

Quality in Legal Aid

SQM Outsourcing – A Discussion paper

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

Overall Comment

The discussion paper states that the LSC “is determined to procure quality services” and identifies five aspects of quality. In addition to the five identified, we propose a sixth and fundamental element: a quality Legal Aid service is one that is capable of carrying out complex legal work to a high standard for clients least able to solve their problems alone.

The fact that this element is missing from the LSC’s definition of quality has in our view had a detrimental effect on its decisions in relation to how it procures services. For example, we still very much regret the LSC’s decision not to move towards a requirement of peer review 2 or above as we regard threshold competence as a minimum level of quality.

A tailored approach

In principle we agree with this approach, however, we would like to be consulted before decisions are made about which methods of quality assurance are to be applied to which areas of law.

Role of peer review

We have always strongly supported the use of peer review as it is the only mechanism the LSC has of monitoring the actual quality of legal work that providers do. Furthermore we have always had good feedback from agencies that have been peer reviewed and our peer review workshops were well received.

We are confused by the peer review figures quoted in paragraph 15 which state that since 2005 there have only been 3 confirmed peer review ratings of 4 or below. In figures presented to the Quality Working Group last year, between April 2005 and March 2008, out of 1713 confirmed peer review ratings there were 128 ratings of 4 or below.

Whatever the true figures we think that the peer review results are encouraging. The fact that some providers move from a 4 to a 3 and that other providers choose not to complete the peer review process having received an initial score of 4 or 5 demonstrates that peer review is working to improve quality and weed out poor quality providers.

We do not agree that requiring an organisation to be peer reviewed every three years represents an unjustified burden. Compared to the daily bureaucracy that results from LSC requirements the burden of peer review is relatively light.

Nor do we agree that peer review represents poor value for money. The LSC should not underestimate the impact on quality of providers knowing that their files may one day be peer reviewed.

We are therefore very concerned about the LSC’s long-term intention to charge for peer review. Firstly, we do not believe that our members could afford to pay for it. Secondly, introducing a charge will make it far easier for those who argue for dropping peer review altogether to make their case.

At a time when we are likely to see new providers bidding for LSC contracts and given that the LSC is moving towards procurement through BVT it would be

extremely unwise if the LSC were to abandon the only tool it has for assessing actual quality of advice.

Accreditation

The proposal to phase out reimbursement of the cost of accreditation will have a particular impact on our members with immigration contracts who are likely to have to undergo IAAS re-accreditation soon.

If the UKBA goes ahead with its proposal to charge for OISC exemption it will mean that NfP solicitor agencies with LSC contracts in immigration will have to pay for SQM audit, IAAS accreditation, practising certificates (which may soon contain an additional charge for Legal Services Board oversight), OISC exemption and cost of LSB oversight of OISC. It should be borne in mind that private practice would only have to pay for the first three in that list.

We are therefore opposed to removal of reimbursement for accreditation.

Outsourcing SQM

We are very concerned about the impact on agencies of having to pay for the SQM. For some it may be the final nail in the coffin.

If the LSC does go ahead with outsourcing the audit it will be very important to agree a clear pricing structure with the auditing body. This has been a problem in relation to the auditing of the GQM and has meant some agencies have had to spend considerable time arguing about the fee that they should be charged.

We appreciate the support the LSC has given so far to the development of a sector quality standard at general help level. We hope they will show similar support to any initiatives from the sector to develop standards at the specialist level.

Operational issues

On the question of whether to outsource to one body or several we can see the benefits of both approaches. However, we are concerned that it would be difficult to maintain consistency between several organisations. Also, whilst competition between bodies may keep prices down it could also mean that auditing standards fall as a result of bodies cutting costs in order to increase market share and profit. We therefore take the view that it would be better to award the contract to one organisation.

We accept that there is a danger of costs rising as a result of a monopoly of provision. We therefore suggest that the LSC set a cap on the amount the auditing body can charge for auditing.

The details of current SQM holders should be given to that body to enable them to contact providers.

The best way to encourage early take-up of audits would be to give providers as much information as possible about 2013 contracts so that they can have a good idea of whether or not they are likely to need an SQM. If the tender round is run in the same way as 2010 has been, last minute applications will be inevitable.

Mitigation of financial impact

The change proposed in paragraph 36(b) is likely to benefit very few of our members. Most Law Centres, CABx or Adviceuk members either operate out of one office or have a single central specialised unit that does LSC contract work.

In paragraph 37 the paper mentions changes to the rules around Legal Help. You have discussed these with us. We can see some benefits to the proposal to allow legal help to be delivered exclusively over the phone in particular circumstances but we would want to be involved in discussion of the limitations to this because of its possible impact on the quality of work.

We support the proposal to remove the means test for homelessness and possibly other areas of work. This would represent a time saving for providers and would benefit clients. In line with this, we propose allowing providers to give clients half an hour's advice without applying the means test. After half an hour they would have to apply the means test. If the advice stops at half an hour they could claim for half an hour at hourly rates. If they do more than half an hour, they could claim the fixed fee. We think this would be particularly beneficial as a recession measure.