



QUALITY INDICATORS IN THE LEGAL SERVICES MARKET

Issued 28 April 2021

ICAEW welcomes the opportunity to respond to the Legal Services Board's discussion paper Quality Indicators in the Legal Services Market issued 23 February 2021 a copy of which is available from [this link](#).

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This response dated 28 April 2021 reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 30 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently Legal Services. In discharging its regulatory duties it is subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service, the Financial Conduct Authority (FCA), the Legal Services Board (LSB) and the Office for Professional Body Anti-Money Laundering (OPBAS).

Amongst ICAEW's regulatory responsibilities it is;

- the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 2,500 firms and 7,000 responsible individuals under the Companies Act 2006.
- a Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 30 firms and 150 responsible individuals under the Republic of Ireland's Companies Act 2014.
- the largest recognised supervisory body (RSB) for local audit in England. It has eight firms and over 90 key audit partners registered under the Local Audit and Accountability Act 2014
- the largest single insolvency regulator in the UK licensing some 800 of the UK's 1,600 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986.
- a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 currently licensing approximately 2,000 firms to undertake exempt regulated activities under that Act.
- a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 11,000 member firms.
- designated an Approved Regulator and Licensing Authority for the administration of oaths and probate under the Legal Services Act 2007 (the Act) currently accrediting approximately 350 firms to undertake the probate activity.

INTRODUCTION

General approach

1. We welcome the LSB's initiative on quality indicators, which were first raised as an issue for the legal services industry in 2016 by the Competition and Markets Authority (CMA) and reiterated with greater emphasis in their December 2020 report. There is clearly more that can be done in this area and the consultation document is valuable in taking forward the debate and exploring the options.
2. As set out in the consultation document, the drivers behind this initiative are the statutory objectives of access to justice, competition, and consumer interest. In practice, these drivers need to be weighed against the requirements of the other objectives as well as the Hampton principles in section 28 of the Legal Services Act 2007 (the Act).
3. It is implicit in the findings of the CMA in both 2016 and 2020 that some of the poor market access is simply down to weak marketing strategies by the firms and legal services providers. The reality is that the marketing approach of professional services firms has in many cases not kept pace with the evolution of communication through the internet and mobile applications in comparison with other industries. Added to which the workflow provided by the historic marketing channel of word of mouth has provided sustainable practice working without the need for much expense on a marketing overhead, an observation made in one of the LSB's own workshops regarding the slow evolution of multi-disciplinary practices in 2015.
4. The issue for the market is that the word-of-mouth mechanism limits the supply to a narrow focus of recurring business and does not reach out to the wider public and, in particular, the vulnerable consumer who does not have access into that channel. Quality indicators are a valid mechanism for giving them entry but do bring with them a number of challenges.
5. Marketing strategies, as Professor Mayson has observed, are something the professional bodies themselves should be helping the firms to evolve, and do not sit comfortably in a regulatory environment; therefore the LSB should be working equally with those bodies as well as with the regulators who ideally should be reviewing how the guidance is implemented rather than being both the coach and the examiner.
6. Quality is something that the professions, both legal and accountancy, aspire to and is fundamental to providers in building and maintaining their reputation. Through its oversight and approach to licensing and enforcement, the LSB has been effectively policing and, more recently, enforcing quality in ongoing legal competence. The attainment of a protected title, such as a solicitor or chartered accountant, or approval as an "*authorised legal service provider*" indicate that required regulatory standards have been assessed and satisfied. Those holding authorisation must continue to maintain and adhere to regulatory requirements designed to ensure high standards and professionalism in the services provided to the public.

7. It is important that the introduction of any new method of assessing quality is an enhancement to that market fundamental, not an inhibitor of it. There is a risk that some legal and other services can be provided without authorisation and that additional requirements on regulated providers could lead to some choosing to leave or not to enter the regulated market. New requirements for authorised providers to open themselves to additional scrutiny must be carefully managed to avoid the dilution of the attraction of using a protected title or authorisation. Any additional scrutiny requirements are of particular significance for relatively new entrants to the market in multi-disciplinary settings where legal services form a part of their business but are not fundamental to it. Further requirements may result in recent entrants to the sector making business decisions to withdraw. We believe that it would be detrimental to the consumer if providers, for example, were to consider the maintenance of a good reputation online to be more valuable than being authorised to provide regulated legal services.
8. It should be borne in mind that one of the drivers of the Clementi review was to open up the legal service market to a broader range of service provider. We are concerned that regulated marketing tools could, if not carefully managed, act as a further disincentive and, therefore, a barrier to expanding the range of providers in the legal market, leaving consumers with less choice.
9. We find the three-fold break down of quality by the LSB particularly useful, as it helps home in on the areas of opportunity and risk and a pathway to quick wins. The general service indicator, which sits well across other areas of professional service delivery, is one that ICAEW leverage as part of their quality assurance inspection programme, though there is no external reporting of those reviews. We can see that where there is a commodity/process type of characteristic to the legal service, such as probate, taxation compliance and conveyancing, then there are measurable and comparable factors. However, on quality of the technical service, and the outcome achieved, there are more inherent problems which the consultation document does recognise.
10. We note that neither the consultation nor CMA findings have given any weight to the psychology behind why consumers provide feedback reviews. The public is entitled to expect professionals operating in the legal services market to provide a high quality of work across the three dimensions identified by the LSB. However, suppose the quality of work or service provided falls short of the consumers' expectations of what can be done in their particular circumstances. In that case, it is probable that they will be more likely to have an unfavourable view on the quality of work than if all their expectations have been met. A dissatisfied consumer is more likely to take the opportunity to provide feedback to give voice to their sense of dissatisfaction.
11. There is a risk therefore that consumers seeking to engage a legal services provider if faced with a high proportion of negative feedback overall across the market do not find the feedback of assistance in making an informed choice. Combined with complaints and regulatory penalty data, the overall picture projected to the consumer risks portraying a failing profession when the opposite is true. Consumers may be dissuaded from engaging in the legal services market, further inhibiting access to justice when the aim is to widen it.
12. It is acknowledged that existing available tools do not provide a complete picture of the market or allow consumers to identify where authorised providers can provide expertise in other areas, for example, in accountancy. The creation of a digital register would enable all consumers to identify all legal service providers.

Question 1: We are proposing to think about quality in terms of these dimensions: technical quality, customer service and outcomes. What do you think about these elements and are there others we should consider?

Technical quality

13. We agree that an assessment of technical quality would be a very useful indicator to a consumer in coming to a decision regarding which service provider to select. However, the technical quality of the advice or the deliverable which has been provided can only be accurately assessed by someone with the relevant technical expertise. If it is being suggested that this can be done by a consumer (the paragraphs leading up to this question do not say who should be assessing technical quality), we do not believe that this will provide a reliable indicator. Legal case law is also littered with many examples of problems with the quality of advice only surfacing some time after the advice has been given which results in the consumer having a belated very poor experience. A classic example might be a husband and wife instructing a firm to prepare their wills. If they have a good experience (prompt service, good price, nice people), that consumer may be very positive about the provider, only to find later when one dies, that the will was negligently written so that the testator's intentions are not carried out.

Customer service

14. Customer service is clearly an important factor in a consumer having a good experience and being likely to recommend a provider to other potential customers but, while useful, this dimension should be regarded as being a far less reliable indicator of quality than technical quality. The most important aspect to a consumer seeking legal advice or redress will presumably be the reliability of the advice or the quality of the deliverable.

Outcomes

15. The achievement of outcomes may again not be a reliable indicator of quality of the service provided by the firm. In a conveyancing transaction, the failure of a transaction due to problems in the chain may not achieve the right outcome for the consumer and that might result in a negative reaction even though the failure (and the generation of an invoice for the consumer with no gain) may not have been the fault of the provider. Likewise, even the most carefully prepared litigation cases with good chances of success can fail at trial due to the performance of a witness etc. The lawyers in both of those cases could have provided high quality service but the outcome will not have been welcomed and this could generate unfortunate negative feedback.
16. Highly process driven services may lend themselves to a greater level of objective technical quality assessment and can be measured by outcome. For example, non-contentious probate could be measured in terms of whether or not the deceased's affairs were dealt with within an agreed timeline and assets distributed as per the will. However, even in non-contentious probate, there may be unforeseen delays that fall outside of the service provider's control, resulting in agreed timelines being missed. It is difficult to see how all but the simplest benchmarking assessments would work in practice in contentious litigation.

17. It is noted that should legal representatives fail to meet required timelines, for example, to make applications, there are already consequences for them and their clients. Where a client is disadvantaged, the representative may be financially liable for any loss. In more serious instances, the representative could be subject to action by their regulator or LeO. It is already the case that regulated persons, and firms, are aware of the consequences of process or service failings and incentivised to ensure that they take all reasonable steps to avoid such failings.
18. Questions asking a consumer about their satisfaction with the outcome would need to be carefully presented and preferably directly linked to the advice provided to them. For example, if a consumer disregards advice that the outcome sought is not legally possible and is ultimately disappointed by the failure to attain that outcome, their dissatisfaction would not be a good quality indicator. Similarly, suppose a consumer persists in giving instructions contrary to advice, and this is recorded, it would be manifestly unfair if the consumer later provided negative feedback that did not represent their decision.
19. It is noted that if consumers were to be asked questions about whether they considered that they had received a successful or good outcome and the data used to assess quality, this might ultimately reduce access to justice. Providers may decline to act or withdraw if they are not confident of a successful or good outcome and overly concerned about reputational damage. Consumers would find it more difficult to secure representation. There would be less rigour in the law, with fewer providers reluctant to take higher-risk or otherwise challenging cases.
20. In terms of additional factors we see sub-elements of the three dimensions as including;
 - Alertness: was the provider cognisant to my needs
 - Preparedness: was the provider capable of mobilising quickly to meet my needs
 - Transparency: were the services and cost structure clear from the outset
 - Responsiveness: was the provider swift and steady in responding to changing needs or circumstances
 - Timeliness: was the work completed to schedule
 - Value Add: did the provider go over and above
 - Uniqueness: does the provider's mix of skills and behaviours make them different to others
 - Diversity and Fairness: was the service flexed to my needs

Question 2: We are proposing to encourage use of these types of information: objective data, consumer feedback and general information about providers. What do you think about these types of information and are there others we should consider?

21. There are aspects of a consumer's customer journey that can be objectively measured. Primarily, administrative functions such as responding to calls or correspondence within an agreed timeframe are obvious examples. It is noted that the capacity of regulated professionals and authorised legal service providers to manage their administrative functions will vary depending on their resources and the type of work undertaken. A sole practitioner is unlikely to have the same capacity to deal with, for example, consumer queries as a large firm but may offer the type of personal service required by a particular type of consumer. Some consumers may find larger firms impersonal, while others find them reassuring. In this way, the market can cater to the needs of consumers.

22. Factual data on ICAEW firms can be accessed via the ICAEW website and the 'find a chartered account' search function. The way the data is presented reflects that ICAEW firms, including those that hold authorisation to provide probate services, are the primary business supply of accountancy services. Notably, consumers can also access a firm's *regulatory authorisations*, *disciplinary record* and information of any sanctions applied for all of the services regulated by ICAEW.
23. Any requirement for general information to be made available to consumers by the providers of legal services should not presuppose that the service provider has, for example, a dedicated website or otherwise promotes all of the services that they are authorised to supply. Some ICAEW authorised firms provide limited legal services to accountancy clients as an adjunct to their primary business. These firms serve a small number of consumers and, in doing so, have improved access to the legal market. Still, they do not necessarily actively promote these services separately or accept new clients who are not also seeking other services linked to accountancy. The legal services offered by accountancy firms may not be proactively marketed but rather are drawn to the attention of clients seeking accountancy services.
24. To help mitigate the risks identified in the consultation document and identified above, we would suggest that feedback focus on objective, measurable elements of the service provided. Where consumers are asked to provide a subjective view, this should not be given as much prominence or weight, be it positive or negative. For reasons given above, we believe there will be a need for caution in the evaluation of consumer feedback on the quality of the advice / deliverable, as opposed to the quality of service provided, as issues in relation to the quality of the advice or the deliverable may only emerge at a later date, well beyond the date of positive consumer feedback.

Question 3: Which groups of consumers and/or types of provider should action in this area focus on?

25. At this time, ICAEW's participation in the legal services market is limited to probate and oaths. As outlined in our 2017 application for further reserved legal service, it has never been envisaged that ICAEW authorised legal services providers would engage in the legal services market more widely. It is expected that the core business of those authorised to undertake legal services by ICAEW will remain accountancy. As legal services are provided as an adjunct to accountancy services, a consumer who becomes a client of a provider authorised by ICAEW will be able to access a package of expertise and services.
26. It is acknowledged that consumers unfamiliar with the legal services market seeking representation, such as small businesses and individuals, are likely to find it challenging to navigate the marketplace and make an informed decision. It is noted that many small businesses will have an existing business relationship with a provider of accountancy services. Anecdotal evidence indicates that many consumers who have accessed probate services authorised by ICAEW did so as they had an existing relationship with the provider and consider them to be trusted advisers. Existing professional relationships offer small businesses requiring certain legal services to use an existing trusted supplier of accountancy services. In this way, the further opening up of legal services to a broader array of providers has already created more choice to benefit all consumers and, in particular to small businesses. Further expansion would increase choice and enable consumers to use existing providers of other services to act on their behalf in other areas.

Question 4: *Should there be a base level of transparency on quality across the market and enhanced transparency in priority service areas? What should a base level of transparency on quality consist of?*

27. ICAEW is currently limited to probate and oaths in the area of priority services. However, it is noted that given the diversity of legal services provided, any base level of transparency would be best rooted in universal and measurable elements of the services provided. If such a requirement is made, it should use existing factual information already shared in providers' literature and online. For example, consumers could be provided with simplified information giving the regulatory status of the provider, scope of authorisation, other services provided and the qualifications and experience of those providing the service. Where feedback or other client-generated data form a part of the information provided, the consumer needs to be reassured that they can rely on that information. For certainty, only consumers who can be confirmed as having used or sought to use the providers' services should be included. Verified client feedback would not prevent abuse of the system, but it would give greater confidence to consumers that what is being presented are the views of past users of the service.

Question 5: *How useful could consumer feedback, objective data and general information about providers be in informing consumer choice? What are the benefits and drawbacks of these types of information?*

28. Standardising the way that information already available from most providers is published would make it more easily accessible and enable consumers to make limited comparisons to select a provider that meets their specific needs. It could also assist consumers better to understand the difference between regulated and unregulated legal services. Consumers should be provided with sufficient information to determine the type and scope of service required and the benefits of engaging in the regulated market whether or not the service required can be accessed elsewhere. As all ICAEW authorised firms and individuals' main area of business remains the provision of accountancy services, most clients will likely have existing business links with the provider. For new prospective clients, it is to all parties' advantage that the scope of the services provided is clearly stated.

Question 6: *What role, if any, should success rates and complaints data have in informing consumer choice? Is there other quantitative data that would be helpful to inform consumer choice?*

29. We agree with the LSB's Public Panel that an over-reliance on and reporting of success rates may result in some consumers experiencing more difficulty securing representation and, therefore, hinder access to justice.
30. Assessing whether an outcome is a success may not always be straightforward. A favourable judgement may not necessarily meet the consumer's expectations regardless of whether the provider has explained the position and sought to manage the consumer's expectations. Given that success will vary depending on the consumer's perception, it is questionable whether it is an appropriate measure to judge the quality of the work undertaken and likely to be of limited use to consumers seeking representation.

31. Complaints data may be useful to a consumer in making a choice but only if the consumer is educated on the usefulness of the data and its relevance to what service or deliverable the consumer is seeking. This may be particularly important in the context of multi-disciplinary practices. For example, if a consumer is trying to determine which of two local firms to instruct and decides to search for complaints data, will the consumer automatically opt to instruct Firm A with just one complaint rather than Firm B who has had five complaints? Will the consumer have sufficient understanding to look more closely at the complaints data and to distinguish between the five complaints upheld against Firm A which might all be to do with a different part of the business, nothing to do with the service being sought and the one complaint against Firm B which relates to the area of expertise sought. Or to distinguish, in respect of individuals between five older or relatively minor complaints upheld against Individual A compared to one much more recent or much more serious complaint upheld against Individual B?

Question 7: Which of these different channels – law firms' websites, DCTs, a single digital register – do you think could be most effective in providing access to information on quality? Are there other channels we should consider?

32. We agree that a single digital register that provided general information of all providers across the regulated market place would arguably assist consumers. Such a register could be created using existing information in the public domain and include details of other services.

Question 8: Do you have evidence on current usage of DCTs not mentioned in the paper? How could we best encourage engagement by consumers and law firms with DCTs? What are your views on the specific potential solutions, such as requiring law firms to signpost to DCTs, embed ratings, or prompt consumers to leave a review?

33. An advisory note was issued in January 2019 to assist ICAEW members in managing online reviews and engaging with DCTs. At this time, we are only aware of one ICAEW regulated firm providing legal services utilising a DCT. We cannot provide any narrative on the firm's experience.
34. It is acknowledged that online reviews, as a tool for consumers to find and assess goods and services, are an established part of the marketplace. While consumer-generated reviews are typically presented as the views of objective peers with direct experience of the service provider that the consumer wants to know more about, the consumer has no way of knowing whether the reviews are genuine, accurate or appropriate. Reviews appearing on the provider's website are unlikely to engender confidence if the consumer believes that the provider can control what is and is not published. While feedback reported on a site that the provider does not control may be deemed to have more weight, the consumer still has no way of ensuring this information's veracity.
35. Unsubstantiated content posted online may negatively affect the provider's reputation, damage their business and deprive the consumer of their services. In an increasingly competitive legal services market, the potential exists for competitors to misuse these platforms. In an adversarial system, the losing party in a civil case may, for example, unfairly seek to denigrate a provider that successfully represented their client. There is a potential for providers to seek to manipulate the system through fake reviews. Without a means of verifying that the person providing the review has direct experience with the provider, there remains a significant risk of abuse of DCTs.

Question 9: What, if any, steps should regulatory bodies take to help consumers and legal services providers engage with DCTs safely?

36. Consumers should be asked to provide evidence that they have either received or sought to receive the provider's services about which they are leaving a review. The absence of verification that the consumer received or sought to receive a service should either prevent them from leaving a review or limit the scope of that review.

Question 10: What range of quality information, if any, would it be appropriate to hold on a single digital register?

37. We are satisfied that there is sufficient information within the public sphere about those authorised by the ICAEW to provide legal services to create a single digital register. Suppose it were to be a requirement for customer feedback to be included or linked to the register. In that case, it should be limited to objective measures and the party providing the feedback confirmed as having received or having sought to receive a legal service from the provider. We can see the benefit of including decisions from the legal ombudsman where they are relevant to the buying decision, though this could be done through a link to the legal ombudsman to undertake further checks if they wish to do so. We do not consider success or outcome data to be relevant unless it can be contextualised in a way that is accessible and easily understood by the consumer.

Question 11: What are your views on the relative merits of a market-led approach compared with standardised regulator-led approach?

38. We have noted above that the driver behind these reforms is the need for better marketing and a better appreciation of the current market. Once a number of firms using new tools to market prove successful and winning business at the expense of laggards then others will follow. The message of accessibility and quality is one that is part of the professional ethic and therefore the professional bodies should play their part in driving forward these marketing tools. The regulators should be encouraging these steps but not be necessarily in the vanguard.
39. We are aware that some ICAEW authorised providers are exploring the use of DCTs to manage their online reputation and navigate the risk to reward using such platforms, though we only one example has been brought to our attention. It would not seem proportionate to seek to limit firms from engaging with DCTs and other mechanisms provided that in doing so that they do not act in a manner that infringes their regulatory duties. It is fair to say that firms that do not engage in such activities may have a lesser online presence, meaning that consumers may not consider them when seeking representation. It is not in the interest of any legal service provider for consumers to have too little or indeed too much information. Incorrect or otherwise misleading information or insufficient information could lead to consumers opting not to engage in legal services.
40. A central register would ensure a base level of accessible information while allowing the service provider to engage in marketing and reputational management in a way that suits their business needs.

Question 12: Do you have any further comments on our analysis and approach to determining suitable quality indicators?

41. An area we should draw to your attention in working with digital tools is that the taxonomy needs to be carefully considered. As our experience with Legal Choices has shown, there is a tendency to group the services under legal/lawyer categorisations, which therefore tend to start excluding the wider market of legal service providers such as alternative business structures that the Act was intended to inculcate. The search mechanisms need to be sympathetic to legal services being supplied outside the traditional solicitor/barrister firms.