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14 September 2012

Dear Elisabeth,

### **Voluntary quality schemes in legal services**

In response to your report my Board undertook further work in this area, publishing a consultation paper on the range of quality risks and suggested regulatory interventions. We have now considered the responses to the consultation alongside our formal response to your report. I attach the paper that my Board considered at its September meeting.

My Board has accepted your recommendations which we have also endorsed in the consultation response document. Here we identify a number of next steps which we expect the regulators to take account of in their future work. This includes the use of appropriate information sources, including voluntary quality schemes, in the assessment of risk which will necessitate close working between regulators and scheme operators.

Earlier this year, we held a roundtable event with voluntary quality scheme operators and regulators where the recommendations your report made concerning the essential characteristics required of credible schemes were discussed. We are aware that following this event, some schemes have implemented measures addressing their consistency with the essential characteristics and that the Panel has continued its dialogue with them. We would therefore encourage you to consider undertaking a review of progress among schemes in meeting the essential characteristics.

My Board agreed that the issue of voluntary quality scheme accreditation would be considered further once schemes and regulators have had the opportunity to establish how they can work together in the future. As indicated in your report, and as we have recognised in our response document on the quality consultation, at this time the successful development of these schemes is likely to be through market activity rather than any outside influence.

It would be helpful if you could keep the LSB and the regulators informed of any further work you undertake in this area. In particular, should you consider, at an appropriate point, reviewing progress among voluntary quality schemes in meeting the essential characteristics and addressing credibility issues we would be very interested in seeing any results.

More widely, you will note that our response outlines the success criteria by which we will hold regulators to account in relation to quality assurance, including the need for improved transparency of performance information. It is here where I see potential synergies with the Panel's forthcoming advice on the extent to which the regulatory system could, and should, help consumers to choose and use legal services.

A handwritten signature in black ink, appearing to read "David Edmonds". The signature is written in a cursive, flowing style.

**David Edmonds**  
Chairman

Consumer Panel recommendation	LSB accept or reject	LSB response
<p>Scheme operators should undertake a detailed self-assessment against the essential characteristics set out in this report. In particular, there are four main elements of schemes which need attention:</p> <ul style="list-style-type: none"> <li>- Measures that assess actual competence, such as spot checks or mystery shopping, should be used to ensure ongoing competence;</li> <li>- Clearer consumer information, which should be made more easily available;</li> <li>- Lay input and consumer feedback should be included to a greater extent into scheme development and review; and</li> <li>- Data should be collected, analysed and published to validate scheme claims and inform ongoing review processes.</li> </ul>	<p>Accept</p>	<p>The LSB considers that the essential characteristics set out in the report offer a solid basis for scheme operators to self-assess against and, similarly, for others to judge them on. Our consultation paper identified the potential for these schemes, where they are robust; to be used by approved regulators to inform risk assessment. This was supported by respondents subject to there being sufficient credibility of the schemes. We consider that the Panel's advice provides a practical framework for developing the credibility of the schemes, particularly in relation to frequency of re-accreditation and rigour of the process. Following a roundtable event held with scheme operators and observed by a representative of the Panel, we are aware that some schemes have implemented measures addressing their compliance with the characteristics. We would therefore encourage the Panel to consider undertaking, at an appropriate point, a review of progress among schemes in meeting the essential characteristics.</p>

<p>Regulators should collect data on scheme membership and examine how membership of credible schemes could be recognised within risk-based regulation.</p>	<p>Not directly for LSB</p>	<p>The LSB has asked regulators to liaise with schemes and identify possible information sources to assist in risk assessment of regulated providers. First regulators need to be able to assess schemes on a case by case basis in order to assess how useful they could be in guaranteeing competence. An example might be the information schemes held in relation to changes in a firm's status within the scheme which may have a bearing on regulators own assessment of risk. For their part, schemes would need to think clearly about the purpose of their quality mark and where they situate themselves on the continuum between identifying competence, specifying good practice and recognising best practice</p>
<p>Scheme operators and the LSB should consider the advantages and drawbacks of developing an independent accreditation scheme for Voluntary Quality Schemes.</p>	<p>Accept</p>	<p>We accept the Panel's analysis of the issues with the credibility of voluntary schemes and have discussed some of these issues with the scheme operators who agreed that a process of continuous improvement and self-review should be put in place. Given this commitment, at this stage we consider that the schemes should be given an opportunity to improve and work more closely with regulators before further discussions take place in relation to independent accreditation. Furthermore it may be that this becomes an issue for the frontline regulators if particular issues arise from their joint working. We consider that a review by the Panel will shed additional light on whether credibility issues persist.</p>

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	12 September 2012	<b>Item:</b> Paper (12) 59

### Approaches to quality - response to consultation

#### Background

1. In March we issued a consultation paper outlining the options for regulators to consider when deciding how to prevent risks to, and improve, the quality of legal services consumers receive.
2. This followed advice from the Legal Services Consumer Panel on the relatively low level of understanding among consumers on what constitutes quality and the risks to it in legal services, followed by further advice relating specifically to the use of voluntary quality schemes and comparison websites. We received the advice in 2010, 2011 and 2012 respectively.
3. The consultation paper provided an overview of the quality risks and suggested existing or alternate regulatory interventions which might be usefully deployed to better assure quality. It also provided an interim response to advice received from the Legal Services Consumer Panel in relation to Voluntary Quality Schemes following a roundtable with scheme operators.
4. We received 15 responses to the consultation, which closed on 1 June. All of the responses have been published on our website.
5. The Board has already responded formally to the Panel's advice on comparison websites, accepting the recommendations at its meeting in April 2012. We have subsequently written to the approved regulators asking them to consider how they will engage with comparison websites to drive the standards set by the Consumer Panel, giving particular weight to the availability of professional registers. Responses are due by the end of September but we received an early response from the SRA, who indicated their support for greater engagement with comparison websites and the need for further work to address issues of creditability. The issue of accreditation of comparison sites will be considered by the LSB at an appropriate point in 2013/14.
6. The LSB's draft response to the consultation is attached at **Annex A**
7. The proposed response to the Consumer Panel is attached at **Annex B**

#### Summary of responses



8. Overall we were pleased with the range of responses and the level of engagement with the issues identified in the paper.
9. The majority of respondents agreed with our assessment of quality risks and proposed toolkit of regulatory interventions, signalling a general acceptance that quality risks need to be addressed through a combination of entry controls, ongoing supervision and enforcement. Respondents also acknowledged the importance of the better regulation principles and the potential impact of burdensome regulation on innovation, particularly as competition can also play a role in improving quality.
10. There was widespread agreement that regulators have an important role in assuring technical quality. This had the potential to overshadow consideration of the other dimensions of quality, although the influence of competition in areas related to service or utility was recognised in some responses. No further dimensions of quality were suggested.
11. Respondents highlighted the importance of education and training requirements in quality assurance, both at the point of individual authorisation and through ongoing requirements. However there was also acknowledgement that the current reliance on educational attainment and CPD measured in hours may not be sufficient to ensure ongoing competence. In this regard some respondents highlighted the link to the Legal Education and Training Review (LETR).
12. We were particularly encouraged to see recognition among the approved regulators which responded to the consultation of the need to take a risk based outcomes focused approach to quality risks that includes appropriate segmentation. Although, many respondents highlighted the availability and transparency of data as a potential barrier to this type of approach and there were limited examples of where this is happening already.
13. Respondents were broadly positive in relation to the role of market driven incentives such as voluntary quality schemes and comparison services, although views as to the extent to which they could replace regulatory interventions were mixed. Some respondents identified limits to the extent that information provided through these mechanisms would be useful to regulators and/or consumers. Others expressed concerns that too much intervention by regulators in market led incentives may stymie innovation.
14. Concerns were expressed in relation to the credibility of such 'choice tools' and particularly the reliability of data, echoing the Consumer Panel's analysis. While approved regulators could see the benefit of engaging more closely with them, most felt these issues first needed to be overcome. While no one disagreed with the principle of transparency of performance information, some

respondents highlighted practical problems (such as data protection risks) and the ability of consumers to understand such information.

15. With regards to the role of the LSB, some respondents saw potential benefits of prescribed regulatory action such as greater consistency and consumer input. However the majority of respondents agreed that the LSB should not prescribe regulatory action to address quality risks and each regulator should be left to develop their own approach. Some of the approved regulators identifying the risk of overlap with the work on regulatory standards and the Legal Education and Training Review. Others such as the SRA felt that the LSB should step back while maintaining a dialogue with the approved regulators. Responses to the triennial review were referenced here.

### **What the LSB response recommends**

16. The response document highlights three themes:

- Provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist
- Development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis
- Ensuring regulatory interventions drive an improvement in quality standards without hindering innovation through an outcomes focused approach

17. We propose that the response document highlights the responses of the approved regulators emphasising their broad agreement that the full range of regulatory tools must be utilised at both individual and entity level rather than relying solely on entry requirements. Now we expect them to put the thinking into practice, building on the work that is already underway in relation to the regulatory standards framework and the Legal Education and Training Review.

18. We will also highlight the importance of a liberalised market and increased competition in driving quality. The more that consumers are able to choose and use legal services with confidence, the less prescriptive regulation is required to be and the more effectively the regulatory objectives can be secured. We therefore give as much weight to the expectation that regulators reduce regulatory restrictions where there is no evidence of risk as to the need for more intensive, targeted intervention in areas of greater risk for example the Quality Assurance Scheme for Advocates. We will also encourage regulators to utilise market led incentives more effectively through implementation of the Consumer Panel's recommendations while taking care not to impede innovation.

19. Taking account of the comments at the last Board meeting in relation to the use of action plans prescribing regulatory action, and demonstrating that we have listened to the responses to the triennial review and question 10 in the consultation, we will then make it clear that implementation of the action needed is being handed back to the ARs, who will be judged on the success of their activity in this area through the regulatory standards work and in any future applications submitted to the LSB.
20. We will not micro manage but will hold regulators to account through clear success criteria and expect to see, as they themselves identify, a greater focus on quality integrated into the overall risk based and outcomes focused approach with their regulatory decisions being robustly supported by research and evidence. The success criteria can be found at paragraphs 93 to 96 of **Annex A**.
21. Where there are specific overlaps with the current year's regulatory standards self-assessment framework, progress will be considered as part of this year's self-assessment process. However we expect that regulators take account of all criteria as part of the ongoing development of their action plans.
22. The Legal Services Consumer Panel will be encouraged to follow up on the recommendations in their report on voluntary quality schemes with scheme providers and approved regulators. We also plan to endorse the essential characteristics of these schemes that they identified.

### **Recommendation**

23. The Board is invited to:
- note and comment on the LSB's response to its discussion document about approaches to quality in legal services at **Annex A**
  - delegate to the Chairman and Chief Executive agreement of the final document in advance of publication.
  - agree our response to the Legal Services Consumer Panel advice on Voluntary Quality Schemes at **Annex B**