Annex B

Quality Assurance for Advocates

Summary Report of the QAA Equality and Diversity Data Survey and Focus Groups

Quality Assurance for Advocates (QAA)

Summary Report of the QAA Equality and Diversity Data Survey and Focus Groups, containing recommendations for pilot design

January 2009

Executive Summary

The report contained here provides a summary of data survey findings for the Bar, together with a précis of the experiences that were shared by barristers who attended focus groups arranged to explore drivers behind those findings. These take us a considerable way in identifying the groups of barristers for whom QAA may have a greater impact and the reasons why, together with the ways in which the scheme can be reasonably designed or modified to minimise that ‘differential' impact.

It should be noted, that while the majority of advocates will recognise these impacts and welcome the recommendations proposed to overcome them, this report relates only to barristers. A separate programme of work is underway to explore impacts unique to solicitor advocates.

The development of a quality assurance scheme for advocates (QAA) was first recommended following the review of legal aid procurement, conducted by Lord Carter of Coles in 2006. It was his intention that the scheme would, ultimately, apply to all publicly funded categories of law. His recommendation was driven by the need for greater clarity about professional quality in light of a changing - more open and competitive - legal services market. In this market, there would be the need for legal aid advocacy, alongside all modern public services, to provide robust and transparent assurance about the quality of service being provided for the purchaser and the client.

Since 2007, the Legal Services Commission (LSC) and Ministry of Justice (MoJ) have worked closely with the profession to develop a pilot for publicly funded criminal defence advocacy. The pilot will commence in February 2009 and will last for 6 months. Throughout, development has been advised and supported by a Reference Group and sub-groups; comprising representatives and nominees from the Bar Council, Bar Standards Board, Law Society, Solicitors Regulatory Authority, Judiciary, Crown Prosecution Service, Solicitors Association of Higher Court Advocates and other key stakeholders.

In his recommendation, Lord Carter specified that *“[QAA]…should be subject to a full regulatory impact assessment before being implemented”*. This is, in fact, a requirement of all new public initiatives, and is designed to ensure that when implemented they do not disadvantage any particular group(s) of people more than any other. An Impact Assessment (which is a series of assessments throughout the initiation, development and testing stage) should identify where policies and activities could reasonably be designed or amended so as not to differentially impact on particular groups. Indeed, it can also identify where an initiative can be made more effective in positively promoting equality of opportunity.

This report follows an initial Impact Assessment that was published alongside the framework QAA consultation paper in 2007. In it we identified that while detailed data was available for solicitors, for the Bar, what we had was insufficient to make informed assessments about possible impacts.

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 means that, for the first time, a wealth of data is available 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 has proved invaluable to the QAA scheme in highlighting the areas in which reasonable steps can and should be taken to minimise the risk that it will create disadvantage for certain groups of people. A summary of these findings is provided in Section 1. 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 and minority ethnic (BME) groups at some stages of their career. Also, a higher percentage of barristers from BME groups were practising in crime than their white counterparts.

Focus groups were established, in partnership with the Bar Council and the Young Barristers' Committee, to explore further the drivers behind these findings. These 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.

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 they might be removed or reduced in designing and piloting the scheme.

A number of key themes emerged, and Section 2 reports comment and the collective, overall views of the combined groups in each category. Some of these themes are general to the profession or to the nature 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. These issues are beyond the scope and remit of the QAA Scheme to address but suggestions that people gave as to how these issues could be better managed by the profession have been reported (in Sections 3 and 4).

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.

For example, as a result of the data and focus groups feedback, QAA can be developed with greater confidence that the scheme will reflect how barrister advocates practice in reality. It will be designed to allow for mobility and progression through the levels, and will 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 has produced key recommendations, broadly relates to cost and resource burden. Here we will progress work 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 QAA 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, we propose that a wide range of assessment methods will be tested in the pilot, to show which ones and in which combinations, can provide a robust but proportionate result.

Additionally, we have proposed actions to address issues that were raised concerning accessibility, career breaks, childcare responsibilities and disability, and will monitor and evaluate these in the pilot. Further, to ensure the credibility of evaluation for groups that most risk being impacted upon by QAA, steps will be taken to increase the pilot participant sample for women, BME and disabled barristers.

Responding to our findings, but beyond the pilot, we will also work with the regulatory bodies to explore the extent to which QAA can attract CPD points, and will take forward discussion with the CPS to consider convergence with prosecution and defence to enable a single compatible assessment for all advocates.

The work set out in the following report, has resulted in a set of recommendations that we are confident will enhance QAA for all advocates; providing adequate assurance that the final proposals on which we consult, have considered all reasonable steps, not only to address issues of equality and diversity, but also to offer positive promotion of equality of opportunity.

Contents

Section 1: Introduction

1.1. Background to the QAA scheme 1

1.2. Impact assessment 1
- 1.2.1. Initial impact assessment
- 1.2.2. Consultation responses

1.3. Bar data survey 3

1.4. Ethnicity 3
- 1.4.1. Ethnicity profile of barristers
- 1.4.2. Progression and type of work
- 1.4.3. Income and ethnicity

1.5. Gender 4
- 1.5.1. Gender profile of barristers
- 1.5.2. Progression and type of work
- 1.5.3. Career breaks and caring responsibilities
- 1.5.4. Income and gender

1.6. The young Bar 7

1.7. Health and disability 7

1.8. Factors that predict earnings 8

Section 2: Focus Groups

2.1. Purpose of the focus groups 10

2.2. Focus group structure 10

2.3. Methodology 11

Section 3: Analysis

3.1. Themes relating to ethnicity 12
- 3.1.1. Factors that determine the type of work in which people choose to practise
- 3.1.2. Factors that influence career progression
  - 3.1.2.1. Clerks and instructing solicitors
  - 3.1.2.2. Barriers for BME women
  - 3.1.2.3. Networking
  - 3.1.2.4. Factors that help or hinder career progression

3.1.2.5. Features that could be included in the QAA scheme to ensure it does not disadvantage BME barristers

3.2. Themes relating to gender **16**
3.2.1. Factors that determine the type of work in which people choose to practise
3.2.2. Factors that influence career progression
3.2.2.1. Clerks and instructing solicitors
3.2.2.2. Networking
3.2.2.3. Impact of caring responsibilities
3.2.2.4. Features that could be included in the QAA scheme to ensure it does not disadvantage women barristers
3.2.2.5. What was the most surprising thing the group heard in the focus group?

3.3. Themes relating to the young Bar **22**
3.3.1. Factors that help or hinder in developing a practice
3.3.1.1. Clerks and instructing solicitors
3.3.1.2. Networking
3.3.2. How might we best factor in to the scheme and give credit to prior achievements?
3.3.3. How might we best accommodate career breaks?
3.3.4. Prosecution and defence practice
3.3.5. What forms of assessment should we consider to ensure the scheme does not disadvantage the young Bar?
3.3.6. What other factors should we consider to ensure the scheme does not disadvantage the young barristers?

3.4. Themes relating to family practice **27**

Section 4: Conclusions and recommendations

4.1. Conclusions **30**
4.1.1. Key challenges
4.1.2. Wider issues affecting the profession
4.1.3. Wider issues in legal aid practice

4.2. Recommendations and actions taken forward **32**

4.3. Next Steps **37**

Acknowledgements **39**

Section 1: Introduction

1.1. Background to the QAA Scheme

The Legal Services Commission (LSC) and Ministry of Justice (MoJ) are working with others to develop a Quality Assurance Scheme for publicly funded Criminal Defence Advocates (QAA). This is a multi-agency initiative comprising representatives from the LSC/MoJ, the Bar Council, Bar Standards Board (BSB), Law Society, Solicitors Regulation Authority (SRA), Judiciary, Crown Prosecution Service and other key stakeholders.

A pilot for criminal defence work is planned for 2009 followed by a full Impact Assessment and consultation that will inform proposals for a final scheme. It is envisaged that a final scheme will apply to all publicly funded criminal defence cases. During 2009 further work will be initiated to consider how family and civil work might be phased in to QAA. The proposed scheme would, ultimately, affect all advocates undertaking legal aid services, as proposed by Lord Carter of Coles in his review of publicly funded legal services.

A robust but proportionate quality assurance scheme for advocates is seen as an essential response to a rapidly changing professional landscape. Beyond changes required to meet increasingly demanding client and stakeholder expectations for public services generally, the Legal Services Act 2007 specifically paves the way for an open and competitive advocacy market. Here traditional business structures and methods of instruction and payment will change, requiring the profession to pay as much attention to assuring the quality of services being offered, as they do to determining cost. The QAA Scheme will help to ensure purchaser and public confidence in the standards of competence achieved by all barristers and solicitor advocates, and in their ability to conduct cases of differing levels of complexity.

In June 2007 the LSC and MoJ published a consultation paper on Lord Carter's recommendations for the scheme, *Creating a Quality Assurance Scheme for Advocates.* This included a supplementary paper that requested feedback on specific equalities and diversity issues and an initial Impact Assessment. (These papers can be viewed on the LSC website at www.legalservices.gov.uk > Criminal Defence > Services > Consultations > Closed.)

1.2. Impact Assessment

1.2.1. Initial Impact Assessment

Our initial Impact Assessment (IA), published with the consultation paper, drew on what limited, reliable data was available on barristers. This included statistics giving the overall breakdown of barristers by gender, ethnicity, London and provincial location. This data was sourced from the Bar Council's annual returns December 2006. More detailed current data was available for the Initial IA from the Law Society on Solicitors with Higher Rights of Audience.

In our Initial Impact Assessment we concluded that the 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 include advocates working part-time, those returning from a career break, new entrants, people with caring responsibilities, advocates with a disability, sole practitioners, practitioners based in rural areas. This conclusion was reached as the QAA Scheme is based upon the assessment of an advocate's work to demonstrate competence at one of four levels within the scheme, and subsequent progression through those levels.

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.

This report relates specifically to barristers, a separate programme of work is being conducted with regard to solicitor advocates.

1.2.2. Consultation responses

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 BME participation in the pilot and the need to develop confidence among BME lawyers 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 this does not appear to present a disadvantage to women the pilot must 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.

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 barristers may need time out of practice to manage their disability. The scheme therefore needs to be aware of these issues and make reasonable adjustments to enable disabled barristers to demonstrate how they meet the competencies. The Bar Council recommended working with their disability sub committee and actively engaging disabled advocates in the pilot. A specific disability working group is now being set up to formally feed in to the QAA development, implementation and evaluation.

1.3. Bar data survey

The data and findings contained in this report relate to barristers only. A separate programme of work has been planned for solicitor advocates.

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 that may be needed in the pilot planned for 2009. The data was also required to inform pilot monitoring and evaluation, provide information for future Impact Assessments on other legal aid reforms that affect the Bar, and to improve the records base of the Bar Council.

As a result of that survey, a wealth of data is now available on the demographics of the Bar. The Bar Council owns the data and will publish reports in due course. The survey provides for the first time, key information on the personal demographics of employed and self-employed barristers, career breaks and caring responsibilities, categories and volume of work, proportion of time spent and earnings from different types of practice, and issues such as size of chambers and education.

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

From the data collected, five reports were produced for the QAA Impact Assessment highlighting key issues on which further information was required. These were then followed up with focus groups to fully understand the drivers behind those issues.

1.4. Ethnicity

The data survey highlighted some areas relating to ethnicity that we needed to find out more about in order to fully understand potential impacts the QAA scheme might have on barristers from black and minority ethnic groups. The key themes were:

1.4.1. Ethnicity profile of barristers

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

While overall 11.3% of all barristers are from BME groups, the survey highlighted that the proportion of barristers from BME 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 BME 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 BME group.

Although the proportion of BME barristers entering the profession is increasing we needed to explore whether there were barriers in the profession for BME 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 minority ethnic groups to fully understand and address them within the scheme. We also aim to find solutions that will enhance equality of opportunity.

1.4.2. Progression and type of work

The most recent Bar Council statistics show there were 1223 QCs in self-employed practice as at December 2007. Of these the ethnic group data of 59 (4.8%) is unknown. 91.6% of QCs describe themselves as White, 3.6% describe themselves as from a minority ethnic 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 BME 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.

1.4.3. Income and ethnicity

The survey showed that in terms of overall gross billed income reported for the financial year 2006/07 (including all categories of work) white self-employed barristers tended to have higher incomes with less post-qualification experience than BME self-employed barristers at some stages of their careers.

1.5. 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:

1.5.1. Gender profile of barristers

67% of barristers surveyed were men and 33% were women. This compares 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 post qualification experience (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.

1.5.2. Progression and type of work

The most recent Bar Council statistics show that of the 1223 QCs at December 2007, 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.

1.5.3. 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 have 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).

1.5.4. 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 1.8. factors that predict income).

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 may 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, 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 needed 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 pilot will need to consider to ensure that the scheme does not disadvantage women.

1.6. The young Bar

As reported elsewhere in this paper, multiple analyses were conducted on the data on earnings by gender, ethnicity and disability. This was compared to number of years of post qualification experience. 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 we needed to take account of for the young Bar. The term young Bar is used in this report to refer to post-qualification experience 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 2006/07. 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, in particular women and BME barristers were relatively low. Entry to the profession is costly and many newly qualified members will have incurred debt from training and education. We needed to work closely with the young Bar to explore this further and to find ways to ensure that the cost to individual advocates is no greater than reasonably necessary to achieve the objectives of the scheme.

The survey showed that of self-employed barristers who had taken a career break, their first period away from practice was, on average, after 8.7 years in practice.

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 and to ensure the scheme does not disadvantage the young Bar.

1.7. Health and disability

As a result of the Bar survey, the scale of health problems and disability at the Bar has been 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 post qualification experience (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 earlier than their disabled counterparts.

The QAA project team is working directly with disability groups and disabled practitioners to formally feed in to the development, implementation, monitoring and evaluation stages of the pilot to ensure any adverse impacts on advocates with health and disability issues are identified and addressed.

1.8. Factors that predict earnings

In the above 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 brackets. 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 BME 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 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.

Section 2: Focus Groups

2.1. Purpose of the focus groups

The purpose of the focus groups was to gather further, qualitative information to understand the reasons behind the equality issues highlighted in the data survey (see section 1). We also wanted to explore further the issues raised in consultation, identify what impact the QAA scheme could have on certain groups of advocates and get practitioner views on the steps we could take to address these.

The aim was to gain qualitative data based on barristers' own perceptions and experience in practice to inform and shape the development of the pilot and to enable a full and thorough Impact Assessment on the proposals for a scheme.

Data from the focus groups, combined with the findings from the Bar survey and consultation responses, have been fed in directly to the work on developing assessment methods to be tested in the pilot. These data will also be used to inform the overarching operational framework of the proposals for a final scheme, to identify what needs to be monitored and evaluated during the pilot and will inform the full Impact Assessment to be conducted at the end of the pilot process.

2.2. Focus group structure

Four events comprising seven focus groups were run, three in London and one in Manchester. They were planned in partnership with the Bar Council and were supported by the Young Barristers' Committee (YBC), the Bar Council Equality and Diversity Committee, the Family Law Bar Association (FLBA), the South Eastern Circuit Diversity Mentor and members of the Criminal Bar Association.

The groups were chaired by leading figures in the Bar who were instrumental in generating delegate support:

- Oba Nsugbe QC
- Kim Hollis QC, Vice Chair of the Bar Council Equality and Diversity Committee
- Lucy Theis QC, Chair of the FLBA
- Fiorella Brereton
- Julia Beer, Chairman of the YBC

60 barristers attended the events. These barristers spanned a wide range of years' call, type and level of practice. Ethnicity and gender events comprised two focus groups each, broadly split by crime and family practice. All other focus groups included participants from both areas of practice as well as some civil practitioners.

The focus groups were of one and a half hours duration preceded by an introduction of the key issues from the Chairs, and explanation of the QAA scheme and purpose and structure of the focus groups by the QAA project team. All participants received an advance briefing about the scheme and the project's equalities and diversity work.

2.3. Methodology

In setting up the focus groups and the project's equality and diversity work we consulted with the Bar Council and the Legal Services Commission Equality and Diversity teams. All actions taken were in line with the aims and objectives within the LSC Single Equality Scheme, details of which can be found on the LSC website at:
http://www.legalservices.gov.uk/aboutus/how/specialised_publications.asp

The focus groups were structured around four key themes. Each group was led by two facilitators. Participants were asked the same principle questions and prompts designed to promote open and inclusive discussion, in order to gain information based on participants own views, perceptions and experience in practice. All sessions were recorded with participant consent. All reference to individuals or specific chambers or organisations has been removed from papers arising from the discussions.

The main aim was to draw out the key themes about what empowers and disempowers people in practice and whether the proposed QAA scheme might impact on these. We wanted to draw out the factors that influence the type of work that men and women, white and barristers from minority ethnic groups and the young Bar do. This included what influences how people are instructed and what influences earnings by looking at what helps or hinders progress. We also specifically explored views about what features could be included in a competence assessment scheme to ensure it does not disadvantage women, BME barristers and young barristers.

Section 3: Analysis

The analyses below report the collective, overall views of the combined focus groups in each category. Comments have been grouped together in to the common themes that were most frequently raised in the groups on which there was general agreement. It is recognised not everyone had the same experiences and, as far as is reasonably possible, the report highlights opposing views where these were reported, and particularly where these were supported by a number of members.

Quotes are given in italics and have been modified only where individuals could have been identified from them.

The views expressed in this section are those of the members who attended the focus groups and so are not necessarily shared by the LSC, Bar Council or the individual Chairs named in Section 2.2.

3.1. Themes relating to ethnicity

3.1.1. Factors that determine the type of work in which people chose to practise

While some participants felt they had experienced few barriers and their experience was not different to white colleagues, the majority expressed the view that BME barristers encountered more obstacles. In particular BME barristers who had been in practice for a long time felt they were less well informed about the application process and profession generally at the outset than their white counterparts, therefore less able at the start of their career to make better informed choices. It was also highlighted that connections in the profession played a big part in securing pupillage and tenancy, with many BME barristers being less well connected; many junior members confirmed this still is prevalent.

Many participants felt that BME barristers are drawn to ‘human’ types of law, which explains over representation in certain types of crime and family practice. While this has an element of personal choice, there is also a perception in the profession about what traditional BME areas of practice are, which it is hard to break through. Getting in to a Set that does work not perceived to be the traditional BME areas of practice is difficult. Similarly, this is an issue with instructing solicitors and clerks who can have a major role in ‘pigeon holing’ BME barristers in these areas:

“When you start you do what you are told and subsequently build up a reputation and specialism in that area of work”.

Many people said their practice was determined by applying to particular chambers where they thought they had a better chance of being accepted; specifically chambers who already had BME members or who were thought to have effective equality and diversity policies. There was a common experience that it was easier for BME advocates to get pupillage than to get

tenancy; an example was given of chambers that had many BME pupils over the years but had offered no tenancies to those particular advocates.

Other barriers reported were discrimination based on the type and level of education undertaken and class rather than race. Some members had experienced lack of support from more senior BME barristers *"pulling up the ladder"* when they reached higher positions; others said support from seniors had been pivotal in helping their careers.

3.1.2. Factors that influence career progression

3.1.2.1. Clerks and instructing solicitors

The most frequently cited factor that impacted on career progression was the influence of clerks. "*Clerks make or break careers"*. Many felt that although the Bar Council provides equality and diversity training for clerks a lot more still needs to be done, and many examples of discriminatory practice were given.

Some people reported that having supportive clerks had been the single most positive factor in achieving their career aspirations; for others, the converse was true.

Members recognised that while clerks are under pressure to meet the requirements of instructing solicitors, many of whom have fixed views about the profile of counsel for specific types of case, not enough was done to challenge perceptions. Similarly, lay clients often have fixed views about the sex and colour of counsel for specific types of cases and it was said that both clerks and solicitors could do more to challenge such discrimination wherever possible.

A considerable amount of work for BME counsel was said to come from BME solicitors. Members felt that the wider changes to legal aid could drive out more BME solicitors and that this would then impact on their work.

3.1.2.2. Barriers for BME women

There was consensus that it is still generally easier for men than women at the Bar. Some examples of clerks' negative attitude to child care issues and family considerations were given and many women reported that it is difficult to return to the same type of work, and even the profession, once they have children. Although the Inns of Court support the Bar Nursery Association's proposals for a nursery, it was said that this would not necessarily help women who have to travel some distance for trials.

Women in the BME groups said they were stereotyped in to sex cases and public law childcare cases whereas men tended to be given the more lucrative fraud, complex crime and ancillary relief cases. It was suggested that the pattern of men getting the more lucrative work happened in all areas of law. Sex and public law child care cases were shorter, more susceptible to plea

changes and were emotionally draining and women felt that, ironically, it would be much easier to manage their family commitments around say a 6 month fraud trial where hearing dates have been fixed and workload could be better planned.

3.1.2.3. Networking

There was consensus that barristers, particularly at the start of their career, needed to socialise with clerks and solicitors in order to get on. Many people highlighted that much *"work is still allocated in the pub*". Most chambers' social activities were said to be male or drink orientated. Examples included football, racing, clubs and pubs. Many people felt excluded from these activities and could not participate in drinking or going to clubs, primarily on religious or cultural rather than race grounds. BME women in particular said the social networking aspect is doubly problematic for them due to religious and cultural differences. There is an imperative to join in social activities to get known and build relationships but, as the activities are generally male led, for women there is a very real risk, that if they do join in it creates a certain perception and can lead to damage to personal reputation.

3.1.2.4. Factors that help or hinder career progression

A number of people said that you have to "*work harder and be a lot more focussed"* as a BME barrister to get on. Some members said their ethnicity had helped them. Many agreed with the comment:

"*I was seen to be exotic and had a novelty factor in a predominantly white environment. A judge would remember a BME barrister more if they did something well".*

While some members reported that they had not been viewed differently by the profession due to their ethnicity, others said they had experienced feelings of prejudice, or had experienced different approaches in some situations to their white counterparts:

"You often felt they [judges] were surprised when you did something well and felt they were waiting for or expecting you to slip up".

"I remember one judge said to me after a trial that I had done very well, as if he was expecting me not to; I was waiting for him to add…. for a BME barrister! I don't believe he would have said that to a white barrister. You feel sometimes that they are surprised you can speak English without a foreign accent"

Most members agreed that in order to get on you have to go out of your way to establish relationships with everyone; you have to work a lot harder and do a better job. Making good relationships with instructing solicitors and being really proactive and marketing oneself is crucial. Choosing your chambers well was also said to be invaluable (a number of examples were given of

people leaving chambers due to direct discrimination and discriminatory practices in work allocation).

Many felt that having a mentoring relationship with senior members of the profession was helpful as was gaining exposure to influential members of the profession, joining committees, generally getting oneself known and getting involved in BME issues.

3.1.2.5. Features that could be included in the QAA Scheme to ensure it does not disadvantage BME barristers

There was discussion around the proposed scheme in the overall context of other changes in legal aid. Concern was expressed that there is a very real danger the scheme could create barriers that would affect a marked setback for BME barristers. Many said there has long been a glass ceiling in the profession and the QAA scheme could reinforce that, at the very point people were starting to make progress. Reduction in work and income combined with further ‘hoops’ to jump through and further barriers to progression could result in minority ethnic barristers leaving or choosing not to enter the profession.

The scheme must not impose significant cost to the advocate. The overheads associated with self-employment are significant. Legal aid work is typically less well paid than private work and, as more BME barristers are drawn to or pigeonholed in legal aid work, they would suffer more as a result of the scheme. The point was also made that BME barrister earnings are already lower than others, and earnings in the early years of practice when people are struggling to get established are relatively poor. A significant cost impact would present a further barrier for people from black and minority ethnic groups.

However there was consensus that a “cheap scheme” would impact more on BME barristers than on others. The scheme must have a transparent, objective view of competence and those doing the marking must be of an appropriate level and representative of the profession. It was strongly stated that markers or assessors would need to be fully trained and aware of equalities and diversity issues.

Concern was also raised that if the scheme were based purely on the kind of work currently being done it could be liable to hinder progression, as BME practitioners are more likely to have a practice that does not represent their ability or talent and have less opportunity to break out of that.

People generally felt the scheme must also enable mobility between levels otherwise it may compound the issues already faced by many BME practitioners. It must allow for taking on work at a higher level, otherwise no one will be able to demonstrate their ability and competence to move through the levels. There was strong feeling that the scheme must take account of potential rather than just work done.

The ability to demonstrate competence on a level playing field was seen as critical. Some members were in favour of an assessment process such as the New Practitioners Programme, in which it was said that everyone gets assessed on the same set of exercises in the same conditions. However, some members felt that performance on the course was affected by the type of work young advocates had been exposed to and that BME advocates may not have had the same exposure as some of their white counterparts.

Members suggested that some form of self-assessment would be necessary. However caution was urged that certain types of assessment might favour certain groups. Some members suggested that white men were more likely to be able to sell themselves better in a written self-assessment than BME and women barristers. If self-assessment were to be used strict guidance would be needed including advice on the style of completing any forms.

There was agreement that credit should be given to qualifications and accreditations already achieved, to the maximum extent possible. It would assist in minimising the burden on the advocate in terms of time and cost.

Members felt that any assessment process should be awarded CPD points; this would make the exercise more worthwhile and valuable and would offset some of the assessment cost.

Around half of the members felt that feedback on performance in court could be obtained from judges. Others were opposed, as they felt that BME barristers could be at a disadvantage from some members of the judiciary. It was felt that this was particularly an issue in courts where they had not appeared before and in areas where the judge did not know them and in which there were few ethnic minority groups.

Members asked why the proposed QAA competence framework had no section on equality and diversity. The common view was this should be included as it is an area of competence in which BME barristers are strong and many of their clients come from minority ethnic groups or are vulnerable.

3.2. Themes relating to gender

3.2.1. Factors that determine the type of work in which people chose to practise

Women reported that within the professions there is a strong perception about what is men and women’s work. Many members said at the outset of their career they were stereotyped in a particular area of practice, consequently they gained expertise in that area and then stayed there. Family law and sex cases were seen as women’s work. If you were not exposed to certain types of work at an early stage in your career it would be very difficult to develop a practice in those areas regarded as traditionally male.

There was consensus that in crime women are pigeonholed into sex and murder work; fraud and terrorism being seen as men’s work. In family women

tend to get the public law child cases whereas men get the better remunerated ancillary relief.

"Men get the better paid ancillary relief work, there is a perception that women do child cases and men do maths"

Most members reported that at the start of their career they did not feel in a position to say no to certain types of work; they had to take what was offered. Others said they were able to assert greater control over their work and a significant factor was having a supportive clerk.

The general view was that once women had children it was difficult to maintain a criminal practice. Being very difficult to work part-time in crime, the only way to do it is to be very strict about the work taken on. Members said the workload associated with the warned list system is a major issue; it will be harder for women to meet the QAA competence on meeting the court timetable as by the nature of the type of work they do they pick up a lot of these cases and return briefs.

Managing a career at the Bar and a family was described as *"constant juggling".* Sex cases and child cases are often short and high intensity and not easy to plan around. Longer more complex cases that traditionally are seen as men's work have more certainty and are easier to plan family commitments around.

Family participants said they often work 11 hours a day. It was said that the recent devolvement of some aspects of case management from the court to counsel had substantially increased workload, work that was required but with no remunerative recompense.

Crime members suggested that it was almost impossible for women with a family to be on the Legal Services Commission's Very High Cost Case (VHCC) panel as you had to be prepared to travel anywhere in the country and stay away from home for long periods of time.

3.2.2. Factors that influence career progression

3.2.2.1. Clerks and instructing solicitors

As with the ethnicity groups, women reported that the single most important factor in career progression was the influence that clerks have. There was consensus that clerks allocate certain work to certain barristers and often this is based on typecasting. Some said there is a "*pecking order"* in chambers and this affects to whom the clerks give the work. Many agreed that clerks socialise with instructing solicitors and use this route to promote certain members of chambers. Similarly, solicitors and clients want a specific type of barrister for specific types of cases, for example defendants in rape cases almost always want female counsel.

Members reported that this issue was prevalent throughout their career. A number of examples of discriminatory practice in the profession were given

including a clerk swapping a woman's name on a trial listing for a male member of chambers after she had already been instructed; a judge agreeing to move a trial date to accommodate the male prosecution counsel's commitments despite the fact the female defence counsel could not do this date due to having arranged childcare around the original listing.

There were examples of where supportive clerks had really helped people develop or maintain their career. One member said that having a female senior clerk who understood the issues women experienced in chambers and the constraints of having children helped her remain in and progress in the profession once she had her second child. This is a time when many women do not return to criminal practice and the profession risks losing them altogether.

There was agreement that men are more likely than women to *'badger'* their clerks and market themselves more widely within chambers and with instructing solicitors than women. There was general agreement that women need to influence more senior members of chambers for changes to clerking practice. Some chambers analyse case allocation, remuneration and the type of cases undertaken by members, which exposes inequities. Members said that this should be the standard of all chambers.

3.2.2.2. Networking

Women reported that in order to progress you have to network. Socialising outside work really helped make careers. For women if you did not join in the drinking culture you were typecast. Conversely if you did join in you could also be perceived negatively and earn an unwarranted reputation.

Members generally felt that their careers were helped by joining in chambers-based socialising when they could, but said that this is not always easy as the events are very male orientated. Some members had organised women only or more women orientated events to counter-balance the general culture. However there was agreement that a good mix of events that both sexes could attend would be the ideal. Members agreed that the current culture needs to be challenged and changed. Social events should also be arranged at times when women with children could participate.

3.2.2.3. Impact of caring responsibilities

There was consensus that childcare responsibilities have a major impact on career choice and progression. An example was given where a member and their spouse worked in the same chambers and had the same career trajectory until they had a family. Once they had children there was an assumption by the clerks that the woman would be the primary carer. It was said that *"a couple at the Bar equal 1.5 barristers, the man works full-time and the woman supplements this"*, and that clerks often perpetuate this assumption. There was recognition that if both partners practice and both want full time careers they will need significant and costly home help.

Many people felt strongly that childcare and family commitments significantly limited the amount and type of work and networking that could be undertaken outside of working hours. When women return from maternity leave there is a necessity to prove they can still do the job; they need to rebuild their career and it is often difficult to say no to extra work – "*as a self-employed barrister you are only as good as your last case*". Many members said that after a day in court they have to give time to the family and only then can prepare for the next day, often working late in to the night. It is difficult to plan around cases such as rape, where something unexpected often happens, particularly on day one.

It was said that the types of cases women take on pay the least; this makes it difficult to continue practice in crime and public law children cases when the cost and practicality of childcare arrangements arise. There were many examples where women enter the employed Bar when returning to work after having children. This was due to the increased levels of stability within employed practice and the potential to work part-time, for example with the CPS or a firm of solicitors.

The groups were asked whether the patterns highlighted in these discussions and the culture was changing now that equal numbers of men and women are entering the profession. The consensus was that younger members of the Bar were still experiencing the same issues. One member said, and there was general agreement, that dining requirements were difficult to meet during pregnancy, breast-feeding and when you have a young child. Also, some members considered the fact one is exempt from CPD requirements only during maternity leave and not during pregnancy to be unfair and potentially discriminatory.

There was general agreement that the only way to improve women's experience at the Bar was to influence and change clerking and chambers behaviour. Some examples of really good practice were given that enabled women to succeed and provide an excellent service while recognising their family commitments. Also, it was noted that significant changes would be required from the courts and listings officers to make any real difference to the position of women at the Bar.

Despite the barriers and obstacles above, many of the members had thrived, broken through the 'glass ceiling' with a family, and were highly successful in their chosen areas of practice. The key factors that had helped them achieve their goals were good clerking, taking responsibility for their own networking and marketing, actively promoting themselves and the influence and support of senior members of chambers.

3.2.2.4. Features that could be included in the QAA scheme to ensure it does not disadvantage women barristers

Group members considered what forms the assessment for QAA could take. One member suggested judges or other barristers in court, such as a leading barrister, could assess competence. While some members agreed this would

provide a cheap and practical form of assessment, others felt that the attitude of some judges to women counsel could impact negatively on the outcome. Nobody challenged the suggestion that there is a strong risk of the *"old boys' network*" impacting on the assessment given.

A member questioned which court would give the assessment if one appeared in a number of courts? There was a general feeling that assessments would be better from courts where you appeared regularly. It was suggested that if you are not from a circuit and a known local practitioner the judge might not be predisposed to you. Two examples were given of quite rude and discriminatory behaviour by judges where women appeared before them in courts outside their normal area of practice. Members said that in the past they had routinely experienced sexist behaviour in court but that the prevalence of this kind of behaviour is decreasing. There was agreement this is less likely to happen in London.

One member raised the concern that they could be assessed on a case that was a late instruction or a poorly prepared brief. Such factors, which are outside of a barrister's control, could have a negative impact on their performance assessment if they were to be assessed on such cases. The majority of members supported this concern. A number of examples were given, particularly in the Manchester group, where it was said that instructing solicitors had retained a brief intending to do the advocacy themselves, but then could not and counsel was instructed at the last minute. Most people agreed this was a symptom of the fee structure and other proposed changes in legal aid that could ultimately result in a poorer service to the lay client.

Some members raised concerns that the stereotyping of women in to particular types of cases could mean they are at a disadvantage in evidencing some of the competencies. There was agreement that the competencies would need to be reviewed to take account of family work, which is much more conference than court based.

Members agreed that one size of assessment would not fit all barristers. There would need to be a range of ways in which the assessment could be achieved. It was suggested that clerks would be a good source to collect evidence of the type or work a barrister has done; systems are already set up in some chambers to do this.

There was a general concern that the scheme as proposed only applies to defence advocates, while many women do both defence and prosecution work. Members agreed that this matter should be considered by the QAA project team as the requirements for getting on the CPS external advocates panel are different from the proposed QAA scheme. Advocates should not have to comply with two separate schemes for what is essentially the same job. Someone asked whether the QAA applied to both external and internal CPS advocates. A high number of members said it should, as the issue of quality should not be limited to defence work.

The suggestion was made for a self-assessment portfolio to be sent to a committee; parallels were drawn with the Solicitor Higher Rights Accreditation scheme. While some members felt this was a potentially good method, others felt it could be too onerous and time consuming for a barrister, and placed a greater burden on those with family responsibilities.

There was general agreement that whatever assessment model was adopted it should be capable of attracting CPD points. Issues such as the fact that the CPD waiver only applies to maternity leave rather than during pregnancy were discussed and the scheme needs to take account of that and career breaks.

Account must be given in the scheme to women taking maternity leave. If the scheme were to operate on an annual basis it would make it harder for women to progress if they took maternity leave and it would place discriminatory burdens on them.

It was suggested that attendance on a half-day course or assessment centre that was held out of practice hours could work well for women. It would have to be arranged in advance, with sufficient notice, and be easy to access. The example was given that in order to take on certain types of cases for the CPS it is compulsory to attend courses such as the CPS Serious Offences Seminar, which is available on a Saturday. Feedback could be given post assessment.

Most people agreed this would be a viable option for women and that any such assessment centre should provide crèche facilities. Nobody challenged the suggestion that male barristers would be less responsive to this kind of event and might prefer to be assessed in different ways.

There was general agreement that whoever is conducting the assessments would need to be of a suitably high level in the profession themselves, in order for the scheme to be credible. The question was raised as to who would monitor the assessors to ensure they are fair and accurate.

There was consensus that the scheme must take account of qualifications, experience and accreditations such as the CPS grading scheme and other panels achieved, and give appropriate credit to those.

3.2.2.5. What was the most surprising thing people heard tonight?

The above question was asked of one of the London groups. Senior members were shocked by the reports that there are still current examples of sexism towards younger female members of the profession by some judges in the criminal courts.

Crime barristers were shocked to hear of the number of hours of work done by members of the family Bar, much of which is not remunerated. Crime barristers said they do not have the same requirements to produce documentation at short notice as the family Bar (see section 3.4. below for family specific practice issues).

3.3. Themes relating to the young Bar

The young barristers' focus group was jointly organised by the Legal Services Commission and the Young Barristers' Committee (YBC). The YBC invited their members and other practitioners who were a mix of male and female, white and BME barristers of up to10 years' call, practising in crime, family and civil.

The YBC had provided a comprehensive response to the QAA consultation paper in 2007. A slightly different format was adopted for the two young Bar focus groups in order to obtain feedback on the issues and concerns they raised in that response. This included factors that influence the choice of work and factors which help or hinder progression; how we might best factor in to the scheme and give credit to previous training, experience or accreditation; how we might best accommodate career breaks; what assessment methods we should consider; what other factors we should consider to ensure the scheme does not disadvantage young barristers.

In the opening discussions, before the participants split in to two groups, the following general concerns and questions were raised:

There was no dissent towards the suggestion put forward that young barristers need to be assessed at the level at which they are competent, rather than the level where most of their work is; this is not always the same. The scheme must be able to accommodate the ability to gain exposure to cases at the next level up in order to achieve that level.

Progression and mobility was seen as key. It was said that some barristers would quickly build up expertise in a specific type of case and want to move rapidly through the levels. Levels 1 – 3 of the scheme look as if they will be fairly close together so that young barristers would need to get 'promoted' fairly frequently through the scheme. As such, the scheme would impact on them more heavily than on others. Such barristers would need to be able to take on more complex levels of work than their current level in order to enable reasonable progression.

This was tied in to the concern that, if under the QAA scheme, an instructing solicitor can only instruct counsel who has achieved the appropriate level for the case and had to justify any deviation from this, such a requirement would have a negative impact on young barristers. Solicitors might be less likely to make the effort to complete the extra paperwork needed. It was noted that the CPS only instruct external advocates at the level of grade achieved.

The point was made that young barristers often picked up last minute returns and this is how they gain experience. If the QAA scheme is too bureaucratic they may be excluded from this work.

Some members raised concerns that if instructing solicitors were to be responsible for determining the level of a case, they could allocate a grade that would enable them to keep the work in-house. Most agreed that solicitor

advocates often have a large number of High Court cases on the go at one time (a figure of 60 was given as an example).

Some examples were given where a solicitor had taken a case as far as they could through the system, but then passed it on to a barrister at the last possible moment when the case went to full trial. Examples were given where cases were received the night before trial, of cases that did not contain witness proofs and cases where interview tapes had not been listened to. It was suggested that this was a relatively common experience for the young Bar, and such circumstances were out of their control. Concern was raised that those situations could reflect badly on the barrister in an assessment situation.

There was consensus that all barristers should be passported in to the scheme at Level 1 without assessment on completion of their 1st Six.

3.3.1. Factors that help or hinder in developing a practice

3.3.1.1. Clerks and instructing solicitors

Again, the influence that clerks had over the type of work that people got was a strong theme. It was said this can be gender-centric and many of the women barristers said there is an assumption that clients in certain types of cases do not want a female barrister. Clerks control which solicitors a barrister gets introduced to and therefore this influences their referrals. The QAA scheme would need to be independent of chambers and be capable of reflecting the talent and potential of a young barrister.

It was said, and there was no dissent, that some clerks can use "*underhand*" tactics to decide which members of chambers get which cases. There is still a strong perception that in crime women do sex cases and men do fraud. In family work, women archetypically do public children work and men do ancillary relief. Women were said therefore to be disadvantaged at the earliest stage of their career as the cases, which are perceived to be women's areas of work, are less well paid and it is difficult to challenge what is endemic in the professional culture.

Everyone agreed that client demand for a male barrister for specific types of cases was a key factor in the allocation of work, but that more could be done by clerks and senior members of the Bar to challenge those assumptions. Some women reported that once they had taken on a case where they were not necessarily the first choice of barrister, and did a good job, they were given repeat instructions. It was suggested that clerks need to champion women more to provide the opportunities by which they could break down gender based perceptions.

3.3.1.2. Networking

As with the other groups, young barristers stressed the pivotal role that socialising with solicitors and members of chambers plays. There is

considerable pressure to socialise with solicitors, which some female members said is difficult and sensitive. As a young woman it was said to be more difficult, and may give the wrong impression, to go out socially with solicitors who are often older men. While it is necessary to network to progress your career such socialising is often misconstrued; many examples of sexual approaches in this context, and one of sexual harassment, were given.

There was general agreement that there is a strong need to market oneself as a young barrister in order to get on the ladder. A great deal of this marketing is done through social networking. There was little dissent from the view that the networking culture is heavily male orientated with examples of activities such as boxing and football given. It was also said that there is a heavy, male orientated, drinking culture.

Women barristers said they were often not invited to chambers' social events.

3.3.2. How might we best factor in to the scheme and give credit to prior achievements?

There was unanimous agreement with the comment made that all barristers should be passported in to the scheme at Level 1 on award of their practice certificate. Many said that passporting at a higher level on completion of the 2nd Six should also be considered. Others suggested that if a barrister passes the Keble advocacy course they should be passported at Level 2. However, others recognised that the programme costs more than most junior barristers could afford, circa £1,000 for a week's training.

Some suggested that barristers could be passported at a higher level on completion of the New Practitioners Programme, described as a compulsory CPD requirement with a certain number of advocacy training hours required. However, others felt the scheme could be manipulated and may not be an accurate reflection of an advocate's experience or competence; namely you could *"top load"* your CPD hours with the advocacy component if it meant a passport to Level 2.

It was suggested that currently, junior barristers would be taking on cases more advanced than Level 1 by the time they have completed their 2nd Six. The scheme would need to take account of this.

The issue of regional differences was highlighted. Members said that outside of London, junior barristers could get exposure to a higher level of cases earlier than those based in London, as there are more junior barristers in London. There was general agreement with the phrase one member used:

"In London barristers like us are ten a penny, we have to take what work there is and it makes progression more difficult"

People generally felt that the scheme could impede their ability to progress if, due to the requirements of the scheme, they couldn't get access to higher-

level work. However, some members argued that such a scheme could provide an opportunity to help progression and give an independent forum in which to demonstrate their abilities.

Some members felt that a form of self-regulation or assessment in chambers at the lower levels could be operated and would enable people to evidence what they have achieved. Such assessment should have a committee in chambers overseeing how chambers run the scheme. Not everyone agreed saying that some chambers were run better than others and there would be inconsistency in that approach.

There was general agreement with the suggestion of one group member that there should be a period of grace at the top of a level which allows advocates to take on higher level cases, in order to enable them to prove their competence and readiness to apply for the next level.

3.3.3. How might we best accommodate career breaks?

A numbers of concerns were raised about the effect that time out of practice, for whatever reason, could have on an advocate's status in the scheme. It was argued that if one took time out, one should be able to return to practice at the level already achieved. There was agreement with the survey findings that that most career breaks would be taken by advocates in their first 10 years of practice, therefore this is a major issue for the young Bar. The groups agreed that if appropriate arrangements were not made for time away from practice this would disproportionately affect the young Bar.

It was also agreed that, should it be possible in the scheme for a barrister to drop down a level after a career break, or if reassessment were required after say a year out of practice, that this would have a significant impact on women. It was suggested that in such scenarios, a barrister would need a period of grace on return to practice before reassessment was required in order to build up their portfolio of evidence. There was consensus that this is a primary concern as it is difficult already for women to return to the profession after having children; any further barriers would compound the problem.

3.3.4. Prosecution and defence practice

The question was raised whether having a period of doing purely prosecution work would count as a career break in terms of the scheme. Others followed this up by asking how such a scheme would accommodate barristers whose practice was mainly prosecution work. As with the other focus groups, there was strong consensus among the young Bar that the scheme must find a way to cover the way criminal practitioners work in reality (i.e. often doing both defence and prosecution work, both of which are publicly funded). It is unpalatable that advocates could end up having to be accredited under two separate schemes with different requirements to do essentially the same job.

There was strong agreement amongst group members with the request to synchronise the schemes or include them in any mutual passporting structure.

3.3.5. What forms of assessment should we consider to ensure the scheme does not disadvantage the young Bar?

There was agreement with the suggestion that the risk in such a scheme lies at the 'top end', therefore more rigorous assessment methods should be applied to levels 3 and 4. Levels 1 and 2 should take account of what is already in place for the junior Bar and use passporting and exemption for what had already been achieved as much as possible.

It was suggested that assessment by judges at the end of a case could be sought. The group was split on whether this would work. Some members felt that it would provide a reasonably cheap option and that costs must be kept down. Others felt it would compromise the independence of the judiciary and of barristers. It was suggested that barristers might not want to advance an argument that they knew would be unpopular with the judge who is assessing them. The group questioned how such a situation could be in the best interests of justice.

There was discussion on how obtaining judges' feedback could be achieved. Many felt that the barrister would have to select which cases they wanted to be assessed on and ask the judge to assess them. Others felt this would be self-selecting and not robust, but that it would avoid the problem raised earlier around being assessed on late returns and cases that were poorly briefed. However, it was pointed out that if a barrister had a choice of case on which to be assessed it would remove the incentive to modify his or her behaviour but that he or she would not select a case in which difficult points were likely to arise. The group was evenly split as to whether the barrister should know or not know when they are being assessed.

It was suggested that a barrister could hand the judge a form at the end of a trial. Most disagreed and felt this may lead to suggestions of an improper relationship between the Bench and the Bar.

There was agreement in principle that judges would need training on the competencies, what they look like, what excellent advocacy is and objective assessment. It was felt these are difficult issues that require an objective approach; however advocacy, by its very nature within the requirements of a specific case, was said to often be subjective.

A suggestion was made that some judges might have a problem with young barristers and particularly with young women barristers. This was not everyone's experience but there was agreement that steps should be taken to ensure the experience of young female barristers in the scheme is properly monitored.

Assessment by the pupil master was suggested. The group was split on whether this would be objective and consistent; some people had better support and supervision than others. Also some worked for several different

sets of chambers out of necessity in the early stages of their practice; it was said that such an assessment could put them at a disadvantage.
It was suggested that applicants to the scheme could fill out a self-assessment form, which could then be validated by someone else. Others suggested case studies based on cases they had undertaken. The majority felt this would work but there was some dissent on the basis it would be time consuming and could compromise client confidentiality.

There was agreement that assessors need to have credibility for the scheme to work. High-level assessors would be needed for levels 3 and 4.

3.3.6. What other factors should we consider to ensure the scheme does not disadvantage young barristers?

The main theme raised was cost. As the data survey showed, earnings for many young barristers can be very low, particularly in publicly funded work. Everyone agreed that the Bar is an expensive profession to train for and to join, and said that the QAA scheme must not increase the financial burden on people joining the profession and trying to develop a practice. To do so would prevent entry to the profession for people from less privileged backgrounds. This is contrary to the Bar's aspirations for a more diverse profession.

People raised concerns about the cost of reassessment. It was suggested that many young practitioners would quickly look to progress through the levels; the financial cost of reassessment would be unduly harsh on them. Also, it was said that the number of people wanting to do so might swamp the scheme and create delays in progressing to a higher level that could impact on a barrister's earning capacity. There was general agreement that there should be no limit on the number of times one could apply to the scheme to move through the levels in a year.

Some members suggested that level 2 could be wider or level 3 could be broken down into more than one part. Some felt that a mid-ranked junior might also do some cases that fall within level 4.

3.4 Themes relating to family practice

Members of the family Bar were present in each of the focus groups. Their comments are reflected in the common themes identified in each of the above focus group areas, but the following issues were so specific to the family Bar that they warrant discrete mention.

Women barristers reported being stereotyped in the types of work they were given. At the outset of their career they tended to be instructed in public law childcare cases while their male counterparts were given the more lucrative ancillary relief cases. Once in those areas of practice, they tended to stay there. Not only are those types of cases more difficult to arrange family life around, as they are short and you have multiple cases on the go at any one time, they are they are also emotionally draining and the least well paid cases.

Women in family practice reported routinely working over 11 hours a day. Several of the participants said that if they were starting their careers again they would not go to the Bar and, if they did, they would not do public family work. Many barristers said they were giving up public law childcare proceedings, or changing their practice to build up more private family cases, as the demands of such cases were too great and some of the work is not remunerated. Several delegates mentioned recent changes in childcare cases with devolvement of some aspects of case management from the court to counsel. It was said this requires the advocate to present summary papers for each stage of the proceedings. People reported that this involved considerable preparation every 2 days or so for each case they were running; work that is time consuming and not remunerated.

Members said that women traditionally do the majority of public law childcare cases and that this is a significant factor in why women are the least well paid members of the profession at all stages of their career.

Most participants commented that the proposed reduction in family fees would hit them so hard that it would make that type of work untenable for anyone with caring responsibilities. These changes would force them in to private work to enable them to meet the costs associated with self-employment, such as chambers rents and overheads. The cost of childcare is also higher for people whose working patterns are not set in the traditional 9 to 5 routine.

Overall, people generally thought that the scheme could have some positive benefits, particularly for the lay client, as many members had witnessed some examples of poor standards of advocacy in the courts. Some members suggested that in their own experience, this was a concern that also applied to prosecution work and commented that the scheme should apply to both defence and prosecution advocates. Examples were given of poor advocacy witnessed across all sections of the profession.

The group suggested that they were seeing a trend where more solicitor firms were keeping cases in-house. Examples were given where solicitors had not instructed a barrister, intending to do the advocacy in-house but had then, for whatever reason, instructed counsel at the last minute. Most participants had examples of receiving late or poorly prepared briefs. Many said that they had received court bundles that did not have papers necessary to the case such as expert witness reports, which meant they had to ask for adjournments. Members raised concerns that if they were to be assessed on their performance in court, the quality of some of the instructions they received, particularly at a late stage in the proceedings, could affect their own performance assessment.

Delegates were concerned that the competencies and the scheme as proposed for the criminal pilot would need to be completely reviewed for family work. It was said the family work involves more opinion writing, case conferences and it is less obvious how family work would translate in to discrete levels proposed for crime. The proposed competence framework and

the assessment methods to be tested in the pilot for crime would need to be reviewed and expanded to enable effective assessment of family work.

Section 4: Conclusions and recommendations

4.1. Conclusions

4.1.1. Key challenges

From our programme of work we have 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
- Attract CPD points
- Take account of the resource time required to apply and be assessed
- Provide for mobility between the levels
- Test 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.

4.1.2. 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 some clerks towards certain groups of advocates
- The perception and behaviour of some 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

4.1.3. 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 BME led. Any reduction in the number of BME firms would impact on instructions for BME counsel and lead to the profession becoming progressively less diverse. BME clients were said to be over represented in the criminal justice system; the profession must therefore maintain diversity of counsel.

4.2. Recommendations and actions taken forward

The Centre for Professional Legal Studies at Cardiff Law School 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.

Cardiff Law School (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 have been reported to CLS and factored in to their design of the pilot assessments. The following recommendations to be taken forward and evaluated in the pilot have been agreed:

Recommendation 1: Competence framework

Issue	Action taken
There is no equality and diversity requirement in the proposed competence framework	A discrete section will be added to the assessment requirements that evidence of trials conducted must include, whether in the form of a witness or client, someone who needed particular consideration by virtue of one or more of the diversity categories/challenges (to be listed). This would be a ‘Requirement’ for Levels 1 and 2 but cannot be made compulsory at Levels 3 and 4 in the pilot. The pilot numbers are small and set around specific court centres where some candidates may not have a vulnerable person or person who presents challenges from the list in their cases. It will be included for those levels as a ‘Desired’ criterion. This will be assessed and evaluated for the proposals for a final scheme.

Recommendation 2: Mobility between levels

Issue	Action taken
Advocates must be able to take on cases in the level above to demonstrate competence at the next level.	Proposals for a period of grace or ‘probationary’ period will be tested in the pilot to identify the best mechanisms to allow for an advocate who is at the top end of their level to progress to the next level.

Recommendation 3: Applying credit to prior achievements

Issue	Action taken
The scheme must be capable of giving credit to qualifications and accreditations the advocate already has.	We will seek to recruit advocates in the pilot who have already achieved a range of different qualifications. These candidates will be assessed against the QAA assessment criteria to determine which prior achievements can provide full passporting or exemption. In a rolled out scheme passporting means automatic admission to the level without any need for further assessment; exemption denotes the proposition that certain categories of advocates are exempt from one or more elements of assessment at the level. Categories of advocates to be tested for passporting and exemption include but are not limited to: • Those with CPS external advocate accreditation • Solicitors on the duty solicitor panel through CLAS accreditation and those who did not go through the CLAS route • Solicitors with Higher Rights of Audience • Advocates holding judicial appointment as a Recorder • Queens Counsel under the new and previous selection system • Barristers who have completed their 1st Six and have their advocacy certificate • Advocates on other panels such as the Treasury Panel

Recommendation 4: Range of assessment methods

Issue	Action taken
QAA accreditation must provide accessible assessment routes for all advocates.	CLS will devise a range of assessment methods to test in the pilot. During the pilot they will be marking, moderating and evaluating the results. The evaluation will assess the relative value of each of the assessment methods (known as instruments) to determine which instruments and in which combinations at each of the levels provide the most robust and proportional recommendations for a final scheme. A key objective is to ascertain the minimum requirements a candidate will have to undertake. These will include instruments such as multiple-choice tests, portfolios, live assessment which could include witness handling, submission and interview. Academic protocol ensures all portfolios are submitted without any reference to individual client names.
Some methods will be more favourable to certain groups e.g. women are less likely to sell themselves in self-assessment.	CLS has a wealth of data on performance in different assessment methods and this will be factored in to the design stage. All results will be monitored and evaluated by demographic profile and any trends in results will be fully analysed.
There was an even split on the issue of whether Judges should provide assessment after a trial.	CLS will assess the role that judicial feedback on performance can play in QAA. Pilot candidates at level 2 and above may therefore be subject to evaluation during a trial by the judge. In the pilot, advocates will not know the case(s) on which feedback by judges will be given. The aim is purely to test and evaluate the process of judicial evaluation.
Confidentiality	All results from the pilot assessments will be confidential and not disclosed to chambers. Individuals' results will not be divulged to the LSC. All candidates will be allocated a unique reference number and all pilot evaluation data provided in statistical format.

Recommendation 5: Accessibility

Issue	Action taken
The scheme must be accessible to all advocates.	• We will run the pilot in 3 assessment areas (London, Birmingham and Cardiff) to enable identification of regional variations in practice. Pilot participants will be recruited from those regions • Pilot participants will be split 50:50 men and women. The number of women in the sample has been boosted to enable proper evaluation of the issues raised in the gender focus groups • The pilot will include a boosted sample of advocates from BME backgrounds to monitor and evaluate issues raised in the ethnicity focus groups • We will seek to attract pilot participants who have health or disability issues and make reasonable adjustments where necessary and monitor and evaluate health and disability issues • Assessments will be made available during the working day for those who are employed or prefer to have a weekday assessment. Weekend assessments will also be available • We cannot provide crèche facilities in the pilot assessment centres but reasonable expenses will be recoverable for the cost of childcare for participants to attend the assessment centres. We will recommend in a rolled out scheme that crèche facilities should be available in assessment centres • The project will meet the cost of assessment in the pilot. Additional reasonable expenses will be recoverable, for example, some travel costs. • We will seek to attract pilot participants that cover a wide age range • We will seek to attract participants who work in small medium and large sets of chambers, sole practitioners and solicitor firms.

Recommendation 6: Quality and experience of assessors

Issue	Action taken
For the scheme to be credible assessors must be of an appropriate level and experience.	CLS as an independent body has access to a pool of assessors who already have experience of conducting advocacy assessments at different levels. These include academics, practising advocates, QCs, Recorders. All assessors will undergo further training to ensure they are familiar with the pilot assessment criteria. Assessors will meet regularly throughout the pilot to ensure standardisation of approach and moderation of marking criteria. All assessors are bound by CLS's equality and diversity policies.

Recommendation 7: Prosecution and defence work

Issue	Action taken
The scheme must reflect real life crime practice where many advocates do both defence and prosecution work.	A number of actions have been initiated to address this: • CLS will test and evaluate passporting and exemptions for people who hold CPS accreditation at all the appropriate levels • The judicial evaluation form will be designed to enable evaluation of both prosecution and defence work • Assessment instruments will be designed to enable submission of both defence and prosecution work • The QAA project team and Reference Group are in discussions with the senior Judiciary and CPS to explore possible options for convergence between QAA and the CPS scheme in a rolled out scheme.

Recommendation 8: CPD points

Issue	Action taken
The QAA scheme should formally be subject to CPD.	In the pilot we will evaluate what level of CPD the various assessment routes might attract and consider with the regulatory bodies the educational value of the QAA scheme so that CPD points might be awarded in any operational scheme.

4.3. Next steps

Information gained through our equality and diversity work and the focus groups has been reported to Cardiff Law School and factored in to the pilot design.

The pilot assessments will run from February to July 2009. During that period CLS will be marking, moderating and evaluating assessment results. They will assess the relative values of each assessment instrument (method) to determine which instruments in which combinations at each of the proposed levels provide the most proportionate and robust outcomes for a final scheme. They will evaluate and make recommendations on the minimum requirements a candidate will have to undertake to achieve a credible result.

They will also be testing and evaluating how prior qualifications and accreditations can be given credit and making recommendations for passporting and exemption in a final scheme.

The QAA project team and Reference Group will develop proposals for the overarching operational framework for a final scheme. This research and the assessment testing and evaluation will inform and guide that process. The proposals will be published in a consultation paper later this year together with a full, final Impact Assessment.

In addition to the recommendations above that have been included in the pilot design, the operational framework will contain proposals for an appeals process, arrangements for how account will be given to time away from practice, the frequency of assessments and arrangements for addressing any negative equality and diversity impacts identified in the pilot. During the pilot we will also collate evidence on and evaluate the following:

- The cost of each assessment instrument
- Cost of the assessment models recommended for a final scheme
- The likely cost to the applicant of the entire assessment process at each level
- The amount of time required of participants to prepare for and complete assessments
- Participants' views of their experience in the pilot
- Judges' views on providing feedback.

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