

Standards for solicitor higher courts advocates and outline proposals for a new accreditation scheme

Consultation questionnaire form

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Question 1

Do you consider the regulatory approach suggested in paragraph 12 of the consultation paper sufficient to protect the public interest and ensure the standard of advocacy in the higher courts?

Yes

No

Please explain and highlight any other measures you think the SRA should consider.

We accept that the revised approach will undoubtedly increase competition for advocacy services and could see improvements in ensuring client continuity and the ability for solicitors to represent their clients from day 1 to trial, if appropriate. However, caution needs to be applied as the proposed approach seems to benefit solicitors first and clients thereafter, albeit this is not the intention.

The main issue with this approach is the voluntary element, as in our view the scheme should be mandatory. Any scheme needs to be proportionate, robust but not unnecessarily onerous, however there needs to be some form of objective competence assessment to demonstrate compliance with the competences, as you propose to embody within the Code of Conduct. How will compliance against the code be measured, will it be measured, or will it only be measured following a complaint, as the paper suggests? From a clients perspective this will be too little too late.

Although it would be in a solicitor's best interest to be accredited, lack of accreditation poses a significant risk to the client and provides no clear boundaries on what types of cases solicitors would, should or could potentially advocate in. How will clients know whether an unaccredited solicitor was one who had chosen not to be accredited, or one where accreditation has been removed? How do we safeguard clients against non-accredited solicitor advocates that are not competent to take on serious cases (higher courts), omitting them from marketing an accreditation certificate is not sufficient? This consultation lacks detail on how accreditation would be removed if necessary, is the intention to remove poor performers within the 5 year cycle for re-accreditation?

While the LSC could not accept voluntary accreditation for publicly funded work, it may be considered suitable for other cases. However, much relies on the process for risk management, which are not set out for consultation here. Routine monitoring would be required, with a process based on receipt of complaints wholly unacceptable. Even with thorough monitoring in place, prior accreditation must be in the best interests of clients.

The intention of the Quality Assurance Scheme for Advocates (QAA) (crime only) would see accreditation post this process and post Chambers Assessment as a minimum requirement from the procurer of such services. It is envisaged that Solicitors completing the accreditation process successfully would be passported into the scheme, within a certain category at a certain level. Non accredited Solicitors will have no passporting opportunities and would not meet minimum quality standards for advocacy work.

Question 2

Do the standards adequately cover the knowledge and skills that should be expected of a solicitor advocating in the higher courts?

Yes

No

Please explain with particular reference to any gaps in knowledge and skills and how these can be best addressed.

The proposed standards (crime) are comparable to those created for the QAA scheme. Common standards across existing and new accreditation schemes are advantageous as advocates are then able to self assess their own performance and have a visible and comprehensive set of competencies / standards that may apply from day 1 up to the most senior complex level. Further benefits are the potential to passport into QAA at a prescribed level and to have consistent competence measurements.

The QAA competencies include a measure of leadership, applicable only to those leading advocates that are tasked with managing a defence team in a very complex case. Not to replicate this within the SRA framework of standards may impact on the possibility of passporting at this level.

One potential gap is the absence of consideration of equalities and diversity. Is this included within vulnerable witness section? It could equally apply to defendants e.g. was an interpreter needed, what was their mental state, were these requirements realised and did the advocate deal with them appropriately? It is not a necessity that this applies in the assessment of competence but should be included within either the Code of Conduct or elsewhere.

Civil standards require breaking down into individual law categories and need to reflect in more detail that specific law category. As they stand they appear very hurried and insufficient in detail to cut across all civil categories and all courts. It may be difficult to convince procurers and potentially problematic when liaising with clients to safely say, that the standard's are sufficient to cover all civil categories across all types of cases in all courts.

In particular, we note the absence of detailed competencies for written opinion and advice, which form such a significant part of an advocates role in family and criminal cases. Specific competencies may additionally be necessary where the nature of the role would bring extended periods of client interaction. While solicitors have more training and experience of clients interaction and formalised client care in their roles as solicitors (than a barrister would)it is nevertheless important to consider whether there are specific requirements that apply when they operate as an advovate. This does not seem to have been considered.

What are the proposals for solicitor advocates wanting to advocate in family law in the higher courts? What other categories aren't included? This could be potentially detrimental to solicitors practicing in family law as the same window of opportunity will not be available to them. Surely, the exclusion of family demonstrates the necessity to separately asses within all civil categories.

Question 3

Do you think that the standards are set at the appropriate level of a competent solicitor higher courts advocate?

Yes

No

Please outline your reasons.

The standard of competent is an appropriate benchmark to protect the public interest and satisfy procurement standards. However, it is questionable whether a accreditation or compliance to this standard is an appropriate badge for a solicitor high court advocate to practice across all civil categories and all courts. Would a competent solicitor advocating in a immigration case be equally competent to advocate within a tax law environment? Our preferred approach would be to assure competence within each of the individual civil law categories and then at appropriate levels.

The QAA scheme intends to introduce levels, for the purpose of case allocation and accreditation. If implemented an advocate would be accredited as competent at a particular level of work (similar to the Crown Prosecution Services Grading Process). Compliance to the standards within this consultation would not be sufficient to assure competence across all levels but could guarantee an element of passporting.

Question 4

Do the standards as drafted achieve the desired aims set out at paragraph 16 of the consultation paper?

Yes

No

Please outline your reasons.

It is anticipated that the standards will not make clear to the general public what level of service can be reasonably expected from a competent high court advocate. It may be that the general public will be confused regarding the reason why there is lack of mandatory accreditation. If the intention is for those not wishing to practice in the higher courts not to embark on accreditation then the standard may as well be mandatory to all those that wish to.

The standards are relatively clear for crime and mirror competences within the QAA competency framework.

Civil standards appear rushed and insufficiently developed to work across all of the civil law categories. Standards are only one element and much more information about assessment and risk assessment/ monitoring to comment with confidence on whether the aims will be met.

Question 5

Are the performance indicators appended to the standards (see Annex 1 of the consultation paper) sufficient explanation of the required competence?

Yes

No

Please outline your reasons with particular reference to any additional indicators you would include or what amendments you would make.

The performance criteria match the standards given. What is not clear is whether there is any higher priority given to specific standards or criteria. For example, there is an imbalance in number between evidence, ethics and evidence and it is not clear what factors, if any, take priority.

Requiring higher courts rights across all courts fuses the solicitor role into one of advocate and barrister. Absent from the performance standards and indicators contained within the evidence section are the requirement to present formal opinions, or offer advice, as would be required

In relation to civil performance criteria, reiteration of the before mentioned point re separation of civil categories equally applies here.

Question 6

Is the proposed assessment process adequate to establish the competence of the applicant?

Yes

No

Please outline your reasons and make any alternative suggestions.

Simulated assessment can be an adequate assessment process. However, further detail is needed to fully understand the full breadth of the assessment process.

The disadvantage of simulated assessment is that there may be instances whereby a solicitor is well prepared, or performs well in this environment but this is not replicated on a consistent basis before the courts. To safeguard against this, targeted assessment from complaints about a particular solicitor and random assessment, maybe from observation in court should sit alongside the proposed assessment regime. If the scheme proceeds on a voluntary basis there should also be a mechanism of ensuring those that do not wish to be accredited and are exercising higher rights are monitored and required to undergo accreditation if complaints are received or there are concerns around performance. As before, if using this approach we would require assurances of more thorough monitoring than just responding to complaints.

Question 7

Should holders of the higher courts accreditation be revalidated every five years?

Yes

No

Please outline your reasons.

Agree that revalidation should apply after 5 years. Revalidation could also exist in the form of accreditation under the QAA scheme at set periods when the advocate felt able to be assessed at a higher QAA level

Revalidation would be advantageous because it would ensure that standards previously obtained were consistent and assure competence on an ongoing basis.

Question 8

If you answered “yes” to Question 7 above, please provide us with any views you may have on the proposed process.

Answered above

Question 9

Should solicitors holding a higher courts qualification under the current regulations be passported onto the new scheme?

Yes

No

Question 10

Should passported advocates be required to complete the revalidation process in due course?

Yes

No

Please outline your reasons.

Passporting should be permitted for all advocates currently in receipt of a high court qualification, if obtained within the last 5 years. If revalidation is a requirement then this should equally apply to advocates already with the qualification.

Question 11

Do you consider that the proposed regulatory approach, competence standards, and scope and structure of the new accreditation scheme have potential positive or adverse impacts in the following areas?

For each equality strand, please place a check in one of the three columns to indicate your answer.

Equality strand	No impact	Positive impact	Negative impact
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered “negative impact” or “positive impact” above, please indicate what you consider the impacts to be and outline your reasons.

Without recourse to appropriate data it is not possible to make an informed assessment as to the impacts the proposed scheme would have on the diversity groups listed above. We are pleased to note the SRA will be carrying out an initial EIA that will identify negative impacts and will be pleased to comment further once that IA is published.

From data collected by the Law Society on the personal demographics of solicitor advocates (collected for the QAA scheme) we understand that on average 70% of solicitor advocates are male and 30% female. We also understand that an average of 10.5% of solicitor advocates are from BME groups. The Law Society survey Supporting Solicitors - Earnings and Work of Private Practice Solicitors in 2007 (February 2008) shows baseline data that 57% of all private practitioners are male and 43% are female and that BME practitioners make up 9% of all private practitioners. This suggests that the current scheme for qualifying for higher rights might present barriers to women. The proposed reforms may therefore open up opportunities for women to gain the necessary experience to apply for accreditation but this is by no means conclusive and should be subject to a full impact assessment.

This is particularly important in light of the above mentioned Law Society survey which plainly shows that women earn 7.6% less than their male counterparts and BME solicitors earn 17% less than white solicitors. Similar differentials in earnings have been highlighted by our recent joint survey with the Bar Council of barristers. We urge the SRA to explore fully the barriers that exist to achieving accreditation under the current regime and work to ensure the proposed scheme removes those barriers. Our initial experience in the QAA scheme is that those barriers may

include costs of accreditation that may be prohibitive to certain groups, in particular young practitioners, and the importance of gaining access to the appropriate range of work to achieve the experience necessary to apply for accreditation. This experience may be more difficult to achieve in small firms. Research by the Legal Services Research Centre identifies that BME practitioners are more likely to work in small firms.

We have focussed our response on gender and ethnicity as we have some data on which to base comment but strongly urge the SRA to conduct a full EIA on all the diversity categories mentioned above and fully engage with representatives of those groups to accurately identify, monitor and evaluate potential differential impacts in the proposed scheme.

Question 12

Do you hold a higher courts qualification awarded under the current or previous Regulations?

Yes

No

If you answered "yes", which qualification do you hold?

All proceedings

Criminal proceedings

Civil proceedings

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, by **25 July 2008**.

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

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