

Quality Relationships Delivering Quality Outcomes:

The Preferred Supplier Scheme

Consultation Summary

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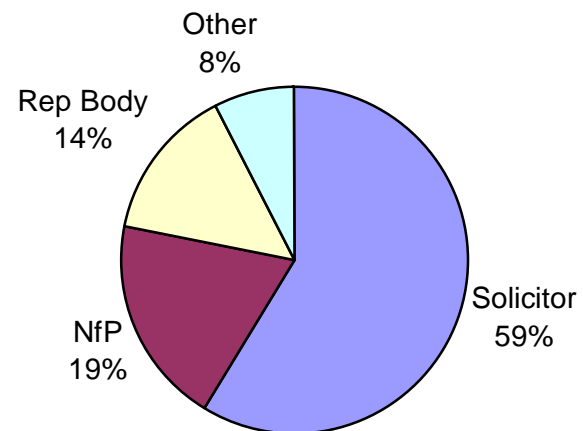
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Part 1: Overview

Introduction

The Legal Services Commission recently consulted on its proposals for a national Preferred Supplier scheme. The consultation document, 'Quality Relationships Delivering Quality Outcomes', was published on Monday 20 March and the consultation closed 12 weeks later on Monday 12 June.

Respondent Type	No.
Solicitor (8 Pilot)	69
Not for Profit (NfP)	23
Representative bodies	17
Other	9
Total	118



This is the report on the evaluation of responses to the consultation. It consists of both an analysis of the answers respondents gave to the nine questions and a theme-based analysis of other views expressed in the responses.

Overview of consultation responses

The tone of responses varied considerably: some respondents were entirely in favour of the Preferred Supplier scheme; many were positive overall but had various reservations; a few were strongly opposed to the proposals.

Many respondents commented that there was not enough detail in the consultation paper to make a valid assessment of the scheme. 21% stated they would not be able to comment fully until the publication of Lord Carter's final report.

Broadly, respondents were positive about the proposed lighter-touch management, the use of peer review, relationship managers, and increased electronic working.

Key concerns included the impact of the proposals on clients' access to advice, the LSC's expectation of improved quality without increasing remuneration, the linkage to the Carter Review, and a lack of detail overall.

Responses varied in length from one page to 19 pages. Response rates to individual questions ranged from 47% - 60%.

26% of respondents did not answer any questions set out in the consultation paper but made comments. Of those who answered at least one question, 64% also made supplementary comments.

Where these comments relate to the issues covered in particular questions, they have been considered under that question. For example, comments about quality have been considered under question 1.

Typical quotes from responses to the consultation:

'The Commission states that its objective is to move away from a system that has relatively low up-front entry criteria. We agree with the proposed direction of travel, but are concerned that some of the proposals in the consultation appear to lead in the opposite direction, raising the possibility that firms that achieve preferred supplied status may find that they are spending more, rather than less, unremunerated time meeting the requirements of the Commission.'

'The Preferred Supplier scheme has the potential to be a very positive development which, if implemented well, should lead to a much more constructive and healthy working relationship between the LSC and the profession.'

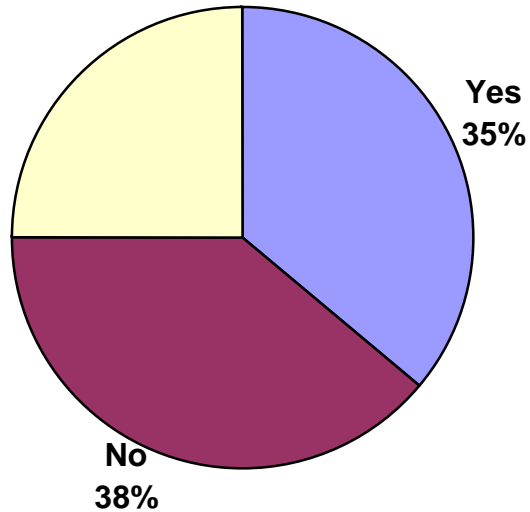
'The absence of a true not-for-profit supplier taking part in the pilot of this scheme does raise questions about whether it is suitable for such suppliers. This is especially pertinent in relation to the lead supplier model, or consortium approach, that would seem to be the primary route for not-for-profit providers to become Preferred Suppliers.'

'One area of particular concern is the extent to which this paper, in assuming that a smaller number of larger providers is necessarily to be preferred, underestimates the likely detrimental consequences for Access to Justice, Choice, and Diversity.'

'In general terms we support the LSC's position of wanting to support and develop quality suppliers. However, we believe that the criteria that the LSC will use to decide which organisations to invite to apply for preferred supplier status... need further consideration.'

Part 2: Consultation Questions

Q1. Do you consider that the quality of advice tools in Appendix A are proportionate? If not, please explain why, and indicate the changes you would propose.



Respondent Type	Yes		No		Other ¹		Total	Response Rate
	No.	%	No.	%	No.	%		
Solicitors	12	32%	17	46%	8	22%	37	54%
NfPs	7	44%	6	38%	3	18%	16	70%
Representative Body	3	23%	4	31%	6	46%	13	76%
Other	3	60%	0	0%	2	40%	5	55%
All Respondents	25	35%	27	38%	19	27%	71	60%

38% of respondents answering this question thought the quality of advice tools were not proportionate.

Quote from consultation:

“We are strong supporters of peer review, and welcome the fact that the LSC has put this at the heart of its assessment mechanisms for Preferred Supplier.”

¹ Where a respondent has provided an answer but has not stated yes or no.

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Peer review

Although 38% of respondents answering this question thought the quality of advice tools were not proportionate, respondents showed overwhelming support for the use of peer review.

'We support and endorse this independent assessment of the quality of advice and legal work of an organisation. We agree that those within the Preferred Supplier scheme should work towards ratings of 1 and 2, Excellence or Competence Plus.'

However, respondents raised the following issues about peer review:

Recruitment of peer reviewers

24% of respondents answering this question had concerns about the availability of sufficient high-quality peer reviewers:

'I suspect that those who actually apply to be peer reviewers will be solicitors who have either retired and are therefore not necessarily up-to-date with current practice or those whose services are not in demand from the public because their own quality of service leaves much to be desired.'

Some of the concerns raised illustrated misunderstanding of the nature of the peer review process and a lack of awareness that the peer review process had been subject to a separate comprehensive consultation exercise.

Some commented that complex or specialised areas of work should be reviewed by those currently undertaking such work. Some concerns were raised about barring non-solicitors from becoming Peer Reviewers.

Peer review process

Appeals

8% of respondents suggested providers should be able to appeal against adverse review findings.

File sample size

7% of respondents suggested a sample of 15 files was not representative and could disadvantage smaller firms.

Conflicts of interest:

5% of respondents expressed concern about peer reviewers exhibiting anti-competitive behaviour.

Some suggested the peer reviewer should come from a different geographical area from the provider to minimise this risk.

Review cycle

Some commented that the 3-year peer review cycle would conflict with businesses that have to plan on a 5-year basis.

The Law Society

Of the nine respondents who commented on the transfer of peer review to the Law Society, six were against and three were in favour.

Guidance / workshops

There was support for improving quality activity through workshops and guidance.

Timing

7% of respondents stated it is unrealistic to expect organisations to achieve a peer review rating of Competence Plus by 2009.

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Cost and time

Some stated the LSC has not considered how time consuming and expensive it will be for both providers and the LSC to undertake effective peer review, especially for certain categories.

Quality profiles

Overall there was support for the principle of quality profiles:

'The system of quality profiles appears to be a sensible way the LSC can monitor the performance of firms remotely, and satisfy itself that nothing significant is changing that might give cause for concern.'

However, 23% of respondents answering this question commented that current outcome codes are too crude to measure true outcomes and could lead to distorted performance profiles:

'We do have some reservations over the construction of quality profile made up of outcomes when the categorisation of the outcome is fairly nebulous and often it may seem that more than one possible outcome could be declared! The quality of advice is not necessarily indicated by this when for example the client may not have a good case or cease to give instructions.'

Some stated they need more detail about how quality profiles would be used.

File assessment

Most respondents answering this question were opposed to the use of file assessment. They raised the following issues:

Qualification of auditors

15% of respondents answering this question expressed concern about the prospect of non-legally qualified LSC staff carrying out file assessment. Some stated that files might not be in a suitable condition to be easily understood by non-experts.

Consistency and reliability

9% of respondents expressed concern about the consistency or reliability of auditors. One reported that some NFP contract holders who had had experience of file assessment had raised a number of concerns:

'There has been a lack of consistency between auditors particularly in relation to issues of contract interpretation; some auditors have taken a non-constructive ... approach ... and some auditors have made judgements about the quality of work and the amount of time claimed for it when they... have not been authorised to do so.'

Lack of evidence to support use of file assessment

8% commented they had not had enough information about the details of file assessment or seen evidence to suggest it would work as a measure of quality.

'We have not seen the questions, nor evidence of their success when tested against peer review and we are sceptical about their value.'

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File assessment for minor categories

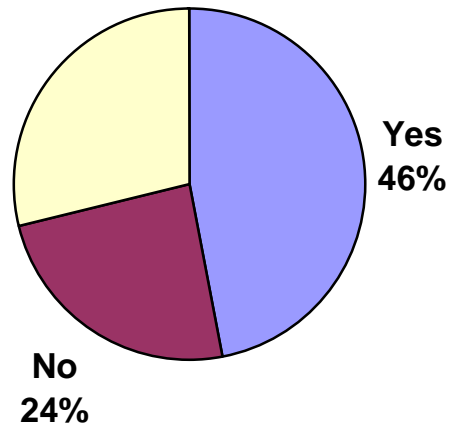
Although some agreed file assessment could be an effective ongoing assessment tool, some suggested they would be concerned if it became the main method for assessing quality, as it can be inaccurate, bureaucratic and focus on processes rather than outcomes.

Some opposed the proposal to use file assessment instead of peer review for minor categories or for initial assessment, as it could compromise quality and enable poor firms to become Preferred Suppliers.

Value for money

Some respondents expressed concerns regarding the value for money element of file assessment, particularly relating to how value for money would be assessed on individual files in a fixed fee environment. Some respondents commented that value for money criteria might compromise providers with niche contracts such as mental health, where cases can take longer.

Q2. Do our proposals for extending devolved powers strike the right balance between maintaining fund control and reducing the administrative burden for providers? If not, please explain why and provide any alternative suggestions.



Respondent Type	Yes		No		Other		Total	Response Rate
	No.	%	No.	%	No.	%		
Solicitors	16	44%	7	20%	13	36%	36	52%
NfPs	4	33%	5	42%	3	25%	12	52%
Representative Body	5	46%	3	27%	3	27%	11	65%
Other	4	100%	0	0%	0	0%	4	44%
All Respondents	29	46%	15	24%	19	30%	63	53%

17% of all respondents identified the proposed extension of devolved powers as a key benefit.

Overall, respondents welcomed the proposed extension of devolved powers.

Some suggested devolved powers should be extended further and others stated they needed more detail about devolved powers.

Further extension of devolved powers

18% of respondents answering this question stated devolved powers should be extended further than the paper proposes:

‘One of the benefits of being a Preferred Supplier must be the extension of such powers, and if these have already been successfully piloted it is unclear why firms other than family firms, cannot benefit from such a reduction in administration. Excellent suppliers, i.e. those at level 1 and 2 of peer review, should be given more autonomy.’

Lack of detail

23% stated the consultation paper contained insufficient detail about devolved powers to comment fully:

‘It is disappointing that the proposals for increasing devolved powers are not more developed given that the LSC has had the opportunity to explore possibilities through the Preferred Supplier pilot.’

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Respondents also identified the following issues about the proposals for devolved powers:

Administrative burden

Some respondents answering this question stated the proposals were likely to increase the administrative burden for providers rather than reduce it. Some of these implied the LSC should help to cover the costs:

'[This] would appear to increase the burden as it will pass the responsibility for much of the work currently undertaken by the Legal Services Commission to the supplier and there does not seem to be any compensating fees.'

Limited impact

Some stated that devolving powers will be more beneficial to the LSC than to providers. Five solicitors & three NfPs stated the proposals were unlikely to make any difference to them, as they do not relate to NFPs or criminal work but only to certificated family work:

'There are only six not for profit agencies with contracts in family law and therefore there is little benefit for the NfP sector in the proposals as they stand.'

Guidance

19% stressed the need for clear guidance for providers about the parameters of the system:

'The Commission will have to be very clear about the parameters of the exercise of devolved powers before it should be allowed to

require a provider to bear the financial consequences of an inappropriate decision.'

Some of these suggested the relationship manager would have an important role in ensuring the guidance was being properly applied.

Sanctions

27% expressed concerns about potential imposition of sanctions or financial penalties resulting from incorrect use of devolved powers. Many of these suggested providers' confidence in using devolved powers would be undermined if sanctions existed to withdraw funding and that the LSC's approach must be characterised by trust:

'It is important that if devolved powers are exercised inappropriately, on the basis that it was a genuine mistake rather than systematic abuse of such powers, that sanctions applied are not too draconian.'

'There may be disagreements about 'inappropriate' use, such as the quality of expert evidence needed for a case. If the Commission decides that the use of the preferred expert is inappropriate, the supplier would have to 'bear the financial consequences' or be subject to a reduction or a removal of devolved power and even termination of contract. The paper does not refer to any transparent method of reaching an agreement. There is no reference in the paper to being able to formally appeal a decision and yet the consequences are severe.'

Some of these suggested a third party should be responsible for adjudicating alleged errors:

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'Whether or not a provider is acting appropriately in relation to devolved decision making should be objectively assessed by a party other than the Commission, and perhaps could be addressed via a system along the lines of peer review.'

Collection of client contribution and the statutory charge

13% commented on the suggestion to devolve the collection of client contribution and the statutory charge to providers. All were opposed:

'..we do not see the transfer of this function would be either appropriate or workable. In effect it would require suppliers to become enforcement agencies. It would have considerable implications for their staffing, procedures and insurance premiums.'

'Collecting money from clients in payment for services provided would be a breach of the Citizens Advice Membership Scheme and would result in suspension or termination of membership and the benefits that it confers.'

Q3. Which of the proposed key features and benefits offer most benefit? What other key features and benefits do you see as a priority for future development?

	Total	%	Response Rate
Respondent Type			
Solicitors	35	54%	51%
NfPs	13	20%	57%
Representative Body	11	17%	65%
Other	6	9%	67%
All Respondents	65	100%	60%

Many respondents identified more than one key benefit:

- Of the 65 who answered this question, 46% identified **relationship managers** as a key benefit.

'We are not surprised that the response to pilot schemes has been very favourable and we believe this proposal has considerable potential to improve the working relationship between the Commission and supplier firms.'

- 32% identified **electronic working**.

'We are aware of the Commission's commitment to introducing electronic forms of working and feel that this would be of immense benefit in making the relationship between ourselves and the Commission more efficient.'

- 19% identified **improved decision-making**.
- 17% identified **simplified billing and claiming**.

Fixed Fees

Under this question, many respondents commented on Lord Carter's proposals to use fixed fee systems.

- Four stated they were in favour of greater use of fixed fee systems.
- Twelve stated they were opposed. Reasons given included unpredictability, potential increase in bureaucracy, and the fact that some cases may be more complicated and take longer than others.
- Three stated fixed fees were likely to have a discriminatory impact on ethnic minorities.
- Four stated they would welcome the opportunity to comment in detail after Lord Carter's report.
- Two NFPs expressed concerned about how fixed fees would relate to the NFP sector:

'The details of any new remuneration structure proposed by Lord Carter must also take account of the funding, financial and governance arrangements of the NFP sector.'

- Five raised concerns about the application of fixed fee systems in particular categories of work, including clinical negligence, family and prison law.

Relationship managers

Most of the respondents who identified relationship managers as a key benefit also identified some of the following issues as potential areas of concern:

Portfolio size

23% were concerned about portfolio size:

'What gives us the greatest concern is the number of firms for which each RM will be responsible. We have heard it suggested that some RMs may be responsible for as many as 35 firms. If that is the case, then we seriously doubt that the RM will deliver much additional value to firms.'

Seniority/Highly Trained/Specialist knowledge necessary

22% commented on this:

'The manager needs to be of sufficient calibre and influence at the Commission to get things done.'

Continuity

12% expressed concern about continuity:

'The introduction of relationship managers is welcome, as long as the relationship is a long-term one: moving staff from one post to another without allowing them to develop the relationship does the LSC no good.'

Confidentiality

5% expressed concern about confidentiality:

'Confidentiality does not extend simply to historical data but to business judgments and plans. Relationship managers are

envisaged as having a number of firms in their portfolios. There must inevitably be conflicts of interest.'

No benefit

Of the 65 who answered question 3, seven respondents were negative about the proposals regarding relationship managers:

Some stated relationship managers would offer no benefit and lead to increased bureaucracy:

'I do not want to move to the relationship manager model as it looks...as if this will make more work for me and more intrusion in my practice.'

'In particular the introduction of a relationship manager simply seems to be yet another layer of bureaucracy to add to the administration costs which will need to be met from the public purse.'

A few stated a relationship manager would be the same as an account manager:

'It would appear that relationship managers are merely account managers with a new title.'

Electronic working

Overall, respondents were very positive about increased electronic working:

'We support the move to adopt an e-business approach and appreciate the value in terms of speed and efficiency of electronic reporting of contract data.'

However, some respondents identified the following issues as potential areas of concern:

Cost

30% commented on the likely high cost of a move to e-business:

'The feasibility and cost of moving to e-business will have to be thoroughly investigated before it is taken forward, so as to avoid a situation where good suppliers are lost from the scheme simply because of their inability to pay for the necessary hardware, software and training.'

Many of these suggested the LSC should help providers to cover the cost.

Compatibility

14% expressed concerns around compatibility of systems:

'So far as the access to case files electronically is concerned, firms will have to invest heavily to achieve this, but they will do so in the dark and their systems may end up being incompatible with those of the LSC devised to accept data.'

Most of these suggested specific LSC-compatible software should be developed.

Insufficient detail

14% stated there was insufficient detail about electronic working:

'The LSC has little clarity as to how this will happen...the feasibility and cost of moving to e-business will have to be thoroughly investigated before it is taken forward.'

NB Four suggested setting up an e-business 'focus group' or equivalent before finalising requirements.

Lead-in time

9% stated it was likely to take a long time to implement e-business:

'It will be important to ensure that further developments take place over a sufficient timescale for firms to be able to incorporate any necessary software or hardware changes within their standard IT procurement schedule, rather than having to buy additional products at shorter notice.'

Confidentiality

A few had concerns regarding confidentiality:

'How would the confidentiality of client files be maintained?'

'The experience of practitioners is that the secure email services currently available are too expensive and are not effective to ensure client confidentiality for the purpose of auditing.'

NFP Sector Issues

Of the thirteen NFPs who answered this question, five stated they had concerns about the move to electronic working and suggested the NFP sector would need support to develop in this area. One of

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these was concerned that the LSC is not in discussion with all the main software providers in the NFP sector:

'We understand from London Advice Services Alliance (who produce and support AIMS software used in a number of Law Centres and independent advice agencies) that they have not been involved in any discussions about how to ensure ease of data import. Without this a number of not for profit agencies will be faced with either having to invest in new casework software or cope with the resources drain of having to input data twice.'

Simplified billing and claiming

Of the 65 who answered this question, eleven identified simplified billing and claiming as a key benefit of the proposals. Six stated there was insufficient detail in the proposals to comment fully.

Improved LSC decision-making

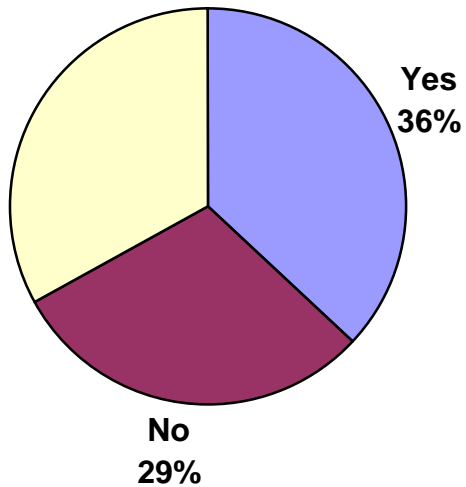
Of the 65 who answered this question, twelve identified improved LSC decision-making as a key benefit of the proposals, though many commented the paper contained insufficient detail about how the LSC will actually improve efficiency.

Priorities for future development

Most suggestions for future development related to reducing bureaucracy. These are considered under question 5.

Others identified certainty of remuneration as a key priority for future development. This is considered in section 3.

Q4. Is the proposed performance management framework for Preferred Supplier set at the right level? If not, please explain why and provide alternative suggestions.



27% of respondents answering this question stated the paper contains insufficient detail about the performance management framework to make a valid assessment.

Respondent Type	Yes		No		Other		Total	Response Rate
	No.	%	No.	%	No.	%		
Solicitors	10	34%	8	28%	11	38%	29	42%
NfPs	7	64%	1	9%	3	27%	11	48%
Representative Body	1	9%	5	45%	5	45%	11	65%
Other	2	50%	2	50%	0	0%	4	44%
All Respondents	20	36%	16	29%	19	35%	55	47%

19% of respondents answering this question stated they would welcome 'lighter touch' monitoring.

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Though many supported the proposed performance management framework, the following issues were raised:

Additional bureaucracy

Some respondents were concerned about the increased administrative burden associated with remote monitoring. Some stated providers would need to make a substantial investment in the development and maintenance of management systems. A few suggested that remuneration should be increased to cover this.

Security

A few respondents were concerned about security issues related to transmission of data.

Other factors

Seven stated the management framework should also take into account other agencies which can influence cost per case such as the courts, police, probation etc.

Five respondents stressed that the LSC should not make decisions based on the monitoring data alone:

'Remote monitoring needs to be carried out by the relationship manager so that the reasons behind figures ... can be properly explored.'

Supplier performance evaluation

There was tentative support for the annual performance evaluation, but many respondents required more detail:

'We would like more detail about what data we would have to produce for the relationship manager to produce an annual Supplier Performance Evaluation. What if the report is contentious? How will disagreement be recorded and resolved? What will the starting point be for the next year in the event of disagreement? What if agreement re performance for the next year is not possible?'

There was also some concern about the relationship manager's role in this:

'The relationship between the relationship managers and suppliers appears complex. On the one hand, they are there as partners to work together to 'provide the necessary support' to deliver services that meet client needs. On the other hand they are also there to monitor performance and produce annual Supplier Performance Evaluations.'

Q5. Are there other ways in which the Commission could reduce bureaucracy for providers without compromising our duty to secure quality and value for money services?

	Total	%	Response Rate
Respondent Type			
Solicitors	29	52%	42%
NfPs	12	21%	52%
Representative Body	11	20%	65%
Other	4	7%	44%
All Respondents	56	100%	47%

For comments regarding electronic working, see question 3.

The main suggestions for reducing bureaucracy for providers were as follows:

1. Reduce the volume of contract documentation and legal aid guidance.

2. Stop making so many changes:

'Within the last four years there have been numerous changes to the contract, the quality mark, the auditing systems, the monitoring and reporting, many of which were introduced at short notice with little time for planned and efficient organisational implementation.'

3. Simplify remuneration rates:

'Rates for different categories of work currently differ ... by a few pence here and there. These should be standardised.'

4. Streamline forms:

'Do we need to provide the name, address and telephone number on each and every form submitted?'

5. Streamline cost assessment and bill payment

6. Improve communication

'[We] would welcome an improved process within the LSC for consulting on and implementing changes.'

Q6 & Q7. What improvements, if any, might you suggest to the proposed process for the award of Preferred Supplier Status (Appendices B and C)? What additions or deletions would you make to the proposed selection criteria to identify Preferred Suppliers and do you have any comments or concerns about specific criteria?

There was substantial crossover in the answers to questions 6 and 7 so these have been considered together.

	Total	%	Response Rate
Respondent Type			
Solicitors	32	53%	46%
NfPs	13	22%	57%
Representative Body	11	18%	65%
Other	4	7%	44%
All Respondents	60	100%	51%

62% of respondents answering question 6 and/or 7 felt the financial assessment requirements were intrusive and unnecessary.

30% of respondents answering question 6 and/or 7 stated there was not enough detail in the proposals to comment fully on the process for the award of Preferred Supplier status.

Phased implementation

14% of respondents answering this question expressed concerns about the proposal to roll out the Preferred Supplier scheme in waves. It was felt that the organisations invited to apply in the initial phase would have a competitive advantage over those applying later:

'Is there not a risk of rigging the market by selecting firms of a certain profile before others rather than allowing for applications by all considering their firm ready to apply?'

Respondents stated this was likely to adversely affect niche and BME firms in particular.

Some NfP respondents commented that failure to be invited to apply in the first or second round could result in the organisation being destabilised and possibly losing other funding.

Some respondents urge the LSC to be fair, flexible and open and to ensure it doesn't confer additional benefits to those in the first round.

Some were concerned that some firms in a geographical area were being prioritised over others, and suggest all providers in a geographical area should be invited to apply at the same time.

A few were concerned about the short period of time a provider in wave 3 would have to improve its rating, and suggested they should be given 6-12 months even if it runs beyond the point of exclusivity.

Insufficient detail

30% stated they could not comment in detail on the award of Preferred Supplier status before seeing Lord Carter's final report and receiving more information about how the process would work.

In particular respondents required further information about cost management, value for money criteria, and information about whether all criteria are mandatory or whether discretion will be applied.

New entrants

A number of respondents questioned how new entrants would become Preferred Suppliers and suggested this had not been given enough consideration.

NfP providers

Five respondents stated not enough NfPs had taken part in the pilot:

'I feel that findings from this study cannot properly reflect the experience of the NfP sector.'

Generic criteria

Cost management / value for money

A number of respondents stated any value for money considerations should take into account the complexity of cases taken by suppliers:

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'For example a firm that deals with a large amount of clients with mental health problems or with children, where the costs are inevitably higher, should not be deemed to be "bad value for money".'

Two suggested that the LSC should drop this criterion as no mechanisms will be finalised before April 08.

Provider History

8% of respondents answering this question expressed the opinion that adverse Consumer Complaints or OSS findings should not lead to exclusion automatically. One respondent commented that previous investigations where the supplier has been cleared should not affect eligibility.

Strategic Importance / niche organisations

Three respondents asked for a clear definition of 'strategic importance', and stated this criterion should not exclude small and niche providers.

'If the Commission is genuinely concerned about the quality of service and the overall need to provide better advice to vulnerable people as a means of reducing the social and economic cost of unmet legal needs, these aspects should be included in the criteria.'

'We would suggest that specific eligibility criteria by category for not for profit providers takes specific account of specialist work and provides an additional weighting for this.'

NfP Performance targets

Five respondents expressed a concern about the 95% targets and suggested agencies should not necessarily be excluded for failing to reach this threshold. One of these cited recent evidence that shows organisations with a higher proportion of BME clients tend to

have higher hourly costs. One national organisation questioned whether the target would be applied as an average across various outlets.

Category specific criteria

Crime

3 respondents stated the requirement for 80% of advice to be given by designated fee earners was too high, especially since quality would be checked through Peer Review in any case.

'In order for firms to provide a good quality of service and meet the time constraints placed on them by the Courts and the Police, outside agencies and representatives must be used.'

Family

One suggested the Law Society protocol should not be included: *'It's difficult to measure and unnecessary because of peer review.'*

Immigration and Asylum

Four respondents were opposed to the 40% success rate for controlled legal representation. 1 suggested this is reviewed before being introduced more widely.

Clinical Negligence

Five respondents suggested the 50% success rate is too high:

'The criteria by imposing such a high success rate implies that clinical negligence cases won or lost are dependent upon the skills of the practitioner. This is not the case. This is an extremely difficult and complex area of law, and additionally, outcomes are often influenced by experts.'

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Another respondent suggests that if the proposal is adopted it should be subject to various exceptions.

Financial assessment

62% of respondents answering this question felt the financial assessment requirements were intrusive and unnecessary, especially since some of the data may relate to non-legal aid work. A number of these stated the LSC should be satisfied by certification from independent accountants.

In particular, respondents expressed reluctance to share their tax returns:

'It was further felt draconian to request the firm's latest tax returns; the expression 'over my dead body' was raised because these are private matters to which the Commission should need no access.'

Five respondents added that the financial assessment requirements alone are enough to deter applicants from applying:

'Moreover, this proposal is so unattractive that, whatever the other merits of the Preferred Supplier scheme, it will form a major disincentive and the greatest barrier to the success of the proposals which in other respects has some merit. By seeking such personal and confidential information a suspicion is bound to be created as to the underlying motives of the project.'

Ten questioned how confidentiality would be assured:

'Much of this data can properly be regarded as confidential and would not be available to a firm's competitors. However once it is shared in extensive detail with the LSC, a relationship manager in possession of the knowledge dealing with several firms in a locality might find themselves compromised.'

NfP Sector

A number of respondents queried details about how the financial assessment requirements will apply to the NfP sector:

'Some of the requirements listed are either a mistake from the authors of the consultation paper, or show a regrettable lack of knowledge of the nature of the NfP. For instance, the inclusion of a section on information return on "borrowing" belies the fact that no NfP organisation would have any equity to be able to entrance a would-be lender to part with any money! Again, the section headed, "going concern", assumes the organisation is running a business.'

Bill assessment

NB See question 1 for comments relating to quality of advice.

Nine respondents stated the bill assessment rate was set too low. One suggested it should be revised to 10%; another suggested 20%.

A further five respondents expressed confusion about bill assessment rates:

'What [do] you mean by "5% or less for civil bills" or "8% or less for criminal bills". 5% / 8% or less of what?'

There were also questions about whether or not this was retrospective and whether it included disbursements or just profits.

Success rates

NB Also see 'Category specific criteria'.

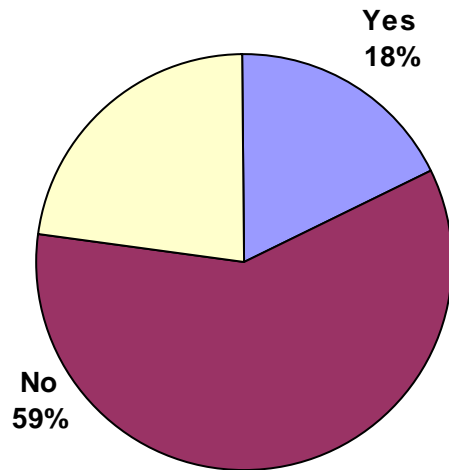
Five respondents expressed concern about using success rates to measure outcomes, asserting they are not sophisticated enough to be meaningful and will encourage cherry picking.

'They should not be an automatic trigger for action to be taken or indicator of poor quality.'

One of these stressed the importance of success rates being assessed by properly trained staff.

Q8 & Q9. Are there any specific considerations that you feel we have not fully addressed that relate to the impact that the proposals would have on your business, on the area(s) of law you deliver, or on the clients you serve? Do you agree with the draft Impact Assessment (Appendix E)? If not, please explain why.

There was substantial crossover in the answers to questions 8 and 9 so these have been considered together.



Respondent Type	Yes		No		Other		Total	Response Rate
	No.	%	No.	%	No.	%		
Solicitors	4	13%	19	61%	8	26%	31	45%
NfPs	3	27%	6	55%	2	18%	11	48%
Representative Body	1	11%	6	66%	2	22%	9	53%
Other	2	40%	2	40%	1	20%	5	56%
All Respondents	10	18%	33	59%	13	23%	56	47%

59% of respondents answering question 9 did not agree with the draft Impact Assessment.

Impact on small, BME, rural and female providers

32% of all those responding to the consultation believed the proposals underestimate the impact of the proposals on small, rural, BME or female providers. Most commonly mentioned was the impact on small and BME providers.

'A policy which is specifically targeted at small and specialist firms will inevitably have a disproportionate impact on BME firms and it is very worrying that this is recognised but seems to be considered acceptable providing the wider aims of the Preferred Suppliers' scheme can be met.'

Impact on competition

9% of all respondents had concerns about potential lack of competition.

'The policy could result in the creation of effectively monopoly providers and to some extent we are already seeing that development with mergers. It is very unhealthy situation to have one or two large law firms effectively evolving into monopoly providers.'

Impact on access to advice

30% of all respondents believed the proposals would have a detrimental effect on access to advice. Many of these stated this would impact particularly on hard to reach groups and could compromise client choice.

'The loss of small practices will inevitably have an impact on access to justice for vulnerable people.'

Do nothing option preferred

Six respondents stated they preferred the 'do nothing' option.

'We do not agree that there are "no apparent benefits to doing nothing". On the contrary, most of the legal aid profession would be delighted if the LSC were to do nothing for the next five years beyond making the current system work efficiently, utilising its current powers to clamp down on suppliers which it knows are not performing and increasing remuneration for the remaining good quality suppliers.'

Recruitment and training

Nine commented that the proposals were likely to have a detrimental affect on recruitment or training. Many of these stated it was impossible to recruit and retain good quality staff given the rates of pay and it would be necessary to use paralegals or junior members of staff to undertake the work.

'If the LSC is genuinely concerned about the continued provision of legal aid services, it needs to do more than simply state that larger firms will have more money to invest in trainees: a commitment to training should be a specific non-mandatory criteria for firms in the application process.'

Impact of minimum contract size

Ten were opposed to a minimum contract size as part of the Preferred Supplier application. Most of these mentioned the detrimental affect this would have on local or niche providers.

'The very fact that most NfPs are rooted in local communities is often seen to be their strength when considering delivery of services. If there is to be a pre-requisite of a certain size, this would undermine the whole ethos of local organisations.'

Preferred Supplier Consultation Summary

Larger firms

Twenty respondents disagreed with the assumption that bigger firms necessarily offer improved efficiency and quality. Many of these stated there is little evidence to suggest economies of scale can be achieved by working from within a larger practice.

'We cannot agree that bigger organisations are necessarily going to be more efficient. Our experience is that bigger organisations tend to get wrapped up in bureaucracy and the left-hand often does not know what the right-hand is doing.'

Impact on niche / specialist organisations

26% of all respondents to the consultation stated the proposals would have a detrimental effect on niche or specialist providers

'We are concerned about the potential impact of Preferred Supplier in reducing dramatically the number of firms providing a clinical negligence service. This could impact on access to local suppliers and on choice, but also on the ability of firms to develop specialist and innovative practice.'

In particular, respondents suggested the LSC further considers the effect on the following areas of law before it finalises details of the scheme: mental health, clinical negligence, child abuse, public law, actions against the police and childcare proceedings.

Part 3: Themes

The following themes were identified in addition to those considered under individual questions.

Preferred Supplier appeal process

Nine organisations expressed concern about the lack of a discrete Preferred Supplier appeal process:

'In view of the tight timetable and the dramatic change that the scheme envisages, an appeal process, rather than just an opportunity to reapply, would be beneficial and improve the scheme.'

Lord Carter's review

Respondents made the following comments in relation to Lord Carter's review:

Unable to respond fully in absence of Lord Carter's final report

Of 118 respondents, 21% stated they were unable to answer specific questions, or respond generally to the consultation in the absence of Lord Carter's final report. Some of these queried why the consultation had not been delayed until after publication.

Fixed Fees

Of the 118 respondents, 21% commented upon Lord Carter's proposals relating to fixed fees. The comments are considered under question 3.

Moving responsibility for quality to the Law Society

Of the 118 respondents, 10% commented on this. The comments are considered under question 1.

Issues regarding competition/monopolies

Of the 118 respondents, 5% expressed concern that the proposals may result in the creation of monopolies, or give firms an unfair competitive advantage.

Other comments/concerns

Two respondents expressed concern that the impact of the Carter review would lead to an exodus of Legal Aid firms and the subsequent impact on clients' access to justice.

'We, like hundreds of High Street Practices across the country, are concerned about the consequences of the Carter Review and the Preferred Supplier Scheme. We envisage that there is going to be a mass cull of Legal Aid firms across the country, and that many quality Lawyers and Advocates are going to be lost to the public.'

Two respondents expressed concern that potential reduced remuneration and block contracting would impact on clients' access to justice.

'There is real concern that the proposals for block contracts for police station work through to crown court work will severely restrict the choice of representation, particularly for BME communities. If appropriate representation is not available this will affect the individual's access to justice.'

Preferred Supplier Consultation Summary

Two respondents expressed concern regarding Lord Carter's proposals for short-term contracts, and the impact on their ability to plan for the long term:

'We are concerned that Lord Carter seems to be talking about shorter contracts e.g. 1-2 years. This is absurd. If the LSC wish for a relationship based on trust allowing for effective long term planning in terms of staffing, recruitment, premises, software etc, suppliers need the certainty of longer contracts.'

Failure of franchising / contracting

9% of respondents commented on the failings of contracting or franchising and expressed scepticism about the new scheme:

'It's reminiscent of the introduction of franchising and of the Quality Mark. Both promised a quality-assured system that would mean less bureaucracy for suppliers but what remains is a system that is intrusive and over-bureaucratic.'

Remuneration

28% of respondents expressed dissatisfaction with the rates of remuneration. This included comments about fees for LSC work being only 40% of private client rates and fees not having gone up in three years.

Many commented there was little incentive to apply to become a Preferred Supplier: the LSC seems to be raising its expectations of providers without increasing remuneration:

'The Legal Services Commission expects gold star service but is not willing to pay for it.'

Some of these predicted many firms would choose not to continue with legal aid work as a result:

'[Where] legal aid is not a major part of their income there is a risk that [firms] will simply decide that the uncertainty about future funding makes it unjustifiable to include such marginally profitable work in a business plan.'

There was also some concern about the impact of fixed fee regimes on remuneration.

Consortia

11% of respondents expressed concern about forming consortia.

Maintaining quality

Many respondents had queries about maintaining overall quality when working within a consortium:

'If one of the providers of the consortium 'failed' would that then mean the consortium fails if, for example, there was no other local supplier producing the category of work at the appropriate level?'

'The notion that a lead supplier would be prepared 'to be accountable for the delivery of good quality, value services of the other providers' is naïve.'

Management and administration

Some stated the arrangements would be onerous and costly in terms of increased administration and bureaucracy:

'Combining into consortia with a 'lead' agency takes up management and administration time not only for the lead organisation but for all the other agencies. Who will pay for this?'

Preferred Supplier Consultation Summary

Culture clashes / competition

Many expressed the opinion that forming consortia with different types of organisations or competitors was unrealistic:

'The proposal...is fanciful. The other two firms in the town are our direct competitors.'

'Whereas for many solicitors, this may not be such a risk due to their ability to supplement legal aid work through fee-paying work, this is clearly not the case for not-for-profit suppliers. Additionally, where a not-for-profit supplier is a lead agency, the risks are exacerbated if, as seems to have been suggested, that agency will also have to take on board the performance and quality standards on behalf of the other agencies in a partnership.'

Impact on existing referral networks

A few expressed concern about the impact of the consortia model on existing referral networks.

One NfP commented:

'My organisation is already forming strong links with Solicitors and are piloting stronger referral networks and joint delivery sessions with Family Suppliers but I do not believe that either of us would have the ability or wish to be responsible for the quality of the other suppliers. This means the only people able to deliver this would be a large private practice who would have no incentive to contract with the voluntary sector, despite the high quality of the work. This would impact on the ability to bring in other funding to support non-eligible clients and fracture, rather than integrate, services.'

Another NfP suggested an alternative:

'A better idea might be to have agencies agree to more robust referral arrangements and which can then be checked by the LSC.'

Agencies could then meet to discuss overall service provision in their area.'

The consultation process

Some respondents made comments about the consultation itself.

Lack of detail

15% of respondents stated the consultation paper lacked detail.

'Foregone conclusion'

6% of respondents felt the LSC had already made its decisions regarding the Preferred Supplier scheme and the consultation exercise was meaningless:

'The fact that personnel are currently being trained to be relationship managers quite clearly backs up my views that this "Consultation" is not a consultation at all.'

'I regret to say that I perceive this consultation exercise as a sham.'

Events

4% of respondents commented on their experience of Preferred Supplier consultation events. All but one of these had negative comments, for example that the presentation was too vague, the speakers expressed themselves badly, and that it was a waste of LSC staff time. One stated they found the event helpful.

Separate feedback obtained directly from attendees at the events presents a more positive perception of the value of the events.

CLACS & CLANS

6% of the respondents mentioned CLACs and CLANs. Most of these had concerns or queries about how the implementation of the Preferred Supplier scheme would fit in with CLACs and CLANs:

'To ensure a logical implementation which ties in with the introduction of CLACs and CLANs we suggest that within the social welfare law field the first providers to be assessed for Preferred Supplier status should be those with a sufficiently broad subject base to make them potential CLACs.'

Others suggested the Preferred Supplier scheme is at odds with the proposals for CLACs and CLANs:

'At one end of the spectrum we have Carter and the PS scheme presaging light touch central control, high levels of supplier autonomy and at the other end you have the centralised imposition of a series of CLACs controlled to the nth degree by the LSC and local authorities as with high levels of micro management and bureaucracy. Which is it to be?'

'What is the point of considering the prospects of the Preferred Supplier scheme in isolation when we face the prospect of an incredibly over-prescriptive CLAC being parachuted into our area of London and effectively denying us the right to offer the advice and representation which we do at present by withdrawing our civil and family contracts.'

Annex: List of respondents

Solicitors

Anonymous
Anonymous
Bhatt Murphy
Barrow & Cook
Blake Laphorn Linnell Solicitors
Bone and Payne
Brand Mellon
BTMK Solicitors
Burnetts Solicitors
CR Burton & Co Solicitors
Crombie Wilkinson Solicitors
Donns LLP
Edward Fail Bradshaw & Waterson
Emma Holt Solicitors
Emmersons Solicitors
Field Seymour Parkes
Fisher Meredith
Forbes
Francis Lovett
Frank Brazell & Partners
Freedman Sharman & Company
George Ide Phillips

Goldbergs Solicitors
Green & Co Solicitors
Greesman & Co Solicitors
Hallinan, Blackburn Gittings & Nott
Hamnett Osborne Tisshaw
Harris & Harris Solicitors
Hayes - Burcombe & Co Solicitors
Hopkins Solicitors
Howells Solicitors
Hughes Paddison
Huw Langley Solicitors
Jackie Philips
Jeff Brailsford Rimmer & Co
Jobling & Knape
Jordan Solicitors
Kerseys Solicitors
Kirby Simcox
Laceys Solicitors
Lansbury Worthington
Leigh Day & Co Solicitors
Leona Daniel Solicitor
Martin & Haigh
MH Legal

Moore & Blatch
Osbornes
Owen Nash & Company
P.Veitch Solicitor
Peters Langford Davies
Pickup & Jarvis
Pope & Co
Powell Forster Solicitors
Public Law Solicitors
Ratcliffe Duce & Gammer
Rawsthorns Solicitors
Rosemary Smith & Co
Rosie Bracher Solicitor
Shaw Graham Kersh
Talbot Walker LLP
Taylor Simpson & Mosley
The Community Law Partnership
Thompsons Solicitors
Thomson Snell & Passmore
Thos Boyd White Solicitors
Wannop & Fox
White Ryland
Wilks Price Houslow Solicitors
Withy King

NfPs

Action Against Medical Accidents
Advocacy in Wirral
Anonymous NFP
Benefits Advice Team (RAISE Ltd.)
Chesterfield Law Centre
Combined Hospitals CAB
Friends of the Earth
Howard League for Penal Reform
Islington Law Centre
Lancashire Family Mediation Service
Legal Action Group
North Kensington Law Centre
NYAS
Salford Citizens Advice Bureau
Shelter
St Helens District Citizens Advice Bureau
Shoreham Citizens Advice Bureau
Sutton Borough Citizens Advice Bureau
Swale Citizens Advice Bureau

Swansea Citizens Advice Bureau
Tameside Citizens Advice Bureau
The Social Welfare Law Coalition
Walsall Citizens Advice Bureau

National Family Mediation
The Bar Council
UK College of Family Mediators
Young Legal Aid Lawyers

Representative Bodies

Advice Services Alliance
Association of Child Abuse Lawyers
Citizens Advice
CLSA
ILEX
Immigration Law Practitioners Association
LAPG
Law Centres Federation
Law Society
LCCSA
Leeds ROCC
London Advice Services Alliance
Mental Health Lawyers Association

Others

Association of Women Solicitors
City of York Council Trading Standards Consumer Advice Services
Housing Law Practitioners Association
Leeds Law Society
Public Law Project
Sussex Criminal Justice Board
Tameside Community Legal Service
Tameside Metropolitan Borough Council
Videss Ltd