against each other, the weighting of what they tell you taken into account and how they interrelate. For example will an internal assessment + interview observation = external assessment? Whatever structure is put in place it must be clear to organisations (and their clients) what each assessment method is telling them.

### **3. Please rate the extent to which you agree with this question.**

*“It’s pointless having a range of assessment methods which deliver great feedback but which increase the cost of the assessment process”*

1. The cost of assessment process will obviously be an important factor for organisations. Costs must be proportionate and affordable. When tendering out the General Quality Mark we put a great emphasis on securing the best price for the audit. We stipulated that audit costs should be graduated according to the size of the organisation. We also changed the audit cycle from annually, to once every two years in order to further minimise costs whilst still achieving effective assurance of the standard for clients. These are considerations that the consortium will need take into account when developing the scheme. We would be happy to share out experiences with the team.
2. It is important that assessment be delivered at the lowest price consistent with achieving proper assurance. External assessment is a necessary component in delivering assurance, but other cheaper tools such as self assessment can contribute a lot, although there will be an upfront cost to develop the related guidance and training. What mustn’t be lost in the debate over charges is the best interests of the clients, and that the quality of advice assessment is primarily about protecting clients from poor service, as well as to provide performance feedback to organisations. Whichever option is chosen must adequately meet this need.
3. One option could be to decouple the quality of advice standard from the management quality standards and allow organisations to choose whether they have a combination of both or one on its own. Separating out the service and quality of advice elements of the standard may also support new entrants to achieve the standard at the earliest stage.