

To:	Board	
Date of Meeting:	25 January 2012	Item: Paper (12) 06

Title:	Approaches to quality
Workstream(s):	Workforce development
Presented by:	Crispin Passmore, Strategy Director crispin.passmore@legalservicesboard.org.uk / 020 7271 0086
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Status:	Unclassified

Summary:
Based upon an update paper presented to the Board on 30 November 2011, this paper provides the proposed content for a Discussion Document for external consultation and to further inform the LSB approach to quality. Additionally subsumed within the Discussion Paper is further consideration of the report on Voluntary Quality Schemes (also received by the Board on 30 November 2011) and which will subsequently be developed following a roundtable discussion with scheme operators and the Approved Regulators to be held in early February 2012.

Risks and mitigations	
Financial:	Further research to quantify risks or generation of evidence to identify and measure the impact of defined regulatory interventions may be necessitated, although at this stage these might or might not fall to LSB.
FoIA:	Not applicable
Legal:	Not applicable
Reputational:	Failure to adequately address quality concerns could cause reputational harm to LSB and Approved Regulators, particularly if there were to be a high profile failing.
Resource:	Considered sufficient at this time.

Consultation	Yes	No	Who / why?
Board Members:	✓		David Wolfe and Barbara Saunders.
Consumer Panel:	✓		Discussion with Consumer Panel Manager
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
N/A		

Recommendation(s):

- (1) to comment upon and endorse the discussion paper,
- (2) agree that the discussion paper form the initial formal response to the LSCP report on voluntary quality schemes, and
- (3) to delegate authority to the Chair/Chief Executive to sign off following the inclusion of final amendments.

LEGAL SERVICES BOARD

To:	LSB Board	
Date of Meeting:	25 January 2012	Item: Paper (12) 06

Approaches to quality

Executive Summary

1. In November 2011 the Board received an update of work on quality assurance (Paper (11) 80) and agreed the proposed approach to develop a discussion document for external consultation (attached at **Annex A**).
2. The Board also received at the same meeting a report by the Legal Services Consumer Panel on voluntary quality schemes in legal services (Paper (11)79). It was agreed that further consideration of the advice and recommendations contained within the report would be taken to feed in to a wider consultation on quality risks.
3. The discussion document will set out the various issues to test the proposed policy framework and to seek to develop an approach to implement regulatory interventions proportionate to quality risks in legal services.
4. The attached document has been developed drawing upon the Board's thinking and comments offered at the November meeting. The discussion document will be published before the end of March in line with the Business Plan.

Recommendation(s)

The Board is invited:

- (1) to comment upon and endorse the discussion paper,
- (2) agree that the discussion paper form the initial formal response to the LSCP report on voluntary quality schemes, and
- (3) to delegate authority to the Chair/Chief Executive to sign off following the inclusion of final amendments.

Background

5. The Legal Services Board shares regulatory objectives with the Approved Regulators (ARs), including to encourage an independent, strong, diverse and effective legal profession, and to protect and promote the public interest and the interest of consumers. However, to deliver these objectives it is not the role of LSB to assure and accredit every regulatory issue. Rather it is for each AR to assure quality standards and effective legal services through its regulatory arrangements. It is reasonable to expect that this will be achieved through a bespoke risk-based approach, tailored to their respective regulated cohort, but constrained within the bounds of the regulatory frameworks.
6. The legal services market in England and Wales is in a state of evolution; consumerism, technology, globalisation and the broader social change within our society are all factors in driving the change. New regulatory challenges will begin

to emerge. Innovation and opportunism may lead to legal services which pose unknown quality risks, especially if those services lie outside of the current regulatory frameworks. The test for the regulators now is to identify appropriate mechanisms to quality assure the individuals and entities, and thereby quality assure the services and activities they deliver, across the widening and diverse span of legal service provision.

7. The vision contained within the attached Discussion Paper is based on our expectation that a liberalised legal services market plus appropriate regulation is most likely to deliver the regulatory objectives. Our efforts as oversight regulator will therefore focus on ensuring that regulation is proportionate - reduced where possible to remove unnecessary barriers to regulatory objectives and imposed where necessary to support consumer or public interest outcomes. Oversight regulation will seek to encourage competition while ensuring that regulation reacts and develops to protect against emerging risks.
8. To understand whether the LSB delivers on its objectives we believe that is essential to know whether the changes introduced deliver the types of outcomes that consumers actually want. Opinion Leader were asked to carry out research¹ to explore what consumers really want when they engage with legal services. This research has produced a series of “consumer outcomes” that help us understand the types of behaviours that we would expect to see if the market was competitive and focused on delivering a quality service for consumers.
9. The questions contained within the Discussion Paper are drafted with a dual intent; firstly to ask whether we have taken a fully informed view of the quality risks, and so have presented our analysis of a toolkit of regulatory interventions proportionate and relevant to these risks for challenge and confirmation. Secondly, to draw upon the consumer outcomes described by Opinion Leader to provide a focus upon the consumer needs and expectations of legal services.

¹ Opinion Leader Legal Services Board: Developing measures of consumer outcomes for legal services. A report of research carried out by Opinion Leader. March 2011

Paper 12 (06) ANNEX A

Draft discussion paper

Foreword by the Chairman

To be drafted

Executive Summary

1. The Legal Services Board shares regulatory objectives with the Approved Regulators (ARs), including those to encourage an independent, strong, diverse and effective legal profession, and to protect and promote the public interest and the interest of consumers. However, to deliver these objectives it is not the role of the LSB to assure and accredit every regulatory issue. Rather it is for each AR to assure quality standards and effective legal services through its regulatory arrangements. It is reasonable to expect that this will be achieved through a bespoke risk-based approach, tailored to their respective regulated cohort, but constrained within the bounds of the regulatory frameworks.
2. The legal services market in England and Wales is in a state of evolution; consumerism, technology, globalisation and the broader social change within our society are all factors in driving the change. New regulatory challenges will begin to emerge. Innovation and opportunism may lead to legal services which pose unknown quality risks, especially if those services lie outside of the current regulatory frameworks. The test for the regulators now is to identify appropriate mechanisms to quality assure the individuals and entities, and thereby quality assure the services and activities they deliver, across the widening and diverse span of legal service provision.
3. A commonly accepted and understood concept of quality in legal services is however not easy to define. Described as multi-faceted, there appear to be three dimensions which may exhibit potential for risk to consumers of legal services; technical competence, service competence (client care), and utility of advice (a service of quality). The magnitude of any such the risk, and consumer willingness to accept risk (or expect its mitigation), will differ depending on the individual consumer and their history of use of legal services and on the legal activity required by the matter(s) at hand. Regulation within this fluid yet dynamic market therefore needs to be sufficiently flexible to accommodate this range of need whilst protecting the public interest.
4. In this Discussion Paper we will provide an overview of quality risks within legal services, and suggest existing or alternate regulatory interventions which might be usefully deployed to better assure quality. The overriding approach is to achieve proportionality; to reduce regulatory intervention where possible to remove unnecessary barriers to delivering the regulatory objectives, but to impose where necessary to support consumer and / or public interest outcomes. In moving away from a standardised approach or mandating specific regulatory interventions this discussion paper genuinely seeks to determine how liberalised or agile regulation might be.

Introduction

5. The legal services market in England and Wales is in a state of evolution; regulation, consumerism, technology and the broader social change within our society are all factors in driving the change. The public deserve to be given the certainty they need that the building blocks are in place to assure the legal workforce of the future and that the legal services market is going to meet the changing demands of justice in an increasingly demanding future.
6. The spectrum of legal services is widening, both in the way they are reaching across international boundaries, and in the increasing delivery in partnership with other professional services. Business models are becoming more diverse at a time when regulation is to be less burdensome. Regulatory interventions therefore need to be proportionate and better targeted whilst providing high levels of assurance. Not only assurance about the technical competency of the workforce, but of the services they provide with well-serviced legal advice that is useful to the consumer.
7. This in itself may require a fundamental shift by the Approved Regulators (ARs) since assurance of technical competency has historically, and continues to be, focused upon education attainment and requirements for entry and retention within the profession. Whilst these might be held out as protecting quality, it is difficult to accept that they serve as proxy indicators for all aspects of quality assurance such as demonstrating competency. Nor does it afford the agility necessitated of professional regulation in an evolving market where traditional descriptors such as number of partners are becoming out-dated and need to be swiftly replaced by more appropriate descriptors, for example through market segmentation describing the type of legal activity and type of consumer.
8. Similarly, the workforce within the legal services market needs to react as flexibly as possible within the constraints of the regulatory framework, whilst maintaining and improving consumer protections. Simultaneously, the regulators should be, and some are, shifting to outcomes-focused regulation, utilising the full panoply of regulatory interventions with better risk management and enforcement within a globalised market. However, this is not at the expense of their specific duty to ensure the workforce has the right skills and knowledge, including the capacity to constantly update and demonstrate competency in those skills and knowledge.
9. The more consumers are able to choose and use legal services with confidence, the less that prescriptive and restrictive regulation is required and the more the regulatory objectives are secured.
10. The Legal Services Board's (LSB) intended approach to regulation for quality is to ensure that it is proportionate; reduced where possible to remove unnecessary barriers to delivering the regulatory objectives, and only imposed where necessary to support consumer and / or public interest outcomes.
11. However, there is not a 'one size fits all' approach to securing appropriate quality of legal services. Different consumers want, and need, different levels

of quality in different circumstances and the most appropriate regulatory intervention will vary from case to case.

12. This discussion paper seeks to describe some of the different levels and characteristics of quality, and the regulatory interventions which might be or are used to assure these. In describing these, questions will be posed as a genuinely open consultation on not only which are the most proportionate and effective regulatory interventions, but on their appropriate and timely deployment.
13. In moving away from a standardised approach or mandating specific regulatory interventions this discussion paper seeks to determine how liberalised or agile regulation might be. Likened to a toolkit, the crux of the proposed approach is to seek to assess which outcomes-focused interventions (tools) should be in the toolbox and justify why, and risk assess their application.

Understanding quality risks in the legal services market

14. In their report² “Quality in Legal Services” the Legal Services Consumer Panel advised that the quality of legal advice needs to be better understood and monitored.
15. Quality in legal services has previously been described as multi-faceted³. The three most common dimensions with potential for risk are:
 - a. Technical competence
 - b. Service competence – client care, and
 - c. Utility of advice - a service of quality

However, legal service providers and legal service consumers may place emphasis on only one of these dimensions rather than associate all three collectively. Providers may focus upon technical competence, whilst consumers focus upon the quality or usefulness (utility) of the service. This asymmetry is observed elsewhere in the relationship, such as the information asymmetry between providers and consumers whereby the providers’ knowledge and expertise potentially puts the consumer at a disadvantage in selecting services.

16. A commonly accepted and understood concept of quality in legal services is therefore not easy to define. Some legal services providers will undoubtedly build a legitimate reputation as delivering high quality services to consumers, and market forces and competition will serve to strengthen this reputation further as the providers strive to maintain or improve that quality and their position in the market place. Consumers who are frequent users of legal services will similarly strengthen their views on the providers’ service quality subsequently demonstrated through repeat business with a provider.
17. Conversely, other providers may seek to influence consumer choice, for example through associating high price with high quality. Outside of the legal

² Quality in Legal Services. Legal Services Consumer Panel. November 2010

³ Mayson S Civil legal aid: squaring the (vicious) circle. Legal Services Institute. September 2010

services sector, research⁴ has shown input cost to be a valid proxy for quality where prices are set other than through normal market mechanisms, but that this is otherwise at best ambiguous where prices vary. In the private market of the legal services sector, prices are set via normal market indicators, but indicators of quality remain somewhat opaque. Equally, it has been argued that where the public interest is concerned, the mitigation for poor quality will not be achieved simply as a result of economic competition within the market.

18. Decker & Yarrow⁵ highlighted the need to maintain a standard of quality of service as perhaps the most compelling reason for regulation of legal services. The importance of legal services to individual customers and more broadly the public interest in confidence in the law and the legal processes makes such a consideration central to any change in regulation.
19. The magnitude and type of quality risks to the individual consumer do become apparent within an overview of some of the published information⁶ on the quality of legal advice (produced to assist LSB round table discussions). The overview highlights that these consumers believe they are more able to judge service quality (attributing good service to personable factors) than technical ability. The latter rather rests on a presumption of sufficient qualifications to practice and that there is little variation of technical expertise between providers.
20. The risks identified also resonate with those described within the theories of consumer harm elsewhere⁷:
 - a. **Consumers have a limited choice**; they are disadvantaged by virtue of area of residence, employment status, or previous legal history. This limited choice can inflate margins on the range of services available to these consumers, resulting in further limitation due to lack of affordability.
 - b. **Consumers perceive they have limited choice**; lack of awareness of alternative options and lack of understanding of available options can mean consumers struggle to compare the quality of services or compare and contrast between service providers, or, they are risk averse and prefer to stay with a known provider. This lack of substitution can lessen competitive pressures between providers.
 - c. **Providers do not compete effectively**; a lack of competitive pressure does not force the least efficient providers to become more efficient or otherwise exit the market. This lack of competition can result in barriers to entry, expansion or diversification within the market and directly affect the elasticity of supply and hence price of legal services.
21. A further review⁸ of published material similarly illustrates an inability of consumers of other (non-law) regulated professions to assess the technical

⁴ Cooper, Gibbons, Jones & McGuire Does hospital competition save lives? Evidence from the recent English NHS choice reforms December 2009

⁵ Decker & Yarrow. Understanding the economic rationale for legal services regulation. Regulatory Policy Institute October 2010.

⁶ Quality in legal services: a literature review. Legal Services Board November 2011 (http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/quality_of_the_legal_profession.pdf)

⁷ Theories of harm and consumer detriment. Office of Fair Trading. April 2010

ability, quality of the service, or advice utility they receive. Professional regulators of these cohorts deploy a variety of regulatory interventions to protect the public interest, some of which address quality risks, but consumers appear to be unaware of many of these.

22. In an attempt to provide a practical approach of easily observable characteristics to capture differences across the legal services sector, the LSB commissioned a study⁹ to develop an outline framework based on segmenting parts of the supply of legal services that exhibit similar features and therefore bear comparison – these segments being defined by the type of consumer problem, the services offered and the sophistication of the consumers served, rather than traditional supplier-focused measures such as number of partners and turnover.
23. This framework has subsequently been tested in benchmarking one sector of the legal services market – city firms. The associated report¹⁰ has begun to provide a clearer understanding of the potential quality risks; the consumers of this sector, often corporate bodies with an in-house legal department, and who are repeat purchasers, have a greater capacity to use knowledge and buying power to make informed decisions and therefore the firms are likely to pose relatively fewer regulatory risks. Although personal consumers were found to access services from this sector they were described as having significant wealth with relatively complex personal situations. Consequently these too were categorised as sophisticated consumers.
24. What isn't then clear from this benchmarking exercise are the risks which might be anticipated with a less sophisticated, infrequent or vulnerable personal consumer. It is believed that this cohort of 'natural persons' are exposed to a greater potential for market failure i.e. poor quality legal service, and therefore need greater consumer protection. This hypothesis requires further testing in the high street sector, and we are collaborating with the Law Society and Ministry of Justice to undertake research with solicitors' firms during 2012. Whilst informed in part by the LSB Regulatory Information Review, a finer granularity of understanding is required to identify which groupings of natural persons are placed at most risk by which types of legal activities.
25. This latter consumer segment may also utilise legal services provided by non-commercial bodies (with non-lawyer owners and/or managers) that provide legal services. Often located within the not-for-profit sector, the consumers are typically those from disadvantaged or socially excluded groups with a very wide range of problems, often without the ability to pay for the legal service they need¹¹. At the current time, regulation extends only to the individual authorised persons working within such organisations and is therefore limited. The LSB is currently considering its approach to non-commercial bodies and

⁸ Quality in other regulated professions. Legal Service Board November 2011 (http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/quality_in_other_regulated_professions.pdf)

⁹ A framework to monitor the legal services sector. Oxera Consulting, prepared for the Legal Services Board. September 2011

¹⁰ Benchmarking the supply of legal services by city law firms. Charles River Associates, prepared for the Legal Services Board. August 2011

¹¹ Understanding the supply of legal services by 'special bodies'. Frontier Economics, a report prepared for the Legal Services Board. July 2011

what regulation of the entity might look like if the transitional protection is lifted, including consideration of quality risks. However, as with mainstream legal services, there may be wider quality risks in the provision of non-reserved services that will remain outside of the scope of such regulatory interventions.

26. In responding to the regulatory objectives¹² we are seeking to identify the risks which are prejudicial to the substantive delivery of the regulatory objectives. In developing our approach to quality we must remain vigilant so as not to undermine the objectives but nevertheless seek to remove or mitigate for the risks to better protect and promote the public interest and interests of consumers, without unduly affecting competition in the provision of services or the strength and independence of the workforce.

Question 1: What are your views on the high level risks to quality (technical, service, utility) that consumers face when accessing legal services? How much do these risks exist across the whole legal services market and to what extent is segmentation necessary?

Regulating quality risks in the legal services market

27. We share regulatory objectives with the ARs, including to encourage an independent, strong, diverse and effective legal profession, and to protect and promote the public interest and the interest of consumers. However, to deliver these objectives it is not the role of LSB to assure and accredit quality standards which tackle every regulatory issue. Rather it is for each AR to assure quality standards and effective legal services through its regulatory arrangements. It is reasonable to expect that this will be achieved through a bespoke risk-based approach, tailored to their respective regulated cohort, but constrained within the bounds of the regulatory framework and drawing upon a toolkit of interventions.
28. Assessing quality risk and deciding upon appropriate targeted regulation is the task of the ARs. The LSB role as an oversight regulator is to challenge and support the ARs through them developing a framework or toolkit for assessing or addressing the issues, and to assess the outcome against delivery of the regulatory objectives.
29. Regulation of the legal workforce has traditionally focused upon requirements for entry of individuals and entities, cyclical retention of a right to practise at generalist and specialist levels (which in truth often equates to no more than payment of a retention fee, rather than proper re-accreditation), and dealing with failings of fitness to practise (FtP). These regulatory activities are underpinned by entry criteria (or barriers) and professional ethics and standards. Historically, they have been underpinned through a minimum level of competence set by the regulators. However, this does not test ability, rather relying upon a generic and title-based FtP concept. Consequently, a fundamental difference exists between being fit to practise and fit for purpose.

¹² Legal Services Act 2007 s1(1)

30. More recently an additional focus has been placed upon the role of continuing professional development (CPD), re-validation and re-accreditation in assuring an individual remains fit for purpose. The gap that continues to remain is whether the individual or service is fit for purpose for the consumer segment(s) it serves and if the entry barriers are targeted at the risks that actually exist in that segment of the market.
31. The legal services market in England and Wales is in a state of evolution; consumerism, technology, globalisation and the broader social change within our society are all factors in driving the change. New regulatory challenges will begin to emerge. Innovation and opportunism may lead to legal services which pose unknown quality risks, especially if those services lie outside of the current regulatory frameworks. The test for the regulators now is to identify appropriate mechanisms to quality assure the individuals, entities or activities across the widening and diverse span of legal service provision.
32. Such changes may necessitate expanding the research evidence base and require a degree of flexibility and agility on the part of the Approved Regulators if consumers and the public interest are to continue to be protected. This must also be set within the guiding principles of better regulation and the general duties placed upon all approved regulators¹³ described in **Figure 1**:

Figure 1 Quality assurance – suggested best regulatory practice

Better regulation principle	Purpose
Proportionate	Reducing the burden, ensuring effective functioning in the market whilst protecting the consumer
Accountable	Cost benefit and a robust and compelling case to introduce, achieving the objective at the least cost and with the least coercion and with clear, transparent, time-bound evaluation.
Consistent	Remove existing regulation that unnecessarily impedes growth whilst seeking to modernise and improve compliance methods
Targeted	Empowering those who will be responsible for enforcement rather than providing a prescriptive set of factors
Transparent	Consulting with those affected and being clear about how effectiveness will be monitored

33. The various reviews of published material and studies referred to in earlier paragraphs demonstrate that different consumers have different starting points for different services. Rather than a broad-brush approach to regulation and the traditional supplier-focused measurements, a targeted approach to quality assurance requires categorisations that are more

¹³ Legal Services Act 2007 s28(3)

reflective of these differences. Market segmentation based upon the type of law, type of legal activity and type of consumer address this need. When considered together not only do these characteristics provide a breakdown of the legal services sector, but they also provide a focus upon outcomes.

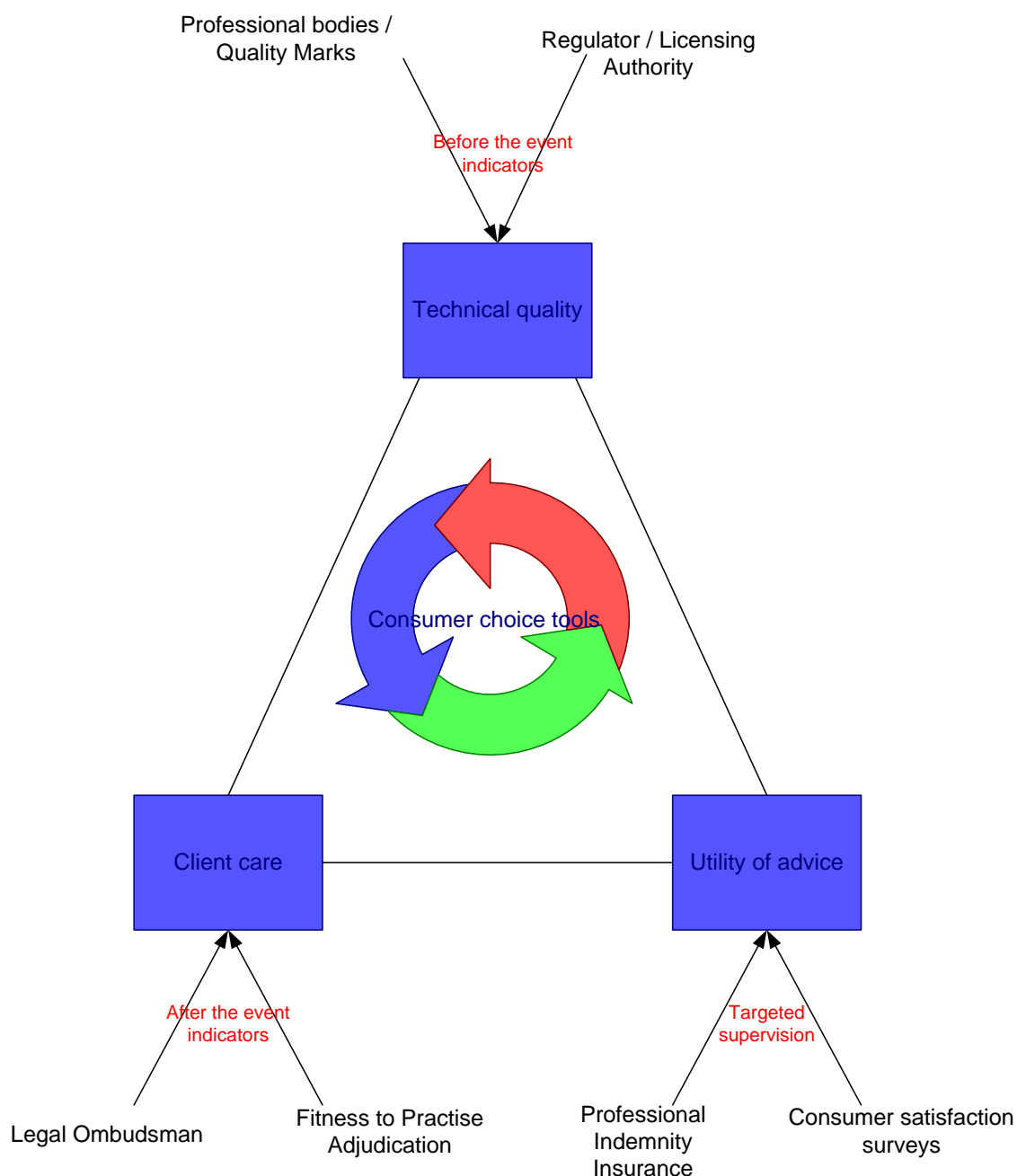
34. In discussion with Approved Regulators and others (spanning legal and non-legal professional practice and regulation) we have identified risks posed to consumers by quality issues in the market, what (if any) evidence base there is for these, how the risks have been described, and appropriately and proportionately addressed through regulatory intervention. Broadly these fall in to three categories;
- a. Before the event assurance – entry hurdles, training and accreditation, and assurance of competency
 - b. Increased consumer empowerment – transparent / published data and tools to support choice (based upon after the event information)
 - c. Targeted supervision – proportionate and risk-based by regulators or on behalf of regulators, but touching all who deliver a legal service (i.e. not reserved to lawyers).

Question 2: What balance between entry controls and on-going supervision is likely to be most effective in tackling the risks to quality that are identified?

Regulatory interventions for quality assurance

35. The inter-relationship between the three dimensions of quality (technical, utility of advice and client care), is illustrated in **Figure 2**. The range of interventions for the reduction, mitigation or removal of quality risks in order to better quality assure the legal services workforce and the legal services it provides will need to touch upon each of these. To do so will require data, efficacy measures and evidence of outcomes either to prioritise future regulatory interventions or, where there is a direct correlation, to target them at known areas of quality risk.
36. Whilst the following paragraphs offer an initial outline view of the possible range of interventions, they must also be considered alongside the legal education and training review. If legal services are to effectively serve the consumer, then the legal workforce needs to have the right skills and knowledge, and a capability to constantly update both. It is to be hoped that the considerations toward the quality interventions will inform the education and training review, and that changes to the range of interventions will come about as a result of the review. This assumes that both will occur in concert as opposed to splendid isolation of one another.

Figure 2 The inter-relationship of technical quality, client care, and utility of advice



37. **Technical quality** is believed to be assured through entry criteria, re-certification and progression criteria, and evidence of continual professional development (CPD). However, the former merely serves to provide a form of assurance of fitness to practise through acquisition of a qualification, whilst the latter provides little assurance other than box-ticking since it is based upon input measures and not outcomes that demonstrate a fitness for purpose.

38. The requirements for qualification have become the only 'before the event' quality assurance means utilised by regulators but this does not provide the consumer with sufficient information to judge whether an individual is competent and honest. Historically it was to erect a barrier to entry to protect the legal qualification from competition. But society and the market place have changed, bringing greater consumer demand and expectation, and competition from other non-lawyer providers.
39. Quality marks provided by professional bodies similarly reveal little about the competency of an individual or a firm, especially if the requirements necessary to achieve a quality mark are not publicised, nor validated. This is confirmed by an assessment of existing voluntary quality schemes undertaken by the Legal Services Consumer Panel¹⁴ that no discernible proof exists (such as spot checks or mystery shopping) that schemes currently deliver on their quality claims. Yet whilst it appears no more than a stamp of attainment, it can and is required by some sophisticated consumers in their purchase specification, posing the question whether it is the sophisticated consumer or the regulator that is assuring quality standards – and, if so, whether the consumer segment as a whole which accesses such services requires regulatory protection.
40. We will consider this matter further, and have planned a roundtable debate with voluntary quality scheme operators and approved regulators to be held in early February after which this section may be updated. We are aware from communications with one scheme operator that plans are already underway to introduce formal reaccreditation, unannounced compliance visits and spot checks on competence during 2012. If implemented, this addresses concerns expressed by the Consumer Panel, and affords good opportunity for such quality marks to be more formally considered as indicators for consumer choice.
41. It is imperative that the legal education and training review provides proposals to move the current "one size fits all" approach to technical quality to one that is more closely aligned to the changing market, and recognising the variety of legal services provided to the differing consumer segments. Understanding the likely demand for generalist and specialist lawyers and how the regulatory requirements for education and training will fit will be central to the success of the review.
42. Consequently given these requirements it seems reasonable to suggest that the ARs integrate the risks in to their respective regulatory strategies, and assess alongside their other regulatory activities. The resulting outcome would demonstrate a technical quality reflective of the recommendations of the legal and education review, the routes to and maintenance of qualification, and the routine demonstration of competence. For example, the Quality Assurance Scheme (for criminal) Advocates (QASA) provides one such tool which the ARs will, in time and with outcome evidence from the nascent scheme, want to consider for extension to others.
43. It will also be for the ARs to seek to demonstrate why particular legal activities do not require regulatory intervention; either because they are not needed or because sufficient mechanisms already exist. Segmenting services and

¹⁴ Voluntary quality schemes in legal services. Legal Services Consumer Panel. November 2011

consumers of those services will provide a much more targeted and proportional approach. Sophisticated consumers can assess risk and determine their degree of acceptance of it or requirements for its mitigation. It is unlikely that the personal, natural person, consumer is able to mirror this, and the ARs interventions could therefore be centred upon these less empowered users.

Question 3: To what extent can regulators rely upon external incentives and drivers (such as voluntary schemes, consumer education or competition) to reduce and mitigate the risks that exist?

44. **Client care** is not proactively quality assured; rather it is a reactive process triggered by consumer complaint or fitness to practise investigation and is therefore an ‘after the event’ indicator. However, the outcomes of these events may be critical learning episodes and either in isolation or collectively point to a failing in educational or professional standards determined by the regulator.
45. Since matters of client care may be directed via various complaints handling routes, including at the first stage to the provider firm, then for an informed and complete view of matters arising to be identified, it will be necessary for certain data about complaints to be published across the range of bodies; at firm level, Legal Ombudsman and ARs. It will then be for the ARs to map the collated data against their respective educational and professional standards and determine whether targeted regulation or changes to standards and regulation are necessary. This approach gains support from the Legal Ombudsman who in their strategy for 2012-15¹⁵ describe an enhanced research function to mine complaints and outcomes data and present the data in useful and accessible ways to stakeholders, including ARs.
46. There might also be opportunity for ARs to introduce a route of ‘earned recognition’, defined by the Department of Business, Innovation & Skills (BIS)¹⁶ as being where a firm demonstrates an in-house voluntary quality assurance scheme of its own or adherence to a strong external scheme which broadly addresses the issues highlighted in the Panel’s report. The virtuous circle of learning from adverse events and complaints is demonstrated in practise. Assuming the scheme is validated as a reliable risk indicator the benefits are two-fold; the AR makes fewer interventions with the firm, and the AR gains insight into the underlying evidence for educational and training changes or review of professional standards. Comparing the output from a range of firms afforded earned recognition then begins to provide a view which might be extrapolated to a service-wide evidence base.
47. Comparing data from different sources has also become an accepted norm in price comparison and ‘search and match’ websites. Such sites have begun to emerge listing legal services both in relatively crude price terms (inasmuch as instant quotes or fixed-fees are currently not a particularly common feature of

¹⁵ Final consultation draft Strategy 2012-2015, Business Plan 2012-2013. Legal Ombudsman. October 2011

¹⁶ Better Choices: Better Deals – Consumers powering growth. Department for Business Innovation & Skills April 2011

legal services), and to identify solicitors to meet the users described need. In a report for the Law Society¹⁷, price comparison sites are recognised as interactive aids and decision tools, and an important part of consumer choice. Despite this view, the sites are also criticised for commoditising routine legal services. The report does however suggest that additions to assist consumers in the initial screening process of available alternatives, to afford a more in-depth comparison between legal service providers is the way forward in an increasingly technological and global legal market.

48. To support consumers in navigating the various information sources, an initiative recently announced by BIS may prove a useful adjunct. 'Midata' is a voluntary programme which over time will give consumers increasing access to their personal data in a portable, electronic format. Individuals will then be able to use this data to gain insights into their own behaviour, make more informed choices about products and services, and manage their lives more efficiently.
49. To gain the maximum benefit from all of the developments referred to above, consumers may therefore require assistance in understanding the different types of law that can be undertaken, and how in light of these the costs and success rates can be placed in context of their use of those legal services. In effect this offers a regulatory intervention that explains and contextualises performance data.

Question 4: To what extent can regulators support an effective market through ensuring transparency of data and performance for consumers and others?

50. **Utility of advice** may become an 'after the event' indicator where a claim against an individual's or firm's indemnity insurance is made, and is likely to already be incorporated within the complaints data referred to in earlier paragraphs. However, Professional Indemnity Insurance (PII) information can also be used to describe the characteristics of high quality and conversely low quality practise. This information can be used to develop risk profiles or predictors of poor practice allowing regulatory intervention to be much more effectively targeted.
51. A range of tools might be used to supervise the firms deemed to present a risk to consumers, and persistent poor quality would be dealt with through existing compliance and enforcement strategies.
52. Whilst the use of PII data might provide objective measures of quality, there are other more subjective measures. Mystery shopper or customer satisfaction feedback mechanisms not only provide 'after the event' information about quality, but provide a co-regulatory role for the consumer. Wielding this power, the consumer role is a powerful disincentive to poor quality. This has been successfully harnessed in health care through Patient Opinion¹⁸, an independent website platform for patient feedback, and used to improve UK health services. The LSB awaits with interest the publication of a

¹⁷ Applying the comparison web site model to legal services. The Law Society November 2011

¹⁸ <http://www.patientopinion.org.uk/> Patient Opinion: every voice matters. Founded 2005.

Legal Services Consumer Panel report on mystery shopping of legal services comparison websites.

53. We know that a range of consumers exist and who utilise a range of legal services. The earlier referenced Oxera framework (market segmentation) may provide a suitable tool to segment the market for type of consumer and types of service used, and enable a comparison of the customer feedback to again inform a more targeted approach for supervision by the regulators.
54. This framework might also be utilised to provide outcomes data (utility of advice) about legal services to drive quality improvement through reputational incentive. Currently there are web-based and hard copy directories published about legal services providing some degree of comprehension of the marketplace and the quality of service provided within that market. Some of these publications are more independent than others. Ranking of firms by outcomes can be a powerful incentive to improve by increasing ranking to overtake competitors, but loses strength when unduly influenced by the very service providers it purports to rate.
55. A truly independent reviewer of legal services outcomes, analogous to Dr Foster in the healthcare sector, could describe and publish outcomes data by firm or chambers. Whilst this could form a reference source for consumers in selecting a legal service provider, a report that describes and rates the service outcomes can be instrumental in driving improvement to achieve or secure a good quality reputation. If a trusted source, it is reasonable to suggest that this resource becomes a legitimate trigger for targeted regulatory intervention.

Summary of regulatory interventions

56. The following **Figure 3** is offered, not as an exhaustive list, but broadly illustrative of regulatory interventions to assure quality in legal service provision. Nor is it intended to confer a mandate or standardise interventions for specific quality risks.
57. Our starting point is to seek to ensure that regulation delivers the public interest and that the interests of the consumers are placed at the heart of the system. Our approach to regulation is:
 - a. Consumer protection should be appropriate for the particular market
 - b. Regulatory obligations should be at the minimum level to be proportionate to the risk and to deliver regulatory objectives
 - c. Regulation should live up to the better regulation principles in practice.

Figure 3 Examples of quality risks and suggested regulatory interventions

Quality risk mitigation	Regulatory interventions
Demonstrating basic / initial skills and knowledge necessary to be fit to practise	Entry and licensing requirements
Demonstrating contemporary knowledge and awareness of practice	Outcomes focused CPD
Demonstrating contemporary competency and ability to practice	Accreditation schemes / minimum competency assurance
Assured quality or competency of defined aspects of service provision	Evidenced / accredited quality marks
Identifying patterns or pockets of practice at the two extremes of the normal distribution curve; targeted regulation	Trend data e.g. complaints, market outcome data
Removing sub-standard competency or behaviours not acceptable for public protection	Fitness to practise investigation and sanctions
Informing professional development, standards and ethics	Closing the virtuous circle – feeding the learning from outcomes in to standards and training
Matching the consumer and their needs to the right legal service and the right legal service provider	Comparison websites and consumer 'help' or choice support information
Targeted regulation; informing professional development, standards and ethics	Risk profiling / predictive characteristics of high risk practise (failing or innovative practice)
Quality assurance and service development triggers, co-regulation	Consumer satisfaction feedback / consumer co-regulation
Targeted regulation, earned recognition / self-regulation	Oxera framework to segment market for customer feedback / develop a trusted source of comparative data for targeted intervention

Question 5: To what extent do you agree or wish to add or subtract to the list of quality risk mitigation and regulatory interventions set out in Figure 3?

Question 6: What other regulatory tools and interventions should legal regulators be deploying to tackle risks to quality?

Question 7: Where regulators do intervene to assure quality how can this be done in a way that supports innovation?

Question 8: To what extent should the LSB prescribe regulatory action by approved regulators to address quality risks?

Next steps

58. Views on our proposed approach are welcome. Please submit electronically (in Word or pdf format) by XXX – this provides XX weeks for interested parties to respond.
59. Hard copy responses by post or fax are also welcome to: XXX
60. In framing this discussion paper we have posed specific questions to help inform our final decision. These questions can be found in the body of this discussion paper and also consolidated at Annex 1. We would be grateful if you would reply to these questions, as well as commenting more generally on the issues raised (where relevant). Where possible please can you link your comments to specific questions or parts of the paper rather than making general statements.
61. All responses will be published on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential.

Annex 1 – List of questions

Question 1: What are your views on the high level risks to quality (technical, service, utility) that consumers face when accessing legal services? How much do these risks exist across the whole legal services market and to what extent is segmentation necessary?

Question 2: What balance between entry controls and on-going supervision is likely to be most effective in tackling the risks to quality that are identified?

Question 3: To what extent can regulators rely upon external incentives and drivers (such as voluntary schemes, consumer education or competition) to reduce and mitigate the risks that exist?

Question 4: To what extent can regulators support an effective market through ensuring transparency of data and performance for consumers and others?

Question 5: To what extent do you agree or wish to add or subtract to the list of quality risk mitigation and regulatory interventions set out in Figure 3?

Question 6: What other regulatory tools and interventions should legal regulators be deploying to tackle risks to quality?

Question 7: Where regulators do intervene to assure quality how can this be done in a way that supports innovation?

Question 8: To what extent should the LSB prescribe regulatory action by approved regulators to address quality risks?