

Annex A

Quality Assurance for Advocates Equality and Diversity Policy Paper

QAA Equality and Diversity Policy Paper

Introduction

The LSC has, to date, taken the lead role in the development of QAA with the support and guidance of the key stakeholder bodies. However, as described in the discussion paper, the regulators are now ready and keen to lead the remaining work to deliver an operational scheme that applies to all arms of the profession.

The LSC's focus is now to concentrate effort on specifying our minimum requirements for an operational scheme and to support the Joint Advocacy Group (JAG) as they take forward the operational management of advocacy competence.

A key feature of our development approach to date has been to engage with individual advocates and groups of advocates who would be subject to the scheme. Throughout we have sought advocates' views on what the key features of a scheme should be, what factors are important to ensure a fair and accessible scheme, and what steps need to be taken to ensure the scheme provides a transparent framework that supports the core principles of proportionality, reliability, robustness and a scheme that is credible to advocates across the profession.

Central to this was the need to take steps to ensure that the scheme does not disadvantage any group or type of advocate, that it delivers a fair and accessible process and that, wherever possible, it promotes equality of opportunity and supports the promotion of diversity within the profession.

The background to our development approach is laid out in the main discussion paper. Had the LSC retained responsibility for delivery of the operational scheme, we would have had a statutory responsibility to conduct a full Impact Assessment on the scheme proposals. Consequently, considerable work has been undertaken throughout the development process to provide data to support that Impact Assessment, all of which will be made available to assist the JAG in taking the scheme forward. This work, and in particular our extensive programme of work on equality and diversity issues, consultation with individual advocates and feedback from pilot candidates, has informed each stage of the QAA development to date.

One of the LSC's proposed requirements is that an operational scheme developed by the regulators, gives appropriate consideration to equality and diversity issues. We urge that the JAG utilise fully our research on this subject. The LSC further require that proposals for an operational scheme are subject to a full Impact Assessment. As a public body, the LSC is subject to appropriate statutory duties relating to equality and diversity and it is essential that the scheme does not infringe those obligations.

This paper sets out the equality and diversity research and programme of work we have undertaken with advocates and pilot candidates to inform such

an Impact Assessment and explains why specific routes have been pursued in the development process to date.

Equality and diversity – background

The LSC published an initial Impact Assessment alongside the QAA consultation paper in 2007. In that we identified that while detailed data was available for solicitors, it was not available for the Bar. The limited data that was available was insufficient to make informed assessments about possible impacts of a final scheme.

As a result we embarked on a comprehensive data survey of barristers, which was produced in partnership with the Bar Council. This achieved a good response rate and provided a wealth of data about barristers including data on their personal demographics, career breaks and caring responsibilities, categories and volumes of work undertaken, earnings, education, size of chambers and more. This data was instrumental in our approach to the development of the QAA scheme and highlighted the areas in which reasonable steps could and should be taken to minimise the risk that QAA will create disadvantage for certain groups of people. The data sets themselves are the property of the Bar Council, to whom all requests for further information should be made.

At a very high level, the data showed that more female than male barristers were undertaking legal aid work; that women barrister's earnings were lower than men's at all stages of their career; that caring responsibilities impacted on women barrister's workload more than on men's. Similarly, there was a difference in the level of earnings between white barristers and barristers from Black, Asian and Minority Ethnic (BAME) groups at some stages of their career. Also, a higher percentage of barristers from BAME groups were practising in crime than their white counterparts. It also highlighted low-earnings levels for some members of the junior Bar.

Focus groups were established, in partnership with the Bar Council and the Young Barristers' Committee, to explore further the drivers behind these findings. Events were set up in London and Manchester and supported by 60 individual barristers; as well as the Bar Council Equality and Diversity Committee, the Family Law Bar Association, the South Eastern Circuit Diversity Mentor and members of the Criminal Bar Association. Each group was chaired and supported by leading figures in the Bar.

Below is a summary of the major issues arising from the LSC's equality and diversity work that highlights the key areas the LSC considers important in the development of an operational scheme. We strongly urge the JAG to fully consider our research findings in developing their proposals for an operational scheme and to use this data to underpin their Impact Assessment.

The full report is available from our website¹.

It should be noted that the impetus for the Bar data survey and Focus Groups was the lack of data available for the Bar, however comprehensive data was available from the Law Society on solicitor advocates. The Law Society has also published research on pay and earnings for solicitors² which show earnings differentials between men and women, between different ethnic groups and the type of work undertaken that are not dissimilar to those highlighted in the Bar survey. We are therefore confident that the equality and diversity work programme highlights issues and makes recommendations that are relevant to both solicitors and barristers.

Initial Impact Assessment

In our Initial Impact Assessment (2007) we concluded that a proposed scheme could have a differential impact on certain groups of advocates who may have more limitations on their access to volume and range of levels of work. These groups included advocates working part-time, those returning from a career break, new entrants, people with caring responsibilities, advocates with a disability, sole practitioners and advocates based in rural areas. In order to fully identify and evaluate these potential impacts we undertook, in partnership with the Bar Council, a comprehensive programme of work to gather the information necessary to inform the QAA development.

Consultation responses to the initial consultation

There were four responses to the consultation paper on specific equality and diversity issues. These stressed the need to actively engage with minority ethnic groups in the development of the scheme. The Bar Council highlighted the need to mount a campaign of explaining and encouraging BAME participation in the pilot and the need to develop confidence among BAME advocates that a diverse profession is high on the agenda.

Respondents suggested that while women appear to be under-represented in self-employed practice in general there is evidence that they are over-represented in certain types of criminal defence work, in particular those relating to sexual offences and children; and under-represented in others such as fraud. While they suggested that this does not appear to present a disadvantage to women it was recommended that the scheme be monitored and should an uneven distribution between the levels be shown, an investigation of the reasons should be conducted. Also it was suggested that a greater number of women tend to adopt alternative working patterns, which may impact on their ability to gain experience with more lengthy or complex cases. Consequently care is needed to inform steps to identify and monitor any impacts this could create in the scheme.

¹ Summary Report of the QAA Equality and Diversity Data Survey and Focus Groups, containing recommendations for pilot design, January 2009. Available from www.legalservices.gov.uk > Criminal Defence Service (CDS) > Quality and performance > Quality Assurance Scheme for Advocates.

² Earnings and work of private practice solicitors in 2007, February 2008. Available from www.lawsociety.org.uk.

Respondents also stressed that lack of physical accessibility of many courts may restrict the number of courts in which advocates with a physical disability may practise and hence impact on their access to quality work. Also, some disabled advocates may need time out of practice to manage their disability. The operational scheme therefore needs to take account of these issues and reasonable adjustments made to enable disabled barristers to demonstrate how they meet the competences. The Bar Council recommended working with their disability sub committee and actively engaging disabled advocates in the pilot. Despite concentrated targeting, few advocates with a disability were able to come forward for the pilot.

We did engage with the relevant disability groups and individual advocates in the pilot development process who agreed to vet all proposals for a final scheme and we strongly suggest that the JAG takes this work forward and, once the scheme is operational, implements a full programme of monitoring and evaluation of health and disability issues.

Bar Data Survey

In October 2007, in partnership with the Bar Council, we conducted a comprehensive survey of the Bar. The survey achieved a good response rate of 34.7% (5,260 responses of 15,160 barristers). This data was collected to enable us to properly understand if, and how, potential adverse impacts might occur from the scheme and to identify any adjustments needed to remedy this. From this we produced five reports that will be passed to the JAG; the Bar Council equality and diversity team has also produced their own reports that are available from the Bar Council.

Survey results were compared to the 2006 Annual Bar Council statistics, which showed no significant difference on the breakdown of ethnicity and gender, and meant the survey results are generally representative for these groups.

These reports highlighted some key issues on which further information was required; a series of Focus Groups was consequently initiated to identify the drivers behind those issues.

Summary of findings from the survey – key issues

The key issues highlighted by the data survey in relation to ethnicity, gender, health and disability and the young Bar are outlined below. We strongly recommend that that the JAG considers fully these issues in their Impact Assessment for the operational scheme.

Ethnicity

The data survey highlighted some areas relating to ethnicity that needed to be explored in order to fully understand potential impacts a QAA scheme might have on barristers from BAME groups. The key themes were:

Ethnicity profile of barristers

BAME made up 12.6% of the overall respondents. 87.4% of barristers described themselves as White. This figure compared to the Bar Council's 2007 statistics where 11.3% of practising barristers described themselves as from a BAME group. This data compares favourably to 2001 census data that shows that BAME groups made up 11.6% of all economically active people.

While overall 11.3% of all barristers were from BAME groups, the survey highlighted that the proportion of barristers from BAME groups is increasing among those more recently called to the Bar. 15% of barristers with between 1-10 years post qualification experience (PQE) were from BAME groups, as were 14% of those with between 11-20 years PQE, 10% of those with between 21-30 years PQE and 8% of those with over 31 years PQE.

19% of all respondents were in employed practice; 81% were in self-employed practice. 16.1% of employed barristers and 11.7% of self-employed barristers described themselves as from a BAME group.

Although the proportion of BAME barristers entering the profession is increasing, we ran Focus Groups to explore whether there were barriers in the profession for BAME advocates generally which may be compounded by a quality assurance scheme. As with all new policies, it is a requirement to ensure that reasonable steps are taken to ensure that the QAA scheme does not exacerbate any such barriers and to work with different ethnic groups to fully understand and address them within the scheme. We also aimed to find solutions that would enhance equality of opportunity and promote diversity within the profession.

Progression and type of work

The most recent Bar Council statistics at that time showed there were 1223 QCs in self-employed practice as at December 2007. Of these the ethnic group data of 59 (4.8%) was unknown. 91.6% of QCs described themselves as White, 3.6% described themselves as from a BAME group.

In the survey, 38.4% of self-employed barristers said they practised in crime, nearly all of them reported doing legal aid work. The percentage of self-employed BAME barristers practising in crime (44.7%) was significantly higher than white barristers (36.8%). Amongst crime barristers more than 63% derived more than 91% of their income from crime work.

Income and ethnicity

The survey showed that in terms of overall gross billed income (including all categories of work) white self-employed barristers tended to have higher incomes with less post-qualification experience than BAME self-employed barristers.

Gender

The survey and the consultation responses highlighted a number of issues relating to women barristers. In particular women reported lower earnings than men; that caring responsibilities impacted on their work more than it did on men; and that women are overrepresented in legal aid work. Key findings in the survey were:

Gender profile of barristers

67% of barristers surveyed were men and 33% were women. This compared to the Bar Council statistics 2007, which showed that 66% of the practising Bar are men and 34% are women. Figures for Bar Council statistics 2007 are in brackets. In the employed Bar the proportions of men and women were not significantly different, men made up 52% (53.7%), women 48% (46.1%). Amongst self-employed barristers 70.7% (69%) were men and 29.3% (31%) women.

Although women make up only circa 34% of the overall Bar, the proportion of women entering the profession in recent years is increasing and there is now an almost even gender split amongst newer entrants. 48% of barristers with between 1-10 years PQE are women, as are 35% of those with between 11-20 years PQE, 25% with between 21-30 years PQE and 10% of those with over 31 years PQE.

Progression and type of work

The Bar Council statistics for 2007 show that of the 1223 QCs, 90.5% were men and 9.5% women.

In our joint survey with the Bar Council, 38.4% of self-employed barristers reported that they practised in crime; nearly all of them (99.7%) reported doing legal aid work. Despite the fact that considerably more men than women were self-employed (70.7% vs 29.3%) the gender ratio in criminal practice was significant with 36% of women and 39% of male self-employed barristers reporting working in crime. Amongst crime barristers more than 63% derived more than 91% of their income from crime work.

78% of female and 77% of male self-employed barristers practised in civil work. Of those who practised in civil, a significantly higher proportion of women (74.5%) did legal aid work than men (57.2%).

A significantly higher proportion of women than men did family work in general, 48% of female and 21% of male barristers.

Career breaks and caring responsibilities

Respondents were asked "since completing your pupillage, have you ever spent any time away from practice for any of the following reasons?" Respondents were asked to tick any reasons that applied. 2.5% of self-

employed barristers had taken maternity, paternity, or adoption leave, 0.9% had taken parental leave, 1.7% had taken a career break for childcare, 4.8% had taken a break from practice due to ill health, and 9.9% had taken a career break for another reason.

For self-employed barristers who had taken a career break, their first period away from practice was, on average, after 8.7 years.

Of these, 41.5% of self-employed barristers had taken only one career break, 32.8% had taken two breaks, 15.7% had taken three breaks, 5.7% had taken four breaks, 1.8% had taken five breaks, and 2.6% had taken six or more breaks.

For self-employed barristers who had spent time away from practice, most spent between one month and six months away.

Although a higher percentage of male self-employed barristers had dependent children (59.3% of males vs. 40.5% of females) and caring responsibilities for an elderly or dependent adult (12.1% of males and 9.5% of females), female self-employed barristers reported their caring responsibilities impacted upon their caseload or the type of cases they were able to take on significantly more than male self-employed barristers (17.6% of males vs. 37.5% of females).

Income and gender

The survey highlighted significant differentials in income between male and female self-employed barristers at all stages of their career. Results showed that those who took a career break did not earn less than those who did not take a career break when other factors were taken into account (see factors that predict income below).

Those who practised in civil law tended to earn more than those who practised in both crime and civil, who in turn earned marginally more than those who practised solely in crime. As a greater proportion of women practised in publicly funded work, potential impacts of the scheme will be greater on women barristers than on men.

Post qualification experience does not account for the pay differentials reported in the survey. The survey highlighted, across all categories of work (including private work), that male barristers have higher incomes with less post qualification experience than female barristers.

Broadly, the data showed that based on predictive earnings (respondents were asked to tick a band for gross billed earnings in the previous financial year) women reported lower earnings at the start of their career and were more likely to enter the profession in income group 1 (£20,000 - £40,000) reaching income group 2 (£40,000 - £60,000) at 6 years post qualification experience (PQE) and not reaching income group 3 (£80,000 - £100,000) until they had 11 or more years PQE. Male barristers were more likely to enter the

profession in income group 3 rising to income group 4 (£100,000 - £125,000) at 10 years PQE; whereas women tended not to reach income group 4 until they had 20 years PQE.

Our data showed that women barristers were more likely than men to be affected by the scheme. We ran Focus Groups to explore the drivers behind the survey findings to help us to understand more about the type of cases within crime and family practice that men and women undertake, identify factors that influence earnings and identify any patterns in access to work that the scheme will need to consider to ensure that it does not disadvantage women. The findings of those Focus Groups are detailed in the full report.

The Young Bar

Multiple analyses were conducted on the data on earnings by gender, ethnicity and disability. This was compared to number of years of PQE. While it is recognised that trends reported for those groups are indicative across the age spectrum, we were keen to identify whether there were any specific issues to take account of for the young Bar. The term young Bar is used to refer to PQE rather than just age.

13% of barristers surveyed were in the age range 20–30; 31.4% were aged 30 – 40. The average age of barristers at the self-employed Bar was 43, ages ranged from 20 to 89. The average age of QC's was 55 with ages ranging from 37 to 87.

Overall, 3.3% of all respondents to the survey said their gross billed income in the last financial year (2007/08) was under £20,000. 7.3% reported gross billed income between £20,001 and £40,000; 9% reported gross billed income between £40,000 and £60,000.

It is recognised that this is merely a snapshot indicator of earnings levels reported for the financial year 2007/08. Earnings reported were gross. For the majority of self-employed barristers overheads and expenses accounted for between 11% and 30% of their gross billed income, not including tax, national insurance and pension fund payments.

Earnings reported by different groups of barristers in the first five years of call, particularly women and BAME barristers, are relatively low. Entry to the profession is costly and many newly qualified members will have incurred debt from training and education. We ran Focus Groups with the Young Barristers' Committee to explore this further and to find ways to ensure that the cost of QAA to individual advocates is no greater than reasonably necessary to achieve the objectives of the scheme.

The key purpose of the focus groups for the young Bar was to determine solutions to ensure the scheme does not create or exacerbate barriers and to find ways to minimise cost, accommodate career breaks, maximise progression and to ensure the scheme does not disadvantage the young Bar.

Issues of health and disability

As a result of the Bar survey, the scale of health problems and disability at the Bar was quantified for the first time. The number of barristers that reported a health problem or disability was substantial. 7.9% of all barristers (employed and self-employed Bar) reported having at least one health problem or disability. 10.5% of employed barristers and 7.2% of self-employed barristers reported having a health or disability problem.

1.1% reported hearing impairment, 0.7% reported visual impairment, 0.1% said they had problems with speech, 2.4% reported mobility or physical impairment, 0.8% reported mental health problems, 0.5% reported learning difficulties (e.g. dyslexia) and 0.8% preferred not to say.

4.6% of all barristers reported spending time away from practice due to ill health. Most spent a period of time of between one and six months away from practice.

34% of self-employed barristers with a health problem or disability practised in crime, 80.5% practised in civil (some barristers practise in both categories).

Self-employed barristers who reported a health problem or disability tended to have lower incomes with more (PQE) than those who did not have a disability or health problem.

Based on a model of predictive earnings, self-employed barristers with a health problem or disability were more likely to enter the profession in income group 1 (£20,000 - £40,000), reaching income group 2 (£40,000 - £60,000) at 6 years PQE. Non-disabled barristers were more likely to enter the profession at income group 2 reaching income group 3 (£80,000 - £100,000) at 5 years PQE. Disabled barristers are more likely to reach income group 3 at 12 years PQE.

Income differentials for disabled barristers were reported at all stages of PQE with non-disabled barristers reaching the higher income brackets much earlier than their disabled counterparts.

The QAA project team worked with disability groups in developing the pilot and it is strongly recommended that the JAG continue this work to enable disabled advocates to formally feed in to the development, implementation, monitoring and evaluation arrangements of an operational scheme.

Factors that predict earnings

In the analyses, ordinal regression was used to examine the predictors on earnings for self-employed barristers. We investigated whether gender, ethnicity, disability status, post qualification experience, type of school attended, class of first degree, type of work, career breaks, and whether or not people did legal aid work explained variance in earnings bracket. All variables were entered simultaneously and taken account of in the model.

Results showed that men earned more than women, white barristers earned more than BAME barristers, those with a disability or health problem earned less than those without a health problem or disability even when the above factors were taken into account.

Those who attended a fee-paying school between the ages of 11 and 18 did not earn more than those who attended a state school. However, those who got a 1st class degree earned more than those who got a class 2:1 degree, who earned more than those who got a 2:2, who in turn earned more than those who got a 3rd.

Those who practised solely in civil law earned more than those who practised in both crime and civil law, who in turn earned marginally more than those who practised solely in criminal law when the above factors were taken into account.

Those who did not do legal aid work earned more than those who did.

Results showed that those who took a career break did not earn less than those who did take a career break when the above factors were taken into account.

Summary of findings from the Equality and Diversity Focus Groups

The Focus Groups (targeted around gender, ethnicity and the young Bar) were presented with the data highlights, and then members were encouraged to share their experiences and provide their explanations about what barriers they had faced in progressing and developing a practice. Key to the discussions was any way in which QAA might exacerbate those barriers, and recommendations about how such barriers might be removed or reduced in designing and piloting the scheme.

A number of key themes emerged, and are reported in Section 2 of the Focus Group Report. Some of these themes are general to the profession or to the nature of self-employment at the Bar: they do not arise because of QAA and QAA will not exaggerate or alleviate them: they are, nevertheless significant in equality and diversity terms generally.

For example, many members identified clerking behaviours that they said had presented real barriers in developing a practice in the type of work they wanted to do. Suggestions that were put forward as to how these issues could be better managed by the profession are reported in Sections 3 and 4 of the report.

Other themes do potentially impact upon QAA or are impacted upon by it, and these are what QAA must address in showing that reasonable steps have been taken to deliver a fair and equitable scheme. Group members were asked to consider the factors needed to ensure a fair QAA scheme and to identify the features that should be included in designing the assessment

process for the pilot. Those recommendations and the agreed action to be taken are reported in Section 4.2 of the report.

We would urge the JAG to use the data and focus groups feedback, so that QAA can be developed with greater confidence that the scheme will reflect how barrister advocates practise in reality. An operational scheme should be designed to allow for mobility and progression through the levels, and should explore proposals to allow for a period of grace where an advocate at the top end of a level may take on a number of cases at the next level.

Another theme of feedback, that produced key recommendations, broadly relates to cost and resource burden. Here work should be progressed to identify and test the maximum credit that can be given to what an advocate has already achieved (for example the levels at which CPS external advocate grading can exempt advocates from parts of the QAA assessment or passport an advocate directly into the scheme).

People also said that the scheme must provide accessible and appropriate assessment routes for all advocates; one size will not fit all. As a result, CLS tested a wide range of assessment methods to identify which ones and in which combinations, could provide a robust but proportionate result.

Additionally, in the pilot we proposed actions to address issues that were raised concerning accessibility, career breaks, childcare responsibilities and disability and these are contained in Section 4 of the Focus Group report. We propose that these considerations are properly reflected in the proposals for a final scheme and are effectively monitored and evaluated post-implementation.

The equality and diversity work undertaken resulted in a set of recommendations that were factored in to the design and implementation of the assessment research and testing undertaken by Cardiff Law School (CLS). The LSC is confident that these recommendations are central to the concerns of advocates who will be subject to the scheme and provide a sound basis for proposals for an operational scheme that will enhance QAA for all advocates. They provide assurance that the proposals have considered all reasonable steps, not only to address issues of equality and diversity, but also to support the positive promotion of equality of opportunity.

Summary of conclusions and recommendations resulting from the equality and diversity work programme

Conclusions - key challenges identified

From our programme of work we learned that if the QAA scheme is to be effective in its purpose to provide assurance of quality services to purchasers and users of publicly funded advocacy services, it must have credibility and meaning to the advocates it will cover. It must be flexible enough to cover the reality of practice as a legal aid advocate, should cover all publicly funded

work including prosecution work and avoid as much as possible an advocate having to duplicate effort.

A range of critical issues were raised by members of the Bar that need to be addressed, notably the scheme must:

- Find ways to ensure the cost to individual advocates is no greater than is reasonably necessary
- Maximise opportunities to give credit to prior achievements held where that has been shown by proper evidence to be justified
- Attract CPD points
- Take account of the resource time required to apply and be assessed
- Provide for mobility between the levels
- Provide a range of options to gain accreditation to ensure accessibility for advocates
- Operate on a level playing field
- Be transparent and independent
- Be assessed by assessors that are credible to the profession
- Be consistent
- Remove any potential for discrimination in assessment
- Include equality and diversity as part of the competence assessment process
- Not create further barriers to progression
- Provide opportunities to reduce existing professional barriers
- Promote best practice and best quality of service for clients
- Accommodate career breaks and time out of practice
- Not be so burdensome as to demote publicly funded work as a professional career choice.

Wider issues for the profession

During the course of the research a number of issues were raised that, although are significant in equality and diversity terms and were said to be endemic in the profession, are beyond the scope and remit of the QAA scheme to address. For many of the focus group participants, these issues represented real barriers in the profession that were difficult for some groups to overcome.

These include:

- The strong influence that clerks have on which areas of work people do at the start of their career and throughout
- The perception and behaviour of clerks towards certain groups of advocates
- The perception and behaviour of instructing solicitors about the demographic of counsel for different types of cases
- While there were many examples of good and supportive clerking behaviour, generally it was felt that the clerking system needs to be

reviewed as more women and ethnic minority barristers struggle to get into and established in the profession

- Clerks should have more equality and diversity training; this needs to be compulsory, maintained and monitored
- Such training needs to include ensuring clerks are aware of and sensitive to barristers' family responsibilities and commitments
- Active policies need to be developed around this to enable women to continue in practice after having children
- Chambers should strive to ensure social activities are inclusive of women and ethnic minority barristers

Wider issues in legal aid practice

Participants raised a number of issues and concerns about the cumulative effect of changes in legal aid practice that need to be recognised.

These include:

- The VHCC Panel was said to be almost impossible for women with caring responsibilities to join due to the requirement to be prepared to take on cases outside their area
- Women are the lowest earners; women undertake most public law childcare work. Once women have caring responsibilities the cost of childcare forces them to drop that work or to increase their private practice and reduce legal aid work
- Devolvement of some aspects of case management in public children cases from the court to counsel increases workload and is not remunerated. This burden would force more women out of those cases
- The QAA scheme as proposed for the criminal defence pilot would need to be reviewed and modified for family practice
- The burden of running a legal aid solicitor practice was said to impact most on smaller firms, many of which are BAME led. Any reduction in the number of BAME firms would impact on instructions for BAME counsel and lead to the profession becoming progressively less diverse. BAME clients were said to be over-represented in the criminal justice system; the profession must therefore maintain diversity of counsel.

Recommendations

The Centre for Professional Legal Studies at CLS was appointed by a panel, formed of practitioners and others nominated by the Bar Council, BSB, Law Society and the SRA, to research, design and deliver the QAA pilot assessments. They were appointed via a formal tender process.

CLS is one of the largest and best-resourced Law Schools in the United Kingdom and is an established provider of legal education and vocational training.

The results of the equality and diversity research were reported to CLS and the following recommendations were factored in to their design of the pilot assessments. Most elements were capable of some form of testing and evaluation in the pilot. CLS produced their evaluation report of the pilot in November 2009, the findings from which are summarised in section D of the discussion paper

It is recommended that these features are fully considered by the JAG in their development of proposals for an operational scheme.

1. Consideration must be given to assessment of equality and diversity as a discrete competence or in the marking and evaluation criteria of assessment instruments.
2. The scheme must include arrangements to enable advocates to take on cases in the level above to demonstrate competence at the next level.
3. The scheme must be capable of giving credit to qualifications and accreditations the advocate has already achieved.
4. QAA accreditation must provide accessible routes for all advocates.
5. Some assessment methods may be more favourable to certain groups; results must be properly monitored and evaluated.
6. There was an even split among Focus Group delegates on the issue of judicial evaluation. Some advocates identified potential risks for some types of advocate and this was supported by the findings of the pilot candidate feedback survey. For judicial evaluation to form part of the operational scheme further evidence (demonstrating that the method is consistently applied and available to all) is required and a system of post-implementation review must be initiated.
7. The scheme must be accessible to all advocates and offer flexibility in the availability of assessment centres to fit around working practice.
8. For the scheme to be credible assessors must be of an appropriate level and experience.
9. The scheme must reflect real life practice where many advocates do both defence and prosecution work; advocates would like to see a scheme that covers both elements.
10. QAA should formally be subject to Continuing Professional Development (CPD).

Pilot Candidate feedback

101 advocates participated in the pilot. A sample of 20 advocates covering the range of levels, including men and women, solicitors, barristers and Fellows of ILEX participated in qualitative feedback interviews. A copy of this report is available from our website³.

Interviews were structured around key themes including individuals' motivation for participating in the research pilot; their expectations and how these were or were not met; views on the proposed levels, the assessment methods used and materials provided. Respondents were asked to say how much time was spent in assessment preparation, whether this was reasonable and what could be changed to improve each method or the process further. They were also asked more generic questions around ownership of any operational scheme, around barriers that any methods of assessment might present and around other factors that should be taken into consideration in the design of final proposals.

The findings offer important information that should be considered by the JAG in the development of proposals for an operational scheme. Although they should ideally be viewed in conjunction with all of the other data, evidence and evaluation, it is possible to identify some headline issues and findings:

- The vast majority of advocates interviewed recognised the need for a scheme, seeing it as vital for protecting public funds and interests, for helping to maintain standards in the profession, and for increasing public confidence in advocates.
- All arms of the profession recognised benefits in a scheme that provided a single standard for all advocates regardless of type; ensuring that only those advocates with the requisite ability undertook work, whilst giving the individual the ability to market their skills on a clear and objective basis.
- All interviewees said that they believed the amount of time they had spent on the assessment exercise(s) was reasonable, and not disproportionate to the objectives of the scheme.
- At all levels applicable, the favoured assessment method tested by CLS was live (simulated) assessment. This was not tested for the highest-level advocates (Level 4), but even here there was a suggestion that a live, simulated advocacy assessment could be beneficial.
- The benefit of judicial evaluation of candidates was universally recognised, though risks associated with this method were also raised by almost all of the candidates interviewed. Some suggestions for

³ Summary Report of the QAA Assessment Research, Candidate Feedback, November 2009

mitigation were provided including ensuring that assessment was not based on evaluation from a single judge and by ensuring that it was not the only method of assessment.

- Respondents recognised that a scheme providing feedback would enable personal and professional development, and that periodic re-accreditation would ensure practitioners maintained the necessary standard; this was said to be currently lacking.
- Almost all candidates had been able to easily identify the proposed QAA level into which they would fit, though there was an issue around the definition of work at Level 2. Here it was suggested that there was a group of advocates working in the Crown Court who would not yet be undertaking Crown Court trials at that level (as had been assumed in the definition and in the consequent assessment methods).
- The majority of interviewees said that the scheme should be owned and managed by an independent body without vested interests. This should be a new body that included the professions' regulatory and representative bodies, as well as purchasers. It was felt that the body should have gravitas and credibility with all areas of the profession.

The feedback gained from these interviews should be considered in conjunction with the detailed evaluation from CLS. These findings, together with other data and reports produced throughout the life of the QAA development programme should be fully considered by the JAG and used to shape their proposals for an operational scheme.