

Proposals for a review of professional accreditation schemes run by the Solicitors Regulation Authority

The Advice Services Alliance's response to the consultation paper

1 About the Advice Services Alliance

- 1.1 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the U.K.
- 1.2 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members are:
 - Advice UK
 - Age Concern England
 - Citizens Advice
 - DIAL UK (the disability information and advice service)
 - Law Centres Federation
 - Shelter
 - Shelter Cymru
 - Youth Access
- 1.3 Our members represent over 2,000 organisations that provide a range of advice, legal and other services to members of the public.
- 1.4 There are many solicitors working in the NfP sector. The majority are employed in Law Centres with some others also working in Advice UK agencies, CABx and Shelter advice centres.
- 1.5 The accreditation scheme affecting the highest number of solicitors and non-solicitors in the NfP sector is the immigration and asylum scheme which is compulsory for all LSC contract holders.

2 Introductory comments

- 2.1 Before answering the consultation questions, we would like to set out our views on how the SRA's accreditation schemes should work and what the underlying principles should be. We will refer to this in the answers that follow.
- 2.2 The SRA's role is to regulate all solicitors. We take this to mean ensuring that they are all operating to a level of basic competence. However, how the SRA does this should be different for different areas of law. In areas of law where the clients are particularly vulnerable, regulation of basic competence should take the form of accreditation and this should be compulsory.
- 2.3 Where clients are less vulnerable, regulation should operate through other means such as setting CPD requirements and investigating concerns about breaches of standards and non-compliance with rules.
- 2.4 In areas of social welfare law, where almost all provision is publicly-funded, we think that it is particularly important to set a quality threshold which all practitioners have to demonstrate they have met before being allowed to practice.
- 2.5 This will become increasingly important with the introduction of competitive tendering, the rollout of CLACs and the move of non-solicitor managed organisations such as A4E into the provision of legal services, all of which are likely to have a negative impact on quality and on clients' ability to choose where they go for advice.

- 2.6 Above the level of basic competence, specialist accreditation schemes should be encouraged. These should be developed by practitioner groups and should be non-compulsory.

Question 1

Are the above objectives comprehensive and appropriate?

- 2.7 We welcome this consultation. We support the review of accreditation schemes and its objectives and agree that the time is right for the SRA to develop a consistent strategy on accreditation generally.

3 Consultation Questions

Question 2

Do you agree that a suite of accreditation schemes run by the SRA in all areas of law is undesirable?

- 3.1 Yes. Resources are no doubt limited, therefore we agree with the SRA's approach of prioritising certain areas of law over others.

Question 3

Do you agree that the SRA's role in accrediting solicitors should focus primarily, in the public interest, on the protection of the vulnerable client and supporting an efficient justice system?

- 3.2 We agree that the focus should be on the protection of vulnerable clients.
- 3.3 We are not sure what is meant by "supporting an efficient justice system". If it means ensuring that public money spent on Legal Aid or the court system is not wasted, we agree that this is an important objective but do not think that it is the role of the SRA. The objectives of ensuring that publicly-funded legal services are competently provided and of saving public money are likely to conflict. We think that the latter objective is more rightly the concern of the National Audit Office.

Question 4

Which, if any, of the SRA's existing schemes do you think fall within the scope suggested in question 3?

- 3.4 We are not convinced that it is the SRA's role to accredit civil and commercial or family mediation. Under the Legal Services Act, mediation is not a "legal activity", in fact it is explicitly excluded.
- 3.5 Therefore, whilst we believe that mediators should be required to pass a form of accreditation, we do not believe that the scheme should be the responsibility of the SRA.
- 3.6 We are also aware that some practitioner organisations, such as Resolution, have their own specialist accreditation schemes for family solicitors. In our view, practitioner groups are the best organisations to set and monitor specialist quality requirements, and therefore the SRA should consider dropping any schemes it duplicates.

Question 5

Are there any areas of law which fall within the scope suggested in question 3 where the SRA does not currently operate an accreditation scheme?

- 3.7 Yes. We believe that for clients in all areas of social welfare law, the impacts of receiving bad advice are more likely to be damaging to clients' lives than in areas of commercial law. For this reason, consideration should be given to developing accreditation schemes to ensure basic competence, in housing, welfare benefits and employment law amongst others.
- 3.8 As we said in our introduction, it is not the SRA's role to ensure that work is of high quality. However, this is a desirable objective and therefore practitioner groups should be encouraged to develop non-compulsory higher accreditation schemes.
- 3.9 The existing immigration and asylum accreditation scheme only covers practitioners who do publicly-funded work. It is our view that the majority of clients in this area, whether publicly or privately funded, are vulnerable and therefore fall within the scope suggested in question 3. Therefore any accreditation scheme in this area should cover all practitioners.

Question 6

Do you think the SRA should also operate accreditation schemes in areas of publicly funded law in order to facilitate the requirements of procurers, where appropriate.

- 3.10 No. It is the regulator's job to protect clients. It is not their role to protect the public purse. Whilst we accept that these objectives overlap and that the SRA's work may help procurers to determine who they contract with, we feel strongly that if a procurer chooses to impose its own particular standards in order to ensure that public money is not wasted, it is the procurer's job to police those standards.
- 3.11 The immigration and asylum accreditation scheme is the only existing example of such a scheme. As we have already said, it is our view that all immigration clients are potentially vulnerable and therefore that an accreditation scheme that covers all providers of immigration advice would be a good idea. However, the existing scheme was motivated by the LSC's wish to ensure that its procurement requirements were met. In our view, this should not influence the SRA's decisions about which areas of law to focus on.

Question 7

Should the SRA be concerned with accrediting solicitors in any areas of law which fall outside of the scope proposed in questions 3 and 6.

- 3.12 As we said above, we do not agree that it is the SRA's role to facilitate procurers' requirements. The main motivation for developing accreditation schemes should be to protect vulnerable clients. We imagine that SRA resources for this work are limited, therefore areas of law where clients are less vulnerable should not be a priority.

Question 8

Do you agree that the SRA should retain the current non-compulsory approach to accreditation schemes until the issue has been fully considered as part of the wider quality assurance debate?

- 3.13 No. Our view is that where accreditation is for the purpose of ensuring basic competence, it should be compulsory. However, before implementing any schemes there should be full consultation with practitioners about what basic competence means and how it should be assessed.
- 3.14 We have suggested that accreditation should cover other areas of social welfare law such as housing, employment and welfare benefits.
- 3.15 The majority of practitioners working in these areas will be operating under legal aid contracts. Given the significant ongoing changes to legal aid and the turmoil these have

created, we are wary of placing further pressures on practitioners at the moment. Therefore, any compulsory accreditation schemes affecting legal aid practitioners should be given lead in times of 2-3 years.

- 3.16 Where the purpose of accreditation is to foster high quality work, any schemes should be voluntary. As we have said, these schemes should be the responsibility of practitioner groups.

Question 9

Do you agree that all accreditation schemes should be based on a set of clear and transparent competence standards?

- 3.17 Yes. Consultation with practitioners is a key component in the development of these.

Question 10

Do you think that it is possible to identify a set of generic standards which would be common to all accreditation schemes?

- 3.18 Yes. The SRA may want to consider the National Occupational Standards for legal advice when developing these.

Question 11

Is it desirable for applicants for accreditation schemes to be assessed against these competence standards rather than on the basis of their length of experience or size or caseload?

- 3.19 Yes. We agree that length of experience does not guarantee competence and that less experienced practitioners can be highly competent. An accreditation scheme must therefore measure actual competence rather than relying on indirect measures.

Question 12

Do you agree that the SRA should set accreditation at competent practitioner level?

Question 13

Do you think that the SRA should be concerned with setting a higher or specialist level accreditation?

- 3.20 SRA accreditation should be set at competent practitioner level, as, in our view, it is the regulator's job to ensure that basic standards are met.
- 3.21 Specialist accreditation is desirable in order to ensure that work is not just competent but of high quality, however, development and management of such schemes is best done by practitioner groups.

Question 14

Do you think that the SRA should consider setting an introductory or probationer level of accreditation in some areas of law?

- 3.22 Yes. We agree that this should be considered for some areas of law. In order to inform any decision the SRA should carry out an evaluation of the effect of introducing a probationer level accreditation for publicly-funded immigration advice. If this is found to have improved the competence of entry level practitioners, then the model could followed for other areas of law.

Question 15

Do you agree that the role of the SRA, as a regulator, should be to set the standards for assessment of practitioners rather than to prescribe the format of assessments or to provide the assessments itself?

Question 16

Is it desirable for all organisations providing assessments for the purposes of accreditation to be subject to a set of common principles and standards which will be set and monitored by the SRA?

Question 17

Will a robust monitoring regime implemented by the SRA against a common set of principles and standards provide assurance that consistency is being achieved across assessment organisations and that standards are being upheld?

- 3.23 We agree that it is not necessary for the SRA to provide the assessments or set the format for them. However, the SRA should retain the role of overseeing assessment schemes. This should involve regular checking that assessments are fit for purpose and are rigorous enough to ensure that candidates are meeting the required competence standards.
- 3.24 As well as a monitoring regime, the SRA should carry out a proper evaluation of accreditation schemes to test whether they are achieving the desired effect of ensuring competence. This could be done by peer reviewing the work of a random selection of practitioners who have been accredited, say a year after completing their assessments to check whether their work is competent. If there are sufficient numbers of practitioners whose work is found to be not competent, then the competence standards and assessment procedures should be reviewed.

Question 18

Do you agree that all accredited practitioners should be subject to re-accreditation after a fixed period of time?

- 3.25 Yes. We believe that re-accreditation will provide an extra incentive to practitioners to maintain the standard of their skills and knowledge. We do not believe it is necessary to do this more frequently than every 5 years.

Question 19

Should the re-accreditation process seek to assess:

- **Practitioners' up to date knowledge only**
 - **Practitioners' up to date skills only**
 - **Both practitioners' up to date knowledge and skills**
 - **None of the above**
- 3.26 Re-accreditation should focus on up to date knowledge. Skills, once proven, are less likely to deteriorate therefore we do not think they need to be re-assessed. Also, given the expense involved in assessing skills, we think it would be disproportionate to require that they are assessed for the purposes of re-accreditation.