



Quality Relationships Delivering Quality Outcomes

The Preferred Supplier Scheme: Response to Consultation

Community
Legal Service



Criminal
Defence Service



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1. Introduction and Background

1.1 This document is the post-consultation response from the Legal Services Commission (LSC) following the consultation paper 'Quality Relationships Delivering Quality Outcomes - The Preferred Supplier Scheme: A Consultation Paper' launched on 20 March 2006 and closed on 12 June 2006. It will cover:

- the background to the consultation
- a summary of the headline responses to the consultation
- a detailed response to the specific questions raised in the consultation
- the next steps following this consultation.

1.2 The consultation paper invited comments on proposals made to establish a Preferred Supplier scheme to secure consistently higher quality services for clients, better value for taxpayers and simpler and clearer relationships with legal aid service providers.

1.3 This report summarises the headline responses, including how the consultation process has influenced the further development of the proposals consulted upon to shape the final policy. It should be read alongside the consultation summary document entitled 'Quality Relationships Delivering Quality Outcomes: The Preferred Supplier Scheme, Consultation Summary' which is available on the LSC website: www.legalservices.gov.uk. This paper also takes into account the publication of Lord Carter's final report and the outcome of the subsequent joint consultation by the LSC and Department for Constitutional Affairs (DCA) 'Legal Aid: A Sustainable Future' published in July 2006.

1.4 Further copies of this document as well as the detailed summary of the responses to the consultation can be obtained by contacting Emily Paddy at the address below:

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85 Gray's Inn Road
London
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Tel: 020 7759 0443

Email: preferred.supplier@legalservices.gov.uk

1.5 This report is also available on the LSC's website at: www.legalservices.gov.uk

2. Overview of the Consultation Responses

- 2.1 A total of 117 responses were received from 69 solicitor firms, 24 not for profit (NfP) agencies, 15 representative bodies and nine 'other'. A full list of respondents can be found in the consultation summary document entitled 'Quality Relationships Delivering Quality Outcomes: The Preferred Supplier Scheme, Consultation Summary' which is available on the LSC website: www.legalservices.gov.uk.
- 2.2 Responses varied in length from one page to 19 pages. Response rates to specific consultation questions ranged from 46 - 60%.
- 2.3 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. Further detail on the responses received can be found in the separate consultation summary document referred to above.
- 2.4 The tone of responses varied considerably: some respondents were entirely in favour of the Preferred Supplier scheme; many were positive overall but had certain reservations; a few were strongly opposed to the proposals.
- 2.5 Some 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 (published July 2006).
- 2.6 Broadly, respondents were positive about the proposed lighter-touch performance management regime, the use of peer review, the move to relationship management and greater electronic working.
- 2.7 Key concerns included the impact of the proposals on clients' access to advice, the impact on providers, the LSC's expectation of improved quality without increasing remuneration, the link to the Carter Review and a lack of detail overall.
- 2.8 As part of the consultation process the LSC held 55 solicitor events and 11 NfP events across England and Wales. These were well attended by over 50% of solicitors' firms and 70% of NfPs. We received over 800 feedback sheets from those events. These have been fed into this response to consultation. We are grateful to all those who took the time to attend an event and/or produce a written response.

3. Link to Lord Carter's Review

- 3.1 Lord Carter's Review of Legal Aid Procurement, published on 13 July 2006, sets the context for the Preferred Supplier scheme. The Preferred Supplier scheme will determine who we work with, and how, in the future. The outcome of Lord Carter's Review provides the framework for how we will procure services. 'Legal Aid Reform: the Way Ahead' was published jointly by the LSC and the DCA in November 2006 following an extensive consultation exercise on Lord Carter's proposals. This sets out how the Government and the LSC are going to deliver a new system of legal aid that will be sustainable in the long term and is available via the LSC or DCA websites: www.legalservices.gov.uk or www.dca.gov.uk.
- 3.2 Lord Carter's recommendations are about making the legal aid system more efficient and cost-effective for government and taxpayers, whilst ensuring that clients have access to good quality legal advice and representation from a diverse and sustainable provider base. Lord Carter identifies a market-based approach to procurement where work is purchased from providers who can deliver best value services to clients. Quality will be at the forefront of best value tendering and only providers that have passed the appropriate quality threshold will be asked to bid on capacity and price. Lord Carter endorses peer review and the Preferred Supplier approach as the quality threshold for his reforms¹. The LSC and the DCA accept all of these recommendations in 'Legal Aid Reform: the Way Ahead'.
- 3.3 There are four overarching needs that underpin the implementation of Preferred Supplier. These are:
- the need to improve the overall quality and value of legal services supplied
 - the need for a more constructive, genuine partnership relationship between the LSC and legal aid providers, which will enable both to develop and improve the legal aid scheme for the benefit of clients
 - the need to ensure the legal aid scheme is sustainable and demonstrates improved value for money, whilst maintaining access for clients
 - the need to work more efficiently to reduce costs and minimise bureaucracy for both the LSC and providers.
- 3.4 Lord Carter has highlighted all of the above as critical drivers for transforming the current scheme. Preferred Supplier has become a key enabler of Lord Carter's Review. That is why this response should be read alongside the outcome of consultation on Lord Carter's proposals.
- 3.5 Preferred Supplier provides a platform to deliver changes that underpin Lord Carter's recommendations. More stringent quality assurance through peer review will help consolidate the market and improve value for money. Through relationship management, Preferred Supplier supports provider organisations to manage their performance better, thus allowing them to compete in the market

¹ Paras. 43 and 78 Ch. 3 of Legal Aid: A market-based approach to reform – July 2006.

- more effectively. Preferred Suppliers will be rewarded with greater autonomy, simpler processes and lower transaction costs.
- 3.6 Preferred Supplier strongly enables the move to fixed, standard and graduated fees, as it delivers a formalised method to ensure the quality of the work undertaken under the fixed fee is maintained. New fee structures recommended by Lord Carter will reduce transaction costs for both the LSC and providers, directly reward efficiency and provide budgetary certainty and control.
- 3.7 As Preferred Supplier presents a new mode of operation at the interface between the LSC and the providers of legal services, it will enable efficiencies and therefore cost savings, through the development of e-business, simplified business processing and LSC organisational restructuring. By only intervening when necessary, the administrative burden on both the LSC and providers will be reduced.
- 3.8 Through Preferred Supplier we will move away from bureaucratic and costly processes, by investing more decision-making power in trusted providers, freeing them up to devote more time to clients and allowing the LSC to target resources more effectively. Relationship managers will work with providers to ensure that services are developed and delivered to meet client need as new service specifications and remuneration structures are implemented.

4. Key Features and Benefits – Feedback Summary & LSC Response

Quality of Advice Tools

Peer Review

- 4.1 Responses show overwhelming support for the use of peer review, with no real opposition to the standards being set at Excellence (1) or Competence Plus (2). There were a number of respondents who suggested that quality work would cost more and in the subsequent responses to the Carter consultation a clear theme emerges highlighting the tension between requiring a higher quality standard whilst at the same time moving to fixed fees and reducing overall expenditure. These issues are covered in ‘Legal Aid Reform: The Way Ahead’, which also sets out that we intend to accept a peer review rating of 3 (Threshold Competence) to qualify for entry to the first competition round (for crime). This allows providers more time to achieve the Preferred Supplier standard of a 1 or 2 rating on peer review.
- 4.2 Peer review data shows that 35% of all providers are currently providing advice and information to clients at Excellence (1) or Competence Plus (2). There is no evidence to suggest that increasing quality will result in higher costs. There is some emerging evidence to suggest that Threshold Competence (3) work can be more expensive than work at Competence Plus or above.

File Sampling

- 4.3 There were a number of respondents who queried how representative a sample of 15 files was of the quality of an entire organisation. The number of files selected for review has been verified through independent research by Professor Paul Fenn. This concluded that the file sample and selection based on the organisation as a whole, as opposed to individual provider offices, is sufficient to maintain high confidence levels about the assessed quality of those organisations.²
- 4.4 The research showed that with a stratified random selection of 15 files the confidence level that the files reflect the overall work of the provider is greater than 97.5%. This confidence level applies irrespective of the volume of legal aid work undertaken.
- 4.5 Peer reviews rated at Threshold Competence (3), Below Competence (4) or Failure in Competence (5) following the representations process will undergo another peer review thereby increasing the confidence level of the peer review result to greater than 99%. Both the Unified Contract and the General Criminal Contract will contain a provision incorporating the Independent Peer Review Process and agreeing to be bound by any rating.

² Statistical Sampling for Peer Review (Paul Fenn, University of Nottingham), the report is available upon request (peer.review@legalservices.gov.uk).

Panel Membership

- 4.6 Despite the introduction of peer review, some respondents still want to see a role for panel membership. Whilst we support any training and development that solicitors undertake including panel membership and accreditation, following extensive consultation with the profession, the LSC has adopted peer review as the definitive quality of advice assessment mechanism for legal advice provided by the organisation as a whole.
- 4.7 Panel membership is the accreditation of an individual and there can be no guarantee that the entire organisation's work would satisfy the standards of panel membership. In addition, ability or competence to provide good quality advice does not necessarily translate to the actual work done as many pressures can impact on the delivery e.g. pressures of work, poor supervision, incorrect allocation of work.
- 4.8 For clinical negligence, membership of a panel is a requirement to become a Preferred Supplier. In the categories of clinical negligence and actions against police, panel membership may be used in conjunction with other factors to provide a proxy for quality. These other factors are currently under development in consultation with external bodies and peer reviewers. In other areas we will seek to ensure that the peer review process accurately reflects the requirements of best practice. We will review future requirements for panel membership as part of the implementation of Lord Carter's proposals in each category of law affected.

Duration of Peer Review Rating

- 4.9 The Law Society would like to see the length of time a peer review result is valid extended from three years to five years to reflect firms' business planning cycles.
- 4.10 A peer review result is valid for three years provided that there are no significant changes to personnel (especially the category supervisor) or the provider's quality profile does not indicate a possible reduction in performance. There are no plans to alter this now given the scale of restructuring currently faced by the legal aid sector and the fact that the LSC currently lets contracts for three years. This may be revisited at a later date once new ways of working have had time to bed down and perceived risks are reduced.

Transfer to Law Society

- 4.11 Of the comments made regarding transfer of peer review to the Law Society there was general opposition. In particular, concerns were expressed that the transfer of peer review to the Law Society would not cover NfP or mediation organisations, as the Law Society does not regulate them.
- 4.12 The LSC supports the principle that a professional body should have ownership of the competence of its membership, but acknowledges the concerns expressed. In accordance with recommendation 5.1 of the Carter Review which has been accepted by the government and the LSC, the LSC needs to be satisfied by the arrangements put in place for quality assurance by the Law Society before effecting a handover of responsibility to ensure that the rating

system and process will remain as robust as at present. The LSC will also look to move towards achieving full recovery of the cost of peer review over time.

Improving Quality of Advice

- 4.13 Consultation responses showed support for the LSC's proposals to support practitioners in activity to improve the quality of advice.
- 4.14 The Institute of Advanced Legal Studies (IALS), in conjunction with peer reviewers, has produced quality guides which are now available on the LSC website, providing a category specific guide to the common issues identified by peer reviewers in each category of law. Crime, immigration, debt and welfare benefits are currently available. Employment will soon be added, with housing and family nearing the end of development. The booklets are designed to highlight the key issues and provide practical tips as to how these might be tackled.
- 4.15 Since the consultation, workshops have been delivered in partnership with the Law Society and Advice Services Alliance. These best practice workshops focus on improving quality and have been led by peer reviewers. The difference between Competence Plus (2) and Threshold Competence (3) is highlighted and addressed. These workshops underline the commitment and desire of the LSC to improve the quality of advice provided to the client.

Non-Solicitors as Peer Reviewers

- 4.16 Concern was raised by some NfPs regarding a perceived bar to non-solicitors becoming peer reviewers. There is no bar to non-solicitors becoming peer reviewers. The criteria require that applicants demonstrate five years' post qualification experience (PQE) or equivalent in the relevant category(ies) of law. However, we have found that it is difficult for non-solicitors to substantiate the full range of work (including certificated work) necessary to be able to peer review in a category of law.

Peer Review Process

- 4.17 Many queries or comments relating to the peer review process were based on misunderstanding of the process. The full process has been consulted on separately and is documented in 'Independent Peer Review Of Legal Advice and Work – Final Process Paper' which can be found at www.legalservices.gov.uk.

Peer Reviewer Expertise

- 4.18 Some comments were made regarding the suitability of peer reviewers to conduct reviews. All peer reviewers are practising legal aid practitioners working under a current LSC contract. All peer reviewers conduct the full range of work in the category of law that they review in (as defined by the appropriate Specialist Quality Mark [SQM] Supervisor Self Declaration Form). As a minimum peer reviewers must demonstrate:

- five years PQE or equivalent in the relevant category(ies) of law

- three years supervisory experience in the relevant category(ies) of law
- three years experience of the LSC SQM/contract work
- peer review rating of Excellence (1) or Competence Plus (2) in their own work.

The full criteria are contained in the Final Process Paper referred to above.

Peer Reviewer Panel Numbers

- 4.19 Some respondents expressed concern that there would not be enough peer reviewers on the panel to conduct the number of reviews required in the timeline stated.
- 4.20 The LSC has taken steps to ensure that the number of peer reviewers on the panel will be sufficient to meet the demands of Preferred Supplier and the Carter Review. We will keep the overall timelines under review. Recruitment is ongoing to maintain the panels and achieve our target numbers. The crime peer review panel is running at the maximum level, with family expected to achieve the same number in 2007. Our overriding priority is to maintain the consistency and robustness of the process and its ratings.

Conflict of Interest

- 4.21 Concern was raised regarding the potential of peer reviewers to exhibit anti-competitive behaviour.
- 4.22 Conflict of interest checks are carried out with both the provider and the peer reviewer prior to any review. As part of the conflict check, consideration is given as to whether the organisation being reviewed is in direct competition with the peer reviewer. A peer reviewer will not normally review any organisation within their geographic region unless both the provider and the reviewer consent. We do put forward peer reviewers in certain areas of London to complete peer reviews in other London areas. Again organisations can object if they believe there is a conflict. Further details regarding conflict of interest can be found in the Final Process Paper referred to in paragraph 4.17 above.
- 4.23 We do recognise that conflict of interest becomes more significant the smaller the number of contract holders and the more specialised the area of work. We are attempting to secure a minimum panel size to overcome this, however the amount of work contracted can be insufficient to maintain a panel of, say, ten peer reviewers. In such circumstances we will look at alternative approaches.

Peer Review and Advocacy

- 4.24 There were a number of concerns raised that peer review cannot assess advocacy. Recommendation 5.3 of the Carter Review suggests that a separate process be established to help quality assure all advocates regardless of whether they are solicitors or barristers. This recommendation has been accepted and the development of this process is underway working with experts and external bodies through a working group chaired by the Senior Presiding Judge.

Peer Review at Organisation Level

4.25 A number of respondents questioned the move from office-based peer review to organisation-based peer review. Originally, peer reviews were conducted on an office basis. This meant that where an organisation had one office, the peer review actually covered the entire organisation. However, clearly for multiple offices the peer review rating of one single office could not be translated as verification of the quality of advice of the organisation as a whole. To establish a level playing field and minimise peer review expenditure, a policy decision was taken to move from an office-based review to an organisation-based review. Peer reviews conducted after December 2005 have reviewed the work carried out across any organisation. If Excellence (1) or Competence Plus (2) has been achieved in a peer review conducted since this date, the score is valid for achieving Preferred Supplier status.

Specialist Categories of Law

4.26 We received responses from private practice and not for profit organisations specialising in public law, prison law, community care, advice to young people, actions against the police, child abuse and clinical negligence. For the purposes of this response they are treated together as 'low volume' categories, which we recognise may present different contracting issues from those in high volume categories. We are grateful for the time taken by these groups to highlight the specific implications of the proposals in their respective fields.

4.27 Respondents are broadly in favour of peer review, but identify that a level of specialisation is required to peer review these low volume categories. They question whether prison law work would need to be peer reviewed separately from other public law or police work. There may be limited volumes of cases to review in these categories. There is the potential for conflict of interest where there are few providers. Some respondents also referred to the existence of well-developed panel arrangements for assessing quality of advice in some areas, such as clinical negligence.

4.28 The rates of payment and time commitment for peer reviewers were a concern for some providers who may not be able to afford to have senior lawyers out of casework for proportions of the year.

4.29 The LSC is undertaking further work to identify these groups of cases and look at the appropriate experience and skills to peer review. The LSC is presently recruiting peer reviewers in these categories who will be central to developing standards. The number of peer reviewers and working arrangements will also be looked at carefully. The LSC can see a continuing role for existing panels in assessing the quality of advice where peer review may not be a complete method for quality assessment. This would be applicable to the categories of actions against the police and clinical negligence. We will continue to develop our strategy for these categories working closely with the relevant practitioner groups.

File Assessment (Quality)

4.30 Two-thirds of respondents were opposed to the use of file assessment, one-third supported its use. The key issues that respondents identified were that LSC

caseworkers are conducting the review and not solicitors. Some respondents viewed it as a form of peer review 'on the cheap'. Respondents were also concerned that file assessment is contract compliance auditing (CCA) or transaction criteria by another name, a process that many believe to have been discredited.

- 4.31 It is important to recognise that file assessment (quality) is a new tool designed to be able to indicate whether a provider will be likely to meet the peer review standards. A pass at file assessment is equivalent to a rating of 1, 2 or 3 on peer review. A file assessment fail equates to a score of 4 or 5 on peer review. It is not the same as peer review, nor is it another form of transaction criteria or CCA audit.
- 4.32 A major difference between file assessment and transaction criteria and contract compliance is that peer reviewers, who are actively involved in the caseworker training programme, have developed the questions. LSC senior caseworkers trained by peer reviewers will carry out file assessments. The criteria questions are objective and are answered on the basis of evidence from case files. The questions have been specifically developed for use by caseworkers and do not require specialist legal knowledge.
- 4.33 Should an organisation fail a file assessment, a peer review will be conducted. This means that file assessment is not definitive and no adverse consequences occur as a direct result of the file assessment. However, as the Legal Aid Practitioners Group correctly points out, there is a risk that organisations may be allowed through which would have been rated at Below Competence (4) on peer review. We recognise that this is a risk, however, the process has been designed to minimise the impact and we will peer review these categories in the future. The categories of law that will be file assessed are restricted to those where the total annual value of legally aided work is below £50,000 and in most cases much lower. We will also rely on other measures to reduce this risk including file assessment value for money and key performance indicators. Preferred Supplier status will not be awarded on the outcome of file assessment alone. A provider's largest category by annual value of legal aid work will be peer reviewed and required to achieve a 1 or 2 rating, even if the largest category is less than £50,000.

File Assessment (Non Quality or Value for Money)

- 4.34 Respondents expressed concerns regarding the non quality element of file assessment, particularly relating to how value for money can be assessed on individual files when we are moving into a fixed fee environment.
- 4.35 It is important to recognise that there are two different kinds of file assessment process. Separate to the quality of advice file assessment tool, file assessment non quality, now known as file assessment value for money (FAVFM), is an indicator that we have developed further since the original consultation process and now propose to use as a filter prior to peer review. Answering a series of questions, trained senior caseworkers will apply a risk rating to an organisation on how it performs against the contract, regulations and Funding Code. It is important to recognise that neither form of file assessment is a CCA audit and there is no cost extrapolation as a result of either process.

4.36 FAVFM will be used to:

- identify contract issues that would not be identified using quality assessments or from distant monitoring
- ensure that all clients receiving funding have had eligibility correctly assessed and that evidence of means is evidenced on file
- ensure that cases undertaken are both in scope and meet the sufficient benefit test
- assess whether certificated work remains within scope and the costs limits of the certificate
- assess that where providers have exercised devolved powers they have done so appropriately
- ensure that recording of matter type and end codes are accurate
- provide ongoing monitoring of compliance with the contract to identify areas for performance improvement
- provide the LSC with an additional level of assurance for the purposes of the National Audit Office and Treasury (due diligence).

Any issues raised at this stage will need to be dealt with by the provider and the relationship manager working together in accordance with the Unified Contract.

4.37 We suspect that many of the concerns expressed on consultation are attributable to the fact that this is a new and unfamiliar process for practitioners. In light of this, we intend to publish a detailed process document on the use of file assessment in early 2007. We will seek input on its content from key organisations and providers.

Quality Profiles

4.38 Consultation respondents supported the principle of quality profiles. Respondents agreed that the approach using matter type and end codes as an indicator of performance was reasonable, albeit with a need for a new coding system as current codes are viewed by many as not meaningful, fit for purpose or comprehensive.

4.39 Quality profiles enable both service providers and the LSC to monitor case performance remotely using information that is submitted by service providers at the conclusion of every case. Quality profiles are split into two distinct areas:

- **Case Outcomes:** using matter type and end codes to routinely monitor service providers' individual performance across a particular category of law over a period of time to ensure any significant changes to the types of cases undertaken or the outcome of cases is explored and understood. Unexplained changes could lead to further exploration, including peer review.

- **Quality Profiles:** a robust risk assessment tool, using a series of category specific indicators. National data has been used to establish a 'normal' range for each performance indicator. Using information that individual service providers report to the LSC at the conclusion of every case we are able to determine when an organisation appears to be outside of this national norm. Following discussions between the organisation and the relationship manager the LSC will be able to use this information to prioritise and target activity where necessary.
- 4.40 We are very aware that case outcomes can only give an accurate picture of an organisation's performance if case information provided at the end of the case is accurate and the matter type and end codes in use are fit for purpose. We share the profession's concerns regarding the appropriateness of the codes and as a result have been conducting a full review of them.
- 4.41 As part of this review the LSC has been working with experienced peer reviewers to develop a new coding system that addresses the concerns raised at consultation. We are working with practitioners to create a framework of recognisable and understandable matter types with their linked issues and a set of outcomes that truly reflect the work and the range of possibilities that can occur when the case is closed.
- 4.42 From April 2007 providers will be asked to use new codes to report the correct matter type and outcome, providing the LSC with valid data on which to make decisions. Correct reporting of this data will be monitored. Using the new correct codes, the relationship manager and service providers will be able to remotely monitor their individual performance. Any performance issues will be discussed with the provider, with a forward strategy jointly agreed.

Specialist Quality Mark (SQM)

- 4.43 There was little response to the planned continued use of the SQM. We plan to continue to use the SQM as proposed for three main purposes:
- for non-preferred suppliers until we reach the stage of only working with Preferred Suppliers
 - as a standard against which we will judge new legal aid providers if the organisation has no recognised quality assurance standard, such as LEXCEL
 - as best practice guidance for Preferred Suppliers.
- 4.44 Some consultation respondents raised concerns over the length of the SQM and the potential lack of flexibility. Moving forward the SQM will be used as best practice, but the new quality standard for Preferred Supplier is a peer review score of Excellence (1) or Competence Plus (2). Providers will be responsible for ensuring that systems are in place to deliver the equivalent of the SQM standard. If concerns are raised on a separate assessment e.g. file assessment or peer review, the relationship manager will work with the provider to ensure that best practice is in place.

- 4.45 Some of the key requirements of the SQM have been written into the Unified Contract (consultation closed 21 November 2006). See para. 11.22 of 'Legal Aid: a Sustainable Future', available at www.legalservices.gov.uk). These include file review procedures, performance monitoring and supervision and approved personnel.

Other Entry Criteria

Cost Management/Value for Money

- 4.46 As we move towards fixed fee payment regimes and ultimately competition as proposed by Lord Carter, purchase of services at a fixed agreed price at a quality level controlled by peer review and the contract specification will be our major guarantee of value for money. This guarantee will be supplemented by use of key performance indicators (KPIs) operating against the new payment structures and by file assessment (value for money) used as a precursor to entry.
- 4.47 The KPIs will be developed along with new end codes and payment systems. In civil work KPIs will compare the inputs per case with the standard fees paid. In crime, KPIs are likely to focus on successful and efficient performance in the police stations and courts. We will develop new KPIs with input from practitioners and professional bodies to ensure that they are meaningful and focus on the right areas. Historic performance at contract compliance audit will not be included as an initial test of value for money, in recognition of concerns expressed on consultation about the validity of this method.
- 4.48 Concern has been raised about how to measure value for money in family cases where there are mixed elements, such as domestic violence, children and finance issues. We will address this issue in the publication of the final Carter fee schemes.

Provider History

- 4.49 Adverse Consumer Complaints Service or Solicitors Disciplinary Tribunal findings against a provider will need to be investigated before a decision is made on provider suitability. As procurer of legal advice, the LSC has a responsibility to protect the clients served. Where there is an adverse finding, each case will be looked at on its particular circumstances by the relationship manager in discussion with the provider. This provides a more tailored approach that will be supported by guidance. We will also look at a provider's history of performance against the SQM, particularly focusing on any outstanding critical quality concerns.

Lower Volume Categories

- 4.50 Some responses note that providers in lower volume categories tend to operate solely in that particular 'niche' of work, which may not be delivered by mainstream providers. Questions were raised as to how the current model would fit with a move to fewer, larger providers.

- 4.51 The LSC recognises that these are important categories of law and will be developing its Community Legal Service Strategy to clarify category boundaries, provide focus on the services we wish to fund and outline how we will contract for services to ensure access for clients. Further consultation will follow on this during 2007.
- 4.52 The LSC will work with specialist interest groups to develop the overall form of provision, quality assurance and controls for low volume categories. In some categories there are already representative groups with whom the LSC can work. In other categories the LSC will work with leading providers to set up the groups.

NfP Performance Targets

- 4.53 The LSC's expectations are that, subject to the transitional arrangements set out in 'Legal Aid Reform: the Way Ahead', NfP agencies will operate under the same terms as solicitors under the Unified Contract and provide equal value for money.

Category Specific Criteria

- 4.54 These attracted little comment on consultation.
- 4.55 The percentage of cases delivering substantive benefit to the client will become a key performance indicator on a category specific basis. Under the Unified Contract a percentage of 40% is proposed as a key performance indicator for civil categories. This is the same rate that has already been proposed for immigration and asylum providers and is based on the existing minimum Funding Code criteria. For the avoidance of doubt, this indicator will not apply in those cases where there is no merits test (currently Special Children Act and some mental health cases).
- 4.56 In the future we are likely to move away from the same rate for all civil categories towards rates which take into account specific category specific guidance, for example we may require a higher rate or monetary value for damages cases. We will also consider higher rates for Preferred Suppliers as further reassurance in terms of devolved decision-making. In doing so, we will look at each category in turn against the relevant Funding Code criteria to deter 'cherry picking' of cases.
- 4.57 For family we will also require compliance with the Law Society Best Practice Protocol, as well as providing clients with an integrated service that focuses on the provision of alternative dispute resolution services.
- 4.58 For crime we have decided not to proceed with any category specific requirements for now. This is because the Criminal Litigation Accreditation Scheme (CLAS) Supervisor requirement could exclude niche providers who do not do police station and magistrates' work and the future of the CLAS scheme is unclear in the light of Lord Carter's recommendations. The quality assurance requirements will be reviewed in the light of the roll out of Lord Carter's crime recommendations, but will not form part of Preferred Supplier.

Bill Assessment

4.59 Concerns were raised around using a bill assessment rate as part of the entry criteria. Some respondents suggested that bill assessment rates are subject to fluctuation, particularly as a result of applications for mark up. In light of these concerns, we agree that the ongoing monitoring of bill assessment rates should be used as a forward-looking performance indicator only. Under the Unified Contract it is proposed that bill assessment rates are measured as a key performance indicator with a benchmark percentage assessment rate for crime and civil. In time, we would anticipate moving to a higher standard for Preferred Suppliers.

Financial Assessment

4.60 This aspect of the consultation caused a number of concerns for respondents and we have revised the process significantly in light of these concerns.

4.61 **Information Required/Purpose:** Many respondents felt the financial assessment requirements were intrusive and unnecessary. Some felt that the financial assessment requirements alone were enough to deter organisations from applying.

4.62 The LSC remains clear that a form of financial assessment is a key part of the Preferred Supplier relationship. However, we believe that we can move away from using the process as part of the upfront entry criteria. The purpose of the assessment is twofold:

- To give real value to a Preferred Supplier, the relationship manager needs to understand the provider's finances. The financial assessment is the relationship manager's introduction to that understanding.
- The LSC needs to be confident of the financial stability of the providers we procure services from. As we move towards competition the LSC must be confident that successful providers have the financial stability to deliver the services the LSC wants to buy.

4.63 Having considered carefully the comments made on the financial assessment proposals, we have revisited both the level of information required and the way in which the assessment itself fits in with the entry process.

4.64 For most providers we anticipate that a lower level of disclosure than proposed in the consultation will be acceptable. The initial assessment will be carried out when a relationship manager is assigned to a provider. It will comprise a questionnaire completed by the provider giving information on staff, partners and other key financial information, supported by the provider's most recent set of audited accounts, which is the only financial documentation that we will require at that stage. The information will be used to found the Preferred Supplier open book relationship, rather than as an entry criterion.

4.65 **Staff and Partners:** The relationship manager needs to understand the way in which the organisation operates and to be able to put in context the importance of its legally aided income stream. With information on number of equity partners, fee earners, support and administrative staff, the relationship manager

- can begin to understand the gearing of fee earners to support staff and of qualified to non-qualified fee earners.
- 4.66 **Key Financial Information:** This information will be available from the most recent set of accounts submitted to support the questionnaire. The provider will be asked to complete this part of the questionnaire as experience shows that numerous accounting protocols lead to variance in the manner in which key information is represented and positioned in different sets of accounts.
- 4.67 It is not envisaged that completion of the questionnaire will be onerous or disproportionately time consuming. It will be significantly less intrusive than the original proposal for disclosure.
- 4.68 The majority of organisations will be able to demonstrate stability on the basis of the initial assessment outlined. Those that are unable to demonstrate stability at the initial assessment will have the opportunity to provide more in depth financial information.
- 4.69 A failure to demonstrate stability would not of itself be fatal to entry to the Preferred Supplier scheme (although it could be in any subsequent best value tender process). The relationship manager will, however, properly take into account knowledge of stability or otherwise when making contract management decisions.
- 4.70 This revised financial assessment process will be no more intrusive than processes used by many organisations procuring services at this level and value. The LSC does not believe that viable organisations of the quality and standards required will be deterred by these requirements, which are likely to be written into any future tender process.
- 4.71 **Confidentiality:** Respondents questioned how confidentiality would be assured as potential competitors' accounts would be viewed by the same relationship manager. The LSC handles large volumes of confidential information. Relationship managers will be highly trained competent professionals who will understand the sensitivity of the information they handle and will respect the individual interests of the organisations within their portfolio. All relationship managers will be bound by the LSC Staff Code of Conduct which covers confidentiality.
- 4.72 **NfPs:** Concerns were raised as to how financial assessment will apply to the NfP sector. Fundamentally our requirement that we want to deal with financially stable organisations applies to both NfPs and private sector alike. The proposed simplified assessment will in many areas be equally relevant to both solicitor providers and NfPs. The LSC recognises that areas of risk identified in an analysis of a solicitor provider (for example low or no profitability) would not be appropriate for the NfP sector. Conversely, risk areas not applicable to the solicitor sector will need to be considered for the NfPs – for example, reliability of differing income streams. A tailored version of the financial assessment process will be applied to the NfPs which will recognise the differing financial structures. We will work with the NfP sector to develop the final model.

Measuring Capacity

- 4.73 Capacity is likely to be measured based on historical performance combined with assessment of future (financial) capacity for growth. We do not now anticipate using this measure to determine Preferred Supplier status, although as with financial assessment it may become a more formal measure as part of any future tender process.

Contracting with Organisations

- 4.74 Both the LSC and consultation respondents agree that contracting with organisations rather than offices will reduce bureaucracy and increase efficiency. The new Unified Contract is aimed at this level so that as of April 2007 we aim to be solely contracting with civil and NfP providers at an organisational level, with crime providers to follow from April 2008.

Relationship Management

- 4.75 Although widely supported by providers as a key benefit, the relationship manager role did raise some areas of concern.

Portfolio Size

- 4.76 Concerns were raised that the portfolio size for each relationship manager could be up to 35 providers, which is seen to be too large.
- 4.77 Relationship managers will generally manage a portfolio no larger than 25 Preferred Supplier providers. Working more closely with Preferred Suppliers does require a greater time commitment from each relationship manager. This portfolio size reflects that commitment. The size of a relationship manager's portfolio will be determined by the size of each provider, the number of categories held, together with an assessment of the risk the provider represents. Relationship managers will be supported by skilled business analysts.

Seniority, Training and Specialist Knowledge

- 4.78 Some responses identified a need for the relationship manager to be of sufficient calibre and influence at the LSC to get things done. The relationship manager role marks a change in emphasis, not only between the relationship manager and provider, but also between the LSC and providers. Relationship managers will be selected and trained against a high-level base standard which will equip them with the skills and influence to make and manage change both with providers and within the LSC.
- 4.79 This broad base allows for specialisms that can develop over time and through the new relationship with his or her providers. This new role is recognised within the LSC as key to the future of how we work with our provider base. This coupled with the number of providers in each portfolio will allow the relationship manager to 'get things done'.

Continuity

4.80 Continuity was identified by some as key to the effectiveness of a new long-term relationship. The importance of this issue is recognised by the LSC. All relationship managers will be trained to a high standard to help develop and build long-term relationships. When allocating relationship managers the LSC will have regard to continuity to ensure that the provider and relationship manager have the time to develop and maintain their business relationship. Whilst the LSC will seek to actively support this approach, we cannot always guarantee it will happen due to factors such as career progression, geographical location and the need to rotate relationship managers from time to time.

Confidentiality

4.81 Confidentiality will form part of the relationship manager training programme. Attempts will be made to avoid potential conflicts of interest, but if encountered, relationship managers will be equipped with the skills to manage the situation and in any event are bound by the LSC Staff Code of Conduct.

No Benefit

4.82 A minority of respondents saw little benefit in the relationship manager role and considered that it potentially increased bureaucracy. This is countered by the feedback from providers taking part in the Preferred Supplier pilot who all highlighted the practical experience of having a relationship manager as a positive.

4.83 Pilot providers identified understanding the LSC's long-term strategy and the need for open communication as the key to productive future relationships between themselves and the LSC. Relationship managers are at the heart of this goal.

- 80% of pilot providers indicated a better or significantly better relationship with better communication as a result of a relationship manager being in place
- 72% of pilot providers found that relationship managers provided a positive impact on value for money and the quality of advice given to the client
- 60% of pilot providers were helped to identify opportunities to expand and develop with legal aid work.

4.84 Further results from the Preferred Supplier pilot can be found in the 'Report Of Evaluation Findings' at www.legalservices.gov.uk.

Devolved Powers

4.85 The proposals were welcomed. Generally respondents wanted more devolved powers with less scrutiny and sanctions. However, few addressed the issue of how best to balance greater devolved decision-making against maintaining fund control. Some of the professional bodies identified areas where devolved powers could be expanded and we will look at these.

- 4.86 Many responses raised concerns about the application of sanctions for inappropriate use of devolved powers. Some suggested that providers should have the opportunity to refer marginal decisions to the LSC for agreement. We are not convinced of the benefits of this. Part of the ethos of Preferred Supplier is to encourage providers to take responsibility for their own performance, including any devolved decision-making.
- 4.87 On a different point, some respondents proposed that the delegation of powers should be determined by the performance of individual providers rather than the category of law. The LSC can see the potential benefits of this approach. The LSC will look at using the contract KPIs and FAVFM (which directly assesses the exercise of devolved powers) as key indicators and when a provider obtains a green rating for both that will trigger the move to a risk based approach enabling high performing providers to be given progressive implementation of devolved powers and a simplified business process regime. We anticipate that this change in approach should enable us to roll out devolved powers more quickly.
- 4.88 For those decisions remaining with the LSC, we envisage developing the model of employing specialist lawyers and caseworkers within the LSC to determine applications for funding. The LSC now has a number of national specialist teams who operate in this way (National Immigration Team, Mental Health Team, Special Cases Unit and Complex Crime Unit). This approach has proved successful in controlling the fund, whilst funding novel and complex cases. These teams will be able to work directly with specialist providers to ensure a common view of the law and practical operation of the Funding Code. The LSC sees itself as having a long term role in deciding which 'cutting edge' public interest cases to fund within the overall CLS Strategy.
- 4.89 The precise scope of the devolved powers that will be available will be confirmed once the way forward on the new fee regimes is confirmed. At this stage we anticipate focusing devolved decision making on the two highest volume areas for civil applications – family and housing. Decisions on the introduction of the new level of Family Help will impact directly on family devolved powers as a greater level of devolved decision-making forms an inherent part of the scheme proposed as part of the consultation on Lord Carter's proposals.

Improved LSC Decision Making

- 4.90 The proposed moves to improve decision making within the LSC were widely welcomed, many identifying this as key to the future working relationship.
- 4.91 Dedicated business process centres will pool expert resource, facilitating more consistent decision-making processes, faster turnaround of civil legal aid applications and amendments and enhanced customer service for Preferred Suppliers. In time, the business centres will manage all processing work for Preferred Suppliers.

Simplified Billing & Claiming

- 4.92 Simplified billing and claiming is highlighted as a key benefit of the Preferred Supplier scheme by consultation responders. As a part of the LSC's objectives to

reduce the administrative burden and associated transaction costs, simplifying billing and claiming remains high on our agenda.

- 4.93 A fundamental review is underway of all of the current claiming processes operated by the LSC. This will result in an e-business based approach which will both simplify and speed up the claiming process. We anticipate that we will roll out this process to Preferred Suppliers first. Further details will be published in February 2007.

Simplified Rates

- 4.94 The joint LSC/DCA consultation paper 'Legal Aid: a Sustainable Future' set out a series of proposals to introduce fixed or graduated fees across a wide range of legal aid work. These proposals reflected Lord Carter's recommendations and will simplify the costing and claiming process significantly for those cases covered by the new fee regimes, thereby producing administrative savings for both providers and the LSC. The move to fixed and graduated fee systems has been endorsed by both the DCA and the LSC in 'Legal Aid Reform: the Way Ahead'. Some changes have been made to both the nature of the schemes proposed and the timeframe for implementation following consultation.
- 4.95 The need for levels of service to be simplified, as well as rates, has been raised as an issue and we will consider carefully the responses to Lord Carter's fee proposals and will endeavour to take into account concerns raised in finalising the fee schemes.

Monitoring Provider Performance

- 4.96 **Key Performance Indicators** will be used to monitor providers' performance against targets detailed in the Unified Contract. This will be an unobtrusive management approach, using data collected throughout the life of the contract, monitoring trends and variances. Relationship managers will communicate any positive findings or concerns on an ongoing basis, resulting in an agreed forward-looking strategy. Providers will be able to access current scores and trends using e-business.
- 4.97 **File Assessment Value for Money** will be used to assess providers' performance against the contract. A red, amber or green (RAG) rating will be applied to a provider on the basis of the assessment. The LSC will work with a provider to address any issues highlighted.
- 4.98 **Peer Review** results are valid for three years, but the LSC reserves the right to peer review a provider again within this time if triggered by a change in fee earner(s)/supervisor(s) or to address concerns raised as part of ongoing performance management. The responsibility for management against the contract remains with each provider and is expressly written into the Unified Contract.
- 4.99 **Quality Profiles** will be used by the relationship manager and provider as part of ongoing remote monitoring once the revised codes are in place (April 2007).

E-Business

4.100 Overall, respondents were very positive about the increased use of electronic working. However, some respondents raised concerns about the following:

Cost of IT Investment

4.101 There are no plans for the LSC to pay for systems and we are unable to offer grants to providers. However, providers will not be asked to invest in new electronic case management systems (ECMS) if they are already using one - the requirement will be to provide data in a format specified by the LSC, which may require amendments to existing ECMS, for which there may be a cost.

Design of Case Management Systems

4.102 The LSC will work with software providers to ensure there is sufficient lead time for implementing potential amendments to case management systems. It is expected that we will work with numerous software suppliers, not exclusively with one, including the NfP sector. The LSC recognises the need to be clear from the outset about the data we require and the specification of the systems that we need providers to use.

The Benefits of E-Business

4.103 The LSC expects there to be benefits for all parties, primarily from reduced paper-based submissions, as data will be transferred electronically where possible from the providers' ECMS to the LSC. Providers and clients will benefit from a combination of devolved powers and quicker decision-making when referral to LSC is necessary. This will be facilitated by e-business.

Client/Case Data Confidentiality

4.104 The LSC recognises that confidentiality is an important issue which will be central to the design of systems and data transfer mechanism.

Practicality of Working Electronically

4.105 The LSC will work with the profession to move towards electronic working where possible. It is recognised that certain areas lend themselves more readily to electronic working and others e.g. police station work, will need to be considered over the longer term.

Timeline

4.106 The LSC plans to move towards electronic working as quickly as possible. The first stage is to request an email address for all providers as the main point of contact for news and contract issues. We will be in a position to provide more details of our vision for e-business in February 2007, together with a broad outline of what will be expected from providers' case management systems. We will work closely with both providers and software suppliers over the coming months to develop these proposals in more detail to ensure that the solution developed is beneficial to providers as well as the LSC. By October 2007 we

hope to be in a position to communicate our high-level requirements for case management systems and to set a target date for when electronic working will become mandatory. After October 2007 we will continue to work with providers and software suppliers to develop the detail and will publish iterative versions of the proposals as the detail is developed.

- 4.107 Integral to the development of e-business is the simplification of the LSC's business processes and the way we transact with our providers. The two will be developed hand in hand and we will make an announcement about our timetable for designing simplified processes, together with our strategy for e-business in February 2007.

5. Roll Out of the Preferred Supplier Scheme

Phased Implementation

5.1 A separate announcement will be made on the precise phasing of Preferred Supplier implementation. The roll out of Preferred Supplier will need to reflect and enable the overall timetable for implementation of Lord Carter's proposals. Peer review of very high cost criminal case providers began in September 2006 and will run until spring 2007. Before then we will make further announcements about how the next stages of the quality assessment process will be sequenced.

Preferred Supplier Entry Process

5.2 Originally, we proposed that qualification for Preferred Supplier would be by way of an assessment based on three main tests:

- historical performance criteria, for example, against the contract and SQM
- a financial assessment
- quality of advice which required a peer review score of 1 or 2 in key categories (or a file assessment quality pass for categories under £50,000) plus satisfactory bill assessment rates.

5.3 We have reviewed this proposal in light of both the consultation responses and other developments, including Lord Carter's review and consultation on the Unified Contract. In light of this we have designed a revised process, using two performance measures as an initial filter, namely key performance indicators (KPIs) under the new Unified Contract and file assessment value for money (FAVFM). Peer review will still be used but later in the process to confirm Preferred Supplier status.

5.4 The benefits of this revised approach are summarised below:

- it provides a clear link to the Unified Contract, identifies good performance and encourages high performing organisations to move into the Preferred Supplier scheme first
- it allows high performing organisations to gain the benefits of Preferred Supplier status at an earlier point, bringing forward the transaction savings associated with increased e-business, simplified business processes and devolved powers
- it provides a level playing field based on objective measures of performance and does not exclude any provider arbitrarily on the basis of size
- it provides a clear map of how an organisation will be working with the LSC in the future and allows lead-in time in preparation for the future method of working, which will include fully electronic processes, an electronic case management system and devolved powers

- it allocates a relationship manager to work with the provider to help prepare for the quality assessment, electronic working etc.
 - it allows time for providers to prepare for the quality assessment process
 - a simplified financial assessment will be used to enable relationship management, but will no longer form part of the entry criteria for Preferred Supplier.
- 5.5 The revised process is described in further detail below and summarised in the diagrams that follow. We believe that this meets many of the concerns expressed on consultation, particularly those highlighting the impact on small providers and the need to give practitioners sufficient time and support to achieve Preferred Supplier status. It should also enable the LSC to bring forward some of the benefits of Preferred Supplier status particularly relationship management, electronic working and devolved powers for those providers who demonstrate good performance.

Contract Award

- 5.6 In April 2007 the Unified Contract will be awarded to all civil legal aid providers with no outstanding contract notice. A conditional contract will be awarded to providers that have an outstanding contract notice. These conditional contract holders will be managed so that either their performance is improved or the contracts are withdrawn by a fixed date.

First Stage Assessment

- 5.7 Once a provider has been awarded a Unified Contract, the organisation will be eligible to begin assessment for Preferred Supplier status. Although crime providers will not move to the Unified Contract until April 2008, we will endeavour to treat them in the same way as civil in terms of eligibility for Preferred Supplier status. This may include allowing crime providers to sign up to the Unified Contract on a voluntary basis prior to April 2008 if they wish to become a Preferred Supplier. It may also be necessary to undertake elements of the revised entry process in a different order for providers that hold criminal contracts as the timeline will be driven by best value competition, but so far as possible we will aim to roll out a similar process for crime and civil and will seek to adopt a 'whole provider' approach.
- 5.8 Every provider will be monitored against the contract KPIs, resulting in a red/amber/green (RAG) status. Early feedback will be advisory only to give time for practitioners to become familiar with the KPIs. Those with initial amber or red ratings for the contract KPIs will be given an opportunity to improve.
- 5.9 All providers will be given details of the requirements for the future method of working i.e. fully electronic processes, electronic case management system, devolved powers, devolved client administration and simplified working. Providers will be advised that they will be expected to be ready to work in this way once they have passed their peer review and become a Preferred Supplier.

- 5.10 Organisations will be required to submit a plan to the LSC showing when they will be ready to implement the new mode of operation, including their electronic case management system.

Second Stage Assessment

- 5.11 Providers that have a RAG status of green against their KPIs for an agreed period of time and can produce a suitable future readiness plan will undergo file assessment value for money, the result of which will be a separate file assessment RAG status of red/amber/green.
- 5.12 Providers that achieve a RAG status of green against both their KPIs and FAVFM, and are regularly using the LSC's e-business services, will be entitled to additional benefits and to move forward to the next stage of the process. Those on amber will be asked to produce an action plan to improve and those on red are at risk of a contract notice.
- 5.13 The provider's contract will be amended to reflect Preferred Supplier KPIs, which will be set at a higher level.

Preparation Stage

- 5.14 The preparation stage will commence as soon as the provider scores a green rating against the KPIs and FAVFM. Providers will be assigned a relationship manager who will help them through the change process. The organisation will be allocated a peer review date up to 12 months away.
- 5.15 At this time, providers will also be given a level of simplified billing and reporting and limited devolved powers. They will be eligible for any additional work that results from poorer performing providers exiting the market.
- 5.16 Providers will be expected to begin the process of procuring (if necessary) their IT system along with the development and implementation of their new business processes so these can be operational at the end of the 12 month period.
- 5.17 Providers will be expected to maintain a green RAG rating for the KPIs throughout the preparation stage. Providers who do not maintain a green RAG rating or show no progress in developing their systems will not be able to progress to the next stage.

Quality Assessment Stage

- 5.18 Providers that maintain a green RAG rating throughout the preparation stage and can demonstrate they have their new systems in place will be eligible for peer review or file assessment (quality) for each category of law depending on the annual value of legal aid work undertaken in each category. We intend to proceed as proposed on consultation i.e. focus peer review resource on major categories where the total value of legal aid work exceeded £50,000 in the previous year and use file assessment (quality) for categories valued at £50,000 or under. If no category has a total value of legal aid work of £50,000 or greater, the largest category by value will be peer reviewed.

5.19 Providers will be eligible for one free attempt per civil category of law to secure a peer review 1 or 2 score. Providers who do not achieve that level may make representations on peer review and will be peer reviewed (at the LSC's expense) if they fail file assessment. The LSC will not fund a second civil peer review as the provider will have been given sufficient time to improve their quality prior to the first review, although it will be open to the provider to do so at their own expense. The process for crime may differ according to the timescales that are agreed for implementation of best value competition. If the timescales do not allow sufficient time to enable providers to review and improve the quality of their advice where necessary, the LSC will generally meet the cost of a second peer review. This reflects the approach that we have adopted to the peer review process for very high cost criminal cases.

Preferred Supplier Status awarded

5.20 All providers that achieve a peer review rating at level 1 or 2 or a file assessment pass in all their categories will be awarded Preferred Supplier status.

5.21 The award of Preferred Supplier status will trigger the full range of devolved powers, devolved client administration, simplified working, improved customer service from the LSC and faster turnaround on those civil applications and amendments that still need to be referred to the LSC.

5.22 The provider will be eligible to enter any future best value competition process although the award of future contracts would be subject to the outcome of any bid round.

5.23 The provider's performance against the KPIs will continue to be monitored, as will their quality profiles and any issues will be raised and discussed with the relationship manager as part of the ongoing contract and relationship management process.

5.24 The new model Preferred Supplier entry process is summarised in the process diagram over the page.

Preferred Supplier Consultation Response

Diagram 1: First Stage and Preparation Stage. It may be necessary to adopt a modified process for providers that hold criminal contracts in order to meet Carter timescales:

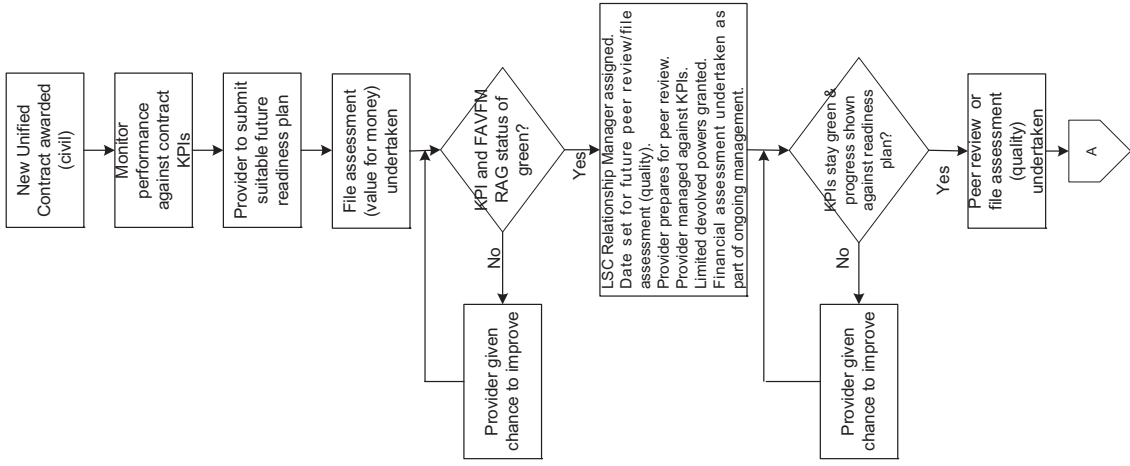
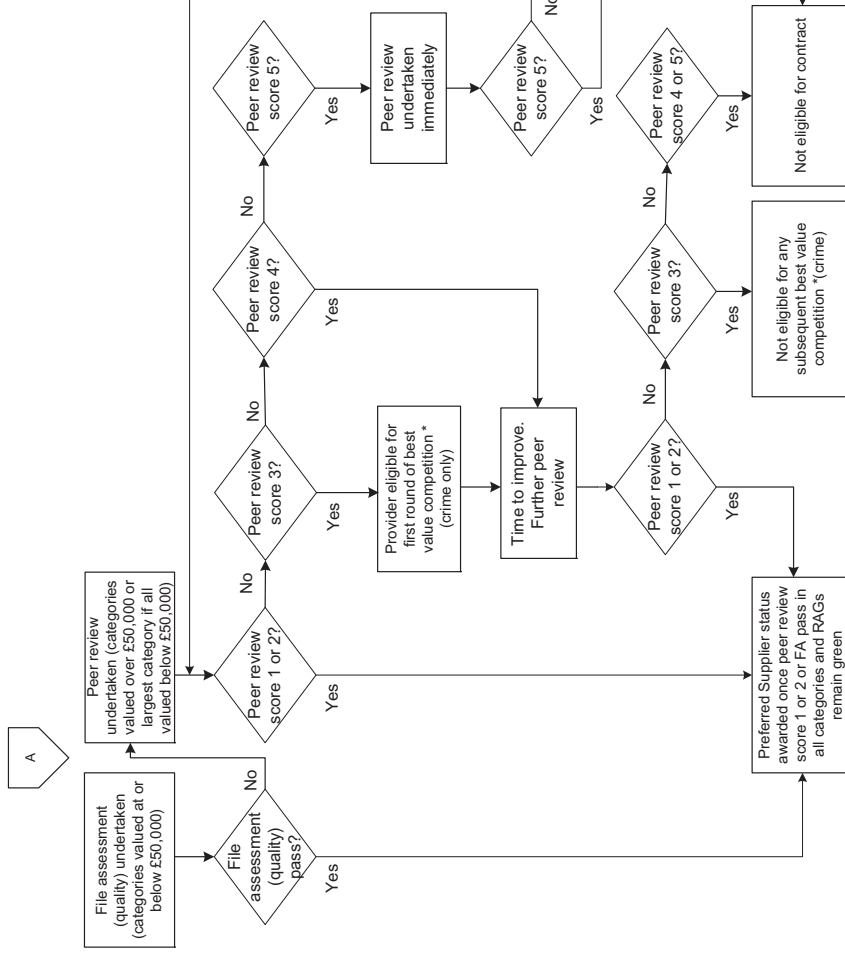


Diagram 2: Quality Assessment Stage:



* If best value competition is launched prior to completion of the Preferred Supplier application process.

Link to Contracting Strategy and Next Steps

- 5.25 A detailed timetable will be published in early 2007 setting out how Preferred Supplier fits with the key milestones for the civil and criminal schemes set out in Annex B of 'Legal Aid Reform: the Way Ahead'.
- 5.26 All civil legal aid services are likely to be competed in some form from April 2009 over a two to three year period. Criminal legal aid services are likely to be competed sooner in some areas. Preferred Supplier will ensure that the services we buy will be of good quality. Certain services will be piloted, such as the first wave of Community Legal Advice Centres (CLACs) and Networks (CLANs). We will apply flexible rules in these cases which will be set out in the relevant best value competition documentation.
- 5.27 Providers tendering for first wave CLAC and CLAN contracts will not be required to gain full Preferred Supplier status prior to their application, although peer review will form part of the selection process. However, successful providers will, as part of their contract terms, be required to gain Preferred Supplier status within a set timeframe. First wave CLAC/N contractors will be required to receive a rating of 2 on peer review in all categories of law delivered during the early stages of holding a contract.
- 5.28 Once the LSC is only purchasing from Preferred Suppliers, any prospective contractor will be expected to meet the Preferred Supplier standard in advance of applying for a contract. In future best value tendering processes for both crime and civil work, only Preferred Suppliers will be entitled to a contract award, although Preferred Supplier status in itself will not be a guarantee of a contract.
- 5.29 The roll out of the quality assessment process will flex to meet the needs of each best value competition and the overall timetable. For civil we will be consulting in early 2007 on new methods of commissioning services for mental health and asylum. Our family strategy will be published in spring 2007 and we will consult on our future strategy for purchasing low volume categories in the first half of 2007. We will build the move to a Preferred Supplier approach into each of these areas.
- 5.30 For crime, as we now intend to move to best value competition in certain areas in October 2008, which is earlier than envisaged by Lord Carter, we will accept a peer review rating of 3 (Threshold Competence) to qualify for entry to the first competition round. This recognises the fact that not all providers will be able to achieve the Preferred Supplier standard of a peer review rating at 1 or 2 in the time available. In subsequent competition rounds we will require providers to meet the Preferred Supplier standard to be eligible to compete. We believe that this approach gives providers sufficient time to achieve the Preferred Supplier quality standard.

Key Milestones

Timeline/event	Civil contract providers	Crime contract providers
Early 2007		<ul style="list-style-type: none"> • Further announcement on best value competition roll out areas
	<ul style="list-style-type: none"> • Preferred Supplier final scheme and timetable published 	
Spring/Summer 07	<ul style="list-style-type: none"> • Unified Contract introduced (April 2007) • KPI monitoring commences 	<ul style="list-style-type: none"> • Peer reviews begin in line with best value competition roll out • Peer review 3 result means eligible to bid for best value competition contract • Peer review 1 or 2 is a precursor for Preferred Supplier status
Throughout 07/08	<ul style="list-style-type: none"> • KPIs become green • FAVFM undertaken • Peer review if KPIs and FAVFM are rated green 	<ul style="list-style-type: none"> • Where peer review 1 or 2 is achieved, FAVFM undertaken • KPI monitoring commences (April 2008)
October 2008		<ul style="list-style-type: none"> • Best Value Contract awarded to firms with peer review 1, 2 or 3. Some will be Preferred Suppliers that have bid successfully; some may not yet have achieved that status
Subsequent best value competition contracts	<ul style="list-style-type: none"> • Best Value Contract awarded only to Preferred Suppliers 	

6. Impact Assessment

- 6.1 A single impact assessment has been conducted against both Preferred Supplier and the outcome of the joint LSC and DCA consultation on Lord Carter's proposals. This is available via the LSC and DCA websites at www.legalservices.gov.uk or www.dca.gov.uk.

Appendix A

Government Code of Practice Criteria

The LSC abides by the Government Code of Practice on Consultation, which came into effect on 1 April 2004.

The six consultation criteria in the Code are:

- I. Consult widely throughout the process, allowing a minimum of 12 weeks consultation at least once during the development of the policy
- II. Be clear about who may be affected, what questions are being asked, and the timescale for responses
- III. Ensure that your consultation is clear, concise and widely accessible
- IV. Give feedback regarding the responses received and how the consultation process influenced the policy
- V. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator
- VI. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the government code is available from the Cabinet Office website at: <http://www.cabinet-office.gov.uk/regulation/consultation/code>.

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