

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

<b>Title:</b>	LSB response to the quality consultation and formal response to the Consumer Panel's advice on VQS	
<b>Workstream(s):</b>	Developing a changing workforce for a changing market (see <a href="#">Business Plan 2012/13</a> )	
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<b>Status:</b>	Protect	

<b>Summary:</b>
<p>This paper provides the response to the Board's recent consultation paper on 'Approaches to quality' and a formal response to the Legal Services Consumer Panel's advice on voluntary quality schemes. The consultation paper provided an overview of the quality risks and suggested existing or alternative regulatory interventions which might be usefully deployed to better assure quality. It did not seek to propose any specific next steps. As our analysis was largely supported by the approved regulators which responded, we will not seek to prescribe further detailed action at this time. Instead we propose to hold them to account through the regulatory effectiveness process for integrating the focus on quality into the overall risk based/outcomes focused approach through success criteria; highlighting increased transparency, provision of information and improved engagement with market led incentives as particular priorities.</p>

<b>Recommendation(s):</b>
<p>The Board is invited:</p> <ol style="list-style-type: none"> <li>(1) To provide comments on the proposed approach</li> <li>(2) Subject to those comments, delegate authority to the Chairman and Chief Executive to agree the final version of the consultation response document in advance of publication later in September (<b>Annex A</b>)</li> <li>(3) To agree our response to the Legal Services Consumer Panel advice on Voluntary Quality Schemes (<b>Annex B</b>)</li> </ol>

<b>Risks and mitigations</b>
<p><b>Financial:</b> 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 this does not fall to LSB</p>

<b>Legal:</b>	Not applicable
<b>Reputational:</b>	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
<b>Resource:</b>	Considered sufficient at this time.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	X		Barbara Saunders
<b>Consumer Panel:</b>	X		Discussion on approach with Steve Brooker but Consumer Panel has not seen draft papers
<b>Others:</b>			

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Annex A	Section 21 – Information reasonably accessible by other means	N/A
Annex B	Section 21 – Information reasonably accessible by other means	N/A

## LEGAL SERVICES BOARD

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### 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**