

# Solicitor higher court advocates

## Proposal for mandatory re-accreditation

### Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

#### Question 1

Do you think that clients who are represented by an accredited advocate would reasonably expect the regulator to assess their skills on a periodic basis?

Yes

No

#### Comments

The Legal Services Commission agrees that accredited advocates should be subject to periodic reassessment of their competence. Re-accreditation is the key to ensuring that all qualification holders continue to maintain their skills to the expected standard. This is especially relevant to advocacy, where all consumers, whether private individuals or large organisations, can not be assumed to always have sufficient information or expertise to make an informed decision on their representation, which in extreme cases may effect their personal liberty. It is wrong to believe that the market alone will prevent poor quality advocacy. Regular re-assessment will ensure public confidence, by assuring that competence is maintained.

As the largest purchasers of legal services, the LSC needs to ensure that the standard and quality of the services it purchases are maintained. It is not sufficient for an advocate to be only quality assured once i.e. when they initially apply for accreditation. It is the regulator's role to assure the quality of it's profession. Advocates who have gained their higher rights via the exemption route are unlikely to have ever been tested, in order to gain their extra rights of appearance. Mandatory re-accreditation would level the playing field with those who have undertaken the accreditation or development route and ensure continued quality assurance.

Given the significant legislative and practice changes in many law categories in recent years e.g. crime and immigration, and the likelihood that there will be continued change, re-accreditation is essential. Regular re-assessment would stimulate an advocate's need to undertake refresher training and ensure an advocate's knowledge and skill both in theory and practical experience. A regular re-

For alternative formats, email [contactcentre@sra.org.uk](mailto:contactcentre@sra.org.uk) or telephone 0870 606 2555.

accreditation process, particularly if directly linked to any operational QAA scheme (see below, but which proposes to assess competence at different levels of case complexity) would also support an advocate's professional development.

Traditionally the profession has relied on the need to collect CPD hours to evidence continued professional skills. The LSC does not believe that that this is appropriate as the sole method of assuring an advocate's continued competence to act in a case. Whilst CPD is undoubtedly useful for evidencing the undertaking of developmental work, it is not a tool that can be used to evidence the continued competence to undertake cases. That said, more correlation between CPD and accreditation could lead to minimalising the re-accreditation process if CPD was focused significantly on advocacy.

The LSC does not believe that there should be an element of self-certification in any reaccreditation scheme. As identified at paragraph 14c, such an approach would not inspire the necessary level of confidence in the scheme and therefore may also have a negative effect on the reputation of solicitor higher court advocates.

Re-accreditation will help identify those whose performance needs to improve and those who should not be able to undertake work as solicitor advocates. It will also be useful for evaluating the high court advocate scheme as a whole, to ensure that those allowed into it are of a sufficient quality to keep practising as solicitor advocates. It would also act as a check on entry requirements for those solicitors wanting to become HCAs by ensuring that they are set at such a level that passing them actually means that a solicitor is capable of exercising higher rights.

Re-accreditation should be proportional and assess practitioners' knowledge and skill where appropriate. This process may not need to cover all professional skills demonstrated at entry level.

It has become commonplace for professions in the UK to be subject to re-accreditation (see for example the health care profession), and therefore there is no reason why the legal profession should not be subject to the same kind of requirement. However, this should apply equally to all arms of profession and not just solicitors.

## Question 2

In paragraph 2 of the consultation paper, we suggested that the SRA's key objectives in the development of the higher courts qualification scheme are to

- provide the public and clients with confidence in the standard of solicitor higher court advocates,
- provide assurances that appropriate standards are being met and maintained, and
- ensure that any regulatory requirements are open, fair, transparent and proportionate.

(a) Which of the options presented do you think most effectively meets all of these objectives?

Option 1 – Re-accreditation for all

Option 2 – Targeted re-accreditation

Option 3 – No re-accreditation

(b) Do you think there are any equality and diversity implications with any or all of these options?

Yes

No

If you answered “Yes” above, please outline what you believe the equality and diversity implications to be.

It is not clear what the equality and diversity implications of the proposals may be from the information available at this stage. It would be advisable for the SRA to look at the profile of advocates who would be subject to mandatory re-assessment and the firms that they come from, before introducing any of the options.

In line with other SRA schemes (although the consultation paper is silent on the issue), it can be assumed the scheme will be self-financing. The LSC supports the principle of providers paying for their own assessment (a cost of doing business). The SRA should look at whether cost implications may affect different groups of practitioners in different ways.

Any impact may be mitigated to some degree by recognition of other schemes for ensuring the competence of solicitor high court advocates. Where timings allow, the proposed Quality Assurance Scheme for Advocates (QAA) should assist in demonstrating competence and could mean that re-accreditation is evidenced by assessment via QAA. This is possible because advocacy standards within QAA have been developed to match SRA standards. This approach will be beneficial to solicitors as they could apply to be accredited under QAA at a higher level, giving them the ticket to exposure to more complex cases with increased remuneration. The scheme is currently being developed in crime, with the intention to extend to family and other civil law categories eventually. The scheme has been created with the professions and is in the process of being piloted.

Within current developments, QAA is applicable to barristers and solicitor high court advocates, as well as to defence and prosecution advocates. The aim being to implement a quality standard, assuring purchasers (on clients' behalves) that the requisite standard exists in order to take on publicly funded work. Current thinking, following wide consultation, is that following an initial assessment under QAA, advocates would be subject to re-accreditation (perhaps every five years). Advocates would be able to apply for earlier re-accreditation if they wanted to progress to the next level, which would require a different degree of assurance. By acknowledging the role of

QAA in assuring the quality of solicitor higher court advocates, the SRA could ensure that solicitor advocates have the most proportionate yet robust accreditation route possible.

The development of QAA has kept in mind existing SRA schemes and proposals in order to maximise the opportunity to give credit to an advocates prior achievement. It is proposed that solicitor higher court advocates who have achieved this qualification via certain routes will be able to use it to evidence competence in certain areas and therefore not be subject to the full assessment. QAA proposes to maximise the opportunities for passporting and exemptions into the scheme in order to make the cost of the scheme as proportionate as possible. If proposals for reassessment of solicitor higher court advocates are not sufficiently robust, it will not be possible to place a high degree of reliance on the award of the qualification and therefore not to maximise the passporting or exemption opportunities into the QAA scheme.

The LSC believes that where there are accreditation schemes in place, these should be subject to mandatory re-accreditation. In areas where such schemes are not available, the LSC is working with the sector to develop them, and would expect quality assurance to be put in place in this way. The intention is for any QAA scheme to become part of an advocate's natural career progression, with exemption and passporting allowing it to fit within the re-accreditation of solicitor higher court advocates.

### Question 3

If you believe that re-accreditation should be mandatory for all holders of the higher courts qualification, should passported members still be required to undertake an advocacy assessment within a specified period before they are due for re-accreditation?

Yes

No

## Comments

Passported members should be required to undertake an advocacy assessment. This could be in line with the re-accreditation cycle, provided that reassessment for this group was prioritised above those who had previously been subject to assessment but before mandatory re-assessment was introduced.

All solicitors exercising higher rights should be able to demonstrate their competence in conducting advocacy, in order that faith in the standard of solicitors with higher rights is maintained as a whole.

Along side regular re-accreditation, the LSC believes that it is also necessary to have targeted assessment of high court advocates on a risk basis. For example if a number of complaints were received against an individual advocate or an advocate was found to have breached professional regulations and obligations, it may be appropriate for the advocate to be subject to re-assessment of their skills and knowledge as an HCA

## Question 4

- (a) If you believe that re-accreditation should be targeted, do you think that the SRA should require only those advocates who have not regularly practised and applied their skills to be re-accredited?

Yes

No

- (b) Should this approach be accompanied by a mandatory and targeted advocacy CPD requirement?

Yes

No

- (c) Do you have any suggestions for overcoming the practical difficulties with a targeted approach detailed in paragraph 14 of the consultation paper?

- (d) If a targeted approach to re-accreditation is adopted, should all passported members who have not previously undertaken an advocacy assessment be required to do so within a specified period?

Yes

No

### Comments

## Question 5

If you do not believe that re-accreditation is necessary at all, should passported members who have not previously undertaken an advocacy assessment still be required to do so within a specified period?

Yes

No

### Comments

---

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to [trainingconsultations@sra.org.uk](mailto:trainingconsultations@sra.org.uk), by **16 April 2009**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Policy Team  
Education and Training Unit  
Solicitors Regulation Authority  
Ipsley Court  
Redditch  
Worcs  
B89 0TD

or

Policy Team  
Education and Training Unit  
Solicitors Regulation Authority  
DX 19114  
Redditch