

The Mediation Quality Mark Standard

The Advice Services Alliance's response to the
Legal Services Commission's consultation paper

Table of Contents

	Preface	1
1	Introduction	2
2	General Issues	3
3	Specific Issues	4
	Section A: Access to Service	4
	Section B: Seamless Service	4
	Section C: Running the organisation	4
	Section D: People Management	4
	Section E: Running the Service	5
	Section F: Meeting Clients' Needs.....	5
	Appendix	7
	Responses To Consultation Questions	9

Preface

- i) The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the UK. Its aims are to: -
- champion the development of high quality information, advice and legal services;
 - ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
 - encourage co-operation between organisations providing such services;
 - provide a forum for the discussion of issues of common interest or concern to advice organisations.
- ii) Full membership of ASA is open to national networks of independent advice services in the UK. Current full members are: -
- Citizens Advice Scotland (CAS);
 - DIAL UK (the disability information and advice line service);
 - Federation of Information and Advice Centres (FIAC);
 - Law Centres Federation (LCF);
 - National Association of Citizens Advice Bureaux (NACAB);
 - Scottish Association of Law Centres (SALC);
 - Shelter;
 - Shelter Cymru;
 - Youth Access.
- iii) Other organisations and individuals concerned with the provision of advice and legal services are affiliated to ASA as associate or subscribing members.
- iv) ASA undertakes policy and development work in agreed areas on behalf of its members. Our current priorities for such work are:
- Alternative dispute resolution;
 - The civil justice system as it impacts on advice agencies and their clients;
 - Legal services, including co-ordinating advice network involvement in legal aid; contracting;
 - Quality and standards of advice.

1 Introduction

- 1.1 ASA is pleased to have an opportunity to respond to the Legal Services Commission Consultation Paper on the Mediation Quality Mark. Our response has been drawn up in consultation with ASA network members and some individual mediation suppliers within those networks, and should be considered in conjunction with the individual responses submitted by those networks. This response seeks where possible to represent the consensus of opinion amongst network members. However, comments on specific proposals should not be taken in every case as necessarily representing the views of all networks, or of individual mediation providers within the networks.
- 1.2 ASA itself does not have the resources to comment on all the areas covered, or to provide detailed answers to many of the questions asked in the Consultation paper. Our response therefore focuses first on issues of general principle, and subsequently on specific issues which we feel will be of importance to network members.
- 1.3 ASA has been represented on the Commission's steering group overseeing the development of the Quality Mark in general, and on the working group which produced the consultation paper on the Mediation Quality Mark standard (MQM). We appreciate having had the opportunity of contributing to the development of the MQM. We have made comments on the draft distributed earlier this year (May 31st 2001) and some of our points and concerns have been addressed in this consultation paper. However some concerns have not yet been satisfactorily addressed, and these have been reiterated in this response paper.
- 1.4 A number of the issues of general principle, and some of the specific points, which are discussed below are also covered in the ASA response to the Legal Services Commission's consultation paper on the Specialist Quality Mark Standard (September 2001). This response should therefore be read in conjunction with that paper. For ease of reference, a number of points from the Specialist Quality Mark response which are common to both are reproduced in an appendix to this paper, and referred to in the text.

2 General Issues

- 2.1 ASA has a general concern about the role of the auditor in the auditing process. In particular, there is a concern about the level of discretion allowed to individual auditors in areas that are of great significance to the individual organisation concerned.
- For example, in 4.8.3 one of the three recommendations possible following an audit is: “Fail: (one or more Critical Quality Concern and corrective action is not possible)”. The continuation or termination of the Quality Mark for the provider is dependent on the assessment of the auditor as to whether or not corrective action is possible. This allows a worryingly wide discretion for the auditor.
 - Another example is at Quality Standard B2.1. “If, having considered the CLSP protocol, you decide not to adopt or incorporate it in any way, you will need to justify this to the auditor...” This again allows a wide discretion to the auditor as to whether or not to accept the arguments put forward.
 - Clear training and guidelines for auditors should be provided on making these judgements, and some form of national moderation of auditor practice should be undertaken. See Appendix for the ASA response to the Specialist Quality Mark in this area.
- 2.2 It is difficult to comment on some of the criteria in the Quality mark without having seen the workbook containing guidance on the requirements. We understand that this will not be available until the final version of the Mediation Quality Mark Standard is published at the end of November. For this reason, it is not possible for ASA to comment on some of the specific requirements of the Quality Mark Standard without these further guidelines being available.

3 Specific Issues

Section A: Access to Service

- 3.1 A1.1 The term “business plan” should be replaced by “**service** plan”. A business plan is a strategic plan for an organisation as a whole, and may cover activities other than the mediation service included in the Mediation Quality Mark. The aim of requirement A1 is to ensure that the quality marked mediation service is adequately planned and monitored, and using the term “service plan” would better reflect this aim. See *Appendix for the ASA response to the Specialist Quality Mark in this area.*
- 3.2 A3.1 ASA does not agree with the requirement set out in the definitions relating to A3.1 that organisations must not discriminate on grounds of creed or political beliefs in the provision of services. We believe that the areas to be addressed in a non-discrimination policy as set out in the definitions relating to A3.1 should be limited to race, sex and disability, ie. those areas presently covered by anti-discrimination laws. This also applies to D1.3 (staff) and F7.1 (other suppliers). See *Appendix for the more detailed ASA response to the Specialist Quality Mark in this area.*

Section B: Seamless Service

- 3.3 ASA strongly supports the intention underlying B1, which is to encourage referrals to appropriate providers where mediation is not appropriate, or where other advice, information, support or representation is needed by the client as a supplement to mediation services.
- 3.4 The inclusion of the Additional Glossary at B1 to define Signposting, Active Signposting and Referral, and to clarify the more common role of mediation suppliers in actively signposting rather than referring clients, is welcomed.
- 3.5 For requirement B2.1 see the comments made under General Issues (2.1) above.

Section C: Running the organisation

- 3.6 ASA welcomes the amendments to the definitions at C1.4.
- 3.7 C4 sets out the arrangements that organisations should have in place to ensure that their facilities are suitable for dealing with two or more parties before, during and after the mediation process. The Specialist Quality Mark requires “arrangements to ensure privacy in meetings with clients” (SQM F4.3). ASA believes that the same privacy requirement should also operate in the Mediation Quality Mark, either as a requirement under C4, or in section F6 which covers confidentiality.

Section D: People Management

- 3.8 We have concerns about the scope of the requirement relating to D1.3 (see point 3.2 above and appendix)
- 3.9 It should be clarified in the definitions relating to D1.4 that posts may be advertised internally or externally.
- 3.10 We do not agree with the requirement in D1.4 that advertisements should include “key tasks, responsibilities and any relevant personal attributes”, for the simple reason that this will hugely increase advertising costs. It is sufficient to require job descriptions and person specifications to contain this information.

- 3.11 D4.2 The specification of arrangements for supervision to include “two observed mediations/year/mediator” should be changed to “two mediation **sessions/year/mediator**”. A mediation could involve a series of several sessions, and a requirement to observe two whole mediations would:
- Impose an inappropriate burden on the supervisor and supervisee, and on the resources of the agency
 - Cause considerable extra difficulty when negotiating suitable dates for mediation sessions to take place, in order to accommodate attendance by the supervisor at a series of sessions.
- 3.12 D5.1 requires community mediators to have undergone a training course approved by Mediation UK. We suggest that this requirement is changed to “**All mediators must have undergone an approved mediation training course.**” The definitions section for D5.1 should contain the following explanation: “**Currently the only approving body for community mediation training is mediation UK. The LSC may in future recognise other approving bodies.**” A similar requirement has already been added to the Quality Mark with regard to individual competence for family mediators (D5.1) and competence assessment for community mediators (D5.2)

Section E: Running the Service

- 3.13 In the definitions section of E1.2 at the third bullet point, we suggest that this should read: “ and that the client has given personal consent to **that person acting as a mediator, having been informed of the potential conflict of interest**”. It is important that the principle of informed consent of the client is maintained at all stages of the mediation process.
- 3.14 The definitions relating to E1.6, regarding information that may be required from time to time by the LSC, should specify that organisations will be given adequate notice when they are required to provide additional case data. In particular, it should be specified that organisations will not have to provide retrospective case data. Even apparently simple requests for information may have significant resource implications for organisations, for example involving changes to software design and programming. The definitions should therefore state that organisations will be informed at least six months before the start of any financial year of the type of information they will be required to provide in that year. This comment has also been made in the ASA response to the Specialist Quality Mark consultation. *See Appendix for the ASA response to the Specialist Quality Mark in this area.*

Section F: Meeting Clients’ Needs

- 3.15 F1.3 and 3.2. The requirement that mediators advise parties about their right to independent legal advice before, during and after the mediation process could be made stronger. In some subject areas where people are in dispute over their rights it could be argued that the mediator should actively encourage the parties to obtain legal advice, and should even encourage the parties to have an adviser/solicitor attend the mediation session where appropriate. In All Issues Mediation in family matters, for example, not-for-profit family mediation suppliers require clients to have an independent legal advisor before they will proceed with the mediation. In other areas, like neighbour disputes, this could be less of a need. It might be appropriate to expect mediators, in keeping with the ethos of the CLS, to give more information as to what information/advice is available. The workbook/guidance could include a checklist to cover this.

3.16 F 5.3. We have consistently made the point that the requirement for services to inform the clients, in writing, of “the likely costs of the matter should it go to litigation rather than mediation” needs further clarification. The definitions specify that these estimates must be based on the “best available information”, but do not specify where the best available information is to be obtained. There are so many variable factors in making an estimate of this kind that it is impossible for services to provide a realistic figure for the total costs should the matter proceed to litigation.

3.17 We suggest that the LSC gives further thought to providing guidance on what cost information should be given to clients, and where it should be obtained.

This could include:

- The average hourly charge made by solicitors in their geographical area (*the mediation service should advise the client that if s/he opts to resolve the dispute through litigation, s/he should get an estimate of the number of hours likely to be involved, and therefore the total cost of the case, from the solicitor concerned*)
- Basic information about the circumstances in which the statutory charge might or might not apply (*but not detailed information about the implications of this for each individual case*)
- Any other information which it is appropriate for the client to know, in order to assess the cost benefit of the mediation process

3.18 F7.1 We have concerns about the scope of the requirement for a non-discrimination policy precluding unlawful discrimination when using other suppliers (see point 3.2 above and appendix)

Appendix

Reproduced below are extracts from the Advice Services Alliance response to the LSC consultation on the Specialist Quality Mark (September 2001), which correspond with comments also made above in the ASA response to the Mediation Quality Mark consultation. The references are to the ASA response paper on the Specialist Quality Mark.

Point 2.1 above

ASA response to the Specialist Quality Mark consultation: Role of auditors

2.11 Paragraph 4.8.3 of the Consultation Paper states that auditors will give organisations 28 days to take corrective action “where corrective action is possible”. Auditors should not deny organisations the opportunity to take corrective action simply because they consider it highly unlikely that this can be achieved within the timescale. The opportunity should only be denied when it is by definition impossible to take corrective action.

Point 3.1 above

ASA response to the Specialist Quality Mark consultation: Business plans (MQM A 1.1)

4.1 The term “business plan” should be replaced by “service plan”. A business plan is a strategic plan for an organisation as a whole and may cover activities not covered by the Quality Mark (including services other than legal advice and representation). The aim of requirement A1, as is clear from the Guidance, is to ensure that the quality marked service is adequately planned and monitored, and this aim would be better reflected by using the term “service plan”.

4.2 We agree that the plan may constitute a number of documents or a stand alone document. It should be emphasised in the Guidance that the documentation making up the plan need not be lengthy or elaborate.

Point 3.2 above

ASA response to the Specialist Quality Mark consultation: Equality of access (MQM A3.1)

4.4 We do not agree with the requirement set out in the definitions relating to A3.1 that organisations must not discriminate on grounds of creed or political beliefs in the provision of services. Despite the reassurances set out in the Guidance, we believe that this will give rise to serious problems of interpretation, for example where an organisation:

- targets its service on a specific religious or political group;
- decides as a matter of policy not to provide a service to certain classes of individual, such as rape defendants, landlords or employers;
- refuses to provide a service to specific individuals because they have expressed views that the provider considers offensive (such as racist views).

4.5 Although it is right to require organisations to address equality of opportunity as part of quality assurance, the Commission should show considerable caution in specifying the detailed content of a non-discrimination policy beyond the need to comply with current legislation. The debate on equality issues is primarily a policy

debate, and as such, raises issues going far beyond the scope of quality assurance. The fact that the debate is frequently controversial only emphasises the need for a cautious approach.

4.6 ASA and its member networks are committed to equality of opportunity and anti-discrimination. However, the setting of detailed requirements in this area is a matter for Parliament, through the passing of anti-discrimination laws, and for appropriate representative bodies, which in the case of services provided under the Community Legal Service (CLS) and the Criminal Defence Service (CDS) means the Law Society, national advice networks, local authorities and similar bodies.

4.7 In view of the above, the list of areas to be addressed in a non-discrimination policy, as set out in the definitions relating to A3.1, should be limited to race, sex and disability, ie those areas presently covered by anti-discrimination laws. Unless Parliament passes further legislation, it should be a matter for organisations and their representative bodies to decide whether to adopt wider anti-discrimination policies. In practice they frequently do so - organisations belonging to ASA member networks are for example prohibited by their network from discriminating on grounds of sexuality.

4.8 The words “or unreasonable” in A3.1 are likely to give rise to disputes over interpretation. They should be deleted, thus limiting the scope of the requirement to the issue of unlawful discrimination.

Point 3.14 above

ASA response to the Specialist Quality Mark consultation: Providing information to the LSC (E1.6 MQM)

8.7 The definitions relating to E1.5 should specify that organisations will be given adequate notice where they are required to provide additional case data. In particular, it should be specified that organisations will not have to provide retrospective case data.

8.8 Even apparently simple requests for information may have significant resource implications for organisations, for example involving changes to software design and programming. The definitions should therefore state that organisations will be informed at least six months before the start of any financial year of the type of information they will be required to provide in that year. If a request for information necessitates a substantial effort by organisations in collecting or analysing data, this work should be paid for.

Responses To Consultation Questions

ASA has not answered all of the consultation questions directly; in some areas we do not have a view on specific matters of practice; in others we have had no comments from the networks that we represent. Individual responses to some of these questions may be submitted by those networks.

Formatting/Document Layout

1 Yes

2 Yes, though we are unable to comment on some of the contents of the Quality Mark without having seen the guidance (see point 2.2).

New Requirements

3 We have commented on a number of specific requirements that are proposed for introduction from October 2002, including:

- A3.1 The requirement that a written equal opportunities policy covers age, political belief and ethnic or national origin (see point 3.2 and appendix)
- D1.3 The requirement that a written equal opportunities and non-discrimination policy covering the selection, recruitment and treatment of staff covers grounds including age, political belief and ethnic or national origin (see point 3.2 and appendix)
- D4.2 The requirement for observed mediation *sessions* (see point 3.11)
- F 7.1 The requirement that a written non-discrimination policy when instructing suppliers covers age, political belief and ethnic or national origin (see point 3.2 and appendix)

Mediation Standard: Individual Sections

Section B: Seamless Service

11 Yes (see point 3.3)

Section C: Suitable Premises

12 ASA supports the point made by Age Concern England in its response to this consultation (dated 19th October 2001). Margaret Doyle wrote: "We disagree with the proposed requirement in C4.3 that in mixed services the mediation service must either have a dedicated telephone line or that staff must state when answering the telephone that there is a mediation service. Although we support the intention behind it – that clients are adequately informed about the service they are receiving and it is distinguished from other services available, we feel the requirement as written would be impractical for many smaller services." Age Concern England suggests that clear information in the Service literature is an appropriate way of informing clients about different services offered, supported by clear verbal signposting by staff where needed.

Section D: Operation of the Supervisory Role

14 We have commented on the requirements for observed mediation sessions (see point 3.11)

Section F: Costings Structure

15 We have commented on the requirement for mediation services to inform clients in writing of an assessment of the likely cost should the matter proceed to litigation (see point 3.16)

Section G: Client Feedback

17 ASA supports the requirement at G2 to encourage clients to feed back to the organisation information about how well their needs are being met by the service provided. In particular, we welcome the flexible approach of the Quality Mark, which allows organisations to work out for themselves how best to do this, providing certain basic requirements are met.