



## **An Agenda for Quality**

The Advice Services Alliance's response to the Solicitors Regulation Authority's discussion paper on how to assure the quality of delivery of legal services

September 2009

- 1.1 ASA welcomes the opportunity to respond to this consultation.
- 1.2 ASA is the umbrella organisation for independent advice networks in the U.K. Full membership of ASA is open to national networks of independent advice services in the U.K. Currently, our full members are:
  - Advice UK
  - Age Concern and Help the Aged
  - Citizens Advice
  - DIAL UK (the disability information and advice service)
  - Law Centres Federation
  - Shelter
  - Shelter Cymru
  - Youth Access
- 1.3 Our members represent some 1,700 organisations in England and Wales which provide a range of advice and other services to members of the public. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising.
- 1.4 With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care.
- 1.5 Around 400 of those organisations have contracts with the Legal Services Commission and we estimate that around 100 of those employ solicitors.
- 1.6 Because the work of these organisations is publicly-funded, they are subject to a number of different quality assurance and auditing regimes. It is important that any new developments do not duplicate existing schemes and place an undue burden on already overstretched organisations.
- 1.7 A draft of this response was sent to appropriate member networks (adviceuk, Citizens Advice, Law Centres Federation, Shelter), and we have discussed its content with some of them. However, the views expressed do not necessarily represent their views.
- 1.8 We have not answered question 4.

## **Question 1**

### **How can we best ensure that consumers are able to access high quality and good value legal services?**

We think that the SRA needs to be clearer about what it wants to achieve and, more importantly, what it thinks it is able to achieve in relation to quality and regulation. Whilst we understand the desire to ensure consumers are able to access high quality and good value legal services, we do not think that it is within the reach of any regulator to do so.

The only way the SRA could measure quality at all would be to put into place a system of regular peer review. However, we think that such a system would be too expensive to implement. Even with such a system in place we do not think it would be wise to make guarantees to the public about quality.

The reality is that there will always be a risk that lawyers are doing poor quality work without the regulator finding out until significant damage has been done. Therefore, any claim to *ensure* quality would be extremely dangerous as it could open up the SRA to the risk of litigation by clients who alleged they had received a poor quality service from any solicitor.

We therefore think the SRA should stick to its regulatory role and maintain its current position of policing and providing guidance on the code of conduct. Beyond that, the most it can do is take steps to create an environment that encourages good quality work.

For example, we think that if an emphasis is placed on the knowledge and skills of individual solicitors throughout their careers, it is more likely that they will provide good quality services. Therefore we think it is essential to monitor training contracts closely to ensure trainees are receiving structured training and to have a more rigorous and focussed CPD system that requires solicitors to demonstrate their knowledge at regular intervals throughout their careers.

## **Question 2**

### **Are there any particular consumer groups whose specific needs should be concentrated on by the SRA as a priority?**

We think that privately paying immigration clients are a group that the SRA should focus on. The stakes are often very high for immigration clients and this has led to stringent quality measures in the publicly-funded sector and the privately-funded non-solicitor sector with the introduction of the immigration and asylum accreditation scheme and also OISC regulation. We think the SRA should plug the gap left by these schemes and introduce a similar accreditation scheme for private immigration solicitors.

## **Question 3**

### **How can we ensure that the delivery of legal services reflects the diverse needs of consumers and clients?**

In the area of publicly-funded legal advice, advisers often have to deal with clients who have complex multiple needs. They may have mental health problems, drug and alcohol abuse issues, poor physical health or disability and they may not read or speak English.

We think that where it is appropriate advice providers should be encouraged to ensure their staff receive training on the skills needed to advise such clients. Therefore we think the SRA should give consideration to awarding CPD points for training courses that cover such skills.

## **Question 5**

**How far do the factors set out in paragraph 16 above provide a clear rationale for reviewing the SRA's regulatory requirements? Are there any other factors which we should consider?**

We agree with the factors set out. We would add to the list regulatory and quality requirements already in operation.

## **Question 6**

**Do you agree that individual competence, the management of the environment and the quality of the service experience together help determine the overall quality of the delivery of legal services?**

We do but as we said above we think that individual competence should be the priority.

## **Question 7**

**How far do you think we can rely on the above factors without routinely measuring the standard of work itself?**

We think there are significant benefits to routinely monitoring the standard of legal work. We have observed the LSC's system of peer review in operation over a number of years and have concluded the following:

1. For an individual practitioner to know that their files might at some stage be reviewed by a fellow practitioner is an incentive to maintain high standards, even if it is a remote possibility.
2. Peer review is a more popular, certainly amongst ASA's members, than other auditing regimes because it involves practitioners looking at actual quality of advice rather than non-practitioners looking at management and procedures. Furthermore it tends to result in the provision of useful and relevant feedback.
3. Peer review has improved quality. Having failed at peer review some providers have given up their legal aid contracts, others have taken the opportunity to be re-reviewed at a later date and have passed. It therefore works to weed out poor provision of advice in some cases and gives an incentive to others to improve their quality.
4. It can be beneficial to all practitioners not just those that are reviewed. The LSC have used peer review findings to publish guidance and run workshops on how to improve quality in their individual areas of law.

As we said above, if the SRA wants to make any attempt to guarantee quality for clients, we think that it would need to routinely measure the standard of work. We do not think that all solicitors need to be reviewed, however. Like the LSC the SRA would need to do a certain number in each area of law to establish a benchmark and maintain reviewer expertise. Beyond that they could review a certain percentage of

practitioners a year and could determine who these are by looking at a number of risk factors such as vulnerability of client group or number of complaints.

## **Question 8**

### **How far do you think the current framework assures the quality of the delivery of legal services?**

The answer to this question depends on the meaning of “assure”. If you take it to mean “guarantee” we do not think the current framework assures the quality of legal services. As we said above, we think it is impossible for any regulatory system to guarantee quality without routinely looking at the quality of work. We therefore think that, under the current system, it is very difficult for the public to be confident that they are choosing a good solicitor. Unless they have used a solicitor before or had a personal recommendation, it is generally a leap of faith.

## **Question 9**

### **Are there any areas of good practice we should look at immediately?**

We think that the use of paralegals is a crucial issue that should be tackled immediately. We refer you to the Young Legal Aid Lawyers’ report on the subject <sup>1</sup>. The report covers paralegals doing legal aid work but we imagine the issues raised are not limited to publicly-funded work.

The conditions under which many paralegals were found to be working are not only exploitative of the paralegal, they are in no way a solid foundation for the provision of good quality legal advice to clients.

We refer you to the recommendations at the end of the report, in particular that the role of paralegals should be clearly defined and that where paralegals are given their own caseload a formal training programme should be put in place for at least the first 2 years.

## **Question 10**

### **What do you think about our proposal to develop a professional standards framework?**

We are not convinced of the value of developing such a framework.

The SRA should bear in mind that the Law Society was involved in a project to develop a standards framework for publicly-funded legal advice<sup>2</sup>. The project was very expensive and took many years to complete. The resulting standards are made up of lists of functions for each role identified. In themselves we do not think that

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<sup>1</sup>

[http://www.younglegalaidlawyers.org/files/Releases\\_Responses/YLAL%20Paralegal%20Survey%20Report\\_280208.pdf](http://www.younglegalaidlawyers.org/files/Releases_Responses/YLAL%20Paralegal%20Survey%20Report_280208.pdf)

<sup>2</sup> [http://www.skillsforjustice.com/las/section\\_a/09\\_downloads.html](http://www.skillsforjustice.com/las/section_a/09_downloads.html)

these lists of functions are particularly useful. They become useful when developed into training packages and qualifications. However, this requires more time and money. We therefore do not think it is necessary to duplicate the work that has already been done.

We believe that instead of developing a new standards framework, a more rigorous CPD regime where legal knowledge is tested on a regular basis is more likely to create an environment in which clients can feel confident they are receiving a quality service.

## **Question 11**

### **Have we identified all the areas that such a framework should cover?**

We agree with most of the areas, however, we are not sure that the SRA can or should prescribe behaviours. Different people take very different approaches to their work which may be equally valid and we therefore do not think it's possible or desirable to be prescriptive.

## **Question 12**

### **How can we best make a co-regulatory approach work?**

We take "co-regulatory approach" to mean devolving some responsibility for regulation to the profession. The difficulty with such an approach is that whilst the majority of the profession have the skills and integrity to regulate themselves, there are those that do not. Unless the SRA can develop a scheme that recognises those able to regulate themselves we feel that everybody will have to be subject to a regulatory regime that is administered by the SRA.

## **Question 13**

### **How far do you think we should provide assurance to consumers and others about the quality of legal services?**

See our answers above. We do not think it is wise for the SRA to provide such an assurance.

## **Question 14**

### **How far should responsibility for the quality of legal services rest with the entity as opposed to individual solicitors?**

Even if the SRA places responsibility for quality with the entity, it will in fact always rest with individuals. However, we think that it is a good idea to make entities ultimately accountable for the quality of legal services. This will ensure that solicitor

staff get the support they need from their employers to meet individual requirements in areas such as training and accreditation.

## **Question 15**

### **How far can supervision help ensure that work is done to the right standard?**

As holders of legal aid contracts and the Specialist Quality Mark (SQM), NfP agencies are well used to employing individuals to take on a formal supervisory role. We think the role is essential to ensuring good quality work. We believe there can be flexibility around the ratio of supervisors to supervisees depending on level of experience, however, our view is that it should be no more than 1 to 4.

We also think that some requirements in relation to how supervision is operated would be a good idea. We recommend that the SRA should look at SQM requirements in relation to file review.

## **Question 16**

### **How can we best use the talents of solicitors and others within law firms to ensure that consumers and clients receive a good quality of service?**

We are aware that research<sup>3</sup> has shown that the factor most likely to guarantee the provision of quality services is specialisation. We therefore think that the SRA should do more to promote the value of accreditation schemes and panel membership.

## **Question 17**

### **We have identified a series of roles to explore; have we captured the right roles and how far do you think these individuals could assist in assuring the quality of delivery of legal services?**

This depends on whether the purpose of the framework is to regulate solicitors or to make an attempt to assure quality more widely. If the purpose is to assure quality, the roles should extend beyond those taken by solicitors. In the future, the SRA will be regulating ABSs and therefore should consider other roles such as trustees and organisation managers.

With regard to the roles identified we support the comments made in relation to the training principal and think they should be expected to meet requirements specific to their training role.

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<sup>3</sup> Richard Moorhead, Avrom Sherr, Alan Paterson, Contesting Professionalism: Legal Aid and Non-Lawyers in England and Wales, Law and Society Review, Volume 37, Number 4 (2003)

## Question 18

### How can CPD be developed so that it supports a learning profession?

We agree that CPD could be more tailored to the roles that individuals undertake. We think that individuals could be required to identify at the start of the year, topics they want their CPD to cover over the coming year. They could then explain why this is important for their role and at the end of the year they could report on the extent to which they have covered the identified topics.



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