

Outsourcing Of The Specialist Quality Mark: A Briefing For Adviceuk Members

Summary

The Legal Services Commission (LSC) intends to out-source the auditing of the Specialist Quality Mark (SQM) from September, 2010. These proposals are described in detail in their discussion paper "Quality in Legal Aid: SQM Outsourcing", June, 2009, which is available from their ¹website:

The main elements of the LSC's proposals are as follows:-

- The LSC is no longer willing or able to bear the cost of auditing providers against the SQM standard (although in practice auditing has of late become risk-based rather than universal, at least for civil work).
- The LSC considers that the costs and responsibility for quality assurance should be borne by providers, who must be able to demonstrate compliance with an acceptable Quality Mark (QM) in order to undertake publicly-funded work from April, 2013, the target date for introduction of best value tendering (BVT).
- The LSC will take a "tailored" approach to quality assurance, implementing different methods of quality assurance applicable to the various categories of law and assessing compliance with key performance indicators (KPIs) which form part of the Unified Contract.
- Peer review will be retained but as it cannot be applied to new entrants to publicly-funded work, it will be applied only on a risk-based, random sampling basis for existing suppliers and for specialised services. The costs will be met by providers. It is not clear whether peer review will also be out-sourced.
- On the same principle, the LSC will cease reimbursement for the costs of accreditation for individual advisers/solicitors (e.g. costs of accreditation for immigration and asylum advisers).
- The LSC wishes to extend accreditation schemes applicable in some categories of law (such as panel membership for family practitioners, IAAS accreditation for immigration advisers) as a means of demonstrating personal competence and as an alternative to peer review.
- The supervision and category-specific requirements of the SQM are to be transferred to the Unified Contract from April, 2010 and Lexcel will be accepted as an alternative to the SQM from that date.
- The auditing and administration of the SQM will be out-sourced by means of a tendering process compliant with EU Procurement Law (cf. tendering for the General Help Quality Mark) from September, 2010.

¹http://www.legalservices.gov.uk/docs/cls_main/Quality_in_Legal_Aid_SQM_Outsourcing_A_Discussion_Paper

- It is likely that several contracts will be issued in order to promote competition between accreditation providers; drive down audit costs for suppliers; encourage competition between the various quality assurance systems.
- The cost of audits for new providers is likely to range from £2,100 to £3,150; for existing providers, from £900 to £1,800.

Issues

The LSC is consciously positioning itself as a purchaser of services, not a regulator. Although budgetary considerations are presented as a key factor in the decision to out-source the SQM, the proposal also signifies the distance the LSC wishes to create between procurement strategy and responsibility for quality – a move signaled within the earlier 2010 consultation document. Peer review as the only effective method of measuring quality of advice has been in effect abandoned.

The LSC has attempted to deflect criticism of the proposal from an equalities perspective by presenting an equalities impact assessment, which is included within the discussion paper (annex 1). It claims that the requirement that the QM audit is 3-yearly, as opposed to annual, and that costs are proportional to size of the organization will mitigate the impact (i.e. time and costs) upon the provider. However, such mitigation is notional, as in fact the SQM has not been subject to an annual audit process for the majority of providers in recent years. Peer review does not generate large amounts of administrative work for providers and has generally commanded respect as a legitimate measure of quality.

It seems likely that the strategy is designed in part to encourage – or at least not deter- new entrants to the market in the wake of the Legal Services Act and specifically to widen the field in preparation for best value tendering in 2013.

Since the document was issued (June, 2009) the Law Society has been successful in persuading the LSC to delay the roll-out of BVT for criminal work until 2013 (although pilot BVT schemes will still go ahead). The vocal opposition of criminal legal aid solicitors to BVT may derail or at least defer the 2013 proposals for civil work, although n-f-p suppliers may have less persuasive power than criminal solicitors. ²“I can foresee firms making unsustainable suicide bids and the price ending up so low that *providing a service of any quality will not be possible.*”

² Quotation from a criminal law practitioner, “Battle won” on BVT – but not the war”, Law Society Gazette, p.1, 23.7.2009 (my italics)

Consequences

With the transfer of the supervision and category-specific requirements of the SQM to the Unified Contract, there is little to distinguish the SQM from any other QA system available to the legal advice sector. It will measure the quality of processes and organizational viability, not quality of advice nor the internal quality management systems which underpin quality of advice. The LSC intends that the SQM will become a generic standard with a remit similar to that of Lexcel, a practice management standard developed by the Law Society. The SQM has recently been amended to align it with Lexcel and to make it less specific to legal aid work.

There seems to be no particular reason why a single Quality Mark (QM) incorporating the remaining SQM criteria could not be devised as an alternative to Lexcel – perhaps specifically for the n-f-p sector - which could apply to legal advice services at all both “general help” and specialist levels. There is no obvious justification for separate QM standards for different levels of service once the supervisory and category-specific elements of SQM-level work have been removed.

The new QM which will replace the GHQM does, however, include a quality of advice criterion and is likely to assess compliance with the quality of advice standards by means of an assessment system similar to peer review. This creates an anomaly in that advice organisations whose services fall within the “general help” standard will automatically be subject to peer review, whereas those undertaking work at SQM level under LSC contracts will not – or at least may only be subject to peer review on a random sampling basis (by the LSC) or on request, if able to pay.

The LSC states that it wishes to create competition within the quality assurance sector, between different quality assurance systems and different assessment agencies. This may create the same conflict between price and quality as has been identified as a potential consequence of BVT in the procurement of legal services – such that the quality of the accreditation process and hence the value of accreditation are brought into question.

It may in practice be very difficult to for the LSC to exercise any control over audit costs, even assuming it wishes to do so, once the contracts have been awarded. It seems inevitable that the impact will disproportionately affect smaller legal aid firms and n-f-p providers – who are by definition less likely to benefit from the concession that quality accreditation is to be based upon the firm/organization as a whole rather than upon each office.

Impact for AUK and its members

Costs will be a deterrent for many members, as for the GHQM.

At this stage, it is difficult to gauge the level of interest in the contracts for accreditation. However, if in due course a monopoly accreditation supplier is created, fee levels may escalate such that accreditation for work at "general help" or specialist level becomes inaccessible to many n-f-p advice services. This would further disadvantage AUK members compared to CABx which will continue to obtain quality accreditation, at least for work at "general help" level, through CitA's membership system.

For agencies with LSC immigration contracts, the burden of meeting fees for IAAS accreditation as well as for OISC exemption (if this proposal is implemented) will be a further disincentive to continue with this work from 2010.

The option of accreditation for advisers as a potential alternative to peer review is a significant feature of the LSC's proposals. AdviceUK has been instrumental in devising the national occupational standards for legal advice work (NOS4Justice) which offer individual advisers the opportunity to achieve external accreditation. This may be advantageous to advisers in the n-f-p sector who will not generally have access to other recognised accreditation routes unless they are solicitors or undertake immigration work.

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