

Quality Assurance for Advocates

Working with the professions to deliver
a framework for better advocacy

A Discussion Paper
February 2010

Open Letter
by Lord Bach, Parliamentary Under-Secretary of State for Justice

I am pleased to have the opportunity to introduce the publication of the Legal Services Commission's (LSC) discussion document on Quality Assurance for Advocates and urge all with an interest to make their views known.

The first phase will cover those advocates carrying out criminal defence work. The aim is to expand the scheme, in due course, to advocates practising in all publicly-funded areas of law.

It is essential that people who have need of representation know that an advocate possesses the right level of skills and experience. It is equally vital that the public, whose money finances the legal aid scheme, has confidence in a robust and transparent system of assessment of advocates. Any scheme will have to apply equally to all, with the aim of delivering better advocacy across the professions.

Partners from the Judiciary, the Crown Prosecution Service, the Bar Council, the Law Society and the regulators of the legal professions have worked together over the last three years, with the LSC, to identify standards of competence across the range of criminal advocacy. They have considered ways in which those standards can be assessed. I am grateful to those who have given of their time to see the project through to this stage, and to Cardiff Law School, who ran the recent pilot research with help from practising advocates and judges.

A Joint Advocacy Group, comprising representatives of the legal professions' main regulatory bodies, has now been established to take this work forward. This work includes both consideration of assessment methods and the design of the scheme. I am encouraged to see that the primary regulators of advocacy have jointly undertaken to develop and administer a final quality assurance scheme, as envisaged from the beginning of this project.

Together, we can ensure the design and implementation of a scheme in which the professions, their regulators, purchasers of legal services and above all the wider public, can have every confidence.



Willy Bach
Legal Aid Minister

Executive Summary

1. The LSC recognises the high quality of service provided by very many publicly funded advocates and the important role that they play in the effective operation of the justice system. It is also important to recognise that the need for a quality assurance scheme, as discussed in this document, is not just about identifying those less conscious of their own abilities. Instead the value of Quality Assurance for Advocates (QAA) comes in supporting the market and the professions and enabling consumers and procurers to have confidence in world-leading advocacy professions. With today's pressures on public spending and concerns about the economy, ensuring 'value for money' is also paramount.
2. The legal services market is changing; the acceptance of new and alternative business structures and trends to keep advocacy (including prosecution advocacy) in-house has seen an increase in competition and a reduction in the old referral process, with less reliance on the self-employed advocate. This will offer benefits to some and create problems for others, but for all there is the need for a common quality standard to ensure a level playing field.
3. This discussion paper has a number of purposes. First it outlines the work that has taken place over a period of three years to move forward the development of a QAA scheme in response to Recommendation 5.3 of Lord Carter's independent Review of Legal Aid Procurement.
4. Secondly, this publication allows us the opportunity to describe what the Legal Services Commission's (LSC) proposed minimum requirements will be for a final operational scheme. It is important that we are clear about these, as ownership of delivering and defining a final scheme has recently moved to a Joint Advocacy Group (JAG), consisting of the professions' regulatory bodies. We look forward to working with the JAG to ensure the development of operational proposals that can meet our minimum requirements. We also need to be clear from the outset that we will seek to rely on quality assurance as a pre-requisite for the funding of advocacy in legal aid cases in the future.
5. The requirements set out in this paper are based on generic characteristics that the LSC seeks in all schemes upon which it relies for quality assurance. However, further detail has been added to describe how those characteristics might apply specifically in QAA.
6. The remainder of this paper details the findings from research undertaken on competences, levels for operation across the criminal courts and methods of assessments. To carry out this research a significant programme of work was undertaken, pulling together findings for each element of a proposed scheme. The work was led by the LSC and the Ministry of Justice (MoJ), but was segmented into Work Stream Groups (WSG) made up from members of the professions. This collaborative

approach means that our findings are the result of significant input, advice and expertise from across the professions.

7. We are keen to support the JAG in its further development towards an operational QAA scheme and consider that, as part of the hand-over process, the time is now right to collate and share all of our findings. We have chosen to do this in an open publication so that all concerned have the opportunity to understand what we have learned and the implications for operational development, as well as to provide an opportunity for reflection and feedback.
8. Finally, although it was always the intention for QAA to apply to *all* advocates undertaking publicly funded work, the focus of this discussion paper and the development to date has revolved around criminal defence advocacy. There remains further work in family and civil advocacy to develop scheme(s) that meet our minimum requirements. Our work to date does, however, assist in setting out how the evidence collected in crime could transfer to other categories of work and support the JAG when framing quality assurance for undertaking family and civil cases.
9. So, what have we found over the course of the last three years? In summary, this can be broken down into the following core elements of any quality assurance scheme:

Standards

10. One of our first findings, and the basis for much of our development work, was acceptance of the need for a single set of competency-based advocacy standards. This would set out the competences (i.e. behaviours) required of all advocates regardless of qualification route. When married with thorough, independent and consistent assessment, this would deliver robust quality assurance that would meet the objectives set for QAA.
11. In the early stages of development, significant work was undertaken by a Competence Work Stream Group (CWSG) (made up of advocates at all levels, plus judges, and academics with assessment expertise) to develop and design a competency framework that was fit for testing in the research pilot.
12. We are now pleased to endorse the recent consultation by the JAG which sets out proposed common advocacy standards for the professions. While they add a few requirements that were not tested in the research pilot, fundamentally, they contain all those that we propose to require as a minimum for our funding purposes.

Levels

13. The work and evidence collected throughout the development phase points to the need to classify criminal defence cases into four broad levels. This classification would cover the entire range of criminal advocacy work

from the simplest magistrates' court cases to the most complex cases heard in the Crown Court and above. It is compatible with the CPS grading system and so would support transferability for advocates across prosecution and defence work. It would also enable the advocate to evidence their competence at a particular level which would support the consumer when making a decision to instruct an advocate.

14. We anticipate that work will need to be carried out by the JAG to refine levels further so that they effectively underpin the operational scheme while also supporting career development. Our findings and any feedback provided here should offer a suitable platform from which to base that work.

Assessment

15. It is now for the JAG to lead the development for and consult upon the operational scheme. We would like to take this opportunity to share the findings of the pilot research and evaluation.

16. There exist a limited number of tried and tested methods of assessment that might be applied to QAA. These assessment methods have been tested as thoroughly as practicable in the research pilot, and findings reported accordingly.

17. In the interests of supporting rapid development of operational scheme proposals, where we have sufficient evidence on which to do so, we have suggested options for how our minimum standards might be met in an operational scheme.

18. In respect of assessments, this publication provides:

- Background to the pilot research undertaken by Cardiff Law School (CLS) where over 100 advocates undertook assessments to test the competency framework and a range of assessment methods
- CLS proposed recommendations on the Competence Work Stream Group (CWSG) competency framework
- Options for the proposed mix of assessment instruments by level
- Options for entry to the scheme for new entrants and those advocates already established at a specific level
- Options for progression through the levels
- Options for re-accreditation.

19. Our options here in no way preclude further development and testing. Indeed we have been clear to say, for example, that assessment research concerning judicial evaluation was disappointing on the basis of insufficient evidence and that one option for the JAG would be to consider alternative ways in which they might test this method particularly at the higher levels.

20. As for standards, our primary concern is that our final minimum requirements are met. If the operational scheme is able to go above and

beyond these, which it may well do in finding the optimum way to add value in supporting the professions and consumer, then we will be delighted.

Equality and Diversity

21. Underpinning QAA development facilitated by the LSC and MoJ has been a significant programme of equality and diversity work undertaken to support the delivery of a fair and equitable scheme. At the outset of development, one of the key objectives was to develop a scheme that recognises and takes account of differential equality and diversity impacts. This aim has not changed and it is now a proposed minimum requirement for a QAA scheme that we can support.
22. The history of development to date is included in this paper and should help to support the JAG with the development of a QAA scheme that reduces the hurdles for some groups of advocates and promotes opportunity for all. Findings, particularly from the focus groups, led us to adopt certain approaches and to discount others. These are set out in the detail and are critical to understanding why, for example, we say that the standards must be competency based; that assessment methods must be thorough and applicable to all types of advocate; and that assessment processes must be consistently applied for all.

Your views

23. We welcome your feedback on any aspect of this discussion paper. Your feedback will be used to inform our final minimum requirements. It will also be invaluable in supporting the future development work undertaken by the JAG and will help the LSC to influence proposals for an operational QAA scheme for the professions.

Contents

Part 1: Introduction	9
Part 2: Proposed Minimum Requirements for funding future legal aid advocacy services	25
Part 3: Work Stream Outputs	43
Section A – Advocacy Standards	44
Section B – Levels for operation for publicly funded defence advocates across the criminal courts	47
Section C – Assessing Advocacy	55
Section D – Outputs; detailing operational findings (to date) that would meet the LSC’s proposed minimum requirements	60
Part 4: Family and Civil Quality Assurance for Advocacy	83
Glossary	89

1 Introduction

1.1 Overview

- 1.1.1 The impetus for developing a quality assurance scheme for legal aid advocates, particularly those doing criminal defence work, was initially provided by Lord Carter in his July 2006 report¹. Further drivers behind a scheme, including the Legal Services Commission's (LSC's) own priority to ensure that it is securing value for money whilst maintaining a high standard of advocacy for its clients are set out later in this discussion paper.
- 1.1.2 The wider rationale for Quality Assurance of Advocates (QAA) falls into five broad areas:
- Facilitating and supporting a competitive market
 - Supporting an advocate's career progression
 - Protecting and empowering consumers
 - Addressing quality concerns
 - In crime, enhancing public confidence in the Criminal Justice System.
- 1.1.3 This discussion paper follows an initial consultation paper, published in June 2007 on proposals by the LSC and Ministry of Justice (MoJ) to develop a pilot for a quality assurance scheme for criminal defence advocates².
- 1.1.4 We have decided to publish this document as a discussion paper, rather than a consultation paper, because detailed operational development of the scheme will now be managed by a Joint Advocacy Group (JAG) made up of the professions' regulators³. The JAG will therefore consult on the scheme in due course. At this stage we see no reason why that scheme could not also meet our needs.
- 1.1.5 In taking this step we have agreed, and feel it is necessary, to share our findings to-date in this discussion paper, setting out a number of options and proposals that we think they present.
- 1.1.6 As a public body spending substantial amounts of public money on the services of advocates, we need to have in place mechanisms that ensure advocates are of sufficient quality. Without that we cannot fulfil our obligations to clients and to the public purse. Responses to this discussion paper will be used by the LSC to decide how we fulfil those obligations, and in particular, what we will ask for in any crime QAA

¹ Lord Carter's Review of Legal Aid Procurement, Legal Aid: A market-based approach to reform, July 2006.

² Creating a Quality Assurance Scheme for Publicly Funded Criminal Defence Advocates, 22 June 2007. Available from www.legalservices.gov.uk > Criminal Defence Service (CDS) > Crime consultations > Closed.

³ The Bar Standards Board, Solicitors Regulation Authority and ILEX Professional Standards.

scheme which is to meet our requirements as a commissioner of publicly funded legal services. We will also share these findings and responses generally with the JAG to assist them in progressing their work, and so welcome comments on any of the subjects set out for discussion.

1.1.7 For Very High Cost Cases (VHCC), the LSC has already made it clear that a QAA scheme will, in due course, be the basis for both eligibility to undertake cases and payment for cases⁴. We will be consulting at a later stage on extending this to other criminal cases and then to other areas of work that we fund.

1.1.8 The LSC's more detailed minimum QAA requirements will be passed to the JAG to assist it in formulating the operational details of its scheme. We recognise that the JAG scheme may go well beyond the LSC's minimum requirements. For example, for reasons given later in this paper, we are not currently in a position to express a view on judicial evaluation of advocates. However, the JAG may want to consider that form of assessment further and include it as an element in any scheme they propose. What matters to us is that, if the JAG scheme is to be used by the LSC to inform decisions on which advocates can undertake any particular case, that scheme will need at least to meet our minimum requirements.

1.2 Why the change in approach?

1.2.1 Ownership of an operational QAA scheme by the professions, as now seems possible, has always been the preferred outcome for the LSC. Following discussions led by the Legal Services Board (LSB), involving the Approved Regulators, their regulatory arms, the LSC, judiciary and Crown Prosecution Service (CPS), the LSB has now taken an oversight role in relation to the implementation of a QAA scheme that they propose is led by the regulators. From this point on, the LSB will hold the regulatory bodies accountable for delivery of a scheme for criminal advocacy by mid 2011.

1.2.2 The LSC becomes a 'Senior User' within the JAG process. Other Senior Users are the judiciary, MoJ and CPS. In this capacity we will attend project board meetings and ensure our requirements for a scheme are met and views on proposals are heard.

1.2.3 We are mindful of the need to ensure timely delivery and implementation of a scheme to provide assurances about the quality of legal aid services we purchase, as recognised by both the National Audit Office⁵ and the Committee of Public Accounts⁶ in their respective

⁴ Very High Cost (Crime) Cases 2010, December 2009, paragraphs 3.23-3.26. Available from www.legalservices.gov.uk > Criminal Defence Service (CDS) > Crime consultations.

⁵ The Procurement of Criminal Legal Aid in England and Wales by the Legal Services Commission, 27 November 2009. Available from www.nao.org.uk.

reports. Although we are optimistic that this new structure will deliver a satisfactory outcome, we are alive to the possibility of delay in the implementation of a scheme, caused perhaps if stakeholders are unable to agree or negotiate detailed aspects of an operational scheme. We are also alive to the possibility that the JAG may propose a QAA scheme for its purposes that does not meet our minimum requirements. If those things happen, then we would need to consider other routes by which our minimum requirements could be met in a timely way.

- 1.2.4 This discussion paper has a number of purposes. First, it provides information about the new governance structure that has been put in place by the LSB for operational implementation. This is not limited to criminal advocacy but also sets proposed time scales for the development and implementation of QAA in family and civil advocacy.
- 1.2.5 Now that the LSB has oversight of development of a wider QAA scheme, we can focus on discussing the issues around setting our minimum scheme requirements to ensure that any scheme developed is suitable for future publicly funded advocacy contracts. Importantly, this paper allows us the opportunity to state and define the LSC's proposed minimum requirements, upon which we will rely when commissioning future advocacy services.
- 1.2.6 This paper also allows us to share the entire history of LSC facilitated development, spanning over some three years. This includes a wealth of qualitative and quantitative analysis on those working in the professions, through the data survey and focus groups, plus, outputs from numerous Work Stream Groups (WSGs) and walkthroughs that were attended by participants from across the professions and at all levels. The research findings supply further evidence, especially relating to assessment methodology, which will assist and support those responsible for finalising scheme proposals, just as they have informed our thinking on what our minimum requirements might be. As above, our minimum requirements (at least for a scheme for criminal defence QAA) will be formulated in the light of the evidence available and comment provided in response to this discussion paper.
- 1.2.7 We have also taken the opportunity to discuss here other findings that relate to what QAA could look like as an operational scheme. These are unlikely to form minimum scheme requirements for the LSC, but from our work to-date, we suggest that if adopted, they would add value to a final QAA scheme.
- 1.2.8 One example of this is the benefit of a scheme that has the capability to converge with the CPS in-house Advocacy Quality Management Strategy (AQMS). We and the CPS have undertaken work already to

⁶ The procurement of legal aid in England and Wales by the Legal Services Commission, 25 Jan 2010. Available from www.parliament.uk/pac.

ensure compatibility, on the understanding that a single scheme covering all defence and prosecution advocates would be a highly desirable outcome. Such a scheme would offer flexibility for advocates to move between prosecution and defence work and provide a framework of assessment and grading. It would also offer improved assurances that the ‘equality of arms’ principle was adhered to, with both sides in a publicly funded criminal trial being represented by an advocate who had been quality assured to at least the level required by the nature of the case.

1.2.9 Last but by no means least, we have taken the opportunity within this paper to address a key concern that has been voiced throughout development of QAA. That concern relates to proportionality and usually begins with the question, “What evidence exists to justify the need for a scheme?”. Within this document we will set out why a scheme is required for the LSC, for other consumers, and for the professions as a whole, in assuring access to justice.

1.3 Applicability

1.3.1 In order to support our commissioning strategy and to ensure value for money it is our intention that (providing it meets our minimum requirements) the final QAA scheme developed by the JAG should be used as the contractual basis upon which advocates wanting to practise in publicly funded defence work demonstrate their competence. For these reasons the proposals set out for discussion here will affect:

- All publicly funded criminal defence advocates (barristers, solicitor advocates and legal executive advocates) in England and Wales
- All chambers, firms and employers with criminal defence advocates
- Regulators responsible for overseeing criminal advocacy accreditation and regulation.

1.3.2 To accompany this discussion paper we are publishing a paper that pulls together our views (expressed elsewhere and throughout this paper) on characteristics of a final scheme based on our equality and diversity programme of work⁷. It is essential that the regulators when consulting on final scheme proposals, complete both a full Impact Assessment (IA) and Equality Impact Assessment (EIA). The LSC must have confidence that it can rely on these to determine whether its statutory obligations in these areas are met. We have presented this as one of our proposed minimum requirements.

⁷ This paper is contained at Annex A.

1.4 Responding to this discussion paper

1.4.1 Responses to this paper are welcomed from anyone with an interest in our views on the subject covered. We particularly value responses from practising advocates, representative groups, judges, chambers, firms, clients and consumer groups.

1.4.2 Responses to this paper should be sent in by 10 May 2010.

In writing to: QAA Team
Legal Services Commission
4 Abbey Orchard Street
London SW1P 2BS

Or by email to: gaa@legalservices.gov.uk

1.4.3 If you require a copy of this paper in an alternative format or would like to discuss your response with a member of the QAA team, please email gaa@legalservices.gov.uk or contact Sinead Reynolds on 020 7783 7421.

1.5 Background

1.5.1 This is the second paper published to support the development and implementation of a quality assurance scheme for criminal defence advocates. The initial consultation paper published in June 2007 sought responses to proposals to deliver a pilot only. This document builds on that consultation exercise and additionally provides research findings on a proposed assessment methodology.

1.5.2 The proposals for QAA are provided in response to Recommendation 5.3 of Lord Carter's independent Review of Legal Aid Procurement. An overwhelming majority of respondents to that consultation endorsed quality as being at the heart of those reforms. The way ahead was to accept Lord Carter's recommendation, and so the MoJ set up a working group to consider development of a quality assurance scheme for advocates.

1.5.3 The Working Group was set up in August 2006 and was originally chaired by The Rt Hon Lord Justice Thomas, Vice President of the Queen's Bench Division and Deputy Head of Criminal Justice and subsequently by Amanda Finlay, then Director of Legal Services Strategy at the MoJ. Following the initial consultation, the Working Group was re-formed as a Reference Group to allow members to continue to contribute to and advise on scheme proposals, while offering more freedom to respond independently to final proposals. Latterly, Hugh Barrett, Executive Director of Commissioning at the LSC, has chaired these meetings.

1.5.4 From the outset we were committed to making development of the scheme a collaborative effort; one in which we actively sought input of

those best placed to comment. This has been primarily achieved through expert and comprehensive representation on the Reference Group and the wider advisory groups established for each work stream, and also through extensive consultation.

- 1.5.5 Throughout development we have remained alert to the fact that Lord Carter's intention was that monitoring and assurance schemes should not be owned by a procuring body. With this in mind, it is now apt that final development and consultation on actual scheme proposals should be drawn up and, we hope, managed by the professions' regulators.

1.6 The initial consultation

- 1.6.1 The initial consultation paper sought responses on the proposed objectives for QAA and the framework of the pilot. Our intention was to test the practicability of key elements of a quality assurance scheme for publicly funded criminal defence advocates. The initial consultation sought views on specific proposals and was also used to encourage interested parties to contribute to development of the pilot arrangements.
- 1.6.2 Despite receiving constructive and detailed responses, collectively they were not conclusive, and in some areas views and comments from respondents were positively contradictory.
- 1.6.3 Consultation highlighted areas needing further work and the need for meaningful proposals to pilot. Responses were also helpful in supporting general themes, and the overall objectives.
- 1.6.4 Such themes included the need for the scheme to be proportionate and not administratively burdensome, while being robust and effective. One of the strongest trends to emerge from consultation was agreement on the need for independent assessment, with many respondents suggesting that this was the only way to achieve a credible scheme that would provide public assurance.

1.7 The approach taken to establishing research pilot proposals

- 1.7.1 A common agenda for all involved in QAA development was the desire to ensure that any scheme supports, and if possible promotes, opportunities for more diverse and inclusive advocacy professions. Equality and diversity considerations have therefore been a focal point in our design thinking, with unique market analysis carried out to identify current demographics. This told us what the professions looked like and helped highlight where potential impacts and opportunities might lie. Approaching QAA in this way required considerable interaction with advocates but provided a solid foundation for development.

- 1.7.2 In order to analyse the market properly we worked with the Equality and Diversity Department at the Bar Council to complete a data survey of the whole of the barrister profession. This, the first, and only such detailed survey, provided comprehensive and meaningful data about the Bar. Comparable data on solicitors was already available from The Law Society.
- 1.7.3 That Bar survey was followed by a number of focus groups to help us understand what might be driving some of the key findings. These groups were well attended and offered insight into issues specifically impacting on different groups, such as women and Black, Asian and Minority Ethnic (BAME) advocates.
- 1.7.4 The groups were chaired by leading figures from the Bar, who were also instrumental in generating delegate support. They were well attended by barristers with a range of experience, type and level of practice. Ethnicity and gender events comprised two focus groups, each broadly split into crime and family practice, as well as including some civil practitioners.
- 1.7.5 To assist with defining scheme proposals, attendees were asked questions about what features of a QAA scheme might create barriers and what features they thought to be important to include in the development of such a scheme to ensure that it would not disadvantage advocates from BAME groups, women, or young advocates. The answers to these questions have helped drive scheme proposals, and are contained in the ‘Summary Report of the QAA Equality and Diversity Data Survey and Focus Groups’⁸.
- 1.7.6 By considering at the outset the impact on those most likely to be effected, it allows proposals to be developed in a way that minimises any adverse impact, or ideally removes it altogether.
- 1.7.7 Armed with a consensus of objectives and outputs from the focus groups, plus resource mapping of existing accreditation schemes, it was agreed that proposals would be best achieved by introducing dedicated and specialist WSGs to undertake the detailed work required to identify scheme and pilot proposals.
- 1.7.8 These groups were made up of representatives from organisations that sit on the Reference Group (individuals with specialist knowledge and skills), alongside members of the LSC and MoJ Project Team.
- 1.7.9 The composition of the Groups meant that the project had access to the knowledge, experience, and expertise necessary for it to be able to take forward development proposals.

⁸ This report is contained at Annex B.

1.8 The Research Pilot

- 1.8.1 The decision was taken to tender as a discrete research project, the design, analysis and evaluation of assessment options, together with the actual conduct of the pilot assessments.
- 1.8.2 Cardiff Law School (CLS) was successful in securing the contract for this programme of work. They have since completed the research pilot and evaluation, which has been instrumental in informing our thinking on the way forward, as set out in this document.
- 1.8.3 Outputs already created from the earlier WSG's, such as the competency framework and approach to levels, were provided to CLS to use for testing, alongside their assessment methodology, in order to determine suitability and reliability within a final scheme. Details of these outputs are contained in Section 3 of this document.
- 1.8.4 Following the completion of the CLS research pilot, the LSC separately undertook feedback interviews with a sample of candidates to gain qualitative information about their experience in the pilot research and their views about what they thought should be considered in proposals for a final scheme⁹. Twenty candidates participated in the feedback interviews. The sample was drawn to include a range of candidates working at different levels, by gender and ethnic origin, geographical location and covered barristers, solicitors, legal executives and both in-house and external prosecutors.
- 1.8.5 Interviews were structured around key themes and designed to build on information collected through the overall development process and the equality and diversity work programme. The common themes explored individuals' motivation for participating in the pilot, their expectations and how these were or were not met; views on the levels, the assessment methods and materials provided, how much time was spent in preparation and what could be improved. Interviews were conducted by telephone and recorded with the express permission of candidates.

1.9 Why does the LSC need a QAA scheme?

- 1.9.1 Some people have asked why a QAA scheme is needed at all. They suggest that the market will weed out incompetent advocates. Some say that solicitors should be relied upon to instruct only advocates (whether barristers in chambers, in-house barristers, self-employed solicitor advocates, in-house solicitor advocates, self-employed legal executive advocates or in-house legal executive advocates) who are capable competently to do the case in question. Alternatively, it has been proposed that professional rules (that say that advocates should not take on cases for which they are not competent) should be relied

⁹ Summary Report of the QAA Assessment Research Candidates Feedback, Nov 09.

upon or that complaint mechanisms can deal with the really weak advocates. Others believe that clients should be able to choose their advocate freely and without intervention.

- 1.9.2 For the reasons set out below, we do not accept that such mechanisms are sufficient. The evidence is that these mechanisms have not worked and that they do not serve the consumer well. Despite all of them already being in place, there remain advocates at all levels who appear in cases (from the simplest to the most complex) that are beyond their competence. That is not acceptable to the LSC on behalf of its funded clients. Nor is it acceptable when it comes to ensuring value for the taxpayer in funding such services.
- 1.9.3 Responses to the initial consultation highlighted the need for us to define further the reasons for a scheme, and to confirm that the core issue is not about identifying the minority of poor performers, but is instead about achieving the best possible quality within an almost exclusively publicly funded criminal defence market.
- 1.9.4 Almost all of the participants that the LSC interviewed after the research pilot felt that the scheme was needed. It was seen as vital to protecting public funds and would help increase public confidence in the professions as well as maintaining or improving standards. It was said to be a strong benefit to the community by ensuring the right level of competence for the case in hand. Some barristers said it would also benefit the Bar in providing a valuable tool for instructing solicitors who lacked first-hand experience of a particular advocate. It was said that the scheme would provide a ‘standard currency’ across the professions and that it would be a good way to stop incompetent practice. It was, however, recognised that to deliver these benefits, the scheme needs teeth; those who do not make the grade should not be able to do the work. To quote one barrister:
- “The scheme is absolutely necessary to ensure advocates are suitably qualified, experienced and skilled to represent defendants properly at every level of seriousness at which charged. It will prevent those who are not good enough to do it thereby jeopardising their client’s interest, the public interest and the court process”.*
- 1.9.5 Of the advocates interviewed after the research pilot, 90% believed that quality could not be adequately determined by the market.
- 1.9.6 Solicitor advocate respondents to the same interview process believed the scheme would also be of benefit to their arm of the profession. Particularly for those in private practice, it would allow them to prove the quality of their work on a level playing field with other advocates, in a climate where they suggest that they can often be perceived as inferior to the Bar.

1.9.7 We are also aware of concerns (from some self-employed barristers) about firms of solicitors who, it is claimed, are using their in-house advocates rather than independent advocates because of the commercial benefits of doing so, even though that option may not be best for the client. We do not have evidence by which to substantiate these concerns, but point out that a robust QAA scheme would give the LSC (and other consumers) the means by which they could ensure that the advocate was competent, whatever their professional background.

➤ **Facilitating and supporting a competitive market**

1.9.8 The LSC's vision recognises the significant role it plays within the legal service market and is focused on procuring good quality legal services that deliver fair access to justice for people who cannot otherwise afford it¹⁰. As a commissioning organisation the LSC is responsible for managing a fixed budget and living within its means. With the 2008-09 spend on criminal advocacy in the Crown Court at £346 million¹¹, and pressure on public expenditure at an unprecedented level, the way to achieve its responsibility is to ensure that all services procured offer 'value for money'.

1.9.9 Underpinning part of Lord Carter's proposals were increasingly demanding consumer expectations for public services and the risk that quality may be prejudiced as greater pressure is placed on the market through increased competition and reduced funding. Quality assurance is required to fulfil the duty to protect clients from the incompetent, to assure the taxpayer of value for money, as well as to protect the professions themselves from public damage (even where incompetence is on a small scale) to their own reputation.

1.9.10 Lord Carter proposed an open and competitive market, in which procurement of advocacy services would change, placing the traditional relationship between instructing litigator and advocate under new and challenging pressures. These could only be made to work in favour of the client, the taxpayer and the professions themselves, if advocates were able to provide a measure of the quality of service being offered and to demonstrate, among other things, a similar level of quality assurance to their litigator counterparts.

1.9.11 The Legal Services Act 2007 (LSA 2007) makes Lord Carter's proposals a reality; it has as its objectives the need to improve access to justice, to protect and promote the interests of the consumer and to encourage independent, diverse and effective legal professions. These objectives are endorsed by the LSB, which was introduced by virtue of the Act, as the oversight regulator of legal services.

¹⁰ Legal Services Commission Strategic Plan 2009-12. Available from www.legalservices.gov.uk > About us > Our publications > Strategic publications.

¹¹ This includes Advocates Graduated Fee Scheme (AGFS), Advocate Complex Crime Unit and Legacy Advocate spend for 2008-09.

1.9.12 The Act itself paves the way for the creation of new business structures. Such entities will allow barristers and solicitors to form partnerships with each other and with other professionals, which should result in new and innovative ways of working, and improved efficiencies in a 'one stop shop' environment.

1.9.13 In a progressively more competitive market, quality becomes increasingly important both for publicly funded and private work. In promotional terms, the introduction of a quality assurance scheme can be used to market the professions effectively. It can be used to market the high quality and value for money services they offer, which, in turn, should assist in increasing public confidence.

➤ **Protecting and empowering consumers**

1.9.14 Historically, the market has been left to manage itself. Quality assurance was demonstrated (or not) by the referral process of solicitors working with clerks to select what they deemed to be an appropriate advocate, relevant to the facts of the case.

1.9.15 Feedback from the profession at an individual level¹² supports the notion that the market might be thought to regulate itself and that poor advocates will not get work. However, in that survey, completed by Ipsos MORI for the Bar Standards Board (BSB), on the perceptions of individual barristers, there were serious concerns about the effectiveness of the current regulatory system:

- 57% of barristers believe that the current system is ineffective at dealing with barristers who are not up to standard
- 50% of barristers believe the current system is ineffective at dealing with barristers who are incompetent
- 48% of barristers believe the current system is ineffective at dealing with barristers that are unethical.

1.9.16 In addition, the market is changing. We are already seeing the introduction of Legal Disciplinary Practices (LDPs)¹³, which will result in increased competition that is likely to put quality service provision under different pressures.

1.9.17 The referral process, as we once knew it, may change as firms and new business structures see financial and customer service benefits in operating a police station to Crown Court trial service. The introduction of QAA will see implementation of a process that can offer assurances that the right case attracts the right advocate, whether based in-house or external to the instructing organisation.

¹² Perceptions of barristers; research study conducted for the Bar Standards Board by Ipsos MORI December 2006-August 2007, published November 2007.

¹³ Following introduction of the Legal Services Act 2007, approximately 130 LDP's have formed.

- 1.9.18 The LSC can no longer rely on the market to assure the quality of advocacy. What is required is a recognisable standard that gives consumers and procurers assurance that an advocate at the requisite level, and with the appropriate competence, is instructed on a case-by-case basis.
- 1.9.19 With ‘quality’ difficult to define, intervention in the market now seems necessary. Consumers have different abilities to judge what constitutes a quality service. This is so for many of those in receipt of legal aid, but also more widely for vulnerable clients, or those individuals who are infrequent consumers of legal services. In these circumstances it is likely to be the case that a consumer’s assessment of the quality of their advocate cannot be made until after the event or in the case of vulnerable clients not at all.
- 1.9.20 Advocacy providers also need to be able to demonstrate the level at which they operate before the service is provided. Lack of transparency here will lead to confusion for consumers, leading to them choosing services regardless of quality which, in turn, negates the need or appetite for providers to improve quality standards above the minimum.
- 1.9.21 In October 2009, the BSB introduced a register of all barristers eligible to provide legal services in England and Wales on their website. This register could be utilised to identify the QAA mark of quality for individual barristers across the four levels, which we contemplate for publicly funded criminal defence advocacy. A similar register could easily be created, or existing directories amended and used to assist solicitor and legal executive advocates.

➤ **Addressing quality concerns and enhancing public confidence**

- 1.9.22 Lord Judge, Lord Chief Justice of England and Wales, in his 2009 Kalisher Lecture¹⁴, stated that the “*quality of justice in the Crown Court depends on high quality advocacy*”. He also commented on the need to recognise the significant change in those now permitted to practise advocacy and the requirement for judges, whether they were in the practice as a barrister or a solicitor, to welcome good competent advocacy, whatever its professional source.
- 1.9.23 The Justice Select Committee in their report, ‘The Crown Prosecution Service; Gatekeeper of the Criminal Justice System’, have also commented that:

“The idea of advocates moving more freely between employed and self employed work is an attractive one, not least because it would preserve

¹⁴ The Rt Hon The Lord Judge, The Kalisher Lecture 2009: Development in Crown Court Advocacy, 6th October 2009.

the benefits of experience of both prosecution and defence work, which probably produces better advocates.”¹⁵

- 1.9.24 Without objective assessment of advocacy in place, there can be no substantive evidence of a decline in standards. However, there has been much anecdotal evidence from across the judiciary and from advocates themselves, which suggests that advocacy standards are declining and in some quarters are unacceptably poor. Such evidence has been aimed at prosecution and defence, employed and self-employed, and barrister and solicitor advocates alike. Solicitors, barristers and legal executives are governed by codes of conduct that forbid them to act outside their competence. However, neither regulator for advocates with higher rights of audience; the BSB for barristers or the SRA for solicitor advocates has any mechanism for routinely monitoring or measuring this.
- 1.9.25 Alongside the existing Codes the professions rely on the requirement to undertake a certain number of hours of Continual Professional Development as a method of maintaining professional standards. The BSB states on its website:
- “The Bar has no formal means of performance or competency assessment. It is left to individual barristers to maintain their own standards through continuing professional development and the range of cases that they undertake. The Bar Standards Board does not believe that this approach to standards at the Bar is defensible or in the interests of the public and consumers of barristers’ services.”¹⁶*
- 1.9.26 The LSC agrees.
- 1.9.27 The BSB then states that it is committed to developing mechanisms to ensure that the quality of services offered by barristers meets agreed standards. Where the service falls short, structures will be established to address the problem.
- 1.9.28 The SRA however, has proposed new regulations that retain the requirement for a mandatory accreditation for those wishing to exercise rights of audience in the higher courts. The new scheme, due to be implemented in April 2010, will be a single accreditation route, based on the assessment of advocacy skills (in either criminal and/or civil proceedings) against defined standards.
- 1.9.29 In July 2009 HM Crown Prosecution Service Inspectorate (HMCPPI) published its Thematic Review, on the quality of prosecution

¹⁵ Justice Select Committee report, The Crown Prosecution Service: Gatekeeper of the Criminal Justice System, 6th August 2009, HC 186, at p32.

¹⁶ <http://www.barstandardsboard.org.uk/qualityassurance/>

advocacy¹⁷. It included self-employed barristers that undertake prosecution work.

1.9.30 The review was carried out over a number of months by a team of highly skilled assessors, who sought to observe advocacy in live cases and read accompanying case files. The report highlighted different trends for Crown Advocates and the self-employed counsel. However, weaknesses were described on both sides and overall a quarter of both Crown Advocates and counsel were said to be ‘*lacklustre*’¹⁸ in dealing with case files, less so in trial advocacy. While this category falls below “*fully competent*”, it does sit above the category “*less than competent*”.

1.9.31 The report concluded that, moving forward, the focus should be on quality and addressing those advocates that were described as ‘*lacklustre*’. We suggest that the CPS’s Advocacy Quality Management Strategy (AQMS) and the implementation of QAA will address and identify training needs and seek to improve quality concerns as identified.

➤ **Supporting an advocate’s career progression**

1.9.32 A valuable output from a QAA scheme would be that an assessment process is designed to be capable of identifying areas for improving performance at each level.

1.9.33 By supporting an advocate’s development, and targeting development needs, a QAA scheme should enable advocates to make provision to rectify any gaps in learning or to develop new skills in order to continue to perform effectively.

1.9.34 Candidates who participated in the research pilot favoured the idea that a final process could provide feedback on performance, which many said is presently lacking. Many said that it is good to be tested and to receive feedback periodically; that such a process would “keep you on your toes” and avoid complacency amongst practising advocates.

1.9.35 Part 3 sets out our work on developing competences for the purpose of assessment. The JAG is currently consulting on their proposed standards and we are pleased to note that these are based significantly on the competency framework developed by the Competency Work Stream Group (CWSG) for QAA. These competences provide advocates, for the first time, with a set of defined standards against

¹⁷ HM Crown Prosecution Service Inspectorate Thematic Review of the Quality of Prosecution Advocacy and Case Presentation, July 2009.

¹⁸ In their study HMPCSI assessed the advocacy they observed using the following criteria: outstanding (1); very good, above average in many respects (2); above average in some respects (3+); competent in all respects (3); below average in some respects, lacking in presence or *lacklustre* (3-); less than competent in many respects (4); very poor indeed, entirely unacceptable (5). Grades 1-3 were considered to be fully competent, 3- as below average in some respects or as *lacklustre* or lacking in presence. Grades 4 and 5 were unsatisfactory and considered to be clearly less than competent.

which they can assess and review their performance. A quality assurance scheme will further support the professions by providing a framework which can be used to support career progression and enable access to work at higher levels.

- 1.9.36 Advocates who participated in the research pilot received a number of CPD points for preparatory work, their appearance at an assessment centre and for the submission of a substantial piece of written work. Although arms of the legal professions are planning to review CPD, for the time being it can be said that if points are awarded for accreditation via QAA a proportion of the costs and resources can be saved by balancing those against the reduction in CPD requirements for that year.
- 1.9.37 As set out above we have been working with the CPS to deliver a converged quality assurance scheme. If continued to be developed in that vein, this will mean that QAA applies equally to solicitors, barristers, and legal executives, whether employed or self-employed, and to both prosecution and defence advocates. Advocates will then be able to compete for work on an equal footing and the scheme will provide the additional safeguard that for every case the most appropriate (competent) advocate is instructed.
- 1.9.38 The benefits of convergence here are clear. Not only does it provide the all important assurance of ‘equality of arms’ between defence and prosecution advocacy, it also provides increased flexibility for advocates and also provides a uniform standard of quality assurance allowing for transferability of skills to enable career progression and the ability to move more easily between prosecution and defence work.
- 1.9.39 An additional benefit to advocates will be the increased marketing potential after having been assessed and badged with a recognised quality mark. This provides the public and clients with confidence in the standards of advocates and the services provided.
- 1.9.40 A number of those who participated in the LSC’s research pilot feedback interviews saw a commercial advantage to being able to market their skills in this respect. Several interviewees highlighted the importance of quality assurance in a competitive market. Whether purchasing or selecting services, procurers and clients (professional and lay) should see QAA as an important tool to support their decision making.

2 Proposed Minimum Requirements - for funding future legal aid advocacy services

2.1 Overview

- 2.1.1 As a commissioning organisation, the LSC wants to be able to rely on standards and accreditation by assuring itself about the quality of the services it is buying.
- 2.1.2 Purchasers, clients and consumers of legal services may have different views on what constitutes quality. Key to the actual advice given to, or service provided for the client is ‘competence’ (i.e. accurate and comprehensive in law, that it is appropriate in that instance and that it is timely). However, for a quality service, we also need to be reassured about how that advice or service is given, about how it is accessed by clients and about whether or not it is available (in the public’s interest) from the widest possible range of suppliers.
- 2.1.3 In this section we identify the general characteristics that we think could give us this reassurance. In the table that follows these apply generically to all accreditation schemes upon which we seek to rely (i.e. not only to QAA or to criminal QAA). Also provided are definitions so that you can see why we think these characteristics are important. Again these are generic to all accreditation schemes.
- 2.1.4 There are nine generic characteristics that we see as critical and that we are proposing to require of any QAA scheme that would be fit for our purpose. These, together with our headline definitions, are shown in the table below. Titles for our proposed minimum requirements specific to QAA in crime are also provided in that table. Issues specific to the proposed development of QAA for family and civil advocacy are separately covered in Part 4, but we suggest that the generic characteristics (and possibly the titles proposed for criminal QAA, aside from the title proposed for Requirement 2), would remain the same.
- 2.1.5 After the table we provide a more comprehensive description for each of the titles given to our proposed minimum requirements. Where we have the evidence to do so, we have provided detail about how these could be achieved.

2.2 LSC Proposed Requirements for QAA

- 2.2.1 In this section we summarise the minimum requirements that the LSC is planning (depending on what is said in response to this paper) to ask for in order to rely on QAA for quality assurance purposes.
- 2.2.2 At this stage, we have deliberately left many of our requirements at a reasonably high level. There is further design work on the scheme and detailed consultation by the JAG to be carried out and so this is

appropriate, to allow those now responsible for delivery, flexibility in how the final scheme might be delivered.

2.2.3 However we already have responses to the first consultation published in June 2007, we have significant data about advocates and focus group findings, a research pilot¹⁹ plus considerable input from the professions' representatives. This, together with our experience of quality assurance in other areas of the legal professions, provides us with a significant steer in terms of our minimum requirements. It also enables us to set out indications about how we believe our requirements could be met.

Table 1 – The LSC's characteristics for all accreditation schemes and how this applies to QAA.

Characteristics of all approved accreditation	Definitions for all accreditation	LSC's proposed minimum requirement titles for QAA
Comprehensive	<ul style="list-style-type: none"> • Schemes inform consumer choice by covering as broad a range of cases as is reasonable within the relevant area of law covered • Accreditation promotes a professional standard by being as relevant and attractive to any private client market (in that area) as to those who access services using public funds 	<p>A scheme applicable to all advocates funded by legal aid</p> <p>A scheme covering all criminal advocacy funded by legal aid</p>
Established and overseen by the professions	<ul style="list-style-type: none"> • Standards are set along with assessable competences, and accreditation is managed, from within the professions • Accreditation schemes safeguard the professions' reputation for quality service provision 	Owned by the professions

¹⁹ Legal Services Commission 'Quality Assurance for Advocates', Centre for Professional Legal Studies, Cardiff Law School, November 2009. Included at Annex C to this paper.

<p>Promotional</p>	<ul style="list-style-type: none"> • Schemes allow for marketing of services on the basis of objective quality assurance • Schemes are useful to consumers in making choices about which service or individual to use 	<p>Simple to apply</p>
<p>Robust</p>	<ul style="list-style-type: none"> • Standards are set to provide confidence that all those who pass meet a defined quality threshold • Standards are based on objective measures that are consistently and independently assessed • Assessments should be valid and reliable predictors of performance • Assessment accurately identifies the standard, by adopting methods and processes that are entirely credible • All accreditation is subject to regular revalidation or assessment in order to remain current 	<p>Scheme is competency-based, objectively measurable and complete</p> <p>Exemption and passporting is evidentially justified</p> <p>Assessment is independent and consistent</p> <p>Re-accreditation and/or ongoing accreditation applies for all</p>
<p>Transparent</p>	<ul style="list-style-type: none"> • Information about the standard(s) required and assessment processes applied are openly available to the professions, consumers and other stakeholders alike • Data is routinely available concerning the consistency of assessment and information required to validate the independent status of 	<p>Outcomes are available to consumers</p> <p>Assessment data is available to the LSC</p>

	<p>assessment</p> <ul style="list-style-type: none"> • Accreditation records provide a public statement of the status provided for individuals 	
Proportionate	<ul style="list-style-type: none"> • Any cost of assessment (and re-accreditation, re-validation or appeal) is proportionate to the work involved • The process of accreditation is representative, responsive and appropriate to the type of entity/individual requiring it • Frequency of, or processes for, re-validation are justified in consumers' interests 	Scheme is accessible for different types and levels of advocate
Flexible	<ul style="list-style-type: none"> • Standards are regularly monitored and amended to ensure that they reflect changes in law, practice and/or method of delivery and to encourage continuous quality improvement • Schemes enable individuals to develop their professional skills within a quality framework • Assessment is able to factor in a range of ways in which the service might reasonably be delivered competently 	Reviews of the scheme are routinely scheduled
Focused	<ul style="list-style-type: none"> • Schemes avoid duplication of assurance – where modules are common to different schemes they need only be evidenced once • Schemes allow accurate identification of levels of assurance provided and/or particular specialisms 	<p>Ultimately covers crime, family and civil advocacy</p> <p>Delivers competence in context (i.e. operates on levels)</p>

<p>Fair</p>	<ul style="list-style-type: none"> • Standards, assessment and other processes are designed to be equally accessible to all who might wish to become accredited • All reasonable steps have been taken to minimise differential negative impact on any one group • Wherever possible, steps have been taken to enhance opportunity to encourage greater equality and diversity 	<p>Follows a full Impact Assessment</p> <p>Accommodates reasonable differences</p>
--------------------	---	--

2.3 LSC’s Proposed Minimum Requirements for QAA

Requirement 1 – A scheme applicable to all advocates funded by legal aid

2.3.1 If accreditation of QAA is to be meaningful to consumers and purchasers, it must apply equally to advocates irrespective of their qualification route (i.e. for barristers, legal executives and solicitors). The same set of standards must apply equally and individuals must be able to demonstrate that they meet the assessment competences in a way which provides confidence that the assessment is also the same or comparable. Only in this way will the consumer be able to make informed choices, and will purchasers be assured that they are buying value for money services. For the LSC, and presumably also for the advocacy professions, this becomes critical (following the LSA 2007) if increasing competition in the marketplace is to deliver the benefits of more innovative, customer focussed services and avoid the risks of selection on price over quality.

2.3.2 The need to apply the same standard for all types of advocate was key feedback from those who attended the focus groups and has been a consistent message from advocates in many other forums. As well as citing the need for commonality between different types of defence advocate, many said that QAA must also cover prosecution work. They identified the potential negative impact that excluding such a significant number of advocates would have, if QAA did not cover prosecution advocacy. In particular, they suggested that many Crown Advocates would have started their professional careers as self-employed barristers or solicitor advocates and that there must be benefit (for all) in being able to move more easily between the two throughout one’s working life. Only by offering a converged (prosecution and defence)

QAA, it was said, would the possible court efficiency benefits be realised and consistency in representation (the ‘equality of arms’ principle) achieved. Although not a requirement that the LSC can set, we and the CPS, accept the significant benefits that would derive from a single converged (defence and prosecution) scheme, and endorse any development with this goal in mind.

2.3.3 In an interview, Keir Starmer QC, Director of Public Prosecutions, had this to say about the future of an advocate’s career progression:

“ The career progression of the advocate is as I have said likely to be different in the future than it was in the past. My approach is that there should be grading across advocates, a, b, c, d, 1, 2, 3, 4, it doesn’t really much matter so that people can progress through their profession, through their careers as advocates, be properly recognised. At the moment we only have the distinction of a junior and QC and there is a lot of ground between the two. I would like to see a more sophisticated approach with grading and very importantly quality assurance across both the self-employed Bar and the employed Bar with a common quality assurance scheme. I think that’s what the future holds.”²⁰

2.3.4 The LSC believes that the assurance we require can only be achieved if a single body takes responsibility for the operation of a final scheme. Ideally, this will be overseen by the JAG governance structure, which will allow for the joint ownership and management of the scheme by all current advocacy regulators. Other stakeholders, such as the representative bodies, judiciary, and purchasers (LSC and CPS in particular) will also need to feed into that structure, to ensure that the scheme continues to work in the best interests of the advocacy professions, of justice, and of consumers.

2.3.5 Candidate feedback from the QAA research pilot supports this view and additionally suggests that this structure would be unlikely to be responsible for undertaking actual assessments. Instead we suggest its responsibility here may be in overseeing the outsourcing of a scheme to an approved assessment body or bodies. The LSC suggests that this would be a sensible approach, providing a necessary degree of independence in the process.

Requirement 2 – A scheme covering all criminal advocacy funded by legal aid

2.3.6 As well as covering all types of advocate, the LSC requires that QAA is able to deliver assurance for the entire range of advocacy that is conducted for clients with legal aid in the criminal courts. Considerable work has already been carried out to develop and test the

²⁰ A copy of the transcript is available from <http://www.college-of-law.co.uk/about-the-college/podcasts/transcript.aspx?id=18266>

competences required of a wide range of advocates. It is not our intention here to pre-empt findings from the separate consultation that is being run by the regulators. However, our evidence from assisting to develop these suggests that, with very few exceptions, the competences required of those conducting relatively straightforward magistrates' court cases are much the same (albeit evidenced at a very different level) as those required of an advocate operating in the most complex of cases.

- 2.3.7 We accept that certain 'bolt-ons' may be necessary to cover the exceptional competences that only a discrete group of advocates require, for example to cover team leadership skills when permission has been granted for more than one counsel to represent a publicly funded client. It may also be necessary to adjust the materials used in assessment to cater for certain advocates (for example to fairly assess those whose skills are only in either defence or prosecution work). Nevertheless, if QAA is to be of most value to consumers, it is essential that they can call on the scheme to help make choices for all types of advocate and all types of legally aided criminal law cases.
- 2.3.8 At this stage it is not possible to outline the LSC's requirements regarding scope of coverage for other areas in which QAA is proposed (i.e. family and civil). These are clearly different areas of law that may or may not require a different approach or approaches. What we can say is that having undertaken early development work, we see no less benefit in the development of QAA to these areas and will continue to support development work to bring about timely operational implementation.

Requirement 3 – Owned by the professions

- 2.3.9 It is the LSC's view that, as a commissioning organisation, we should be able to make decisions about the services we purchase based on both quality and price (at the very least). In an increasingly competitive market it cannot be appropriate or desirable for the LSC to be making these decisions as well as conducting the quality assurance on which they will be based. We therefore require a QAA scheme that is independent of the LSC. While we cannot require QAA to be owned by the professions' regulators, that is our aspiration and we believe QAA will operate in the best interests of all if the JAG structure is fully utilised.
- 2.3.10 Our proposed requirement here means that the scheme, (its standard(s), assessment and other processes) and the associated cost will, we hope, be the responsibility of the professions. We think that this is appropriate in terms of achieving independence from the LSC. We also think that in this case it is appropriate that QAA is owned not only by 'the professions', but specifically overseen by their regulatory arms and we support the recent establishment of the JAG to achieve this aim. We are seeking only to be assured that individuals are competent

(by level) and assert that this is the role of the regulators, acting in the public interest.

- 2.3.11 Having set out our view that QAA should ideally belong with the regulatory arms of the advocacy professions, we should note two things.
- 2.3.12 First, it is not for the LSC to state how QAA should be enforced in regulatory terms. We accept that it is for the regulators to determine how best to discharge their regulatory function, particularly in deciding whether QAA should attract statutory implementation (i.e. whether it should link to practice rights, as for the solicitors Higher Courts accreditation). It is normally perceived as the role of the regulator to decide whether regulatory sanctions should apply for those who do not meet the standard and who continue to do work that is below it. What we assert is that, once established, we will require QAA (at the requisite level and providing it meets our minimum requirements) for all those wishing to continue to receive legal aid funding. We consider that this is in the consumers' and taxpayers' best interests and that it provides the best opportunity to maximise the benefits of increased competition, including helping to support continuous quality improvement even in an increasingly price competitive environment.
- 2.3.13 Secondly, we accept that the representative arms of the advocacy professions could and should play a significant role in the development of a final scheme and in its application once operational. They are uniquely placed to maximise the market benefits of QAA and to encourage widespread scheme uptake, which in turn will offer improved consumer choice. We also anticipate that accreditation in advocacy will encourage new support and training networks to become established. Again these are entirely beneficial, in encouraging vital continuous quality improvement for the professions as a whole.
- 2.3.14 We should also be clear that we would anticipate 'professional ownership' extending to cover responsibility for costs of the operational scheme. In our development work to date, we have placed considerable emphasis on determining how QAA might best achieve accreditation that is sufficiently robust to be credible while minimising the time and cost burden for advocates. However, inevitably any accreditation will carry with it costs. These are covered, to the extent to which they can be at this stage, within the research findings on assessment methods in Part 3.
- 2.3.15 Having undertaken a detailed data survey that included information about the income levels of barristers from different minority groups and at different stages of their careers, we accept that the cost of accreditation will need careful consideration to ensure a fair and reasonably accessible scheme. From the work we have carried out, we have no reason to assume that the situation is any different for solicitor advocates or legal executive advocates. We will therefore continue to

work with the regulators to determine how an appropriate balance might be achieved.

2.3.16 Finally, if the QAA scheme implemented by the JAG does not meet our minimum requirements, we will consider other options by which these could be met.

Requirement 4 – Simple to apply and outcomes are available to consumers

2.3.17 If QAA is to be effective and to operate in the consumers' interest our key requirement here is that it must be straightforward for clients to understand when, why and how they should use accredited services.

2.3.18 At this stage we are not specifying a requirement for formal procedures to ensure that this happens. However, we would ordinarily expect all clients to be made aware of QAA's existence and to understand what it means, for example that; 'the individual has been independently assessed as competent to provide advocacy in cases of comparable complexity to yours'.

2.3.19 To a large extent, this requirement will be achieved automatically if others are met. In particular, if the scheme meets our specific requirements to be robust, transparent and focussed, it is likely to also be simple and openly publicised, and therefore effective in operation.

2.3.20 Throughout development we have been heartened by the number of advocates who view QAA as a positive opportunity to market their services and to provide a level of public confidence that we think is commensurate with professions of this standing. Changing patterns of consumer expectation tell us that it is no longer acceptable for any profession to assume that they have the public's confidence simply on the basis of entry qualification. Advocacy is no different.

2.3.21 We would expect that, in supporting this requirement, the representative bodies would link poor outcomes with remedial support and the regulators' role should be one of considering limiting practising certificates where competence is not achieved. In those instances we would expect the regulators to intervene to determine the degree to which clients should be safeguarded. Routinely we would hope to see remedial support (e.g. through mentoring and/or training) being made available, so that those individuals could improve performance to achieve competent assessment at a later date. However, where assessment has shown the advocate to lack competence (at an entire level or in key aspects) we would expect them to be required to stop providing such a service to clients until rectified. Although we cannot require this of the professions as a whole, the LSC has every intention of making competent assessment a requirement of its funding and contracting arrangements for legal aid cases as soon as it is able in the future and, for all criminal defence advocacy, not later than 2013.

- 2.3.22 Ensuring that detailed feedback forms part of the assessment process would certainly help regulators and others to structure remedial support and sanctions, and we would support this approach. Indeed, although it is beyond our remit to require feedback in any scheme, we strongly support its development and can see a number of ways in which it could only be of benefit to individual advocates and to the professions as a whole.
- 2.3.23 In supporting the professions as a whole, feedback (at a high level) could be used to profile the overall standard of advocacy, to identify trends that might easily be rectified and to support other processes (such as targeted training and dissemination of best practice) that would promote continuous quality improvement for all.
- 2.3.24 On an individual basis we also suggest that detailed feedback, on performance during assessment, should be available to all advocates. We know from our research pilot candidate interviews that this is seen as a significant potential benefit of QAA in helping advocates to gain professional acceleration and a commercial edge by identifying the areas in which they have particular strengths or weaknesses. Even though feedback was specifically not provided in the research pilot, this view was expressed at all levels tested and was evident even among QC participants, where professional development was said to very much be left to the individual at present.
- 2.3.25 We will support all efforts to include both high level (management information) and detailed (individual performance) assessment feedback in an operational scheme.

Requirement 5 – Scheme is competency-based, objectively measurable and complete

- 2.3.26 Having reviewed responses to our last consultation and subsequently facilitated detailed development of the draft competences, we propose that our requirement for a QAA scheme is that it must be competency based; measurable or otherwise capable of objective assessment; and (as above) covering all skills reasonably required of a criminal advocate. In the standards section (Part 3) we set out the key competences that we suggest will need to be contained within the underpinning standard.
- 2.3.27 Over the last three years the LSC has facilitated significant work by advocates (prosecution and defence, solicitors, barristers and legal executive advocates operating across the levels), and others with assessment expertise, to develop core competences that could be tested in the research pilot. The development process is set out in detail in Part 3, together with a copy of the current draft competency framework, and our appraisal of possible options for amendment as a result of findings from the assessment research. We are delighted that the draft competency framework shown here has been substantially

adopted by the regulators and is now subject to their own, separate, public consultation. This is a very positive step in achieving professional ownership and one that we entirely endorse. As with other areas in which proposals and options are presented, we anticipate using responses to support the regulators as they adopt governance for QAA, and take responsibility for the further development of an operational scheme.

Requirement 6 – Exemption and passporting is evidentially justified

2.3.28 It is entirely appropriate for some arrangements for exemption and passporting to be in place for QAA. By this we mean that on the basis of prior qualification or experience already attained, not all advocates would need to undertake an entire QAA assessment in order reasonably to be assumed to be operating competently against the standard. In some instances, those prior attainments would ‘exempt’ the individual from certain (specific) elements within QAA assessment. In others, the prior attainments would offer sufficient confidence to justify ‘passporting’ the advocate straight into QAA without any further assessment. This approach is sensible and will help in the delivery (for the professions) of a proportionate scheme. However, if the scheme is also to be robust, it is our proposal that a requirement should be in place ensuring that justification for, and evidence in support of, all such recommendations is made.

2.3.29 Unfortunately, significantly more data would be needed to properly determine the full range of exemptions and passports than was available from the research pilot. However, given the competing needs to deliver a proportionate yet robust scheme within a defined timeframe, we would suggest that a practical solution here may be to make certain assumptions (that can reasonably be justified) and to test those in initial live assessments. This would be a full QAA scheme but with additional monitoring and evaluation attached to it for a given period of time. From that, one would expect to see sufficient evidence to accept a greater level of exemption and passporting in the context of a scheme that met our requirements. It would clearly, for example, be advantageous if the schemes through which advocates qualified could be treated as sufficient evidence of their competence in the lower levels of a QAA scheme in due course.

2.3.30 We will work with the regulators to continue to find a way to maximise exemption and passporting in QAA as supported by robust evidence. However, we will support this work while keeping in mind the concerns that have been raised with us to ensure delivery of a scheme that adds value and avoids mere ‘rubber stamping’ or automatic validation of what has gone before.

Requirement 7 – Assessment is independent and consistent

- 2.3.31 We suggest that another key requirement for us, if QAA is to be accepted as credible, is for assessment to be independent (of associated chambers, firms, or others as necessary to be credible) and for it to be capable of being moderated to show that assessments have been undertaken consistently for all.
- 2.3.32 Our thinking, specific to QAA, has been driven by the data survey and focus group findings. Here concerns centred on ensuring that the results obtained would be consistent regardless of who conducted the assessment or if it took place in a different geographical location.
- 2.3.33 Potentially this presents a challenge for QAA, particularly as it is also clear from feedback that advocates would ideally want assessment to be carried out by their peers or others with advocacy expertise who they hold in regard.
- 2.3.34 We suggest that one credible option would be for the JAG (with input from other stakeholders) to approve assessment organisations with the requisite assessment and accreditation expertise and operating within strict guidelines to ensure consistent and independent decision-making. These guidelines generally require, for example, that agreed marking-criteria is applied consistently by all, that individuals are trained in assessment, that records of assessment are kept (for consistency checking and appeal), and that a proportion of assessments are routinely moderated.
- 2.3.35 We accept that it could require considerable professional support for such an organisation (or organisations) to establish sufficient assessors of the requisite calibre to develop and conduct the number of assessments required. Particularly at the higher levels, practitioners would ideally wish for assessments to be conducted by very senior practising advocates or judges. Were this to prove manageable we suggest that it could provide an ideal solution. It would allow many of our requirements, and the most significant concerns that have been raised by practitioners to be met. Importantly, it could also deliver assessments in which advocates, judges and consumers have a good level of confidence without placing the justice system at the risk of being overwhelmed by requests for disclosure in live cases in which the outcome was not as the client or their appeal advocate wished. It would also provide for the proper management of all appeals by advocates.
- 2.3.36 As well as deciding on the process for assessment, the ability to meet this requirement depends significantly on the assessment method(s) used. Again our development work, including the research pilot, has provided information to help identify which specific methods of assessment could achieve this requirement (by competences and at each of the different levels).

Requirement 8 – Re-accreditation and/or ongoing accreditation applies for all

- 2.3.37 Just as vital as ensuring that advocates are of a suitable level of competence, is being certain that they maintain that level of skill over time. Re-accreditation of competence for all must therefore be a key requirement for us in QAA. This will mean that consumers can be confident that they are receiving a level of service at a suitable quality, regardless of when they use the service.
- 2.3.38 As set out in Part 3, we propose that advocates are assessed at least every five years (unless they have gained accreditation at a higher level in that time). We believe that this period would give a suitable level of assurance to consumers. Re-accreditation may not require the advocate to undertake the full range of assessments. However, if fewer assessment instruments are used, we will require assurances that the instruments chosen will adequately assess the advocate's ongoing competence at the requisite level.
- 2.3.39 The requirement for re-accreditation should not stop an advocate from being able to take an assessment for a higher level whenever they feel that they can suitably evidence their competence at that level. Our observations about how an advocate might progress through the QAA levels are set out in Part 3. If an advocate is being assessed to move to a higher level, we believe that they should be subject to the full range of assessment instruments pertinent to that level.
- 2.3.40 Our research pilot candidate interviews support this approach. Almost all respondents recognised the benefit of re-accreditation in ensuring quality and competence, and in providing a development programme for the assessed advocate. The majority of respondents felt that five years was an appropriate time frame for re-accreditation, with the acknowledgement that advocates should not be restricted on being able to take an assessment within that time period²¹.

Requirement 9 – Assessment data is available to the LSC

- 2.3.41 We would expect information about the standard, assessment processes and scheme to be available to advocates, consumers and other stakeholders alike. However as a minimum we think that data on consistency, on pass and fail rates, and on appeals should be made available to the LSC according to an agreed schedule. We do not anticipate that this will cause difficulty if the regulators are keen that QAA remains the scheme by which quality assurance for advocates is provided in legal aid cases.
- 2.3.42 The above data would need to be supplied to the LSC at agreed points in time, in order that we can be confident in the outcomes of the

²¹ Summary Report of the QAA Assessment Research Candidates Feedback, Nov 09, at page 21.

assessment process. Similar data is currently reported annually by assessment organisations to the BSB and SRA in relation to courses and accreditation schemes, such as the Legal Practice Course and Bar Professional Training Course, (formerly the Bar Vocational Course).

2.3.43 We suggest that information about the standard, assessment processes and scheme, should additionally be made available to all those interested, including to advocates and consumers.

Requirement 10 – Scheme is accessible for different types and levels of advocate

2.3.44 It is a requirement for us that consideration is given in assessment process development to reducing (to a reasonable minimum) the time and cost burden of assessment on the advocate. This is important in order to ensure good supply and because we want good advocates to be assessed (and lead quality improvement for the professions). But it needs to be balanced (hence 'reasonable minimum') with the need for robust assessment against a credible standard.

2.3.45 The assessment process developed should be the minimum necessary to adequately assess the overall competence of an advocate. By minimising the time and cost burden on the advocate, we suggest that the disincentive for advocates to undertake assessment will be minimised. This should help encourage existing advocates to be assessed and to continue to undertake publicly funded work, whilst not preventing new entrants to the professions from wanting to take on legal aid work.

2.3.46 A proportionate assessment mechanism, which does not put advocates off accreditation, should encourage continued quality improvement within the professions by ensuring sufficient advocates continue to come into it, and that they are of an appropriate quality.

Requirement 11 – Reviews of the scheme are routinely scheduled

2.3.47 It is suggested that it will be a requirement that we are able to see that the operational scheme stays abreast of changes in law, procedure and best practice. It is important for those reasons and also to make sure that the widest range of individuals can continue to be able to be assessed as competent against the standard.

2.3.48 The standards that advocates need to evidence their competence against should be regularly reviewed. Practice in the court does not stand still, and it is important that the scheme reflects this continuous change.

2.3.49 By ensuring that the assessment process reflects current practice, it will mean that all advocates will be subject to a true assessment of their ability in relation to the advocacy skills currently expected of them.

2.3.50 The LSC expects that any QAA scheme that meets its minimum requirements will create a structured quality framework that will allow an advocate to position their professional progression in the framework. By encouraging advocates to consider the skills and competences required at each level of practice, as well as providing feedback on areas for development following an assessment, the scheme will enable practitioners to move between levels and gain access to more complex work.

Requirement 12 – Ultimately covers crime, family and civil advocacy

2.3.51 The LSC will ultimately, in all categories of work, purchase advocacy services only from those who can prove they are of a suitable standard. We hope that following the delivery of QAA in crime, the regulatory bodies will develop QAA for family advocacy followed by all other areas of publicly funded work.

2.3.52 As with QAA in crime, we will work with the regulators to assist development of schemes to meet our minimum requirements. We have already conducted some work in these areas that we will share with the regulators, as well as highlighting all relevant findings, such as those contained within the Focus Group Report. Although there are significant differences to consider for remaining areas of work, we believe that much of the lessons from developing QAA in crime can be applied, significantly reducing the time period it would take to develop such schemes.

2.3.53 As has been the intention during the development of QAA in crime, we would expect QAA in family and civil to fit within a structure which supports an advocate's natural career progression, and takes account of other developments in the sector, for example Resolution's move to develop specialist accreditation for family solicitor advocates.

Requirement 13 – Delivers competence in context

2.3.54 We will require QAA to be delivered so that consumers can most easily determine the level of advocate they need in order to be assured of competent conduct. At present we propose that this necessitates classifying criminal defence cases into four broad levels, as set out in Part 3.

2.3.55 We believe that competence must be presented within some context; that the requirements on an advocate representing a client in a straightforward case in the magistrates' court will not be the same as those of an advocate appearing in the Crown Court in a murder case. We consider that it must be appropriate for advocates to be able to evidence their competence to the level needed for the types of cases they take on, in a way that is easy for the consumer to understand when making a decision to choose an advocate.

- 2.3.56 Following extensive work by a group consisting of advocates, judges, academics and officials nominated by the professions' representative and regulatory bodies, and with input from the CPS, a system of four levels that reflect case complexity was created and agreed as suitable for testing in the research pilot. In broad terms, these levels equate to cases in the magistrates' court (Level 1), straightforward Crown Court cases (Level 2), more complex cases in the Crown Court (Level 3), and the most complex criminal cases (Level 4).
- 2.3.57 CLS's research found that this approach worked well, with the exception of some candidates who had difficulty in placing themselves in Level 2. We believe that with detailed case studies and examples, four levels of advocacy will work well. Although we are not stipulating that 'competence in context' must be met by adoption of precisely the four levels tested, we will need to be persuaded by arguments against this proposal for several reasons.
- 2.3.58 Of most significance, our approach to developing four levels has been influenced by input from the CPS. Their grading system for prosecution advocates is based on four grades that reflect the seriousness and complexity of the case. The definitions for the four levels in the pilot were developed with CPS input and advice and deliberately constructed to facilitate a converged, single scheme for all publicly funded criminal advocates.
- 2.3.59 By placing advocates in one of four bands, the scheme will also ensure that consumers can more easily determine the level of advocacy they need for their case, in order to be assured of competent conduct.
- 2.3.60 We would not expect that (in publicly funded defence cases) an advocate would be instructed to appear who is not 'badged' as competent at the required level for the case. However, we cannot require this to apply equally to clients who fund their own cases and who may wish to be free to select an advocate of their own choice regardless of their assured level of competence. So, unless the Regulators determine otherwise, in privately funded cases we would not therefore necessarily expect to see statutory requirements that only an advocate competent at the appropriate level could take on a case.

Requirement 14 – Follows a full Impact Assessment

- 2.3.61 We require that QAA is developed alongside and implemented following a full IA. It is vital that the scheme does not disproportionately affect certain groups of advocates when compared to others. The LSC will not be able to endorse the results of a scheme that does not have a thorough supporting IA (including an Equalities Impact Assessment). These must be of a suitable quality and level of detail for the LSC to consider whether its statutory obligations are met.

2.3.62 As a public body, we have a number of statutory duties relating to equality and diversity. It is a requirement that the scheme does not infringe the LSC's obligations under these.

2.3.63 To accompany this discussion paper we are publishing a paper that pulls together our views (expressed elsewhere and throughout this paper) on characteristics of a final scheme based on our equality and diversity programme of work²². The paper builds on the IA work the LSC has undertaken in order to drive development of QAA. This work includes the joint LSC-Bar Council data survey and subsequent focus groups (which fed into the Focus Group Report), engagement with different representative groups and the feedback gathered from assessment research candidates, recorded in the candidate feedback report.

Requirement 15 – Accommodates reasonable differences

2.3.64 It is a proposed requirement that operational QAA is launched following publication of an IA and EIA detailing steps that have been taken to remove or reduce any negative differential impacts identified as possible by the IA and EIA. We suggest that we should also require that the scheme identify the steps that have been taken in order to improve the opportunity to positively influence equality and diversity within the professions.

²² This paper is contained in Annex A.

3 Work Stream Outputs

3.1 Overview

3.1.1 In order to take the findings of the initial consultation forward Work Stream Groups (WSGs) were established. This format was adopted to make best use of the knowledge and experience of practitioners and academics available to support the project. Discrete WSGs developed the competency framework and levels that were then presented to the Reference Group for agreement to be tested in the research pilot. A WSG was also responsible for the award of the contract to run the research pilot, and subsequently offering advice to CLS in the run up to the assessment phase and after their research was concluded.

3.1.2 This part of the discussion paper outlines the outputs of these Groups. It details:

- Potential advocacy standards (development of a Competency Framework) – Section A
- Potential levels for operation across the criminal court – Section B
- Assessment development up to the research pilot – Section C
- Research pilot outputs – Section D.

3.1.3 The LSC believes that these outputs, along with the comments which we hope to receive in response to this discussion paper and further work to be carried out by the JAG, can provide the basis for us to judge whether our suggested minimum requirements (Part 2) will be met by any proposed scheme. As noted in Part 1, this does not preclude development of an operational scheme that enhances these outputs or extends beyond them. We do, though, say that any such enhancements would still need to meet our minimum requirements (for example that they should be properly evidenced, independent and consistently applied, have requisite assessment validity and be assessed against equality and diversity requirements).

3.1.4 What follows is a summary of the work to date. It is included here in the interests of transparency. However, the LSC is no longer involved directly in developing the operational details of a QAA scheme, and the purpose of this discussion paper is not to consult upon such details. It will be for the JAG, overseen by the LSB, to develop and consult on such operational details in due course.

Section A – Advocacy Standards

3.2 Development of the competency framework

- 3.2.1 The 22 responses on the competency framework proposed in the initial consultation paper in June 2007 highlighted very mixed views. The competences proposed there were broadly based on the range of competences that underpin the application process for the Queen’s Counsel scheme. Several respondents had reservations about the drafting of those competences and others suggested that the level of detail was too elaborate, disproportionate and would need to be simplified.
- 3.2.2 It was clear, after the analysis of responses, that further research was needed and that specialist and practitioner input was necessary to review the competency framework to provide a coherent, measurable and assessable competence range for criminal advocacy skills.
- 3.2.3 Working with the project Reference Group and the key stakeholder bodies we established a working group (Competence Work Stream Group – CWSG) to take QAA competence development forward.
- 3.2.4 The CWSG comprised delegates nominated by the SRA, the Bar Council, the BSB, the Criminal Bar Association and the LSC. The Group included academics and practitioners²³.
- 3.2.5 Following a series of meetings the CWSG developed a framework to provide core competences that could apply to all levels of work within the scheme²⁴.
- 3.2.6 The framework took account of the need for robust yet proportional assessment and the limitations imposed on assessment options by the nature of advocacy itself. It was designed to be assessable by a range of methodology including in court by judges, occupationally competent third party assessors or by simulated advocacy situations. Section E of the framework ‘Leading a Case’, was to apply only to senior advocates managing complex cases in which more than one advocate had been instructed.
- 3.2.7 The framework was also designed so that it would be capable of translating across other training and accreditation initiatives within the professions such as the Bar’s quality initiatives, the review of the SRA’s Higher Courts accreditation scheme for award of rights of audience in the Crown Court and above, and the review of the BVC. It was also designed to apply equally to defence and prosecution work.

²³ Bodies represented on the CWSG are listed at Annex D.

²⁴ This framework can be found at Annex E.

- 3.2.8 The CWSG felt strongly that the competences reflected the core skills that all advocates should have, irrespective of the level at which they practice. Of course, different behaviours would need to be demonstrated at different levels, but these could be contained in the marking criteria of any assessment process.
- 3.2.9 In researching and designing the assessment methodology, CLS was asked to test the framework to identify which of the competences were capable of objective measurement and by which assessment method(s).
- 3.2.10 The competency framework was subject to testing by CLS in the criminal advocacy assessment research pilot during 2009. Since then the JAG has developed its own framework of standards and has recently published a consultation on this²⁵.
- 3.2.11 We have mapped the QAA competences across to fully understand the similarities and differences between the framework developed by the CWSG and that published by the JAG. We have also done this exercise for the CPS National Standards of Advocacy²⁶. We are pleased that the JAG's proposed standards contain the QAA competences that were tested in the research pilot.
- 3.2.12 However, the standards on which the JAG is currently consulting contain additional competences that were not tested in the research pilot. While these additional competences (such as 'integrity' and 'sentencing') may form part of the future regulatory framework, unless they can be routinely and consistently tested, they are unlikely to form part of the LSC's minimum requirements for QAA accreditation. This is because the competences need to be capable of achievement by all advocates. It was considered important not to exclude some people due to the nature of their practice or to include competences that would be difficult for advocates to routinely and positively demonstrate.
- 3.2.13 Additionally, for accreditation rather than regulatory purposes, feedback we received during consultation and from practitioners, was that competences that underpin a national scheme *must* be capable of independent and objective assessment. They should not rely on self-assessment but must stand up to scrutiny in all parts. It was said that processes must provide for consistency of assessment and deliver a framework on which feedback from assessment could be given, as well as being able to provide sound evidence of performance in the event of appeal or challenge.

²⁵ Advocacy Standards, Joint Consultation by the Solicitors Regulation Authority, ILEX Professional Standards and the Bar Standards Board, December 2009.

²⁶ The CPS National Standards of Advocacy are available at <http://www.cps.gov.uk/Publications/prosecution/nsa.html>

3.2.14 We fully support the JAG's standards development programme of work, and commend an approach that contains both areas of interest for a regulatory scheme and also the QAA competences that were tested during the assessment research pilot. CLS's findings on the QAA competences and their recommendations for an accreditation scheme are detailed below.

Section B – Levels for operation for publicly funded defence advocates across the criminal courts

3.3 Initial consultation responses

- 3.3.1 For a scheme based on levels to be efficient when operational, but not restrictive to an advocate's career progression, a balancing act must be struck which ensures a degree of flexibility and exposure to more complex cases at any particular stage, whilst at the same time making it clear what the level of case is for the services sought. It should be possible for advocates, their clerks or practice managers (where relevant), instructing solicitors, clients, and any procurer to identify easily where a case fits within the structure. No such structure of levels presently exists and the judiciary is clear that this is leading to too many advocates accepting instructions that are beyond their level of competence.
- 3.3.2 The majority of respondents to our initial consultation agreed that the four levels proposed were accurate and would reflect case definition in the criminal courts. There were other responses that suggested two or three levels. This could be achieved, it was suggested, by amalgamating Levels 1 and 2, or Levels 2 and 3. Other respondents suggested only two levels, stating it would be simpler and easier for assessment purposes with a reduced number of levels.
- 3.3.3 Of those suggesting four levels, some identified the need to align levels with the CPS's grading process as an important requirement. The overwhelming number of responses also recommended further work, especially the necessity to look at complicating factors that may result in a case falling into a higher level, thus requiring a more experienced or specialist advocate.
- 3.3.4 Following the consultation a Levels Work Stream Group (LWSG)²⁷ was set up with the specific brief to consider consultation responses and feedback from the Reference Group, in order to refine the levels for use in the research pilot. Establishing levels before developing the assessment methodology was important, as when deciding what assessment instruments would best match the levels in the proposed pilot, it would be necessary to consider:
- The range of competences
 - Their robustness as tests of competence
 - The relative utility of the respective assessment instruments
 - Value of evidence based on numbers
 - Practitioner's familiarity with the various assessment instruments
 - The feasibility of designing and implementing appropriate assessment instruments

²⁷ Bodies represented on the LWSG are listed at Annex D.

- The cost of the assessment mechanisms to practitioners and commissioners
- Likely acceptability in an operational scheme.

3.3.5 The original levels framework did not cover magistrates' court work and it was strongly recommended at the Reference Group that this should be remedied. Representations were made highlighting the need to develop a single scheme that could deliver quality assurance for the entire duration of an advocate's working life, from their start in the most straightforward magistrates' court cases, potentially to the most complex of all criminal cases in the Crown Court and above. As a result, it was said that the four levels should be re-worked to include advocacy at the magistrates' court at Level 1. This was unanimously agreed and the levels were re-worked to reflect that agreement.

3.4 Defining levels

Table 2 – The LSC's four levels agreed and tested in the pilot

Level	Description
Level 1	Magistrates' court, appeals to the Crown Court and committals.
Level 2	Straightforward Crown Court cases – e.g. Jury trials including lesser offences of theft, dishonesty, deception and handling, assault (ABH and section 20) burglary (not aggravated), lesser more straightforward drug offences and lesser offences involving violence or damage, plus straightforward robberies and non-fatal road traffic offences. Also, less serious offences against children and minor sexual offences.
Level 3	More complex cases heard in the Crown Court and above – More serious cases of dishonesty and fraud. Drug offences (such as possession with intent to supply), blackmail, aggravated burglary, violent disorder, arson, complex robberies, serious assaults, driving offences involving death, child abuse and sexual offences under the Sexual Offences Act 2003, plus more serious sexual offences.
Level 4	The most complex Crown and High Court cases. Very serious, sensitive and complex cases, including serious sexual offences, substantial child abuse, very serious and multi handed murder trials, cases involving issues of national security, serious organised crime, terrorism and complex and high value frauds.

- 3.4.1 Defining levels and implementing them operationally is a particularly technical, complex and new task. The current system for defence cases permits an advocate to be instructed, and indeed take on cases, without reference to levels. Feedback from CLS reports that a minority of advocates, mainly (but not exclusively) at the lower levels, had difficulty placing themselves in one of the four levels during the research pilot.
- 3.4.2 Supposedly, these advocates would have considered their experience and cases undertaken and then applied this to the levels framework. It is highly probable that cases undertaken today, in an unstructured market, would lead to advocates undertaking cases across the levels. Indeed, the introduction of levels will ensure some uniformity in practice and thus reduce the risk of advocates (unwittingly or otherwise) operating beyond their competence.

3.5 Creating the levels

- 3.5.1 When initially defining levels, the starting point for the LWSG was to look at complexity factors and to identify all characteristics that denote complexity in order to categorise the levels not by case type alone but with additional characteristics such as vulnerability of witness, complex points of law, likely sentences and pages of prosecution evidence.
- 3.5.2 This option was fully explored by the LWSG, and their recommendation to the Reference Group was agreed; that level definitions should not be based on a combination of factors that denote complexity or gravity. Instead, in the first instance, they should be defined by case type alone. The reason behind this decision was to ensure certainty and transparency, and to safeguard against manipulation or exaggeration of complexity factors that could be subject to wide interpretation.

3.6 Issues applying offence type

- 3.6.1 Proceeding by case type alone was not a simple task, and there was much debate regarding which type of cases fell into which level. Assisting with this process was the use of data retrieved from previous cases which helped identify the complexity of case types by looking at length of case, whether a QC or senior advocate was usually currently instructed and importantly the volume of cases undertaken. What this did highlight was the varying differential in complex characteristics within the same case type. In recognition of this, it was proposed that some case types would reasonably need to span across more than one level.
- 3.6.2 However, additional issues arise where a single case offence spans more than one level, with less complex cases being classified in the lower level and more complex ones in the higher. Applying the 'offence type alone' approach, both actions could result in unsatisfactory outcomes. With all such offences classified at the lowest possible level,

there is a risk to quality, while classifying them all to the highest applicable level would put at risk natural career progression. In particular, solicitor advocates and the junior Bar would be likely to be excluded from instruction in cases for which they have adequate experience. They would also have their exposure to more challenging cases reduced, restricting their ability to work towards, and demonstrate competence at, the higher level.

- 3.6.3 The benefits of the approach proposed are that it allows the advocate's capabilities to be matched more closely to the complexity of the case, and gives advocates exposure to and experience of similar but less complex cases of the same offence type. It also allows the level defined for an individual advocate to reflect more accurately the level of complexity of cases in which they are competent to appear.
- 3.6.4 We have produced detailed case studies²⁸ to support advocates, clerks and instructing solicitors to further assist in ensuring clarity for those cases that span across the levels. These have been agreed with the CPS as representative of the four levels that they use for grading self-employed advocates.
- 3.6.5 CLS suggest that complicating factors should be considered in addition to case types²⁹. Although the LWSG and the Reference Group dismissed this suggestion, there can be some value in applying this process to cases that span across the levels. Indeed, although not formalised, this is the current process used by all those responsible for instructing advocates.
- 3.6.6 Therefore we would suggest that based on CLS's recommendation, on feedback from research pilot participants, and on the decision agreed at the LWSG and Reference Group, that the approach to matching a case to level should be based initially on case type and only where the case type spans across more than one level consideration of complicating factors should be considered to ensure the complexity accurately matches the skills and competence of the advocate.
- 3.6.7 CLS did not make any recommendation to decrease or increase the number of levels.

3.7 Recognition of specialism

- 3.7.1 We have previously consulted on the necessity within a QAA framework for additional specialist training or assessment for particular types of work (such as cases involving juveniles, serious sexual offences, murder or VHCC). The response to this question was overwhelmingly against the inclusion of further training or assessment

²⁸ One example case study is provided in Annex F. The full set of case studies can be viewed at: www.legalservices.gov.uk > Criminal Defence Service (CDS) > Quality and performance > Quality Assurance Scheme for Advocates.

²⁹ See Cardiff Law School's Evaluation Report Annexes, Annex M.

for particular types of cases or clients, and linked to many responses about the complexity of cases, definitions of levels and avoiding an over-complex scheme. It was also linked to responses about the regulatory bodies' roles in requiring adequate continuing professional development (CPD).

- 3.7.2 Post-consultation this issue has been further considered with an alternative to the proposed Levels 3 and 4 suggested. An alternative, it is suggested, would be to introduce requirements for specialist training or experience that an advocate must undertake before being allowed to take on certain cases. Comparisons have been drawn with the process requiring a judge to have additional authorisation, or 'ticketing', prior to trying cases involving allegations of rape or serious sexual offences, and for particularly complex cases.
- 3.7.3 This recommendation is problematic and does not recognise the differences between training and assessment. Arguably, an advocate could undertake all training courses but unless monitored and assessed in practice there are no assurances that could confirm or otherwise that advocate's competence. An alternative proposal would be to allow bolt-ons to the existing competencies that would enable advocates to be ticketed via robust and independent accreditation.
- 3.7.4 As before, providing it continues to meet our minimum requirements (for robust and valid assessment) we would support further exploration of this latter suggestion. We can see value in a scheme that not only accredits across four levels but that additionally identifies those assessed as competent to conduct cases that are said to require very specialist, exacting skills and expertise.

3.8 Levels – compatibility with the CPS Advocacy Quality Management Strategy (AQMS)

- 3.8.1 Although QAA was initially solely intended for publicly-funded criminal defence advocates, feedback, particularly from the judiciary, led to a concerted effort being made to dovetail the processes that already exist with those being developed for prosecutors, to deliver proposals for a converged (prosecution and defence) scheme. The Director of Public Prosecutions has been clear about the potential benefits for all, of a single converged scheme.
- 3.8.2 An example of progress in this area is the work we have taken forward on levels for CPS in-house advocates. Not only have we developed levels to match those operated for external grading but have now also ensured compatibility with levels for in-house Crown Advocates (CA). This gives us increased confidence that the levels proposed, and subsequently tested by CLS in the assessment research pilot, will work operationally, as the CPS has direct access to case details when instructing advocates and are experienced at matching the most appropriate advocates to the level of case.

3.9 Ensuring flexibility and facilitating transition between the levels

- 3.9.1 A danger of any level-based system of accreditation is that it is operated inflexibly and prevents capable advocates from developing the skills and caseloads necessary to practise competently at the higher levels.
- 3.9.2 CLS recommend that the scheme should have ways of testing some competences that assist this transition to a higher level. A candidate could then pass this transitional, or gatekeeper, assessment and be permitted to take cases at the higher level for a probationary period, whilst they completed the full diet of assessments for that higher level. The probationary period would need to be flexible and account for possible circumstances such as periods of ill health or maternity leave.
- 3.9.3 CLS assessors who tested the simulated cross-examinations have indicated their confidence that the cross-examinations set for Level 1 and Level 3 candidates can also be used to test whether candidates at this level are also performing at higher levels of competence (i.e. at Level 2 or Level 4 respectively).
- 3.9.4 CLS recommend that the simulated cross-examination assessments be used as a gatekeeper assessment for transition to the higher level.
- 3.9.5 We can see the force of this recommendation and suggest that these recommendations be considered further.

3.10 Movement between the levels

- 3.10.1 Proper grading of advocates according to recognised levels is at the heart of a successful QAA scheme. The ability to distinguish cases readily by level is essential – but this will never be an exact science. This lack of strict boundaries (save at Level 1) can be used to advantage in an operational QAA scheme.
- 3.10.2 It will mean that even without formal recognition of competence at a higher level, advocates will be able to take on cases at the upper margins of the level at which they currently have the right to practice. This lack of a precisely drawn boundary can also assist the scheme in another way. The advocate aspiring to the next level could take on responsibility for a limited number of cases at that higher level, for a limited period, without having to make such a big leap. Recognition of this could be built into the scheme, with the acknowledgement that the scheme would need sufficient inbuilt safeguards to ensure that clients remain assured of receiving competent representation.
- 3.10.3 A big concern voiced by advocates throughout development was that levels should not be too restrictive to deny them exposure to more complex cases or unreasonably inhibit their ability to develop their practices. We suggest that this approach best protects consumers by

ensuring that advocates less conscious of their own abilities do not represent in cases clearly outside their competence level, but allows others the reasonable freedom to take on cases that challenge and develop their skills.

3.11 Same advocate proceedings

3.11.1 In some proceedings there is good reason for ensuring continuity of advocacy regardless of QAA level. One example is confiscation orders. The Bar Council's recently published protocol on the approach to confiscation proceedings, states that:

“A barrister that unconditionally accepts instructions to represent a lay client in criminal proceedings may be expected to conduct all aspects of the case, including any resulting confiscation proceedings. Phrases such as ‘Brief for Trial’ are understood by general usage to mean that the barrister is accepting all aspects of the case covered by the Representation Order”.

3.11.2 An exception to the above is where complex confiscation proceedings follow a relatively straightforward trial or where the junior advocate accepts instructions within their competence, and subsequently becomes aware that complex confiscation issues will or are likely to arise which are out with their expertise and competence.

3.11.3 In such circumstances the advocate should notify the instructing solicitor and continue to represent the lay client but representation should be limited to the conduct of the trial and sentence hearing.

3.12 Unpredictability of complexity

3.12.1 The same can also be said of any case where the level of complexity, skill or experience required, changes post-instruction. Having the advocate retain the case supports the notion of allowing exposure to more complex cases in order to develop practises. However, as above the advocate should inform the instructing solicitor and apply the Code of Conduct rule regarding competence to act.

3.13 Election of jury trial

3.13.1 The principle adopted by the LWSG was that the same advocate should also be used within proceedings for any offence type where the magistrates' court is prepared to exercise jurisdiction, but the defendant elects trial by jury. It is accepted, however, that cases heard in the magistrates' court can be complex and that certain complexities also arise where a jury and professional judge are in place.

3.14 Mentions and Plea & Case Management Hearings

3.14.1 Best practice states that for both types of hearing (regardless of offence) the trial advocate should attend. In exceptional cases where this is not possible, a substitute advocate may attend. In attending they must have sufficient competence for the level or type of case, or subsequently must be performing and undertaking cases at the top end of the immediately lower level and therefore their attendance could be used as evidence to demonstrate competence at the next level. Justification of this instruction would need to be recorded by the instructing solicitor and advocate.

3.15 Appeals

3.15.1 The original trial advocate should continue to represent the client in any appeal with the obvious exception where the appeal is based on the competence of the advocate.

3.16 Two Advocate Cases

3.16.1 The preliminary view is that additional requirements of the competency framework that relate to leading cases should be capable of being demonstrated by the leading advocate. Indeed only in such cases, would the competences in Section E (Leading Cases) of the framework be applicable. However that additional requirement is assessed, we would suggest that cases in which advocates are led should not qualify for their assessment purposes.

3.16.2 We have already had this discussion in our initial QAA consultation and asked specifically how the levels should be applied when there is a certificate (permission) in force for more than one advocate, and the need to consider the extent to which evidence from these cases (in which others play a significant role in delivering the overall advocacy service) should contribute towards assessment.

3.16.3 Responses to this question were contradictory, but the most popular response suggested that the lead advocate only should be at level required by the case. Others said that the level of a led advocate should depend on the role of each advocate in each case (which may vary) and that the scheme should not be too rigid as to exclude perfectly able advocates from being led (regardless of their level) where appropriate.

3.16.4 Therefore, in the development of an operational scheme the issue of assessment in two advocate cases will need to be considered and a conclusion reached.

Section C – Assessing Advocacy

3.17 Initial consultation, published June 2007

- 3.17.1 The initial consultation sought views on the amount of evidence required for assessment purposes and the type of evidence that should be sought. There were also two questions that asked who should be responsible for assessing the evidence, a specially appointed panel or an advocate's chambers or firm?
- 3.17.2 Consultation provided some interesting and innovative suggestions about evidence, but with little consensus, save for overwhelming support for evidence of observed advocacy skills as in court. Work undertaken began by looking at existing evidence, at the burden of giving and seeking evidence and at issues around volume and frequency.
- 3.17.3 There were many comments about initiatives that already exist to assess quality and standards of advocates, and about the need to ensure that any new scheme should be compatible with and complementary to those existing requirements. Recognising levels of competence already assessed as having been achieved by both barrister and solicitor advocates was said to be a key issue.
- 3.17.4 Enquiring about types of evidence disclosed an identifiable trend in consultation responses, which was the desire to make maximum use of what is currently available to avoid unnecessary duplication and inconsistency. This applies in two ways, first in considering the schemes and processes run by other organisations that already contain an element of quality assessment, and secondly in making use of assessment evidence already available for individual advocates.
- 3.17.5 Armed with consultation feedback we embarked on two important programmes of work:
- The Data Survey and Focus Group Report
 - Mapping of existing accreditation schemes.
- 3.17.6 In relation to questions about who should assess, the key issue raised was in respect of potential (differential and detrimental) impacts that some methods could have on different groups of advocates. We worked with the Bar Council's Equality and Diversity Department to jointly produce and manage the Bar Data Survey, and conducted an analysis of data about solicitors with higher rights of audience, in order to produce a comprehensive picture of the potential risk associated with all proposals. This was followed by a series of focus groups to help us fully comprehend the findings from the data survey, by securing first hand feedback from those working in the professions. This was published ahead of the assessment and was intended to be further tested and evaluated in the assessment research.

3.17.7 Secondly, we sought detailed feedback on the methodology of assessment used for existing accreditation schemes. We visited those responsible for administering these schemes and sought feedback on the practicalities of adopting similar methods. A key issue to emerge was the volume of advocates that QAA would need to assess, although it was envisaged that there would be a certain degree of passporting and exemption and that implementation would be phased. The number of advocates requiring assessment or re-accreditation, would be unmanageable were a scheme like the Treasury Solicitors Scheme or the Queen's Counsel Selection scheme, which involve a detailed application and reference type process, adopted.

3.17.8 A clear majority of respondents said that assessment must be independent, and so we worked with that consensus to develop an assessment process that could meet this necessary requirement. It was the regulatory bodies' (and others) view that a scheme could not be considered to be sufficiently robust unless assessment was objective and independent, thereby ruling out internal assessment within chambers and firms. One respondent also suggested that consideration should be given to assessment by an external third party with specific experience and expertise in competency based assessment. This is the approach adopted by HMCPSI in their recent thematic review.

3.18 Assessment development

3.18.1 When it came to creating the assessment methodology we already had a revised competency framework and levels for advocates to be assessed against.

3.18.2 During development of the competency framework the CWSG considered the key elements of advocacy that should be addressed in a quality assurance scheme, how these could be assessed and, due to the nature of advocacy itself, the inherent difficulties of providing evidence of competence that is robust, fair and capable of objective measurement.

3.18.3 The CWSG agreed that judicial evaluation should be considered as being a potential part of the assessment process for much of the framework but that there were important elements that must be included in a meaningful quality assurance programme, primarily interaction with clients, which could not be observed and assessed in this way. It was also noted that there may be situations where advocates would not be able to access a sufficient range or volume of judicial feedback and supplementary forms of evidence may be required.

3.18.4 A number of issues were raised about the type of evidence that could be used to assess competence. The Group thought it important to consider the requisite volume of evidence that would be required to

demonstrate competence; for instance, whether obtaining judicial feedback on a cracked trial would have the same weight as that on a full trial, and whether feedback would be given equal weight if an advocate received the brief the night before trial or had much longer to prepare. The Group also expressed concern that feedback from a lay client could be subjective and inappropriate as a form of evidence, but considered that some means of incorporating feedback from the professional client could be covered.

3.19 Work Stream Group approach

3.19.1 The issues highlighted by the CWSG required further examination in an assessment and evidence work stream. It became apparent that the approach for this work would require a high level of technical expertise alongside a dedicated resource. Although the initial approach that was considered mirrored the CWSG development, the level of expertise required, coupled with the concentrated programme of testing and evaluation, meant that it was doubtful if it could be completed effectively by volunteers within the time frame. Therefore, it was decided that the way forward should be to tender out the development required.

3.20 Tender to develop assessment methodology

3.20.1 The decision was taken to tender services from appropriately qualified assessment bodies to research, design and test a range of methods that could objectively assess the competences at the prescribed levels. A small working group, the Assessment Work Stream Group (AWSG)³⁰, was set up to oversee the procurement, through EU Procurement Regulations.

3.20.2 In order to take steps to meet our minimum requirements for the scheme, it was identified that the assessment research would need:

- An assessment process that allows for flexibility, but contains clearly defined baseline requirements
- A matrix of weightings to balance complexity and duration of trial on which feedback may be obtained within each level
- Some form of self-reflection by the advocate in the application process to demonstrate readiness at the level applied for
- Effective evaluation of the assessment methods piloted to promote confidence among advocates that the assessment process is fair, objective, robust and worthwhile
- One main route for application and assessment but alternative options would need to be considered for exceptional cases
- Evaluation of the time required between application, presentation of evidence and award of level as, ultimately this may impact on an advocate's ability to take on work at that level

³⁰ All bodies represented on the AWSG are listed at Annex D.

- An effective method of feedback to the advocate that enables development
- To identify and evaluate the role of chambers in the process
- To identify and evaluate passporting and accrediting options
- An appeals process.

3.20.3 The invitation to tender comprised three key stages:

Design research

- Design the application process, guidance and support papers including criteria against which the application is to be made at each level
- Research and report to the Reference Group on performance assessment options that best meet the requirements of the scheme and the competencies
- Research and report on key issues such as a matrix of weightings of evidence, anticipated timeline between application and award, feedback mechanisms, consistency, and process costs
- Recommend with justification the main route to be piloted with options for exceptional situations that fulfil our IA and EIA requirements
- Design a judicial feedback form and any support materials required
- Research and report on opportunities to credit prior accreditation including the QC scheme, CPS Scheme, Solicitors' HRA scheme and the Advocacy Training Certificate
- Research the feasibility of chambers or in-house assessment and develop guidance
- Research and report on IT required to administer the scheme
- Design and report on options for an appeal process.

Assessment testing

3.20.4 Working with the project team and the Reference Group to manage research pilot assessments providing data to enable accurate analysis of:

- Efficacy of prior accreditation and passporting options
- Viable options to meet equality and diversity requirements in a final scheme
- Resource requirements and cost to advocate of main route and alternative routes
- Cost and sufficiency of assessment routes and appeals
- Consistency of process
- Applicant and judicial feedback on the process.

Input into research pilot evaluation

3.20.5 Provide accurate data to feed in to the overall research pilot evaluation including:

- Feedback from the judiciary and participant applicants
- Evidence sources used such as instructing solicitors
- Other sources identified.

3.20.6 Final report on the options tested with recommendations, justification and full cost benefit analysis of:

- The main assessment route to be applied in the final scheme
- Optional routes to be offered to meet identified equalities duties
- Passporting and accreditation processes and levels to which they apply.

Section D – Research Outputs; detailing operational findings (known to date) that would meet the LSC’s proposed minimum requirements

3.21 Background to the research

3.21.1 Cardiff Law School (CLS) was successful in winning the tender to develop and test assessment methods for the QAA research pilot in criminal advocacy. Their brief was as set out in Section C and they reported to the QAA project team and the AWSG. The process was subject to CLS’s research ethics procedures. Their brief was informed by the programme of work on equality and diversity issues undertaken by the project team and the recommendations for assessment that came out of this work.

3.21.2 In October 2008 CLS commenced work on researching and reporting on the range of assessment methods (known as instruments) that could effectively capture advocacy performance as laid out in the QAA competency framework at the four levels set out in Part 3.

3.22 Process – assessment research

3.22.1 CLS’s initial task was to review the various types of assessment instruments in common use and consider their utility and relevance for assessing the competence of advocacy skills. They had regard to existing modes of assessment used by the professions and by the CPS in drawing up the framework of assessments for consideration.

3.22.2 The instruments CLS considered included (and are reported on in full in the Evaluation Report – Annex C):

- The performance of an advocate in a real trial (by a professional assessor and/or the trial judge)
- Review of an advocate’s conduct of a real trial by an advocate’s own description of that involvement in a portfolio case reviewed by an assessor or review from a file
- An advocate’s written advocacy, anonymised from a real case
- The performance of an advocate in a simulated hearing by an assessor
- A written examination with problem questions or multiple choice questions
- An application made by an advocate supported by references.

3.22.3 From those, CLS identified instruments that could provide reliable, verifiable and consistent evidence which would be of research value and also capable of forming part of an operational scheme.

3.22.4 A number of instruments were reviewed and not considered viable:

- For routine and/or sole use as an instrument, assessment by a professional assessor of the performance of an advocate in a real trial was rejected, as it would not be capable of comparison or verification for appeal. CLS drew on the previous research on public defenders³¹, which showed significant economic and practical problems. Trials vary in substance and involvement by the advocate, trials may not be effective or subject to relisting, or may be handed to another advocate late in the day. Assessors would face significant difficulties in scheduling assessment visits and would face high levels of wastage leading to considerable cost. The HMCPSI review applied this approach and reported achieving only 25% time efficiency
- A review from a file was rejected due to the difficulty of assessing advocacy by the kinds of documentation that would traditionally appear on an advocacy file. This would also be detrimental to barristers who do not generally retain files for cases once instructions are complete
- An application made by an advocate supported by references was also rejected, as this process could not provide verifiable evidence for assessment purposes. At the start of the development the QAA team liaised with other accreditation schemes within the professions, including the QC scheme (which is reference based). This research led CLS to conclude that amongst other problems with such an approach, the cost of administering a reference based scheme was prohibitive, would present difficulties for junior members of the professions and issues around ‘weighting’ the different approaches that appeared in individual references was significant.

3.22.5 CLS sought to test a range of assessment instruments in order to make recommendations about possible assessment regimes at each level. The overall aim was to compare results between mechanisms to determine which instruments are necessary to evaluate performance against the competences to achieve reliability, consistency and proportionality.

3.22.6 The full report on CLS’s research and evaluation also contains the assessment materials used. The LSC has drawn on that report in formulating this discussion document.

3.23 Process – consistency and reliability

3.23.1 Once an assessment instrument had been identified as suitable for the research pilot, CLS drew up the marking criteria to enable all relevant competences to be evaluated in respect of that instrument.

³¹ Evaluation of the Public Defender Service in England and Wales, by Lee Bridges, Ed Cape, Paul Fenn, Anona Mitchell, Richard Moorhead and Avrom Sherr, 2007.

- 3.23.2 Key to that process was assessor criteria to ensure consistency of approach. Each assessment instrument produced by the team of assessors was written by one or more members of the team and subject to revision and scrutiny by at least two others, to ensure it was free from unintentional ambiguity or elements that could cloud the ability of an assessor to obtain a true picture of the candidate's competence.
- 3.23.3 Each assessment instrument at Levels 1 and 2 was pre-piloted on a sample of advocates not participating in the main research pilot. Those at Level 3 were dealt with in a similar but abridged fashion.
- 3.23.4 Live assessments were video recorded and initial assessments subject to joint scrutiny by all assessors, who discussed the relative merits or de-merits of what they saw and decided on the standard to be reached. Full details of the consistency and validity checking processes adopted are set out in Section 3 of CLS's Evaluation Report.
- 3.23.5 Candidates took a different combination of assessments depending upon the level at which they were being assessed. Section 5 of the Evaluation Report sets out the results from each assessment and compares the result of different assessment methods. This enables some empirical analysis of the extent to which the assessment mechanisms relate to each other and which competences they assess.
- 3.23.6 The aim in trialling a variety of assessment instruments was to collect evidence that would enable the paring down of the assessments needed to show the relevant competence. Where more than one assessment for a single individual arrived at results confirming one another it was considered whether one could be proxy for the other.

3.24 Process – assessors

- 3.24.1 In the research pilot and in any final scheme it is important that the professions and advocates undergoing assessment have confidence in the process of grading which has the potential to impact on their range of work. This point was asserted by delegates of the Equality and Diversity focus groups and by respondents to the candidate feedback interviews.
- 3.24.2 CLS's team of assessors was made up of academics (including a current Recorder) who had previously been in practice and were experienced advocacy teachers, as well as barristers, solicitors and QCs in current practice. They also had a pool of advisors on whom they could draw, which included practitioners from the professions, the CPS and a retired circuit judge.

3.25 Process – cohort of candidates

- 3.25.1 The LSC was responsible for recruiting candidates and aimed to enlist a maximum of 250 candidates to participate in the research pilot across the different levels. This target was based on cohorts of advocates holding previously acquired professional accreditations with the aim of identifying evidence based recommendations about passporting and exemption based on APEL (accreditation of prior experience and learning). Full passporting means automatic admission to the level without any need for assessment; exemption denotes the proposition that certain categories of advocates are exempt from one or more of the assessment instruments at that level. We led a recruitment campaign to target advocates who held a variety of relevant professional accreditations such as CPS external prosecutor status, higher rights of audience accreditation and duty solicitors. A minimum target of 75 pilot candidates was required to enable effective testing of the individual assessment instruments.
- 3.25.2 We also targeted advocates from different sections of the community including advocates with a health issue or disability, advocates from different ethnic backgrounds, and men and women from the professions.
- 3.25.3 227 people registered interest as potential candidates. Of those, 101 were able to be assessed in the research pilot time frame, and 98 submitted data in time for the evaluation, using one or more of the assessment mechanisms. A full breakdown of the cohort is contained in Section 4 of CLS's Evaluation Report. The inherent structure of the assessment instruments at each level is the same; materials and level of complexity of case scenarios differ between levels. Therefore the methodology of the assessment instruments was tested across sufficient numbers of advocates (98) to enable evaluation of the efficacy of the individual instruments in testing advocates against the competences and the levels. The numbers were also sufficient to provide data to enable evaluation of which instruments and which combination are necessary to provide reliable, consistent and robust results and to identify those instruments that produce the same outcome as other instruments and are therefore superfluous.
- 3.25.4 The number of candidates assessed during the research therefore provided sufficient evidence to support findings and recommendations on most of the assessment instruments tested, the notable exception being judicial evaluation. However, there is insufficient data to provide evidence-based conclusions about passporting and exemption options, or to start to explore possible equality and diversity impacts.

3.26 Context for research outputs

- 3.26.1 In accordance with their brief, CLS has provided a range of recommendations based on the evidence collected during the research pilot.
- 3.26.2 Following the research pilot, we carried out candidate feedback interviews with a sample of 20 advocates who had been through the assessment process seeking their views on the process, the assessments they took, how much time it took them to prepare, what worked well and not well, confidence in the process. Those views have been fed in to the considerations set out here on the possible shape of a final scheme.
- 3.26.3 Our current views on minimum requirements for a scheme are supported by the principal outcomes of our research to date, specifically our equality and diversity work, which has been extensive. The final part of that work is the CLS QAA research evaluation, which pulls together all the core strands of QAA and reports on the evidence obtained through the assessment research.

3.27 Recommendations for the QAA scheme

- 3.27.1 The project's AWSG met to discuss the findings and recommendations from the CLS Evaluation Report on the QAA research pilot. The group's role was to consider the options laid out in that report and to agree what should be included in this discussion paper for consideration by the JAG.
- 3.27.2 The aim is to set out the key conclusions and recommendations of the QAA research in order to seek feedback on these from as wide a range of bodies and individuals as possible. The analysis of responses will then conclude the LSC and MoJ's lead role in the development process to date. That analysis will form part of the body of research and evidence to be considered by the JAG in the development of an operational scheme. It will also support the LSC in determining its more detailed minimum requirements for purchasing criminal defence advocacy services at a later date.
- 3.27.3 The AWSG was specifically asked to consider the recommendations proposed for:
- The competency framework
 - Options for the proposed mix of assessment instruments by level
 - Options for entry to an operational scheme for new entrants to a level and those advocates whose practice is already established at a specific level
 - Options for progression through the levels
 - Options for re-accreditation.

3.27.4 The evaluation report also included recommendations on feedback to advocates post assessment, monitoring and ensuring consistency, who should assess, and the costs of an operational scheme. The following sections deal with each of these in turn.

3.28 The QAA competency framework

3.28.1 As mentioned above, the competences tested in the assessment research pilot are those developed by the CWSG and signed off for testing by the project's Reference Group. Since then the regulatory bodies have developed their own standards, which we have mapped against QAA. We are clear that the key elements of the QAA framework are reflected in the regulatory body standards.

3.28.2 However, in setting out our requirements our focus is on those competences that underpin core advocacy skills and that are measurable and capable of reliable, verifiable, credible and consistent assessment methodology.

3.28.3 CLS recommended that the following competences be removed from the framework for accreditation purposes:

B.3. Meets deadlines:

B3.1. Keeps the court informed of any timing problems/delays.

B3.2. Complies with judicially imposed timetables.

B3.3. Is punctual.

C1.2. Keeps lay and professional client up-to-date.

C2.1. Observes professional etiquette in relation to third parties.

C2.3. Keeps all parties informed.

3.28.4 CLS's rationale for removing them from the accreditation process is that these competences deal with the passing of information and in their view cannot routinely be assessed except by means of a tick box (self-assessment) that arguably is not robust or challengeable, or by judicial evaluation (except C2.3. which CLS believe can only be assessed via a tick box approach). We suggest that further consideration will need to be given as to how these competences might be assessed as they remain critical to efficient case management and high quality client care.

3.28.5 The AWSG felt there are two issues:

- Which competences are capable of independent assessment?
- Which competences should form part of the overall standards framework for professional regulation?

3.28.6 We support the principle that regulatory standards may contain a greater range of criteria, much of which will form part of that regulatory structure, but go beyond the LSC's requirements for assuring quality of advocacy services.

3.29 Options for the proposed mix of assessment instruments by level

3.29.1 The AWSG agreed that all the recommendations made by CLS for the mix of assessment instruments at each level should be considered in this discussion paper. Results from assessments and instrument comparisons are detailed in the CLS Evaluation Report at Section 5. Assessment recommendations are summarised at Section 8.3.2. Detail on the competences that each assessment instrument evaluates can be found at Section 2.5. The content and materials used for each instrument are contained in the annexes to the evaluation report. The following has been taken from the CLS Evaluation Report and summarised for ease.

3.29.2 The following assessment instruments were used (to a greater or lesser extent) in the research pilot:

- Assessment of advocacy in real cases
 - Judicial evaluation

- Simulated (advocacy and other) assessments
 - Interview/conference
 - Submission (non-witness based advocacy)
 - Cross-examination
 - Examination in Chief
 - Multiple Choice Test (MCT)

- Assessment methods deriving from real cases
 - Portfolio
 - Written advocacy.

Judicial evaluation (from in-court observation of cases)

3.29.3 The majority of AWSG members felt that judges could have an important role to play in any assessment process. Judges are those whose work is most closely affected by the standards of advocates before them; they are in daily contact with advocacy, most will have had years of experience as an advocate, and they are also ideally placed to judge the visible aspects of performance in advocacy.

3.29.4 Findings from the equality and diversity focus groups, coupled with responses to the candidate feedback report gave rise to concerns that need further consideration in this context. While, overall, those advocates concurred that judges are well placed to provide feedback, concerns were raised that a judge may not always be aware of the instructions received or that a candidate may be judged on a late or poorly prepared brief. Also, it was suggested that if the candidate knew they were being assessed this could change their behaviour which may or may not be in the client's (or justice's) best interests. It was suggested that to mitigate those issues for judicial evaluation, at least three pieces of evidence would need to be secured for each candidate

application to ensure a fair and proportionate outcome and that this would have to be achieved without the candidate being made aware that they were subject to assessment.

- 3.29.5 Concerns have also been raised about the potential for results of the evaluation to be subject to disclosure. This could arise where a client claimed that the advocacy they received was inadequate. It is also suggested that disclosure may be sought by an advocate who received a poor assessment outcome.
- 3.29.6 From an opinion that we sought, it is clear that some protection in respect of areas of concern regarding disclosure could be provided within arrangements for exemptions to disclose (under s31 (and possibly s40) of the Freedom of Information Act 2000 and under s31 of the Data Protection Act 1998). However, it is equally clear that this would be unlikely to be watertight in every instance. This may present an issue, were defence advocates routinely to request disclosure of evaluations, as some have said they would. In the circumstances, we suggest that this matter would need to be considered further by the JAG in progressing developments to include judicial evaluation in the operational scheme.
- 3.29.7 Similarly we urge that equality and diversity concerns would need further exploration and suggest that, for the purpose of an operational scheme, there should be moderation of outcomes of judicial evaluation with a focus on results between different equality groups and regions, as indeed there should be of all other methods of assessment.
- 3.29.8 Judicial evaluation was included in the research pilot, but due to the timeframe in which the research pilot had to be conducted, and the administration difficulties in securing evaluations in this context, insufficient data is available to provide firm recommendations for judicial evaluation as an assessment tool. However, we do recognise its potential value, and the importance of judicial confidence in any scheme and we expect that the JAG will want to consider alternative ways in which they can utilise this method of assessment, particularly at the higher levels.
- 3.29.9 The AWSG recommend that judicial evaluation be considered as a means of assessing advocacy ‘on your feet’ and that it be properly trialled and moderated. Some members cautioned that, aside from needing to meet equality and diversity obligations, if it were not equally available (e.g. for regional or administrative reasons) those advocates affected would be disadvantaged if judicial evaluation became a compulsory method of evaluation in the scheme. Confidence about the universal availability of judicial evaluations would therefore also be required to provide assurance that all advocates could reasonably access this method for a number of cases and within a reasonable timeframe.

Simulated advocacy assessment

3.29.10 A key advantage of simulation over real life assessment is that the simulations ensure that all candidates work with the same materials and are tested on the same facts and issues. Thus an assessment of one candidate is broadly comparable with the assessment of another candidate. The simulation also allows a wider range of issues and tests to be built-in than would ordinarily be found in a real case. The simulated advocacy exercise can test the performance skills of the advocate and their ability to identify and use evidential and legal points. With suitably designed assessments, it provides the opportunity to feed the candidate late information to test the speed and accuracy of their response. It also tests their ability to adapt ‘on their feet’ to a response not in line with expectations, or a witness’s particular characteristics. Thus, in important senses, the ‘unreality’ of simulation can be an advantage: it can be designed to include particular characteristics essential for the testing of competence at the relevant level. It could take several real cases to afford an advocate such an opportunity.

3.29.11 The cross-examination assessment assesses a wide range of competences; in a context as similar to genuine advocacy as possible; on a basis which is fair and replicable (i.e. candidates sit the same standard of test); and it is not prone to problems that portfolios and other assessment tools are prone to (i.e. that they test a candidate’s presentational skills as much as they test their actual skills). For these reasons the research team and the assessors had most confidence in this method of assessment. CLS exit feedback from candidates, in common with that in the LSC candidate feedback report, supported this view. Whilst opportunities to compare judicial evaluation with other assessments were limited in number, judicial assessment of a candidate’s overall performance was most often the same mark as that which they had given for the effectiveness of their cross-examination (i.e. judges appear to see cross-examination as the key skill).

3.29.12 A further advantage of a simulated cross-examination is that it can be used if required as a gatekeeper to assisting the progress of candidates up the levels. An advocate aspiring to a level could first (without risk to a real client charged with a more serious offence) attempt to obtain a pass at the relevant level in such an exercise. A fail would have no impact on clients facing charges or victims having suffered crimes at that next level. A relevant pass could however give the right (for a limited period or for a limited number of cases – or a combination of both) to accept instructions to conduct a trial of an offence categorised at that next level. A MCT could be used in conjunction with this in the same way, as a gatekeeper.

Multiple Choice Tests (MCT)

3.29.13 From the CLS analysis a MCT is an assessment without a proxy and is a valuable additional tool that has the advantage of readily

enabling assessment of new procedures or interesting points of law or evidence. A disadvantage of a MCT is the regard it is held in (as an assessment tool) by some members of the professions. For many of them it is linked to testing of a level of knowledge and understanding consistent with being a student and does not appear to have the sophistication that they hope characterises their current level of competence. They may fail to recognise the particular utility (breadth of assessment, consistency, economy of development and administration) of the tool, and the fact that it can be (and now regularly is) drafted in a way that tests some particularly difficult points.

3.29.14 The main operational difficulty of a MCT is not in sitting it initially, when a candidate is also taking a cross-examination test, but in arranging a reassessment which might occasion either a costly attendance or arrangements for secure remote assessment (e.g. by use of the internet) which could entail significant development. An alternative solution might be to engage the professions through their local presence to administer any such test. However the need to test D3.3 could be handled with a lighter touch by the portfolio requirement.

3.29.15 One aim of the research and evaluation conducted was to reduce the number of assessments to the minimum that could properly assess the competences. Interviews (or conferences) and submissions were shown by the data to give results that largely correlate with one another. There are aspects of the competences – concerned with relating to the client – which can only be assessed live through interview, but may be judged in part from a portfolio.

3.29.16 There is one competence, A1.3 (Makes only relevant submissions), which was considered capable of assessment in the recommended regime of assessment for Levels 2, 3 and 4 only through written advocacy. Written advocacy does not appear as an assessment instrument in the recommended diet at Level 1, where the research and feedback indicates that it is not appropriate.

Portfolios

3.29.17 Whilst portfolios can be managed by candidates to enable them to present themselves in their best light, the team of assessors felt that they provided good insight into the level of experience a practitioner has achieved and their ability to reflect on that experience. Interestingly, and to the surprise of assessors, candidates who undertook these were appreciative of a rare opportunity to reflect upon and relate their own practice. It also affords the opportunity of requiring different levels of skill to be displayed consistent with the case in which the advocate is appearing and the level to which they are being assessed. When an advocate is assessed at the higher levels, a reduction in the number of cases required for the portfolio reflects the added complexities of any case with which they would be dealing and

the extent to which they would be expected to explore their analysis of that case and their approach to conducting the trial.

3.30 CLS recommendation for assessment regime at Level 1

- A portfolio to include 3 trials at Level 1; at least 2 to be of either way offences
- A submission based piece of advocacy
- A cross-examination

and

- Specifically if D3.3 (Assists the court with the proper administration of justice) above remains a competence, then either a MCT with a relevant question or a requirement in a portfolio case to show that competence would be needed. However, since B2.1 (Complies with appropriate Procedural Rules and judicial directions) remains at this Level an untested competence, a preference for the MCT option would enable capture of both competences. The suggested number of trials for the portfolio at this Level reflects the fact that the trials will be shorter, thus easier to relate, and that their reduced complexity suggests this number is more likely to ensure the competences are satisfied. No written advocacy is recommended at this level due to the fact that our cohort was rarely called upon to do this. They could not provide such evidence in any realistic way. The need for this could be kept under review should practice change in the magistrates' court.

3.30.1 The full diet of assessment instruments trialed at Level 1 included all of the above, together with the following that it is recommended are removed:

- Interview conference
- MCT unless D3.3
- Written advocacy.

3.31 CLS recommendations for assessment regime at Level 2

- A portfolio to include 2 trials at Level 2 and a piece of Written Advocacy
- A cross-examination

and depending on the view taken about capture of competences D3.3 and B2.1, as set out in relation to Level 1

- A MCT.

3.31.1 The full diet of assessments trialed at Level 2 included all of the above and judicial evaluation which, the AWSG recommended should be properly trialed in an operational pilot. The research pilot also tested the instruments shown below, that it is recommended should be removed from the regime at this level.

- MCT (see above)
- Examination in chief.

3.32 CLS recommendations for assessment regime at Level 3

- A portfolio to include a single Level 3 trial and a piece of Written Advocacy
- A cross-examination.

3.32.1 To ensure that competence D3.3 (Assists the court with the proper administration of justice) is captured at this Level it would be necessary to include a requirement that the case described in the portfolio included an instance where the advocate did so.

3.32.2 The full range of instruments tested at this level included all of the above plus judicial evaluation. It is recommended that 1 case be removed from the portfolio requirement trialed.

3.33 CLS recommendations for assessment regime at Level 4

- A portfolio to include a single Level 4 trial and a piece of Written Advocacy
- A cross-examination
- At least 3 pieces of judicial evaluation.

3.33.1 Two of these on judicial evaluation forms, one covering the same case as in the portfolio, a second from another case, and a third a narrative document detailing the advocate's strengths and weaknesses and provided at the request of the advocate by a judge (perhaps of High Court level) who has been the judge in a trial lasting for an appropriate period of time in which that advocate appeared. The reason for recommending three pieces of judicial evaluation is to ensure a broad enough range of evaluations for any one application to counter the potential risk of being evaluated on a poorly briefed case. In addition, the LSC recognises that there are other issues raised by candidates in the research pilot and the equality and diversity focus groups that support the collection of a number of pieces of judicial evaluation if it were to become part of a scheme.

3.33.2 If competence D1.3 (Maintains pace *throughout the course of the trial*) were modified by the deletion of the words in italics above, it could be assessed in the above regime through cross-examination. If not it would remain unassessed or assessable only by judicial evaluation.

3.33.3 If such a scheme were to become operational it would leave only 3 of the competences not already recommended for deletion with any uncertainty over their being assessed. These are:

- C3.1 Observes restrictions and judicial rulings on questioning
- D3.1 Observes duty to the court and duty to act with independence
- D3.2 Advises the court of adverse authorities and, where they arise, procedural irregularities.

3.33.4 Each could be satisfied by a requirement (in the guidance to candidates on portfolios) for them to choose cases which showed particular challenges on these points. The LSC notes that this approach would restrict the cases an advocate chooses, to those which showed these particular problems.

3.33.5 The assessment instruments trialed at Level 4 did not include a cross-examination. Some Level 4 candidates contacted CLS to give feedback on the experience and said they would have welcomed the opportunity of undertaking a live assessment. The development and testing of the Level 3 cross-examination lead CLS to believe such a simulated assessment would be possible. Cross-examination has therefore been included in the recommendations but would be assessed to the more exacting standards expected of a Level 4 advocate.

3.34 Options for entry to an operational scheme for new entrants to a level and for those advocates with a practice already established at a specific level

3.34.1 The number of candidates undertaking assessment provided sufficient data to underpin recommendations for the competences, levels and assessment regime. However considerably more candidates with prior accreditations would need to have been assessed in order to make reliable recommendations on giving credit to previously held qualifications and accreditation, namely passporting and exemption.

3.34.2 However, proportionality is a central concern in the launch of a new operational scheme where, at its inception, large numbers of advocates will wish to become accredited within a relatively quick timeframe. CLS was able to outline some options for entry to the scheme for advocates coming in to an operational scheme who are new to a level and suggest a package of reduced assessments, spread over a longer period of time, for those advocates who are already operating at a level and have done so for some time.

3.34.3 These options were determined by the general results achieved in the pilot and consideration of risks and proportionality. However, the AWSG felt that should these options be taken forward by the JAG a system of post implementation monitoring and review should be established.

3.34.4 The AWSG agreed that in any operational scheme there may be certain groups of advocates who, on the basis of their current accreditations, could be passported in to the scheme or exempt from some part(s) of the assessment requirements as laid out above. However, considerable further testing would need to be conducted in an operational scheme to provide reliable and robust evidence allowing passporting or exemption on the basis of accreditation of prior experience and learning.

3.35 Options for entry to Scheme at Level 1

Barristers and Pupils

3.35.1 Eight barristers who were not pupils were assessed. This cohort had an average of 1.9 years experience in criminal practice. CLS suggest that in recognition of the training and assessment in advocacy that they have undergone on the BVC, consideration could be given to allowing a barrister exemption from the cross-examination and submission test for entry to the scheme at Level 1.

3.35.2 Only three pupils were assessed in the pilot. Once a pupil has the certificate of successful completion of the first six months of pupillage, they hold the same rights of audience (subject to the usual restrictions imposed by the professional code) as any barrister. CLS recommend that this group could also be given exemption from the cross-examination and submission test for entry to the scheme at Level 1.

3.35.3 If however the MCT is retained as part of the diet of assessments at Level 1, there is no evidence to suggest exemption from this instrument. It is therefore recommended that the MCT could act as a 'gatekeeper' assessment. Barristers and pupils would sit this, passing of which would trigger a 12-month probationary period, within which time a portfolio must be passed.

Legal Executive Advocates

3.35.4 Only three legal executive advocates were able to be assessed in the research pilot, their number means that no recommendations for passporting can be made based on the data. However, as regards Level 1 advocacy accreditation, this group of advocates has had to pass up to eight different advocacy assessments to achieve their status as Fellows with rights of audience in criminal proceedings in the magistrates' court. It is therefore recommended that legal executive advocates who have successfully completed their extended rights of audience qualification in criminal cases should be passported in to the scheme at Level 1; then be reaccredited in line with the scheme proposals for re-accreditation.

Solicitors and Duty Solicitors

- 3.35.5 The solicitor cohort tested at Level 1 was made up of 20 solicitors, 16 of whom are current Duty Solicitors. This cohort is likely, as the majority were Duty Solicitors, to include those with significant exposure on their feet as advocates in the magistrates' court. The majority of the solicitor cohort have therefore already been scrutinised in order to achieve Duty Solicitor status. There was no evidence or reason to suggest that solicitors who are not Duty Solicitors should be exempt from undertaking the full diet of assessments at Level 1.
- 3.35.6 The assessment instruments used for Duty Solicitor accreditation lack any assessment of witness handling or of knowledge in a MCT. Nonetheless, this cohort has proved largely competent on those tests. This may be because of the exposure they have gained but it should also be noted that these candidates were volunteers and there are plausible reasons for speculating that they might appear to be of a higher quality or greater experience than a random sample of candidates. A suitable balance should be struck between recognising their prior accreditation and assessing their quality. CLS recommend therefore that Duty Solicitors could enter the scheme with only the need to pass the cross-examination assessment.
- 3.35.7 For some solicitors, criminal advocacy has formed the main part of their practice for a considerable period. It is recommended that any future scheme could trial giving exemptions on all but the cross-examination exercise to solicitors who have practised criminal advocacy over a long period of time.

3.36 Options for entry to Scheme at Level 2

- 3.36.1 Solicitors and barristers who presented for assessment at Level 1 over achieved to this extent – 2 of 7 barristers and 8 of 20 solicitors assessed at Level 1 achieved Level 2 in their cross-examination. However, the cohort at Level 2 looked rather different. It contained – for the live assessments, 39 candidates of whom 26 were solicitors, 8 barristers, and 5 held either professional qualification and worked for the CPS. The average years' criminal practice was 14.6 for solicitors (less than for those assessed at Level 1) and 11.7 for barristers (much more than those assessed at Level 1). These solicitors underachieved in greater numbers and to a greater extent than the barristers. In the cross-examination 11 of 26 solicitors failed (42.3%) while 2 of 8 (25%) barristers did so. Only one CPS candidate cross-examined at the correct level.
- 3.36.2 What the evidence from the Level 2 assessments suggests with some force is that there is no evidence to show that merely having the right to appear and conduct trials in the Crown Court means that an advocate can exercise their skills at the requisite entry level for that court. Currently barristers automatically have that right and solicitors can

acquire it. Feedback from candidates suggests that while some will routinely exercise their rights to conduct trials in the Crown Court, others may not do so or they will do so infrequently.

3.36.3 It is recommended by CLS that a full diet of assessments be trialled for all new entrants to this level. However, it could be coupled with a reduced diet of assessments for advocates who are already working (and have been for a defined period) at Level 2. CLS recommend a minimum requirement of a cross-examination for all, to be passed within one year of inception of an operational scheme.

3.37 Options for entry to Scheme at Level 3

3.37.1 13 advocates (4 solicitors and 9 barristers) were assessed via a Live Assessment Day, 10 candidates also submitted a portfolio. There was no difference between the pass rates of the professions.

3.37.2 It is recommended by CLS that new entrants at Level 3 take a full diet of assessments. For those whose practice is already at this level, CLS suggest that they should pass the diet of assessments within two years of the inception of an operational scheme. The greater length of time takes account of the fact that those practising at this level will have fewer and longer trials, although we would be keen to explore whether this is necessary or to explore ways in which it can be achieved in a shorter timescale.

3.38 Options for entry to Scheme at Level 4

3.38.1 Numbers assessed at this Level (seven) were too small to be able to recommend passporting. Only barristers were assessed at this Level.

3.38.2 Some Level 4 candidates contacted CLS to give feedback on their experience and said they would have welcomed the opportunity of undertaking a live assessment. This point was also raised in the candidate feedback interviews. It is recommended that a cross-examination exercise of the same degree of complexity as that taken by Level 3 candidates be included in the assessment regime but assessed to the more exacting standards of a Level 4 candidate. This exercise affords the possibility of achieving a pass at Level 3 or 4 for Level 3 candidates, providing an indication of their readiness to proceed to other Level 4 assessments and facilitating progression through the scheme.

3.38.3 Given the limited available evidence at this stage, CLS was only able to recommend that new entrants at Level 4 would be required to take a full diet of assessments. For those whose practice is already at this level, CLS suggest that they should pass the diet of assessments within two years of the inception of an operational scheme. As explained for Level 3, the two-year time period takes account of the fact that those practising at this level will have fewer and longer trials.

Again, we would be keen to explore whether this is necessary or to explore ways in which it can be achieved in a shorter timescale.

3.39 Progression through the levels

- 3.39.1 Mobility and progression through the levels was a key issue for members of the focus groups. It was a particular concern for the junior Bar. It was argued that the scheme must reflect real life practice patterns where advocates are able to take on cases in the higher end of the current level held and the lower end of the next level in order to be able to demonstrate competence to progress.
- 3.39.2 The issues around progression through the levels and CLS's suggestions for this are made at page 66 of the Evaluation Report.
- 3.39.3 It is recommended that there be a gatekeeper assessment that allows assessment of some of the key competences for the next level, before entry to any higher level at all. Thereafter, until they have achieved passes in the full diet of assessments, advocates should be subject to a probationary period of 12 months within which to acquire the remaining pass in the non-gatekeeper assessment – e.g. the portfolio.
- 3.39.4 Failure to pass the full set of assessments within the probationary period would give rise to the advocate having to recommence the process. In this way those people actively seeking to improve their knowledge and skills at the next level will have an opportunity of so doing. If anyone does not take that opportunity, there will be a restricted period during which they will have access to those higher-level cases.
- 3.39.5 There is a particular problem with this approach which stems from the current drivers to ensure that an advocate takes responsibility for a case from an early stage and continuously. In the past, one way that an advocate became familiar with a higher court, and improved their own ability to deal well with matters in those forums, was by taking responsibility for earlier hearings of matters which they would not subsequently conduct at trial. This will still happen in earlier stages of the most serious cases, but for many others it will not.
- 3.39.6 The responsibility is therefore very much on the advocate to take on cases of incremental difficulty within the Level. This is more difficult in an era where senior colleagues or clerks are keen to see that the advocate is as fully and profitably engaged as possible. However, the codes of each of the professions are clear on the need for an advocate only to deal with cases within their competence. The onus remains as ever, with the individual to resist stretching themselves too far.

3.40 Re-accreditation

3.40.1 Re-accreditation must pick up changes in competence over a period of time. Nearly all research pilot candidates in the feedback survey agreed re-accreditation (for advocates remaining at the level at which they are currently accredited) is necessary and the average time frame they suggested was five years.

3.40.2 CLS recommend that a new QAA scheme should not require any re-accreditation before 5 years from the time of the advocate's first accreditation, although there may be some support for having a period of 7 years. In the shorter time frame many advocates in the earlier part of their career will in any event have sought accreditation at the next level. If they have not it would appear prudent to reassess, but to give credit for their earlier display of competence by a reduced diet of assessment.

3.40.3 The portfolio would appear to be the cheaper assessment to offer and may for this reason be the more popular proposition among some practitioners. It could readily be prepared by an advocate already working at the Level, from which the necessary case(s) would derive. It does not however have the rigour of a live assessment, which we believe is the best assessment, has the strongest support among the research pilot cohort, and does not require the same length of time to prepare.

3.40.4 The actual expense of taking a live assessment is greater than a portfolio if outlay alone is considered, but the length of time necessary to prepare a competent portfolio makes it at least as expensive in its hidden cost. We suggest therefore that a cross-examination exercise is likely to afford the degree of reassurance about the standard of an advocate's practice that is necessary for re-accreditation.

3.40.5 If a portfolio were to be the re-accreditation method adopted, there could be an added requirement that an advocate failing a portfolio based re-accreditation be reassessed by a cross-examination assessment (an incentive to submit a properly prepared portfolio).

3.41 Feedback to advocates and appeals

3.41.1 In our programme of work with individual practitioners, there has been consensus that proposals for a scheme should contain effective arrangements for feedback on performance to be provided to advocates. Many advocates felt that a major benefit of a QAA scheme based on independent, reliable and credible assessment methods is that it provides an opportunity to test oneself and to receive constructive feedback on strengths and weaknesses in performance.

3.41.2 It is recommended, as is consistent with current practice, that candidates are provided with feedback on their performance in

appropriate terms for each of the assessment mechanisms used. Special consideration may need to be given to whether such requirements can be met in relation to judicial evaluation and the issues of disclosure discussed above need to be explored further in the development of an operational scheme.

3.41.3 The scheme will also need to make provision for appeals against assessments consistent with current approaches operating in other assessment schemes.

3.42 Who should 'run' the scheme?

3.42.1 As explained earlier in this paper, the JAG will be considering the details of an operational scheme. If such a scheme is to meet our needs it will need to meet the minimum requirements that we draw up in the light of all the evidence, including responses to this discussion paper.

3.42.2 The collaboration of funders, the professions, the regulators, the judiciary and commissioners of advocacy services is an important element in the establishment of a QAA scheme which carries sufficient support amongst those participating in the scheme as candidates or assessors.

3.42.3 There has been considerable support amongst many who participated in the research pilot for an independent body to oversee QAA that includes all arms of the professions. It was felt that for QAA to be successful it must provide consistent standards that apply equally to all advocates and provide a level playing field for assessment. Some respondents felt the regulatory bodies should lead on QAA but identified that this could pose a risk for different standards and assessments to be developed by the different arms of the professions. In these circumstances, the development of the JAG, with all regulators working together, is extremely welcome.

3.42.4 CLS recommend that this work should be overseen by a joint body of funders, the judiciary and the professions (an Advocacy Board) which would have responsibility for the establishment of a scheme, regulations, validation and periodic monitoring of assessment organisations who would run assessment diets for which they were authorised.

3.43 Who should assess?

3.43.1 Comment has been made in some feedback about who should have the responsibility for assessing. The experience of the research pilot is that successful and consistent assessment relies on a variety of skills that are not to be found solely in either those working in education or current practitioners.

- 3.43.2 Considerable educational experience is required for the detailed work of preparation of assessments, and guidance in using assessment criteria, as well as for the operation of fair assessment procedures that need to be matched by a constant dialogue with current practitioners about standards, practices and practicalities of the skills employed in assessment exercises.
- 3.43.3 A successful scheme also needs good administrative support to ensure that assessments are arranged and run within the sort of framework that ensures fairness, and allows an advocate to work their practice around the assessments.
- 3.43.4 Assessments must be provided in a rolling and repeating programme with sufficient frequency to enable ready access to opportunities for an advocate to either obtain a first grading at the relevant level and eventually to progress to the next level.
- 3.43.5 Those assessments need to occur around the country at sufficient centres to make them accessible to all advocates. A balance however has to be struck on the number of centres. A proliferation of centres increases the cost of the assessment and reduces the frequency at which assessments can be conducted. It also increases the difficulties of monitoring and ensuring consistency. The provision of those assessments by too many assessment organisations would make it difficult for the authorising body to monitor properly their systems and standards. This might leave a new scheme facing the same difficulties that beset the separate schemes that currently exist, if that body cannot ensure the same degree of rigour and consistency applies to all assessment organisations.
- 3.43.6 An important finding of our equality and diversity work was that advocates wanted a range of options for attending assessment centres. The assessments for the QAA research pilot were offered on different days, including Saturdays, in the daytime and some evenings. Appointments were given to fit in with childcare and court commitments. This sort of flexibility can only be achieved with very committed assessors. Evening work will create extra cost as in some centres it will necessitate an overnight stay. Those offered were only taken up as late as 5.30pm. As between weekdays and Saturday there was a slightly lower rate of acceptance of appointments for Saturday, but this would not necessarily be the case for an operational scheme.
- 3.43.7 We strongly recommend the development of an operational scheme should take account of the equality and diversity findings and consider accessibility issues for different types of advocates.
- 3.43.8 All these are matters of operational detail, to be developed by the JAG.

3.44 Monitoring and consistency

3.44.1 CLS suggest that the greater the number of assessment organisations validated, the harder it is to monitor comparability. Should such a model as CLS described be adopted there are two main ways in which this could be safeguarded. The first is that there could be monitoring of the assessment organisation during the first year of their delivery of the scheme; the monitoring to be undertaken by such overall board as is set up to administer QAA. A system of monitoring could then be implemented, including requirements for statistical reporting on assessments and candidates, which decreased in frequency as confidence grew in assessment organisations, but increased if problems arose.

3.44.2 The second way to ensure continued fairness would consist in annual joint meetings of representatives of the markers at each level from all authorised assessment organisations, where sample assessments could be compared and guidance given as to where the appropriate standard should lie.

3.44.3 This is of particular importance given the atypical nature of the candidate sample in the research pilot. CLS put forward that it would be sensible if a system of QAA is implemented on a compulsory basis for a period of continued testing, refining and moderation to take place as the scheme beds down. There would also be a need to consider making recommendations on double marking as the range of assessors increases in any live scheme.

3.45 Costs of an operational scheme

3.45.1 CLS were asked to provide an estimate of the costs of the assessment regimes at each of the levels. These are set out in Section 11 of the Evaluation Report and summarised here.

3.45.2 The costings draw on CLS's experience of running the research pilot assessments, and their experience of running schemes that include a similar diet of assessments, such as CLAS (Criminal Litigation Accreditation Scheme). It is confined to an assessment of the costs of conducting the assessments, and does not include the costs of implementing the scheme as a whole.

3.45.3 Any estimate of costs has to make provision for:

- Developmental costs (particularly preparation of materials)
- Administration costs
- Overheads (such as venue charges)
- Assessors' fees (including live assessment days, marking of portfolios/written advocacy and attendance at Test Boards)
- Actors' fees and fees for expert witness for cross-examination assessments at higher levels

- Fees for external examiners.

3.45.4 If the QAA scheme is to be offered via assessment organisations, then those organisations will wish to secure a financial return, so an uplift to reflect profit margin would also need to be applied. The amount of that uplift will vary depending on the nature of the organisation, the extent to which it is able to make any economies of scale, the administration system already in place and the extent to which it can tie in the development of this scheme with any others it has run.

3.45.5 The amount to be charged will also vary depending on whether or not the organisation has to charge VAT. All costs and likely fees are quoted exclusive of VAT and are conservatively drawn – taking no account of the factors above that might operate to reduce either the suggested costings or the impact of the uplift applied in respect of profit.

3.45.6 It should be remembered that some of the advocates already pay significant amounts for their professional accreditation. If a new scheme either wholly or partially replaces any such accreditation there would be either total or partial saving of those fees.

3.45.7 Additionally, it would be possible for the professional regulatory bodies to recognise any accreditation – or re-accreditation – under QAA for the purposes of the requirements of compulsory professional development. This would both ensure that CPD undertaken was entirely relevant to the lawyer's area of practice and would also have the effect of reducing the real cost to an individual advocate of QAA assessment.

3.46 Estimate of candidate fees by Level (excluding any costs for administering and implementing the scheme and maintaining a register of candidates)

- Level 1: £450 – £500
- Level 2: £450 – £500
- Level 3: £575 – £625
- Level 4: £600 – £650

3.47 Costs of re-accreditation

3.47.1 It is anticipated that this would only be necessary after a minimum of five years. We recommend above that any re-accreditation would require a reduced diet of assessment, consisting probably of a cross-examination exercise that CLS estimate could be provided for £300 per candidate at Levels 1 and 2. Even if re-accreditation required, instead of cross-examination, a portfolio, this could be properly marked and administered at Levels 1 and 2 for £160 per candidate.

3.47.2 For Levels 3 and 4 the enhanced nature of that cross-examination assessment instrument would cost £450 per candidate. CLS estimate

that a portfolio at Levels 3 and 4 could be assessed for £200 per candidate.

3.48 Cost of regulation

3.48.1 If responsibility for a QAA scheme passes to a regulatory/external body, then that body is likely to incur costs in respect of its governance of the scheme, including matters such as:

- Receiving and dealing with applications
- Tracking evidence from applicants
- Tracking the status of applicants
- Identifying those who require re-accreditation
- Monitoring of standards of assessment organisations.

3.48.2 It is usual for some of the costs of regulation to be passed on to candidates; for example the SRA charges a fee per candidate in respect of its monitoring of the police station accreditation schemes. The costs of regulation would, therefore, increase the overall cost to candidates of obtaining accreditation under a QAA scheme.

3.48.3 In our equality and diversity work programme and the Bar Data survey, we identified that some groups of people have relatively low earnings at different stages of their career. In particular, young advocates, who would be looking to move quite quickly through the levels, could incur assessment costs at the start of their career when earnings are particularly low.

3.48.4 The Bar Council owns the survey data and has produced their own report from these data. The LSC has also produced reports; these include an analysis of earnings differentials.

3.48.5 We strongly urge that the development of an operational scheme should utilise the wealth of information that has been collected and consider options for reducing the burden on advocates whose earnings are low.

4 Family and Civil Quality Assurance for Advocates

4.1 Background

4.1.1 Lord Carter's intention was that QAA would, ultimately, apply to all advocates. Whilst it is not our place to say that QAA should apply to all advocates, the LSC does believe that its own and all other consumer's interests are best served by having full information on the quality of service being purchased. Therefore, like the sections on criminal defence advocacy above, any requirements or comments in the following section only apply to advocacy funded by the LSC, but could be read to be relevant to all.

4.1.2 The LSC funds family law cases, including:

- Divorce proceedings
- Financial disputes on separation
- Private law litigation relating to children
- Public law litigation relating to children
- Cases involving domestic violence.

4.1.3 Under 'civil' schemes, the LSC funds cases covering:

- Human rights
- Employment
- Immigration
- Housing
- Clinical negligence
- Public law
- Mental health
- Education
- Welfare benefits
- Debt
- Actions against the police
- Consumer
- Community care.

4.1.4 The LSC requires that following the development of QAA for criminal defence work, the focus should be on implementing a scheme to assure the competence of advocates undertaking publicly funded family work. This requirement is due to our annual spend on the Family Graduated Fee Scheme of £98 million (2007-8)³², and the risk to the client if advocacy is poorly undertaken in this category. Whilst the impact of poor advocacy to the client is relevant in every area the LSC funds, in family law this could mean that children are removed

³² Reforming the Legal Aid Family Barrister Fee Scheme, June 2008. Available from www.justice.gov.uk.

inappropriately from their parents, or returned to a carer when to do so is not in the child's best interest.

4.1.5 We believe that different options could be considered for the quality assurance of advocacy in family and civil categories. We suggest that detailed consideration is given to at least the following:

- A single scheme covering both family and civil advocates, in line with the SRA's approach for solicitors' Higher Court accreditation
- Two distinct schemes, i.e. one for family and one for civil advocates
- A scheme that further breaks down civil work to assure advocates by individual practice areas.

4.1.6 As described in detail elsewhere in this document, we have undertaken an extensive research project to develop proposals for criminal defence advocacy. From this, and with the intention of QAA being introduced for all publicly funded advocacy, a number of findings and observations for QAA in other categories have arisen.

4.1.7 We have run a series of Focus Groups aimed at the junior Bar, women and BAME advocates, to further investigate issues highlighted in the Bar data survey. We explored with over 60 barristers (across a range of disciplines) what barriers they have experienced in their profession, which factors have influenced their career progression and what features need to be included in QAA to ensure the scheme does not disadvantage certain groups of advocates. We also explored how best we could accommodate career breaks, part-time work patterns, support progression and give credit to prior accreditations held and how such a scheme should incorporate more than one area of practice. However, the major feature of this work was to seek the views of those who would be subject to the scheme, on what forms of assessment should be considered.

4.1.8 Findings from this work and the consequent recommendations for assessment are laid out in Section 4.2 of the Focus Group Report. These recommendations were fed in to CLS's work on assessment research and testing.

4.1.9 There was consensus from focus group members that a final scheme must take account of real life patterns of practice. Many advocates do both defence and prosecution work and many do a mix of crime, family and civil. It was asserted that QAA should be accessible for advocates who have more than one area of practice and duplication of effort must be minimised.

4.1.10 Members of the Family Bar attended each of the Focus Groups, as did a smaller number of advocates who practise in civil work. Delegates from the Family Bar suggested that the competences and the scheme as proposed for the criminal research pilot would need to be reviewed

for family work as practice differs, and that it is less obvious how family work would translate into discrete levels as proposed for crime.

- 4.1.11 Following the conclusion of the criminal advocacy research pilot, a sample of those candidates participated in feedback interviews to gather views on their experience of the process and identify what could be improved or needed to be considered in the proposals for a rolled out scheme. Specifically, they were asked how the scheme should accommodate advocates who practise in more than one area.
- 4.1.12 The majority of respondents felt that although it would be ideal for there to be one assessment process that covered family and civil practice as well as crime, there are differences that should be explored in greater detail. It was said, as it was in the focus groups, that some aspects of family and civil advocacy require different skills to criminal advocacy. Therefore any tests would have to accommodate those different skills. Most respondents felt that it could be difficult to accommodate that in one scheme.
- 4.1.13 Taking findings from the criminal research pilot, additional research has been undertaken to explore the extent to which the data gathered during, and the conclusions drawn from that work could assist in framing quality assurance for advocates undertaking family and civil cases.
- 4.1.14 We have considered the extent to which the competences tested for crime are transferable to other categories of work, examined the levels tested, reviewed the assessment instruments tested and which of these could apply to family and civil work. We have looked at potential passporting and exemptions and the extent to which achieving QAA accreditation in one category should entitle an advocate to work in another.

4.2 Competences

- 4.2.1 Although the focus of the QAA research pilot has been criminal advocacy, the competences evaluated there are framed in general terms; none are specific to criminal advocacy. It is therefore suggested that the competences set out in Annex E could provide an appropriate basis for the quality assurance of advocacy in criminal, family or civil proceedings, subject to proposed minor amendments suggested later in this section. However, any assessment would need to be conducted in the relevant substantive context to which the advocate seeks accreditation.

4.3 Levels

- 4.3.1 The levels for criminal advocacy were based on a hierarchy of complexity. After testing these, CLS concurred that a levels based system is, in their opinion, viable for criminal advocacy. We have

further considered whether it would be possible to design levels based systems that employ a hierarchy of complexity for civil and family work. Both the civil justice system and the family justice system currently employ allocation procedures that relate to the complexity of litigation. In civil areas many claims are allocated to track – small claim, fast-track or multi-track – and the complexity of the litigation is a factor in determining the appropriate allocation. Family proceedings relating to children can be heard in the Family Proceedings Courts, the County Courts or the High Court (Family Division), and are allocated in accordance with the Allocation and Transfer of Proceedings Order 2008 – with the more complex matters being allocated to the higher courts.

4.3.2 It is our initial view that it should be possible to create levels-based systems for both civil litigation and family litigation that are based on a hierarchy of complexity. This is subject to the creation of prescriptive levels that enable the allocation of particular types of case to specific levels.

4.3.3 It is proposed that each category of advocacy has the same number of levels and that the types of case assigned to the levels in each scheme should be of equivalent complexity. The rationale for this is that if the scheme does not operate on the same number of levels or complexity differs, this would create considerable difficulties in devising appropriate assessment regimes and would introduce undesirable, though not insurmountable, difficulties for passporting and exempting between categories.

4.4 Assessment Instruments

4.4.1 Based on the idea that the competences developed for criminal defence QAA are applicable to family and civil advocacy, we suggest that the assessment instruments trialed by CLS in their research, subject to being set in the relevant substantive context, are also applicable to other areas of advocacy. It is recognised that assessment of ‘examination in chief’ is not appropriate for either family or civil work, due to the use of written statements of evidence in those jurisdictions, and that further work would need to be undertaken to set the instruments in the relevant context for the category.

4.5 Passporting and Exemption

4.5.1 Where an advocate achieves QAA accreditation in one category of work this should not automatically entitle the practitioner to be considered as accredited in another category. This is due to candidates needing to comply with different Procedural Rules (Criminal, Civil and Family respectively) and judicial directions in each category (competence B2.1). It also recognises the potentially very different skills involved in advocacy in different areas of law.

4.5.2 We believe that this could be addressed, and exemption from some assessment tools maximised, if advocates wishing to conduct advocacy in more than one category of work are required to demonstrate their competence in complying with the relevant procedures and rules in each area. This could be demonstrated by an additional assessment designed specifically to test compliance with the procedural rules of court, alongside an assessment to ensure the advocate's understanding of the applicable substantive law for that category.

4.5.3 We believe that successful completion of a full diet of assessments in one category could provide a sufficient level of assurance to require only the additional assessment proposed above, in order to be 'badged' in that/those other areas. This approach would be proportionate and not overly burdensome for the applicant.

4.5.4 In order to facilitate this, it may be necessary to amend competence B2.1 to include knowledge and understanding of the applicable substantive law.

4.6 Exemption due to prior accreditations

4.6.1 One of the reasons why Lord Carter recommended that QAA should initially be developed for criminal advocacy, is that there is currently little in the way of post qualification accreditation for advocacy; the HRA scheme for solicitors is the only formal accreditation scheme applicable to the higher courts.

4.6.2 For family and civil advocates, the situation is markedly different. Taking advocacy in these categories to be more wide ranging than in criminal law, there are many different accreditation schemes for advocates. Some schemes are voluntary such as Resolution's Specialist Accreditation Scheme, the Law Society's Children Panel, and their Family Panel, but there is also the mandatory higher rights of audience accreditation for solicitors.

4.6.3 Due to the variety of different accreditation schemes in family and civil, we believe that there may be scope for far greater degrees of passporting and exemption in these areas than for criminal work. It is proposed that, subject to sufficient evidence and subsequent testing, accreditation under existing schemes could result in one of the following:

- Advocates being passported into a QAA scheme at an agreed level
- Advocates using their accredited status to exempt them from some aspects of the assessment
- Advocates use their accreditation as evidence for partial exemption if applying for a higher level than they would normally be passported in at.

4.6.4 The LSC does not believe that publicly funded work carried out before the Tribunal Service, should be conducted only by those assessed under the QAA scheme. This recognises the wide variety of backgrounds of representatives who routinely appear at tribunals, including those who are not legally qualified.

Glossary

Advocate	In this paper, the term advocate relates to all those with Rights of Audience in the Magistrates, Crown and Higher Courts including barristers, solicitor advocates and Fellows of the Institute of Legal Executives who have extended Rights of Audience.
Approved Regulators	The bodies, as defined by the LSA 2007, which have direct responsibility for the day-to-day regulation of the relevant arms of the profession. Such bodies have a duty to promote the regulatory objectives of the LSA 2007. In this paper the bodies referred to are the Bar Council, Law Society, and Institute of Legal Executives.
BAME	Black, Asian and Minority Ethnic.
Cardiff Law School (CLS)	The Centre for Professional Legal Studies at Cardiff Law School, Cardiff University. 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.
Continuing Professional Development (CPD)	The compulsory requirement set down by the BSB, SRA and ILEX for the continuing professional development of their members.
CPS Advocacy Quality Management Strategy (AQMS)	The CPS programme to monitor the performance of and to train and develop CPS advocates.
CPS National Standards of Advocacy	The CPS standards of advocacy required of all advocates who prosecute on behalf of the Crown Prosecution Service.
Crown Advocate	In-house CPS advocates.
Crown Prosecution Service (CPS)	The Government Department responsible for prosecuting criminal cases investigated by the police in England and Wales.
Data Survey	The joint Bar Council/LSC survey of all practising barristers in England and Wales, conducted in 2007.
Equality Impact Assessment (EIA)	The process to ensure that policies,

	practices and functions do not adversely affect or discriminate against any equality group and to consider how the policy may help to further develop equality and diversity.
HM Crown Prosecution Service Inspectorate (HMCPISI)	The independent Inspectorate for the CPS.
Impact Assessment (IA)	The statutory requirement on public bodies to evaluate the consequences of possible and actual Government interventions in the public, private and third sectors. A tool to enable the Government to weigh and present the relevant evidence on the positive and negative effects of such interventions, including by reviewing the impact of policies after they have been implemented.
Joint Advocacy Group (JAG)	The group established in December 2009, consisting of the profession's regulatory bodies, to take forward development and implementation of the QAA operational scheme.
Legal Services Act 2007 (LSA)	The Act of Parliament that seeks to liberalise and regulate the market for legal services in England and Wales.
Legal Services Board (LSB)	The oversight regulator for the eight separate bodies named as Approved Regulators in the LSA 2007.
Legal Services Commission (LSC)	The non-departmental public body sponsored by the MoJ, responsible for the delivery of civil and criminal legal aid and the development of community legal services.
Legal Services Commission Commissioning Strategy	The strategy by which the LSC intends to purchase the legal services it requires in meeting its statutory duties.
Ministry of Justice (MoJ)	The government department that sponsors the LSC.
Quality Assurance for Advocates (QAA)	The project to design a quality assurance scheme for advocacy services. The development of the scheme was initially facilitated by the LSC/MoJ, advised by a Reference Group made up of the professions key stakeholders. The JAG has now assumed responsibility for the operational development and implementation of the operational

	scheme.
Reference Group	The advisory body made up of key stakeholders, who contributed their expertise and practical experience, to assist the LSC/MoJ Project Team in the development of QAA to date.
Regulators	The Legal Services Act requires the Approved Regulators to separate their representative functions from their regulatory functions, and therefore the Approved Regulators have created bodies to do so. In this paper the bodies referred to are the Bar Standards Board (BSB), Solicitors Regulation Authority (SRA), and ILEX Professional Standards (IPS).
Representative Bodies	In this paper the bodies referred to are the Bar Council, Law Society, and Institute of Legal Executives.
Senior User	Senior users are those bodies with an interest in the final scheme for commissioning or quality purposes. In the context of QAA, Senior Users are the LSC, MoJ, CPS and the Judiciary.
Very High Cost Cases (VHCC)	An LSC funded case in crime, where the trial is likely to last for more than 40 days or lasts between 25 and 40 days and meets specified criteria.
Work Stream Group (WSG)	A group established to develop discreet areas of the QAA project. Membership was drawn from the LSC project team and nominees with specialist knowledge or experience, put forward by bodies represented on the Reference Group.