

## Quality – where to Now?

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*Jim Fearnley, Quality Manager at the Advice Services Alliance takes forward the debate about how to assure the quality of advice*

## **Introduction**

The article "A Mark of What?" (Adviser Nov/Dec 2001) raised a number of important points about the Community Legal Service (CLS) and the Quality Mark (QM), and served to kickstart a debate within the advice sector about the most pressing issues relating to these initiatives. This article is both a response to some of those points and also an attempt to broaden the discussion that has been taken up by advisers, managers and policy workers.

## **Why did the advice sector sign up to the Quality Mark?**

The first issues to examine are the position of the advice sector regarding quality assurance before the introduction of the CLS, and our response to the proposed aims and structure of the Quality Mark at the consultation stage. Was our involvement in the development of the Quality Mark purely defensive? Did we become reluctantly involved to mitigate what we felt would otherwise be an inappropriate form of external regulation? Or did the aims of the CLS and the intended purpose of the QM correspond with ideas and objectives that we had been considering already?

The simple response to the question of why the sector has accepted, or not resisted, the development of the CLS and QM is that, as concepts, these initiatives broadly reflected the principal components of a coordinated national strategy for advice proposed by the major networks themselves.

In 1994, Advice Services Alliance (ASA), in its capacity as the representative body of the major UK advice networks, was responsible for launching Advice 2000, a campaign that aimed to instigate a national strategy for advice. Among its three main aims was the intention to "publicise quality standards for advice and legal services". The other main aims of Advice 2000 were to develop a national network of advice services and to "work with central government, local authorities and voluntary organisations, planning and developing services responsive to local needs". In other words, the sector's strategy anticipated the two principal aims of the CLS - the development of quality standards for advice and partnership working to coordinate supply to meet need.

The limitations of input-based quality assurance systems have been recognised since Legal Aid franchises were piloted in the early 90s. ASA'S response to the LCD consultation paper on the CLS also argued that a quality assurance system focusing on issues of organisational management would not be an effective long-term tool for measuring or improving the quality of advice. We argued for a shift of emphasis towards the monitoring of outputs (the quality of legal advice and help provided) and outcomes (results for clients) through the application of three main processes - peer review, practitioner accreditation, and outcome measures. These processes are discussed later in this article.

In 1999, the Lord Chancellor's Department set up the Quality Task Force, whose task was to "define the minimum quality standard for all providers of legal services of the Community Legal Service". All advice networks represented on this group had developed, or were in the process of developing, their own organisational standards.

To varying degrees, all these standards shared the limitations of the QM itself, namely they were input-based and did not directly measure quality of advice.

Since the introduction of the QM, the networks have expressed legitimate concerns about the detail of particular requirements and the practical implications of submitting a successful QM application. However, to now suggest that the whole initiative is fatally flawed would be disproportionate - no single network adopted this position either at the consultation stage or subsequently.

### ***Does the QM have any benefit?***

The value of a QM application depends on why an organisation is doing it - can they see any potential benefits for themselves or do they feel railroaded by funders? We know that organisations can and sometimes do resentfully apply, treating the process as a tokenistic paper exercise. Conversely, other organisations use the application as the starting point of a process of continuing organisational development.

Do any of the QM requirements contribute towards improved advice for clients? In our view, there are two policies that provide clear potential for safeguarding the quality of advice - supervision and file review. However, their effectiveness depends on the technical and management skills and commitment of the reviewers/supervisors, and without these elements they will be of little value. For example, an organisation could demonstrate evidence of having carried out x number of file reviews, but have missed a whole number of instances of incomplete or incorrect advice, without an auditor being any the wiser. In other words, whatever benefits the QM has at present are entirely contingent on the use to which it is put by organisations themselves.

Advice providers have suggested further wider benefits to ASA's CLS Support project over the last year:

- Enhanced management committee understanding of services and how they operate;
- Greater transparency of working practices - of benefit to management and workers, particularly new ones;
- Increased awareness of the rationale behind application of "sensitive" procedures, eg file review and supervision become recognised as methods for enhancing performance and identifying training needs, rather than as "policing tools";
- Statement of service aims - people know what they're doing and why they're doing it in terms of meeting the needs of their target group/catchment area.
- Emphasis on client care - eg recording and acting on complaints, confirming advice in writing.

### ***What are the drawbacks of the QM?***

In our view the two main disadvantages of the QM at present are:

- Excessive bureaucracy
- The time it takes to put an application together

"A Mark of What?" suggests that these elements contribute to undermining the quality of advice that organisations provide. Is this true? There is no doubt that there is a significant resource implication involved in putting together a QM application, particularly in terms of staff time. This time is primarily taken up with familiarising staff with the purpose and requirements of the QM, and drafting policies. As a result,

clients are likely to suffer reduced access to advice in the short-term while applications are being prepared, and policies and procedures are updated and amended to ensure ongoing QM certification.

There is also a risk that small community-based organisations will not have the resources to apply, and may lose funding as a result. One such group told us that they were reluctantly applying because of fears of funding cuts, and that their major concern was alienating their management committee, largely composed of ex-clients, to whom the language and concepts of formal organisational planning were unfamiliar and off-putting.

We are well aware that such organisations are likely to provide services to their clients that are far more culturally and socially appropriate than what might be available elsewhere, because of the nature of their relationship with the local community or the fact that staff profile mirrors that of the target group.

We should acknowledge that the LSC recognises the difficulties facing these organisations. It realised that if the QM is to attain the status of a universal standard for all information and advice providers, then support had to be provided to under-resourced organisations. As a result, the LSC has funded support initiatives such as ASA's CLS Support Project, the Inclusive Quality Project, a cross network initiative set up to support DIAL UK, FIAC, Youth Access members and other organisations in applying for the QM.

### ***Who should the QM apply to?***

As well as asking what the QM and CLS have to offer to clients in terms of enhanced access to better quality advice, we should also ask how wide the scope of the CLS and the applicability of the QM should be.

If we talk about an advice sector, we first have to define what it is. We should be wary of assuming that all organisations or individuals who provide information or advice consciously regard themselves as being members of an "advice sector". In addition to the mixed-service providers discussed above, there are many people such as social workers or community psychiatric nurses providing advice who do not regard themselves as being part of an advice sector, or even of being advice workers themselves.

The Access to Justice Act left the scope of the CLS as an open question in an attempt to be as inclusive as possible. The longer the CLS has been in existence, the more often this question comes up, but the answer seems as elusive as ever. We should remember that the question is not just an abstract one - the more that funders allocate grants based on QM attainment, the more critical the issue becomes, particularly for small organisations.

Some organisations, particularly those who provide a range of services of which advice is only one, will also be questioning the practical value of applying for the QM. They might be under pressure to conform to other non-advice related requirements or quality standards, as is the case with youth advisers and the ConneXions agenda. Or they might be able to cover the costs of providing information or advice through non-dedicated funds. The LSC may have to accept that the QM is not applicable to all, and publicise that fact to funders.

### ***Regulation and Independence of the Advice Sector***

"A Mark of What?" was explicit in its concern that the QM skews the relationship between the advice sector and the State and leads to a serious threat to our

independence. Many of us within the sector, from advisers and managers to network representatives and policy officers are rightly possessive of our independence from the statutory and public sector. However, irrespective of the (unmeasurable) extent to which the sector overall regards itself as acting with a sense of "outrage and injustice" in some form of struggle against the State, there have always been limits on our powers to effect radical change.

We are working within the State's terrain - our practical casework strategies and assessments of the relative strengths of cases rest on how a client's circumstances fit with existing legislation and caselaw. Therefore, the "objective merits" of a case are defined by a language and framework that originate with the State, and that are modified, but not led, by the advice sector and legal profession. We should also be aware that the structure of the modern State is complex. A liberal democracy will provide, on its own reformist terms, limited resources and legal scope to challenge itself. If it didn't, the advice sector and independent legal profession wouldn't exist.

To what extent does the QM compromise our political independence from the State in practical terms? Does it stop someone from representing a client at a tribunal with the same degree of independence that they would do without it? We can't think of a single QM requirement that limits our scope to oppose central and local government.

"A Mark of What?" also touched on the wider issue of independence from funders, and suggested that the LSC is actively encouraging local authorities in particular to use QM acquisition as a funding weapon. However, no concrete evidence was provided to support this contention. In our view, it is likely that the LSC is compromised by its lack of overt recognition of the value of social policy work and its need to maintain dialogue with local authorities in the interest of maintaining and developing Community Legal Service Partnerships.

### ***Measures to make the QM a "real" measure of quality***

Given that the QM is inherently limited as a method of measuring the quality of advice because it is an input-based system, we need to examine the three main technical quality measurement tools available to us, with a view to deciding the best way forward, in terms of ensuring that clients are given the best advice possible.

#### ***Competences***

The LSC has recently proposed the development of a programme of individual competences for information and advice workers. This proposal presents the advice sector with a choice - to get involved and do our utmost to make the competences programme a worthwhile one (with a scope that extends beyond the Quality Mark agenda), or to turn our back on it and risk the creation of a scheme of limited value and credibility.

Whatever their final form, competences are likely to be used as an alternative or supplement to current QM proxy quality measures such as the monitoring of supervision and/or file review procedures. In other words, competences have the potential to reduce regulation, since certain aspects of auditing could be applied with a lighter touch.

Because it is an abstract model based on a fixed framework, the QM militates towards the standardisation of advice practice - organisations have to present or reorganise their work to fit, or appear to fit, with the QM levels. Early discussions with the LSC indicated that the mapping of jobs and activities in the advice sector, which is an essential first stage of their current competences proposal, could create the scope to critically assess QM levels against real advice practice.

It is too easy to label competences as input-driven and thus lump them in with current QM proxy measures and requirements. Competences are only input-driven in the sense that they recommend the development of skills/practices at a point *before advice is given*. We see this as a real strength - competences could be a tool that contributes to *preventing* bad advice, rather than a retrospective measure, such as peer review and outcome measurement, that assess whether good advice was delivered but only *after the fact*.

The LSC are currently keen to stress that the advice sector and independent legal profession should lead on the development of competences, with the Commission's role being that of facilitator. This assurance presents the advice sector with a challenge to mobilise itself and take an active role. However, we should not lose sight of the fact that unless we can access resources to support this work, it will be hard to take up the challenge. *Outcome measurement*

In principle we support the development of outcome measurements. However there are significant difficulties in devising appropriate and accurate measurements for every (or any) category of law. We suggest there are two main problems:

- Funding bodies are likely to favour financially quantifiable measures because they produce apparently neat value for money equations: ie "we funded this much work, and this was the return on it". However, even in areas where it can be applied, financial measurement can be misleading for a number of reasons.
- Outcome measurement in areas where financial results don't apply are impossible to devise, eg immigration where the number of successful appeals is low, and family - who defines a positive outcome following a divorce where, one party gets a big settlement and exclusive custody of the children and the other one doesn't?

### *Peer Review*

Peer review is agreed by most people involved in quality work to be the most effective and accurate measure of the technical quality of advice. ASA shares this view, but we feel it is important to make a distinction between internal reviews (conducted within organisations by advisers on the work of their colleagues), and external reviews (assessors are brought in from outside). In our opinion, there are risks attached to internal peer review, not least the inhibitions that advisers might feel about criticising people that they work with.

Previously, the LSC suggested that they would only be prepared to use peer review in limited circumstances, on cost grounds. However, the introduction to the Specialist Quality Mark states that "peer review will become an important additional element in the auditing process and is recognised to be the best mechanism to evaluate casework performance and the quality of advice", indicating a significant change of attitude.

Two advice networks, NACAB and Shelter, have piloted peer review. The LSC has also initiated a peer review pilot involving CLS Fund contractors. There would much value in carrying out comparative analysis of all the projects undertaken so far. This could lay the foundation for further work to be carried out that may be of use to the whole sector.

### ***Where to now?***

"A Mark of What?" exhorted the advice sector to take control of the quality agenda. It proposed that we come together to take the initiative on the design and implementation of appropriate quality measurement tools. In principle, we fully agree

with this position, but feel that a number of practical issues need to be acknowledged to make this proposal a reality:

- What are we talking about - tools for universal use or network-specific ones?
- How do we ensure parity of access to resources and equal robustness of the quality measurement tools designed?
- Will bigger networks share expertise spontaneously and altruistically?
- Where's the money? Networks need to seek funding now to be able to take the lead on the design and implementation of peer review and competences.

The LSC has mapped the QM against other quality standards for advice in a format that seeks to eliminate the need to carry out the same piece of work twice to meet two standards. So, for example, if an organisation has met the DIAL UK quality standard, then the LSC mapping template points out what gaps they will need to fill in order to also fully meet QM requirements. In other cases, the mapping goes further and becomes passporting, as is the case with NACAB's Membership Scheme and the QM General Help level - a CAB that meets the Membership Scheme automatically meets QM General Help level requirements.

What we propose is a synthesis of what exists and what may come - the strongest elements of the QM, the use of individual network standards and the implementation of technical quality measures devised with maximum sector input. In practice, the elements could combine in the following fashion:

- Organisational standards to be met and supplemented by the relevant QM requirements on a self-assessment basis;
- Audits (by network or LSC) to be restricted to examining the robustness of policies such as file review and supervision for non-accredited advisers;
- Use of external peer review and extension of accreditation through competences;
- Reference to client satisfaction data when planning and reviewing services;
- Eventual abolition of transaction criteria.

In our view, once appropriate and accurate quality assurance and measurement tools are in place, all the participants in the quality debate will be in a stronger position to evaluate which Quality Mark requirements should be retained or amended, and which ones should be discarded.