

The Specialist Quality Mark Standard

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

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PREFACE

ASA 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.

The following national advice networks are full members of ASA:

- Citizens Advice Scotland (CAS);
- DIAL UK;
- 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.

Other organisations and individuals concerned with the provision of advice and legal services are affiliated to ASA as associate or subscribing members.

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 and supporting advice sector involvement in the legal aid scheme and the Community Legal Service;
- quality and standards of advice.

ASA is therefore pleased to have an opportunity to respond to the Legal Services Commission's Consultation Paper on the Specialist Quality Mark standard. Our response has been drawn up in consultation with ASA member networks operating in England and Wales, and should be considered in conjunction with individual responses submitted by those networks. The response seeks where possible to represent the consensus of opinion amongst networks on the Commission's proposals, but comments on specific proposals should not be taken in every case as necessarily representing the views of all networks.

PART ONE: GENERAL COMMENTS

1. Introduction

- 1.1 ASA is represented both 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 Specialist Quality Mark standard (SQM). We are very grateful to the Commission for having had the opportunity to contribute at an early stage to the development of the SQM. We made detailed comments on earlier drafts, and some of our points and concerns have been addressed in the Consultation Paper.
- 1.2 Our response to the Consultation Paper reiterates previous concerns which we do not believe have been satisfactorily addressed in the consultation paper. It also outlines further issues raised by member networks and takes account of comments received from individual advice agencies.

2. Overview of the SQM

- 2.1 The introduction to the Consultation Paper states that the SQM has substantially the same criteria as the Legal Aid Franchise Quality Assurance Standard (LAFQAS). This is clearly not the case. While most of the main requirements (other than those concerning referrals and client satisfaction, which were announced last year and which we broadly support), are identical or similar to those in LAFQAS, the related definitions impose many new and detailed requirements. We acknowledge that some (relatively minor) LAFQAS requirements have been dropped.
- 2.2 ASA supports some of the new requirements and agrees that some of the proposed changes constitute helpful clarification of LAFQAS requirements. Taken as a whole however, the SQM is significantly more prescriptive than LAFQAS and will impose a greater burden of administration and bureaucracy on providers, for which they will not be paid (but see paragraph 2.12 below). This is a retrograde step, and ASA urges the Commission to reconsider the detail set out in the definitions to the requirements (and the Guidance), with a view to reducing the level of prescription and re-introducing greater flexibility.
- 2.3 This is not merely a plea for less bureaucracy. In previous discussions with the Commission over the development of franchising and contracting, ASA and its member networks have stressed that a reasonable balance must be maintained between the Commission's justifiable desire for robust quality assurance standards and the right of providers to use their own judgement on how such standards should be met. The SQM represents a significant and unwelcome increase in the Commission's power to dictate how organisations should be managed on a day-to-day basis.

- 2.4 The Commission gives no justification for most of the proposed changes. Nor does it provide any evidence that more prescriptive requirements will improve services. It is perplexing that the Commission is proposing to deepen the emphasis on process and systems based quality assurance at a time when it has begun to acknowledge publicly the limitations of this approach and recognised that more attention needs to be paid to direct measures of the quality of legal services. The findings of “Quality and Cost” (Sherr et al, 2001) demonstrate the limitations of the present approach, but the researchers have not concluded that this needs to be remedied by more of the same.
- 2.5 We suspect that many of the proposed changes are auditor rather than quality driven, ie they are designed to make it easier for auditors to do their job by imposing greater uniformity on providers and placing a greater reliance on a tick box approach to auditing. This usurps the role of management and is no substitute for auditors and providers alike using their professional judgement on quality issues.
- 2.6 The Commission appears to have assumed that quality requirements for specialist providers generally need to be more detailed and stringent than those for providers operating at the General Help level. This assumption may be correct in relation to matters such as case management and supervisor qualifications, but there is no reason in principle why it should apply to matters such as organisational planning and general personnel management. In seeking to reduce the level of prescription in the SQM, the Commission should revisit the General Help Quality Mark Standard and consider whether equivalent SQM requirements really need to be more detailed.
- 2.7 The Commission should passport organisations in relation to relevant requirements where they are accredited against other recognised quality assurance schemes, such as Investors in People and ISO 9000.
- 2.8 Some of the documentation is confusing and requires redrafting. This is especially the case in relation to parts of the Guidance. We have a number of concerns regarding the Guidance, which are set out in Part Three of our response.
- 2.9 The Commission is expressly required to act at all times reasonably and in good faith in relation to contracted providers (General Civil Contract, clause 2.2, contract standard terms and conditions). This undertaking should be repeated in the Quality Mark documentation in order to apply to non-contracted providers holding the Quality Mark.
- 2.10 The SQM gives considerable discretion to auditors. Although the point may be implicitly covered by the undertaking referred to in paragraph 2.9 above, we would like to see an explicit undertaking in the documentation that where the consent of the Commission is required in relation to the Quality Mark, it will not be unreasonably withheld.
- 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.

- 2.12 ASA will be raising cost and payment issues arising from the SMQ in future discussions with the Commission on contracting.

3. Scope of the SQM

- 3.1 Two issues concerning the scope of the SQM need to be addressed. Firstly, it appears to be envisaged that the SQM must be applied to all work in the relevant category of law, whether or not that work is funded by the Commission. It is not entirely clear to ASA whether the Commission expects private client work undertaken by solicitors to be carried out to SQM standards and whether it will insist on auditing private client files.
- 3.2 If however private client work is exempted or partially exempted from the SQM regime, the same exemptions should apply to not-for-profit (NfP) services funded by sources other than the Commission, for example by local authorities and charities. This is necessary to preserve a level playing field between private practice and the NfP sector.
- 3.3 In such circumstances organisations could choose whether or not to apply the SQM to services funded by others. In practice, many specialist organisations are likely to choose to do so, and may frequently be expected to do so by their other funders. It is possible however that some organisations providing specialist legal services may decide that they lack the financial resources to apply the SQM to work other than that funded by the Commission.
- 3.4 Secondly, the Commission appears to assume for the purposes of the SQM that all work undertaken by an organisation in a given category of law is carried out at the Specialist Help level. This is not the case. Many organisations carry out such work at both the General and Specialist Help levels. To take a common example, a Citizens Advice Bureau with a legal aid contract in welfare benefits may ringfence the contracted service, which is of course provided at the Specialist Help level. Other staff outside the ringfence (frequently volunteer advisers) also provide advice and assistance on welfare benefits at the General Help or General Help with Casework level.
- 3.5 The majority of such agencies will not find it feasible to apply the SQM across their entire service in a given category of law. Indeed, "Fast, Friendly and Expert?" (Steele and Bull, 1996), the research report on the first NfP franchising pilot project, identified a number of problems concerning the operation of the "integrated generalist" model of service provision, ie where franchise standards are applied across a largely generalist service. This model is not recommended by the Commission and only a handful of contracted agencies now operate it.
- 3.6 It is essential that organisations maintain their freedom to offer a service in a given category of law at both the Specialist and General Help levels. Without such freedom, many NfP organisations are likely to lose their legal aid contract.
- 3.7 The issues discussed in paragraphs 3.1 - 3.6 above raise the question of how organisations should be formally badged (for example in the CLS Directory) when only part of their service in a given category of law is carried out to SQM standards. Our preferred solution, for simplicity's sake, is that they are formally badged at the Specialist Help level.

- 3.8 However, in order to avoid misleading clients, such organisations should be required to inform clients that the service in question is delivered at more than one level, and that not all clients will receive advice from a specialist caseworker. This could be achieved through a leaflet given to clients. Organisations should also be required to tell an individual client at which level they are being advised (and whether the organisation has the Quality Mark for that level) if the client asks them to do so.

PART TWO: COMMENTS ON SPECIFIC REQUIREMENTS

4. Section A: Access to Service

Requirement A1 - Business planning

- 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.
- 4.3 The definitions relating to A1.2 should clarify that records of review do not have to be set out in a separate document and may for example take the form of a minute to a management committee meeting.

Requirement A3 - Equality of access

- 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.

5. Section B: Seamless Service

Requirement B1 - Active signposting and referral

- 5.1 ASA strongly supports the intention underlying B1, which is to encourage referrals to appropriate providers where a matter is beyond the competence of the referring organisation. Organisations should view this approach as a sign of quality rather than failure.
- 5.2 There is however a risk that the detailed requirements set out in the definitions relating to B1 will lead to organisations feeling that they have to adopt complex and administratively burdensome procedures. This could result in the requirement having the opposite effect to that intended, with caseworkers deciding not to refer in order to avoid the bureaucracy involved.
- 5.3 With this in mind, we would particularly urge that the requirement in the definitions to keep sample records on active signposting be dropped.
- 5.4 We also have some concerns regarding information on costs, which are dealt with at paragraphs 9.4 - 9.7 below.

Requirement B2 - Awareness and incorporation of CLSP protocols

- 5.5 We do not agree with the approach being taken to Community Legal Service Partnership (CLSP) protocols. While B2 and the related definitions seem to give organisations discretion in this area, the Guidance makes it clear that it will only be acceptable not to incorporate a protocol in extremely limited circumstances, ie where the organisation provides a "niche" service (for example in education law) or operates a regional or national service.
- 5.6 CLSP protocols are untested in practice and, according to individual advice agencies, vary in quality and practical value. Some protocols have been criticised along the lines indicated in paragraph 5.2 above, ie that they set out referral procedures which are over elaborate and unnecessarily bureaucratic. Moreover, there is no guarantee that individual protocols themselves comply with Quality Mark requirements.

- 5.7 At some point in the reasonably near future, CLSP protocols should be evaluated with a view to identifying good practice and providing national guidance on their development and operation. It is at the very least premature to make incorporation of protocols compulsory, but the Guidance will have precisely this effect in the case of most organisations. The limitations on organisations' discretion should accordingly be deleted from the guidance to B2.

6. Section C: Running the Organisation

Requirement C1 - Staff and management structures, and organisational independence and regulation

- 6.1 The term "department" in the definitions relating to C1.1 is not appropriate for small NfP agencies and should be replaced by "organisation". The heading to the definitions should be altered to "Your structure".
- 6.2 The words "by exception" should be deleted from C1.3. Provided that an organisation meets Quality Mark standards they should not be excluded from providing a service as part of the CLS. There is a policy debate to be had concerning the scope to the CLS (ie the type of organisations and services properly falling within its remit), but this is not primarily a matter to be dealt with through Quality Mark requirements.
- 6.3 The definitions relating to C1.3 indicate that where an organisation is not a member of a recognised body, the Commission will look particularly closely at its record in relation to serious misdemeanours. We would suggest that similar attention be paid to the issue of the organisation's independence and its policies for handling conflicts of interest.
- 6.4 The words in brackets following the reference to the "list of recognised bodies" in the definitions relating to C1.3 should be amended to read "which includes the Law Society, local authorities, full members of the Advice Services Alliance (ASA) and any other body which may from time-to-time be recognised by the Commission".
- 6.5 It should be clarified that auditors will not attempt to second guess whether organisations are compliant with the policies of recognised bodies (definitions relating to C1.3 and C1.5). Monitoring in this area is properly the responsibility of the recognised bodies themselves.
- 6.6 Where a service is provided by a local authority or other public body, there should be a mandatory requirement for that organisation to include in its contract of employment with relevant employees a clause making it clear that there are no fetters on employees' discretion to advise on legal action against the public body concerned.
- 6.7 Clearly such employees cannot initiate such action or defend an action against a client by the body concerned. This needs to be addressed in the requirements concerning conflicts of interest (see paragraph 8.2 below).
- 6.8 The definitions relating to C1.5 should contain an additional requirement that all organisations make a public statement concerning their independence, for example in the form of a poster displayed at service outlets.

Requirement C3 - Time recording

- 6.9 We accept that time recording provides useful management information on cost, capacity and individual performance. We also accept the Commission's right as a funder to require organisations to meet time recording requirements in relation to contracted work. However, we do not believe that the Commission should extend such requirements to services funded by others. It should be a matter for those funders to decide whether to impose time recording requirements under the terms of a grant or contract.

7. Section D: People Management

Requirement D1 - Roles, responsibilities, recruitment and equal opportunities

- 7.1 For the same reasons as those outlined in paragraph 4.4 - 4.6 above, the words "or unreasonable" should be deleted from D1.3, thus limiting its scope to the issue of unlawful discrimination. In addition, the list of areas to be addressed in an equal opportunities policy (definitions relating to D1.3) should be limited to race, sex and disability, ie those areas presently covered by anti-discrimination laws.
- 7.2 It should be clarified in the definitions relating to D1.4 that posts may be advertised internally or externally.
- 7.3 We do not agree 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.

Requirement D2 - Induction, appraisal and training

- 7.4 The level of detail set out in the definitions relating to D2 exemplifies our concern that the SHQM is excessively prescriptive and bureaucratic.
- 7.5 We are far from convinced that the new requirement to produce individual training and development plans (D2.3) adds anything useful to the armoury of quality assurance.

Requirement D3 - Supervisors

- 7.6 ASA welcomes the Commission's recognition that general and technical supervision may be undertaken by different individuals. It would be helpful if this was made explicit in the definitions relating to D3.1.
- 7.7 Clarification is also required concerning which requirements each type of supervisor should meet when the supervisory role is split. Our view is that technical supervisors should have to meet D3.2, D3.4 and D3.5. They should also have to meet requirement D3.3, but should be given a period of one year from the date of Quality Mark certification to meet it. General supervisors (ie those not providing technical supervision) should be required to meet D3.3 and D3.5 only.

- 7.8 In the “case involvement” sections of the supervisor self declaration forms which follow Annex A, it should be specified that external training delivery includes preparation of training and presentations to national or regional practitioner associations.
- 7.9 The reference to knowledge of community care should be removed from the supervisor self declaration form for welfare benefits, as community care is now a separate Quality Mark category.
- 7.10 We do not agree that caseworkers supervised by external supervisors must receive at least 2 hours one-to-one supervision a week (definitions relating to D3.1), especially as the definitions also specify that such caseworkers must be relatively experienced. The amount of supervision required should be a matter for the professional judgement of managers and supervisors.
- 7.11 The general point needs to be made that there is a shortage of caseworkers in the NfP sector who can presently meet the supervisor requirements. While we would not wish the Commission to lower the requirements, we believe it should take a developmental approach and operate a degree of flexibility in relation to caseworkers who are close to meeting the requirements. In practice this means that such individuals would be provisionally “accredited” as supervisors on the understanding that they meet the full requirements within an agreed timescale.

Requirement D4 - Operation of the supervisory role

- 7.12 Requirement D4.1 is a substantial new requirement, and its implementation should be delayed until October 2002.
- 7.13 Requirement D4.5 should specify that staff should be notified of changes in law and procedure as soon as is reasonably practicable.

Requirement D5 - Individual competence

- 7.14 The training requirement (D5.1) should be more rigorous for inexperienced staff, ie with less than one year’s experience in the relevant category of law over the last five years. We would propose a minimum of 18 hours training in the relevant category of law during the first year, falling to 12 hours in the second year and 6 hours thereafter. Attendance of meetings of national and regional practitioner associations for the purposes of discussing technical legal issues should count towards approved training.
- 7.15 The definitions relating to D5.2 (the 12 hour rule) should specify that for the purposes of the requirement, “qualifying casework” includes:
- a minimum of say 9 hours direct advice and casework on behalf of clients (it is arguable that such work should be undertaken in the relevant category of law);
 - receiving technical supervision on a one-to-one basis;
 - receiving training in the law (including internal training if CPD accredited and attending meetings of practitioner associations);
 - undertaking technical supervision or training.

- 7.16 A small number of contracted agencies operate what is known as the “integrated generalist” model of service delivery, which usually entails the involvement of volunteer advisers. Volunteer advisers may also be involved in the “expanded ringfence” model of delivery. Some of these organisations may face difficulties in meeting D5.2, which (unlike the present equivalent requirement) specifies that the minimum of 12 hours must be spent on casework. In the case of such agencies, the Commission should consider extending the deadline for compliance with D5.2.
- 7.17 The definitions relating to D5.2 should specify that qualifying casework need not be supervised to full SQM standards where it is level (i) work. This preserves the current position for NfP contract holders. The meaning of “level (i)” should be spelt out in the definitions.
- 7.18 The definitions relating to D5.2 should specify what constitutes a professional legal qualification. We assume that it does not include, for example, a law degree or an NVQ in advice work.

8. Section E: Running the Service

Requirement E1 - File management

- 8.1 We do not agree with requirement E1.1, which appears to be bureaucracy for its own sake. In any event, it should be made clear in the definitions relating to E1.1 that organisations do not have to use the case classifications set out in Annex B.
- 8.2 The definitions relating to conflict of interest (E1.3(a)) should specify that where a service is provided by a local authority or other public body, and a client’s enquiry relates to the activities or duties of that body, the caseworker must:
- inform the client from the outset of a potential conflict of interest and of the option of obtaining advice from an independent provider;
 - refer the client to an independent provider if legal proceedings are imminent or have commenced;
 - signpost or refer the client to an independent provider if the caseworker otherwise has reason to believe that the client may have a potential claim against the body concerned.
- 8.3 The requirement proposed in paragraph 8.2 above should be covered by appropriate guidance. The requirement should not preclude the body concerned from providing initial advice and basic assistance to the client.
- 8.4 We would be concerned if an organisation made their accounts departments or secretaries responsible for identifying potential conflicts of interest. The definitions should specify that this responsibility should be the responsibility of whoever has conduct of the case (although administrative staff may be involved for example in record searches).
- 8.5 It should be clarified that the definitions relating to undertakings (E1.3(d)) apply only to solicitor organisations.

- 8.6 The requirement to constantly update the "latest action taken" on a summary flysheet (definitions relating to E1.4) is overly burdensome. It should suffice to require this to be clear from the file itself (usually from the latest file note). It is unclear what the term "current case status" as opposed to "latest action taken" means.
- 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 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.

Requirement E2 - File review

- 8.9 We strongly disagree with the proposal that a minimum number of files must be reviewed for each caseworker (definitions relating to E2.1). This exemplifies our concern that too many of the new requirements in the SQM are auditor rather than quality driven. No evidence has been adduced that there is a problem with the current LAFQAS requirement, which rightly leaves decisions on file review numbers to the professional judgement of managers and supervisors, taking account of the experience and expertise of individual caseworkers.
- 8.10 In any event, the minimum numbers of reviews should be halved, to 12 files a year per caseworker in each category of law (and 6 files for supervisors).
- 8.11 We do not agree that organisations should be required to obtain the prior consent of the Commission to allow a non-supervisor to carry out file reviews where the caseworker concerned meets the legal competence standard (D.3). It should suffice to confirm at audit that the caseworker meets the standard.
- 8.12 We do not agree with the statement that it is insufficient to record a simple "yes" in relation to review findings (definitions relating to E2.5). If the caseworker has provided good quality of advice and adhered to organisational principles and as a consequence no corrective action is required, a simple "yes" is quite sufficient. We do not understand the issues which the Commission is seeking to address with this requirement.
- 8.13 It should be clarified that auditors are not in a position to second guess a reviewer's assessment of the quality of advice given.

9. Section F: Meeting Clients' Needs

Requirement F1 - Individual cases: at the outset

- 9.1 We do not agree that clients must "agree" advice given (F1.1). This requirement is unreasonable and utterly impracticable, not least because some clients may refuse to agree a record because they are not happy with the advice received even though it is perfectly correct. F1.1 should therefore be redrafted to state simply that all of the matters listed should be confirmed in writing.
- 9.2 In addition, where level (i) advice only is given, the requirement should be that organisations must offer the client written confirmation of the advice given.
- 9.3 Either F1.1 or F1.2 should be amended to include a requirement to confirm in writing details of any limitation on the organisation's ability to provide independent advice and on any potential conflict of interest.
- 9.4 As worded, the costs information requirement in F1.2 is far too onerous, especially in relation to cases being dealt with at the Legal Help level or where an organisation is making a referral to a solicitor in relation to actual or anticipated proceedings. We recognise that this may be unintentional, but clarification is required.
- 9.5 The definitions relating to F1.2 should clarify that organisations providing Legal Help need not provide information on costs relating to potential Legal Representation until it is clear that the matter is likely to proceed to that level of work. To take an example, a welfare benefits caseworker should not be obliged to advise on costs relating to potential judicial review or Court of Appeal proceedings when handling an appeal against refusal of benefit at the Legal Help level.
- 9.6 The definitions should also clarify that when an organisation is making a referral to a solicitor, its obligations are limited to providing a bare outline of likely costs issues, including eligibility for civil legal aid, the operation of the statutory charge, potential liability in relation to an opponent's costs and the operation of conditional fee agreements. To require more is unrealistic and will result in duplication of effort by the referring organisation and the solicitor.
- 9.7 The definitions should further clarify that the referring organisation is not obliged to:
- (a) provide information concerning the solicitor's charge out rates;
 - (b) assess whether the client is in fact financially eligible for civil legal aid;
 - (c) give detailed information on the operation of cost regimes relating to proceedings.

Requirement F2 - Individual cases: progress of the case

- 9.8 Our comments in paragraphs 9.4 - 9.7 above also apply to costs information provided during the progress of a case (F2.3).
- 9.9 It should be clarified in the definitions to F2.4 that contracted organisations may complete work on a matter under the contract where the client ceases to be financially eligible for Legal Help and other levels of Controlled Work after work on the matter has started. The definitions should highlight that it is important to be alert to opportunities to bring clients within the scope of the legal aid scheme.

Requirement F5 - Use of approved suppliers

- 9.10 For the same reasons as those outlined in paragraph 4.4 - 4.6 above, the words “or unreasonable” should be deleted from F5.1, thus limiting its scope to the issue of unlawful discrimination. In addition, the list of areas to be addressed in an equal opportunities policy (definitions relating to F5.1) should be limited to race, sex and disability, ie those areas presently covered by anti-discrimination laws.
- 9.11 It will frequently be impossible to evaluate performances in court (F5.3), as we understand that there are fewer and fewer occasions when representatives of the instructing solicitors are paid to attend court with Counsel. The requirement should be qualified accordingly.
- 9.12 We do not agree that where a supplier has been recommended by another organisation, that organisation must be provided in every instance with an evaluation of the supplier’s service (definitions relating to F5.3). Where the service has been satisfactory, this is entirely unnecessary.
- 9.13 The definitions relating to F5.3 should specify the need to comply with the law relating to defamation and data protection (this point is currently buried in the Guidance). Our view is that organisations will need to be extremely cautious in recording adverse findings on approved suppliers in order to protect themselves and their clients from legal proceedings. This calls into question the value of the requirement.

10. Section G: Commitment to Quality

We have no comments on this section.

PART THREE: COMMENTS ON THE GUIDANCE

11. Introduction

11.1 Before turning to specific comments on the guidance, we would like to highlight four main areas of general concern. These are:

- use of "business" terminology that will be unfamiliar to the NfP sector. In our view, this lack of familiarity may be an obstacle to NfP providers getting to grips with the Standard;
- areas where the Guidance appears to create requirements that are additional to those contained in the Standard itself;
- an impression that the Guidance sets parameters for auditors' discretion that are not qualified explicitly by "reasonableness";
- an excessive degree of detail in relation to staff and organisational management issues. Although the content of much of this information may be of use, we are concerned that the effect of including so much of it may be off-putting, and makes the Guidance lengthier than necessary. Organisations should be able to find guidance on management issues for themselves from relevant textbooks, websites and training courses. For the sake of brevity, where this issue has arisen, we have simply inserted the phrase "excessive detail" in our comments.

11.2 Please also note the comment at the end of this section on the presentation of clarified and new requirements in the "Changes to Requirements" list provided with the draft SQM documentation.

12. Section A: Access to Service

A1.1 Business plan

Plan style and setting objectives

12.1 There is a risk that too great an emphasis on quantifiable targets will simply lead agencies to produce speculative figures to please auditors. The phrasing of the last sentence of bullet point 3 is an example of how the Guidance appears to be adding a fresh requirement that is not explicit in the Standard. Where the Guidance indicates that something will be looked for by an auditor, it strongly suggests that if it isn't found in the format suggested, this will have an effect on audit results.

Keeping your plan up to date

12.2 It is important to acknowledge that it is not always feasible to quantify the effects of all major issues likely to have a significant impact on service, such as dispersal of asylum seekers, since the scale of the issue, and therefore its impact, will often be impossible to predict with precision.

- 12.3 In relation to both sections above, we suggest it may more useful for agencies to be encouraged to identify a small number of service objectives that are relevant to them, and for monitoring to be recommended in more general terms. For example, Aim: to increase take-up of service from a particular estate/group within the local community, followed by methods of achieving this, followed by a summary of how to evaluate success.

Plan contents

- 12.4 Bullet point 1: the use of the term “market” will hinder NfP providers’ ability to recognise that this section has anything to do with them and the services they provide.

Service delivery aims

- 12.5 Bullet point 3 (service targets): many of the sample targets proposed as possible requirements are not susceptible to an agency’s control. Additionally, we do not see the value in the recommendation that an organisation should aim to close a given number of files in a prescribed period. There is a risk that organisations will comply with this recommendation simply because it has been provided in the Guidance.

A2.1 Marketing your service

Where to promote your service

- 12.6 Bullet point 2 (“As a minimum...”): contradictory approaches seem to be recommended here. On the one hand, it is advised that “it will be usual for auditors to find additional promotion of services”, although whether as a requirement or a possibility is unclear. On the other hand, “leafleting and cold calling is not encourage (sic)”. It is (rightly) pointed that there are strictures placed on these activities under the terms of legal aid contracts, but the way in which these two sentences read is confusing.

A3.1 Non-discrimination in the provision of services

Grounds

- 12.7 Please refer to our comments on this requirement and its definitions in Part Two of this response.

13. Section B: Seamless Service

B1.1 Staff knowledge about when to use active signposting and referrals

Giving examples

- 13.1 There seems to be some confusion at present about the definition of the term “referral” as it applies across the Quality Mark as a whole. If it is necessary for an adviser to make an appointment with a second supplier purely on the grounds that a client’s language or other communication problems make this impossible to do themselves, is this active signposting or referral?

- 13.2 ASA has received anecdotal reports that advisers are choosing to actively signpost rather than refer clients, on the basis that signposting imposes a smaller administrative burden. This means that a client's needs may be overlooked by caseworkers operating under pressure, particularly during drop-in sessions.

B1.2 A procedure for conducting active signposting and referrals

Advice to all clients (cost implications)

- 13.3 Bullet point 2: please see comments in Part Two of our response regarding our concerns about the level of detail prescribed in the requirement/definitions regarding costs of services provided by an agency referred to. The Guidance to this section appears to further amplify the level of detail required. This activity will presumably lengthen the time spent on cases. Can we assume that this time can be claimed for by advisers working under contract?

Recording and reviewing feedback

- 13.4 Bullet point 2: we recommend that caution be exercised in the framing of the suggestion that agencies contact auditors about their concerns regarding other Quality Marked services. In our understanding, agencies' lack of trust of, or sense of competition with, other providers is a significant barrier to referral. Perhaps the phrasing could be qualified with something to the effect of "raising repeated or serious concerns".

B1.3 Maintaining and reviewing records and data

- 13.5 Excessive detail.

B2.1 Awareness and incorporation of CLSP protocols

Not incorporating the CLSP protocol

- 13.6 The Guidance, which is referred to in the main Standard as a source of further information, provides detailed limits to the general grounds mentioned in the definition to the requirement on situations where organisations can choose not to incorporate their local CLSP protocol. In our view, this is an example of the Guidance effectively introducing further requirements that are not explicit in the Standard itself. We have commented elsewhere in our response both on the terms of this requirement itself and on the general issue of auditors' discretion that is raised here.
- 13.7 It would be useful to include guidance to cover organisations providing a regional service that extends across a number of CLSP areas. How do they incorporate a number of individual protocols that may not be mutually compatible?

14. Section C: Running the Organisation

C1.1 Departmental structure; and

C1.2 Key/decision making responsibilities structure

- 14.1 Excessive detail.

C1.4 Status enquiries

Validating status information

- 14.2 Bullet point 1: the phrase "admitted personnel" is not one most non-solicitor organisations will understand. We suggest that this is replaced by "people qualified but not necessarily working as solicitors or barristers" (assuming this is what is meant).

C3.1 Time recording procedures

Purpose

- 14.3 Please see comment above under A1.1 (Plan contents). Once again we feel that the phrase "business activity" is not one that will sit well with NfP providers. Please also see our comments on the requirement in Part Two of this response.

What is meant by "case cost"?

- 14.4 The requirement and definitions at C3.1 make it explicit that monitoring time spent on cases in terms of their cost is only mandatory for LSC funded and fee paying work. The way in which case cost is discussed in the Guidance does not make this distinction clear, and it was hard for us to make out the sense of this paragraph overall. If NfP organisations are to be persuaded of the value of time-recording for non-LSC funded work (and in our view the level of detail suggested may put them off), it is important to stress the benefits of doing so (ie C3.2), rather than recommend analysis of cost on grounds that are far from clear.

Accuracy of recording

- 14.5 Bullet point 2: surely there is a whole range of reasons why time spent on a case may diverge from any abstract parameters allocated to it? We are not convinced that the comparison suggested is a reliable method of checking accuracy of time recording.

15. Section D: People Management

D1 and D2 Job descriptions/person specifications etc

- 15.1 Excessive detail.

D1.3 Operating an open recruitment policy

Attracting suitable candidates/finding the best person for the job

- 15.2 Excessive detail.

D3.1 Named category supervisor

External supervisor

- 15.3 Bullet point 2: this raises the issue of auditors' discretion once again. We recommend that a sentence be added to the effect that the auditors' authorisation will

not be unreasonably refused.

D3.2 Legal competence standards

Panel accreditation route (D3.2(a))

- 15.4 The third bullet point refers to non-solicitor practices. We suggest that this is changed to non-solicitor organisations.

D3.3 Supervisory skills

Training in supervisory skills (D3.3(b))

- 15.5 We suggest that the recommendation that supervisors undertake a 10-day course is unrealistic. We understand that currently available supervisory skills courses do not tend to run for longer than two days.

D4.3 Limits of individual competence and referral

Special cases

- 15.6 We suggest that you remove the restriction not to allow support from another specialist who has taken a case on referral. Ongoing support from a specialist to whom cases have been referred allows for the development of competence of caseworkers in the referring organisation, which a simple referral would not. The restriction also runs counter to the apparent intention of the proposed amendment to future second-tier contracts, which we understand will include a “supported casework” component.

16. Section E: Running the Service

E2.1a Number of files, frequency and method of review

Minimum arrangements

- 16.1 Bullet point 2: please see our comments on the relevant requirement in Section 2 of our response.

Review frequency

- 16.2 Bullet point 3 (“File review intervals should not exceed three months/quarterly”): we suggest that if this forms part of the requirement it is added to the definitions in the main body of the Standard.

E2.3 File reviewers

Supervisors conducting their own reviews

- 16.3 We suggest that the last sentence of this paragraph is deleted, on the grounds that supervisors will be able to make their own assessment of the best means to self file-review.

Authority to appoint a non-qualified supervisor

- 16.4 The wording differs between the definition and the guidance. We are unsure of the distinction between “routine” and “specific” reviews as described in the definition, and note that “routine” reviews only are mentioned in the Guidance.

E2.5 Review records

Record storage

- 16.5 Another example of excessive detail. We suggest that it would be sufficient to simply make a statement to the effect that whatever system is used will enable an organisation to meet the requirement.

File Review Record Content

- 16.6 Bullet point 3: please see our comments on the relevant requirement.

17. Section F: Meeting Clients’ Needs

F1.1 Agreeing the record in writing

- 17.1 Writing on the case record that a client has agreed advice given etc is distinct from providing a written confirmation of such advice in cases where a file is opened. The wording of the relevant definition at page 79 of the Standard appears to present them as either/or options. If this is not the intention, it may be as well to add something to the effect that a letter of confirmation could include a request that the client contacts the agency if they do not agree with the content of the confirmation letter. Alternatively, some organisations ask clients to sign and return a second copy of the initial confirmation letter.

F2.4 Legal aid eligibility

- 17.2 We welcome this section, which clarifies confusion arising from ambiguous wording in the definition to the requirement. A change in financial circumstances which makes a client ineligible for Legal Help in relation to a new matter does not affect their ongoing entitlement to Legal Help in respect of a matter opened at a time when the client was eligible. We suggest that the phrase “ie either making them eligible where they weren’t previously or vice versa” is removed from the definition in the Standard, and that the requirement itself be reworded. We make this point in general terms in Section 2 of this response in relation to the requirement and definition.

F4.2 Consent to audit clients’ files

Where client declines to give consent

- 17.3 In our view it is not possible to “seek evidence” of something that is an absence, namely a client’s refusal to give consent - by definition an act of refusal is not objectively verifiable beyond a note on the case record to that effect.

18. Section G: Commitment to Quality

G4.1 Having a quality manual

Purpose

Please see our comments on the Guidance for A1.1 (Plan contents) and C3.1 (Purpose) regarding business terminology.

19. Lists 1 - 3 (Changes to Requirements)

In our view, the statement that List 2 only contains “Clarifications of Guidance” from LAFQAS is not accurate. This list contains a substantial number of Code 6 requirements, which the LSC defines as “brand new” requirements. Equally, a majority of the Code 3 and 4 requirements in this list require changes to documented procedures and are thus to one extent or another also new. We are concerned that new requirements or substantial alterations to existing requirements are being described as clarifications.