



Higher rights of audience consultation

Analysis of responses

Education and Training – Policy
May 2007

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Why we consulted

The Solicitors Regulation Authority (SRA) consulted on whether the current restrictions on higher rights of audience are justifiable in the interests of the public or the proper administration of justice.

The SRA sought views on the need for solicitors to achieve a separate qualification before being permitted to exercise rights of audience in the higher courts, or whether standards could be secured through some other, probably voluntary, quality assurance mechanism.

The consultation, in the form of an online questionnaire, ran for three months from Friday 12 January 2007. An email inviting responses was sent to around 1,000 people who subscribed to updates on training issues. It was publicised in the Gazette on 25 January.

We also invited the following organisations to make a response:

- The Law Society
- The Department for Constitutional Affairs
- The Bar Council and Bar Standards Board
- Solicitor's Association of Higher Courts Advocates
- The Crown Prosecution Service
- The Office for Fair Trading
- The Legal Services Commission
- Chair and members of Higher Courts Qualification Appeals Casework Committee
- Chair of Higher Courts Qualification Casework Committee

The current position

The Courts and Legal Services Act 1990 allowed solicitors to achieve higher rights of audience. Discussions including the Lord Chancellor's Advisory Committee on Legal Education (ACLEC), the Lord Chancellor, the judiciary and other stakeholders resulted in specialist training for solicitors seeking higher rights. In 1992, the Higher Courts Qualification Regulations were approved to cover this training.

Following a review of the operation of the scheme in 1995 the Higher Courts Qualification Regulations 1998 were introduced, intended to provide greater equality of opportunity for solicitors to achieve higher rights of audience.

The Access to Justice Act 1999 introduced the concept that, on admission, all solicitors had full rights of audience in all courts in all proceedings, but required solicitors to comply with training requirements and rules laid down by the Law Society. This led to the implementation of the Higher Courts Qualification Regulations 2000, which amended existing routes to qualification and introduced some additional routes.

To date, around 3,000 solicitors have attained the higher rights qualification. This is a one-off qualification, with no re-accreditation or review of ongoing competence.

Summary

A substantial majority of those who responded to this consultation indicated that Practice Rule 1¹ was sufficient to ensure standards of solicitor advocates in the lower courts; a much smaller majority felt the same in relation to the higher courts, with several stakeholders indicating that reliance on Practice Rule 1 was not sufficient at this level.

The majority of respondents (55%) thought that current restrictions on advocacy rights should not be retained. All stakeholders except the Bar Council and Bar Standards Board were of this view.

However, within this majority, opinion was almost equally divided on whether an alternative quality assurance (QA) system should be put in place. All the major stakeholders who responded, with the exception of the Law Society, saw a need for some form of quality assurance. While there was no specific question about whether the alternative QA system should be a requirement, many comments suggested that this should be the case.

Suggestions for QA included focussed training, regular assessment, or conversely a simple reliance on CPD. Small majorities thought that a QA system should:

- be based on standards of behaviour, skills and knowledge
- be subject to periodic revalidation on the same standards
- apply to higher and lower courts
- be limited to specific areas of practice
- cover advocacy only, not be a part of other accreditation schemes.

Even those who saw no need for the current restrictions recognised that advocacy was high risk in terms of consequences for clients, and that it required different or additional knowledge, skills and behaviour.

Profile of respondents, and stakeholders

The majority of responses came from individuals. Almost a quarter were made on behalf of a firm or organisation. A number of stakeholders were identified, most of them having been directly invited to respond:

- The Law Society
- The Bar Council and Bar Standards Board
- Solicitor's Association of Higher Courts Advocates
- The Crown Prosecution Service
- The Legal Complaints Service

Their responses have been summarised in greater detail within this report.

¹ Under Rule 1 of the Solicitors' Practice Rules 1990 solicitors are required not to do anything that would compromise or impair their proper standard of work. The new Code of Conduct will deal with this at Rule 1.06: "*You must act only when you are able to provide a competent service*".

Practice Rule 1

A majority believed that standards are secured by relying on Practice Rule 1 in the lower courts. A small majority believed that standards of advocacy in the higher courts would be secured by relying on Rule 1.

Why is advocacy different from other reserved areas?

Those who did not see Practice Rule 1 as sufficient saw advocacy as a high-stakes and complex service with potentially serious consequences for clients if not delivered properly, and requiring discrete skills and experience. Pre-qualification advocacy training for solicitors was not provided to the same level as was the case with barristers.

Differences between lower and higher courts

Of those who expressed an opinion, the largest proportion of respondents (29%) thought that different and/or additional behaviours, skills and levels of knowledge were required in the higher courts – knowledge being the most frequently suggested quality. However, a similar if smaller proportion (27%) felt that there were no significant differences.

***Should current restrictions be retained?**

The majority of respondents (56%) felt that current restrictions should not be retained, mainly because there was no reason for them, or that they were too onerous or unfair.

*Only the 56 people who answered 'no' to this question (and a small number of people responding by email or hard copy) were given the opportunity to answer the following questions.

***Should there be any other quality assurance?**

Opinion was divided on whether or not there should be some other form of quality assurance – just under a third of people thought there should not, slightly fewer thought there should.

*Only the 28 people who answered 'yes' to this question (and a small number of people responding by email or hard copy) were given the opportunity to answer the following questions.

What quality assurance should there be?

Many of those people supporting an alternative QA system responded in terms that suggested a required rather than voluntary scheme. Common suggestions included a requirement to take specific training in advocacy, a reliance on CPD, regular assessment, peer review, and an accreditation scheme

What should quality assurance apply to?

A majority of those answering this question believed that a quality assurance mechanism should be applied to both higher and lower courts.

What standards should quality assurance be based on?

A majority felt that a quality assurance system should be based on standards of behaviour, skills and knowledge. Knowledge was the most commonly suggested single value.

Should quality assurance be periodically revalidated?

A quarter of respondents felt that a system should be subject to revalidation, and that it should be based on knowledge, skills and behaviours.

Should quality assurance cover all areas, or be limited?

The majority felt that a quality assurance mechanism should be limited to specific areas of practice. Testing people in areas of law they might not be familiar with was seen to be unfair, unnecessary and disproportionate. Also, limiting a quality assurance scheme to specific areas would reflect the growing specialisation of practice.

Only 7% of all respondents felt that a quality assurance scheme should cover advocacy in all areas of law.

Should quality assurance cover advocacy only?

A majority felt that a quality assurance scheme should cover advocacy only and not be a part or element of a practice-area specific scheme. These people believed that advocacy skills were distinct, and would cross-over many areas of practice.

Other comments

Around half of respondents gave additional comments, mostly supporting a continuation of the present scheme or replacing it with alternative arrangements. A view was expressed that this would benefit solicitor advocates and the administration of justice.

Profile of respondents

100 people or organisations responded to the consultation. 32 people completed the online survey when it was originally hosted on the Law Society website, 58 people completed it after it had moved to the new SRA site. 10 people responded by email or post.

The majority of responses – 76% – were made on an individual basis. 23% of responses were made on behalf of a firm or organisation. The respondent who did not state his capacity was taken as an individual for the purposes of analysis later in this report.

fig 1

respondent's capacity

		no. in group	% of all responses
organisation	firm	9	9%
	representative group	5	5%
	board or committee	2	2%
	local law society	2	2%
	academic institution	1	1%
	government body	2	2%
	Legal Complaints Service	1	1%
	Bar Council Standards Board	1	1%
	unanswered	1	1%
individual	employed solicitor	33	33%
	solicitor in private practice	27	27%
	trainee solicitor	8	8%
	another legal professional	5	5%
	academic	2	2%
	LPC/QLD student	1	1%
	unanswered	1	1%
total	100		

Organisations

Of the firms, four were partnerships, three were limited law practices, and two were sole traders. Three were among the largest firms in the country. The remainder were small, with up to six partners.

The Crown Prosecution Service was included in the 'government body' category.

Six of the firms gave information on the type of work and clients they mainly handled, in terms of gross fee income percentage. The information here was too limited to assess any trends in responses based on areas of work or clients.

The Law Society and the Bar Council were put into the 'representative group.' The Bar Council associated itself with the Bar Standards Board's response.

The Higher Courts Qualification Casework Committee (whose remit is to decide all applications under the Rights of Audience Qualifications Regulations) considered the consultation in March 2007. The Committee did not respond in a way conducive to this type of analysis –they provided brief summarised views through their minutes, which are included in the main body of the analysis where relevant.

Individuals

More solicitors completed the consultation questionnaire than any other type of respondent – nearly two thirds of respondents if the employed and private practice responses were taken together. Three people within the ‘another legal professional’ category were also solicitors, in non-practising roles – the others were a judge and a barrister.

11 of the solicitors worked at the Crown Prosecution Service. Nine were employed in local government.

Practice Rule 1 – lower courts

Question 1

Under Practice Rule 1, solicitors are required to work only within their competence. Do you think that standards are secured by solicitors advocating in the lower courts by relying upon this general requirement?

The majority – almost three quarters of respondents – believed that standards are secured by relying on Practice Rule 1 in the lower courts.

fig 2 1. are standards in the lower courts secured by relying upon this general requirement?

	no.	% of all responses
yes	71	71%
no	24	24%
no answer	5	5%
total	100	

Standards are secured – reasons

Two-thirds of people who thought standards were secured by relying on Practice Rule 1 gave reasons for their view. There were six main themes, listed here in descending order of frequency:

- solicitors' inherent professionalism is reliable enough - they know their limits
- there is no evidence of a problem
- complaints from consumers/judges, and the market, address any lack of competence
- existing training is adequate for lower courts advocacy
- Rule 1 is enough in general, but it will not ensure all solicitor advocates are competent
- it is adequate, but additional training should also be required

Standards are not secured – reasons

Almost everyone who thought standards were not secured gave comments. Again, there were a number of headline themes, listed below in descending order of frequency:

- solicitors have not had enough training or experience in advocacy, especially pre-qualification
- standards are already low/variable
- standards must be demonstrated discretely
- Practice Rule 1 on its own is not enough

- some solicitors do not always act within their competence
- no definition of competence exists
- there shouldn't be one rule for lower and another for higher courts

Stakeholders

The Law Society and CPS thought that standards are secured by Rule 1.

- “Advocacy requires particular skills, as do other areas of practice. The Law Society does not believe that advocacy should be treated differently from other areas of practice.” – **the Law Society**
- “... In general cases before the magistrates are less complex both evidentially and in legal technicalities and take less court time. In addition very many cases result in acceptable guilty pleas.” – **CPS**

The Bar Council, Bar Standards Board, Legal Complaints Service (LCS) and the Solicitors Association of Higher Courts Advocates (SAHCA) believed that reliance on Rule 1 does not secure standards.

- “PR1 does not of its own secure competence. The same would apply to any rules that the Bar code of conduct may have.” – **SAHCA**
- “... LCS believes that the "professional duty" option in para 4.6 is not sufficient to achieve what we believe are the shared aims of both the SRA and the LCS. The other options ... would be preferable, as they more effectively balance the need for high standards for the profession with the need for there being enough practitioners to provide consumers with sufficient choice.” – **LCS**
- “...we think that the competencies required for advocacy in the lower courts may need to be reviewed. Individuals must be able to demonstrate the appropriate competence to represent clients.” – **Bar Standards Board**

Practice Rule 1 – higher courts

Question 2

Under Practice Rule 1, solicitors are required to work only within their competence. Do you think that standards could be secured by solicitors advocating in the higher courts by relying upon this general requirement?

In contrast to the previous question about the lower courts, opinion was more equally divided between those who thought Rule 1 was enough to secure standards in the higher courts and those who did not. A majority, if not a large majority, did believe that standards of advocacy in the higher courts would be secured by relying on Rule 1.

fig 3 2. are standards in the higher courts secured by relying upon this general requirement?

	no.	% of all responses
yes	55	55%
no	41	41%
no answer	4	4%
total	100	

Standards are not secured – reasons

Over half of the comments supporting this view saw that for the higher courts some form of additional training, assessment, and/or accreditation is needed to ensure competence

Standards are secured – reasons

Nearly three quarters of people who thought standards in the higher courts were secured by relying on Practice Rule 1 gave reasons for their view. The main themes have been listed here in descending order of frequency:

- solicitors' inherent professionalism is reliable enough - they know their limits
- reliance on the rule is adequate, but training and/or a set of standards should also be required
- barristers have automatic rights - why can't solicitors?
- complaints from consumers/judges, and the market, address any lack of competence
- there is little difference between lower and higher courts work
- reliance on the rule is enough in general, but not always

Stakeholders

The Law Society was the only stakeholder supporting reliance on Rule 1.

- “There is little reason to suppose that solicitors would act as advocates in the higher courts when they were not competent to do so, particularly as (unlike some other areas of practice) any shortcomings would be on public display and would risk adverse judicial comment being made to the SRA.”

The CPS, Bar Council, Bar Standards Board, Legal Complaints Service (LCS) and the Solicitors Association of Higher Courts Advocates (SAHCA) believed that reliance on Rule 1 was not enough.

- “It is important that advocates in the higher courts are properly trained and of sufficient experience to undertake cases in the higher courts... relying solely on PR 1 would not be sufficient to regulate or maintain the standard of advocacy and ensure that advocates who appear in the higher courts are fully equipped to discharge the full range of responsibilities. It is for this reason that the CPS has established a rigorous selection and training programme for Higher Court Advocates (HCAs). The Advocacy Development Programme ensures that CPS HCAs meet the required standards and behaviours appropriate to the level at which they will practice.” – **CPS**
- “The risks which are involved in advocates who are insufficiently competent exercising rights of audience are much greater in the higher courts, where the issues are more complex and more serious. In consequence, the public interest requires that those who wish to exercise rights of audience in the higher courts should be required to satisfy those competencies to a satisfactory level... This, in practice, can only be done by some pass/fail accreditation, probably supported by some mandatory training requirement; The SRA may well wish to look at versions of the Bar’s “3 year rule” and advocacy training courses.” – **Bar Standards Board**

Why is advocacy different from other reserved areas?

Question 3

If you answered 'no' to question 2, why do you believe advocacy to be different from other areas of reserved rights?

39 people gave comments here, which were grouped into headline themes for analysis. The most common opinion was that the level of responsibility on higher courts advocates, and the potential for clients losing their liberty, was greater.

fig 4 3. why do you believe advocacy different from other reserved rights?

	no.	% of answers
high stakes/no margin for error/it is more complex	10	26%
there is not as much advocacy training as other areas	9	23%
requires thinking on your feet	5	13%
needs discrete skills/experience	5	13%
it is not different/all reserved areas need accreditation	5	13%
very public facing	3	8%
greater need for client protection	2	5%
total	39	

Stakeholders

SAHCA and the CPS gave comments on this question.

- “Some areas of Advocacy lead to grave consequences for consumers. The consequences can be penal in both civil and criminal jurisdictions.” – **SAHCA**
- “The main reason is that other areas of reserved rights such as conveyancing and probate are very comprehensively taught and examined on the LPC. This is not the case with advocacy...In the absence of increased LPC advocacy training, and for the purposes of those already qualified, it is essential that there is an accredited training scheme in place to ensure that only those who can demonstrate (after training) that they have the requisite skills are allowed to practice in the higher courts.” – **CPS**

Differences between lower and higher courts

Question 4

What do you consider to be the main differences between advocacy in the lower courts and tribunals and the higher courts?

different/additional behaviours are required
different/additional skills are required
different/additional levels of knowledge are required
there are no significant differences

93 people expressed an opinion. Respondents were asked to select as many answers as they thought appropriate – nearly two thirds selected multiple values. The responses were analysed to see how often the individual values were selected, then the combinations of values were examined.

Almost a third of those who expressed an opinion (29%) thought that different and/or additional behaviours, skills *and* levels of knowledge were required in the higher courts. However, a similar, if smaller, proportion (27%) felt that there were no significant differences.

The most common response was that different and/or additional levels of knowledge were required – this was put forward by 59% of those answering this question.

fig 5 4. What are the main differences?

<i>different/additional ...</i>	no.	% of all responses to this question	% of individuals who answered
individual values			
levels of knowledge are required	55	34%	59%
behaviours are required	49	30%	53%
skills are required	33	20%	35%
there are no significant differences	25	15%	27%
total	162		
combinations			
skills and knowledge	11	7%	12%
behaviour and knowledge	10	6%	11%
behaviour and skills	6	4%	6%
all three	27	17%	29%

65 people set out what they believed to be the different and/or additional behaviours/skills/knowledge needed. The majority felt that there were many attributes needed to cope in the higher courts, including:

- knowledge of the significantly different rules of etiquette and procedure
- more in-depth knowledge of the rules of evidence
- the ability to marshal extremely large quantities of information and documentation
- greater essential preparation
- enhanced understanding of legal technicalities and an ability to explain often complex areas of evidence in pleading a case
- the need for a full and in depth understanding of sentencing practice and procedure
- a more detailed, deeper knowledge of the law
- greater understanding of ethics, case theory, and specialist skills such as cross examination and dealing with expert witnesses
- better command of the skills of cross examination

A number of these attributes were also mentioned on their own by other respondents, as can be seen in *figure 6*.

fig 6 *different and/or additional behaviours/skills/knowledge needed*

	no.	% of answers
multiple differences - all skills/behaviours/knowledge are enhanced	28	43%
knowledge of rules and procedures	16	25%
complexity/seriousness of cases	6	9%
experience and/or training	5	8%
higher skills of advocacy	4	6%
more detailed technical knowledge (especially of law)	4	6%
enhanced, rather than different/additional skills needed	1	2%
no differences	1	2%
total	65	

Stakeholders

The Bar Standards Board and the CPS thought that all listed values were required. The Law Society saw few fundamental differences other than greater complexity of cases, and that enhanced skills were needed. SAHCA felt that there were no significant differences.

- “The more serious nature of issues at stake means that different skills and knowledge are required. There are also differences of scale, complexity and consequence between the levels of court. Issues and consequences are likely to be much more serious than in the lower courts. Specific knowledge of advocacy techniques is needed. Handling full trials and important hearings can only be managed effectively by understanding all the procedures and conventions of the particular venue and having mastered the skills of making submission, presenting a case, leading evidence, cross examining witnesses. This must be developed thorough analysis and synthesis of law, fact and evidence. Advocates in higher courts must have built up those skills to cope with more complex legal, factual and evidential patterns carrying more significant levels of risk.” – **Bar Standards Board**

Should current restrictions be retained?

Question 5

Do you think the current restrictions on advocacy rights should be retained?

The majority of respondents felt that current restrictions should not be retained.

Those who answered 'yes' on the electronic questionnaire were routed directly to the demographic questions. Only the 56 people who answered 'no' here were given the opportunity to answer the later substantive questions.

fig 7 5. should current restrictions on advocacy rights be retained?

	no.	% of all responses
yes	39	39%
no	56	56%
no answer	5	5%
total	100	

The majority of those who answered 'no' felt that there was no reason for any restrictions, or that the existing restrictions were too onerous or unfair. One example given was that a newly qualified barrister could appear before higher courts whereas a solicitor who might have several years of advocacy experience in magistrates' courts was unable to do so without further qualification.

fig 8 current restrictions on advocacy rights should NOT be retained

	no.	% of answers
there is no need for restrictions	17	38%
current restrictions are too onerous/unfair	13	29%
appropriate training/experience should remove need for restriction	5	11%
restrictions only protect the Bar's interests	4	9%
other jurisdictions have no such restrictions	3	7%
current restrictions increase client costs	2	4%
current restrictions are not in the interests of justice	1	2%
total	45	

The majority of people who indicated that current restrictions should be retained argued that the present system worked well and that there was no need to change it. Supporting this overall view, people thought that the qualifications allowed more equal competition with the bar, enabling solicitors to demonstrate that they could match the specialist training received by barristers.

fig 9 *current restrictions on advocacy rights should be retained*

	no.	% of answers
no need to change present system	10	31%
to ensure standards, confidence and client protection	9	28%
not enough advocacy training	8	25%
yes, but should be modified	4	13%
advocacy is a specialised skill	1	3%
total	32	

Stakeholders

The Bar Standards Board felt that the restrictions should be retained, and possibly enhanced - "It would be an unfortunate and retrograde step if the BSB's efforts to improve advocacy and to enhance advocacy training were accompanied by a lowering of entry and training requirements for solicitor higher court advocates... Whilst the BSB readily accepts that there may well be other ways of achieving these prerequisites than the present system, the BSB takes the strong view that any lowering of minimum requirements for advocates exercising higher court rights would not be in the interest of the public or of consumers "

The Law Society, the CPS, Legal Complaints Service (LCS) and the Solicitors Association of Higher Courts Advocates (SAHCA) felt that the restrictions should not be retained.

- "... full rights of audience should be acquired on admission. There is no reason to distinguish between higher courts advocacy and (say) the conduct of complex medical negligence litigation. The fact that a newly qualified solicitor is unlikely to be competent to deal with the most complex matters does not mean legal restrictions on rights of audience are needed: the professional obligation not to act where not competent to do so is sufficient." – **the Law Society**
- "...on the face of it, LCS believes that there is no reason why solicitors should not have equal rights of audience at all levels of court." – **Legal Complaints Service**
- "There are many instances (short of contested trails) where litigators with detailed knowledge of their client's case could assist courts/consumers in the absence of the briefed advocates. Instead they have to bring in a higher rights advocate with no knowledge of the case who in the end does not add anything more of value to the case except the costs." – **SAHCA**
- "...the current restrictions on advocacy rights are unnecessarily complex, onerous, time-consuming and expensive. One example of an unnecessary restriction is the requirement for 3 years post qualification experience (PQE) in order to take advantage of the Exemption Route. We have found that it is the competence of the advocate and the quality of their experience rather than its length that is crucial to the standard of advocacy they provide." – **CPS**

The Higher Courts Qualification Casework Committee's view was that solicitors should be granted higher rights of audience immediately on admission.

Should there be any other quality assurance?

Question 6

If your answer to Question 5 is 'no', should there be any other form of quality assurance for clients and the proper administration of justice?

Opinion was almost equally divided – half of the people who answered this question thought that there should be some other form of quality assurance, half did not.

fig 10 6. should there be any other form of quality assurance?

	no.	% of answer to this question	% of all responses
yes	28	48%	28%
no	30	52%	30%
total	58		

Looking at the supporting comments, the negative respondents viewed existing regulation (as well “judicial displeasure”) as sufficient quality control.

Those who thought that there should be quality assurance commented that an accreditation scheme, CPD, tailored training courses, a set of clear competencies, peer review, or a minimum experience requirement would be acceptable systems.

Without a specific question asking if a scheme should be compulsory or voluntary (for solicitors wishing to exercise rights of audience), it was not possible directly to ascertain the views of respondents on this issue. However, from the comments received and the type of alternative systems favoured by respondents, it is reasonable to work on the basis that many of those supporting an alternative QA system felt that it should be a requirement. Only three respondents suggested schemes that were clearly voluntary in nature, those being a quality mark, advocacy-specific elective subjects on the LPC, and relying on other bodies' systems (namely the LSC and “private companies”).

Supporting comments

- “... we note that where a solicitor wishes to do advocacy in the higher courts, then he or she must have the right training in order to develop appropriate skills. We welcome the SRAs efforts to achieve this aim and generally support proposals that require a period of advocacy experience in tribunals or courts with some form of formal assessment before a right of audience is granted.” – **LCS**
- “the training of solicitors does not fully equip them with the full range of skills for higher court advocacy in the same way that the Bar Vocational Course equips barristers. It is important that all advocates who appear in the higher courts are properly trained and

equipped to deal with the range of issues that they would face in that challenging environment and that there is a quality assurance mechanism in place to regulate the system, ensuring that high standards are maintained.” – **CPS**

- “It is essential that only those with the right training and experience can exercise these rights” – **University of Huddersfield**
- “... there should continue to be a separate qualification and title of 'solicitor advocate' for those who appear sufficiently frequently as advocates to be able to be accredited on a continuous basis.” **Fulbright & Jaworski International LLP**

Stakeholders

All of the stakeholders who responded, except the Law Society answered that there should be some other form of quality assurance. The Law Society did not favour a mandatory additional qualification, but said that if such a scheme survived, “it would be desirable to have a separate elective in the LPC dealing with higher court advocacy, as ... the current LPC training on advocacy is insufficient to ensure competency.”

The other stakeholder responses included:

- “any quality assurance system must reflect the degree to which the market is an informed one or otherwise as to both litigators and their clients. The answers may vary according to the area of practice. In many areas it is the case that the procurers of legal services (LSC/private companies) have their own systems. In such cases for the SRA to impose its own system as additional requirements would be burdensome and unnecessary.” – **SAHCA**

The Higher Courts Qualification Casework Committee’s view was that the existing Advocacy Code should be enhanced and more rigorously applied

What quality assurance should there be?

Question 7

If your answer to Question 6 is 'yes', what type of quality assurance mechanism should be put in place?

28 people made suggestions. Three of them were people who had previously said that there should not be any quality assurance.

The most frequent suggestion was for a system of tailored training, or a reliance on CPD – one person suggested that advocates should be required to undergo a pupillage period with a suitably experienced advocate. A number of people also suggested a periodic assessment of advocacy competence, on a 3 or 5 year basis.

fig 11 7. What quality assurance mechanism should be put in place?

	no.	% of answers
cpd/training	7	25%
regular assessment	6	21%
accreditation scheme	4	14%
change solicitor training system	2	7%
regulations	1	4%
minimum experience periods	1	4%
unspecified	7	25%
total	28	

Stakeholders

Two of the stakeholder groups made suggestions:

- “Practice Rule 1 should be underpinned by a simple method of accreditation that involves attending and passing an accredited training course, targeted at the area of advocacy that the lawyer intends to practice e.g. crime... The quality, as opposed to the length, of an advocate’s experience is an important factor in equipping a lawyer to appear in the higher courts and the CPS would not support the imposition of a requirement for a minimum period of PQE before a solicitor may attend an accredited course.” – **CPS**
- “All such mechanisms should be based on competencies that are objectively verifiable. They should be 'lite touch' and proportionate. They should not be a means of levying a tax on the profession.” – **SAHCA**

The Law Society reiterated that they did not believe that a formal mechanism was required.

What should quality assurance apply to?

Question 8

To what should this quality assurance mechanism be applied?

advocacy in the lower courts
advocacy in the higher courts
both

31 people gave their opinions here. As with Question 7, two were people who had previously said that there should not be any quality assurance. The majority felt that any quality assurance mechanism should be applied to both the lower and the higher courts.

fig 12 8. To what should this quality assurance mechanism be applied?

advocacy in...	no.	% of responses
both	20	65%
the higher courts	11	35%
the lower courts	0	0%
total	31	

19 people gave supporting comments. The people who thought that a QA system should apply to both saw little difference in the skills needed. Some also believed that standards of advocacy in both would benefit from quality assurance.

The respondents supporting quality assurance only in the higher courts saw problems if new requirements were to be added to magistrates' courts work, increasing costs and potentially reducing supply of representation. There was also concern that the lower courts were an essential training ground for solicitors, and that there was no evidence of any current problems with existing rights of audience there.

Stakeholders

The only stakeholder who felt that both lower and higher courts should be covered by a quality assurance mechanism was the Bar Standards Board:

- "The increasing complexity of some lower court matters may in any event justify looking again at the provisions for exercising rights in the lower courts ... Any new system should thus ensure that those wishing to appear as advocates, particularly in the higher courts, have attained those competencies."

SAHCA felt that Lower court jurisdiction work is dealt with adequately during the training contract period, within the Professional Skills Course. The CPS went further – "whilst advocacy skills are required in the magistrates' court, the particular nature of the work

conducted in the Crown Court requires enhanced training to equip solicitors with the necessary skills and learned behaviours.”

What standards should quality assurance be based on?

Question 9

If a quality assurance mechanism is introduced, this should be based on standards of...

*behaviour
skills
knowledge*

33 people (56% of the 58 who thought there should be some form of QA) answered this question. Respondents were asked to select as many answers as they thought appropriate. Only three people selected a single value. The responses were analysed in two ways – first to see how often the individual values were selected, then the combinations were examined.

Over half of the people who answered this question thought that a quality assurance system should be based on all three stated values – behaviour, knowledge and skills.

Considering each value separately, knowledge was seen as the most important standard to base a quality assurance mechanism on – only one person did not put knowledge forward.

fig 13 9. a quality assurance system should be based on standards of...

	no.	% of all responses to this question	% of individuals who answered
individual values			
knowledge	32	39%	97%
skills	29	35%	88%
behaviour	21	26%	64%
total	82		
combinations			
skills and knowledge	10	12%	30%
behaviour and skills	2	2%	6%
behaviour and knowledge	1	1%	3%
all three	17	21%	52%

Few reasons, other than broad “all are important” statements, were given as reasons by those who favoured all three values. Those who discounted behaviour thought that it was too subjective a quality to lend itself to assessment or quality assurance.

Stakeholders

The Law Society, CPS, Bar Standards Board, and SAHCCA were all of the view that all three areas should form the basis of a quality assurance system.

Should quality assurance be periodically revalidated?

Question 10

If a quality assurance mechanism is introduced, this should be subject to periodic (e.g. every five years) revalidation of standards of...

behaviour

skills

knowledge

25 people (43% of the 58 who thought there should be some form of QA) thought that a quality assurance mechanism should be subject to revalidation. The remainder did not select any value, only seven people explicitly stated through the comments section that revalidation was not appropriate.

Respondents were again asked to select as many answers as they thought appropriate. As with the previous question, most people selected multiple answers – only four selected a single value.

The responses were analysed in two ways – first to see how often the individual values were selected, then the combinations were examined.

Knowledge was seen as the most important single value for revalidation, although there were proportionally small differences between the three.

Looking at the combination answers, as with the previous answer the majority of respondents saw all three values as an appropriate basis for ongoing revalidation.

fig 14 10. should QA be periodically revalidated, based on standards of...

	no.	% of all responses to this question	% of individuals who answered
individual values			
knowledge	22	39%	88%
skills	19	34%	76%
behaviour	15	27%	60%
total	56		
combinations			
skills and knowledge	7	13%	28%
behaviour and skills	1	2%	4%
behaviour and knowledge	1	2%	4%
all three	12	21%	48%

Seven people responded in the comments section that they did not support a quality assurance system which involved periodic revalidation. It was seen by two people as unfair when compared to the lack of such a requirement for barristers. The rest saw the skills of advocacy as being naturally maintained and re-assessment as unnecessary.

Stakeholders

In the case of revalidation, only the Bar Standards Board and SAHCA supported a system that applied to all three values of knowledge, skills and behaviour.

The Law Society stated that they did not support revalidation while the CPS felt that re-accreditation for an individual was unnecessary. The CPS did state that “any form of ongoing quality assurance relating to the standard of solicitor advocates needs to take into account the current work looking at Quality Assurance for Advocates in the Crown Court, being led by DCA and the LSC ...”

The Higher Courts Qualification Casework Committee’s view was that re-accreditation of solicitors to ascertain whether they remain competent to undertake advocacy in the higher courts was not desirable or viable.

Should quality assurance cover all areas, or be limited?

Question 11

If a quality assurance mechanism is introduced, should it cover advocacy in all areas of law, or should options be made available limited to a specific area of practice (e.g. crime, family)?

29 people answered this question. The majority felt that a quality assurance mechanism should be limited to specific areas of practice.

Some respondents felt that testing people in areas of law they might not be familiar with would be unfair. It was also felt that concentrating on specific areas would naturally reflect the growing specialisation of practice, and would be less onerous than training and assessing people in all areas.

The small proportion of respondents who felt that a scheme should cover all areas felt that advocacy skills were the same regardless of speciality.

fig 15 11. should QA cover all advocacy, or be limited?

	no.	% of those who answered
specific areas of practice	21	72%
all areas	7	24%
both	1	3%
total	29	

Stakeholders

The Bar Standards Board and the Law Society both believed that a quality assurance mechanism should apply to all areas of law. The Law Society expanded on this – “... it should focus on key skills and behaviours that are common to all advocacy.”

The CPS and SAHCA took the view that QA should apply to specific practice areas:

- “It would be both onerous and completely unnecessary to require advocates to submit to quality assurance in areas where they do not practice. For example a CPS HCA prosecutes only criminal cases and has no need of training in the civil or family arena” – **CPS**
- “Each area must be considered separately.” – **SAHCA**

Should quality assurance cover advocacy only?

Question 12

If a quality assurance mechanism is introduced, should it cover advocacy only, or should it be an integral part or an optional element of a scheme specific to an area of practice (e.g. family, crime)?

advocacy only

integral part of a specific scheme

optional element of a specific scheme

23 people answered this question. Another five gave supporting comments without selecting a value. The majority felt that a quality assurance mechanism should cover advocacy only and not be a part of a practice-specific scheme.

fig 16 12. should QA cover advocacy only, or be part of other schemes?

	no.	% of those who answered
advocacy only	13	57%
integral part of specific scheme	5	22%
optional element of specific scheme	5	22%
total	23	

11 people gave supporting comments. Those favouring an advocacy only scheme believed that advocacy skills were distinct, and would cross-over many areas of practice.

Stakeholders

The CPS felt that a quality assurance mechanism should cover advocacy only – “This is wholly about appropriate standards of advocacy. Not all practitioners will want to become [higher courts advocates]. Solicitors should be able to make choices around their preferred area of practice and seek to develop the necessary skills to meet the identified need.”

The Law Society referred to their answer to question 11: that QA should focus on advocacy only.

The Bar Standards Board's view was that “there is a strong case for a quality assurance mechanism which goes beyond advocacy, but should at least cover advocacy.”

Other comments

Question 13

Do you have any other comments?

48 people gave additional comments. 12 stated that they wished their responses to remain confidential. They have been included in the following analysis, but no attributable quotes will be included.

The comments were grouped by broad theme for analysis. A third of those commenting favoured retention of the current restrictions on rights of audience and the accreditation systems that are in place. A significant number felt that restrictions should continue, albeit with different quality assurance systems. Taken together, these represent over half of the people who gave comments, or roughly a quarter of all respondents.

21% did not see a need for restrictions or a quality assurance system, feeling that reliance on Practice Rule 1 would be adequate.

fig 17 13. other comments

	no.	% of comments
supports current higher rights system/restrictions	16	33%
no need for restrictions or a qa system	11	23%
there is a need for a QA system, different to present qualifications	10	21%
general comments	9	19%
no re-accreditation please	1	2%
need to canvas judiciary's views	1	2%
total	48	

A sample of comments supporting the current system:

- "... I feel strongly that the standards of an advocate should not drop just so a solicitor can more easily get a higher court qualification."
- "it is only right that solicitors should undertake an additional qualification to obtain higher-rights... that Solicitor-Advocates should be differentiated from other solicitors... that once qualified, Solicitor-Advocates should not have to undergo on-going accreditation so that they are not treated differently from Barristers."
- "current HRA restrictions work reasonably well and we do not believe that they represent an area of regulation in which the SRA needs to introduce any significant changes"

A sample of comments supporting a new or different form of quality assurance:

- "The current mandatory scheme should be retained but with re-accreditation every five years to ensure that practitioners are retaining their skills... Resources should be found for the LSC to reimburse the costs, as with other accreditation schemes"

- “I would also favour an accreditation scheme for the lower courts, so that practitioners could gain experience in lesser cases before, once being accredited, moving on to [crown court] trials.”

Stakeholders

The Law Society was concerned that LPC training on advocacy was insufficient to ensure competency. They also felt that Rule 5 (i) of the new Code of Conduct (requiring principals to provide training for individuals to maintain a level of competence appropriate to their work and level of responsibility) meant “it is important for firms to recognize the constraints in assuring competence that arise from the current LPC training.”

They saw the current portfolio approach, and the cost of attaining an advocacy accreditation, as a barrier to gaining higher rights.

They stated that they would support a voluntary system of accreditation, provided the membership requirements were flexible, not unnecessarily and disproportionately burdensome, and without mandatory re-accreditation.

The LCS suggested that we consider the experiences of other jurisdictions, such as in Ireland, where immediate rights of audience are awarded to both equivalent types of lawyer. They also asked that “the SRA consider how quality of advocacy for solicitors should be measured.”

- “We do not consider that reliance on professional duty alone or even a non-mandatory accreditation scheme would provide sufficient protection for the public interest” – **the Bar Council**
- “the CPS would welcome the opportunity to explore these points in greater detail and work with the SRA in order to help drive forward the simplification of the accreditation of solicitors and their increased deployment in the higher courts.” – **the CPS**

List of respondents

Organisations

The Law Society
Legal Complaints Service
Solicitors Association of Higher Court Advocates
CPS
Bar Standards Board
Bar Council
The Hampshire Incorporated Law Society
Willem Louw Solicitor Advocate
Lovells
Allen & Overy
Resolution
Tuckers
Herbert Smith
Solicitors in Local Government
Jordans Solicitors LLP
Edward Hayes
Davies Solicitors Ltd
James Button & Co.
Hampshire Law Society
Chester and North Wales Law Society
The College of Law
Office of Fair Trading

Individuals

Academics

Penny Cooper
Sean Curley

solicitor in private practice

Byron Britton
Nadia Akhtar
David Archer
Paul Bennett
Julian Coningham
Susan Demers
Steven Ladhams
Andrew MacCuish
David J Moore
Qasim Nawaz
Peter Causton
Michael Pimm
Fergus Poncia
Raymond Porter
Iain Roxborough
Richard Schmidt
Thomas Sowler

Employed solicitors

Taiwo Adesina
Kehinde Adesina
Claire Beddow
Nicholas Bennett
Radley Biddulph
John Davison
Ian Deprez
Andrew Fouracre
Mark Frost
Edward Hand
Michael Otuyalo
Tim Riley
Tim Shaw
Sean Stocks
Martin Thompson
Kevin Toogood
David Watts

other legal professional

Mark Loosemore
Christopher Rennie-Smith

trainee solicitor

Aalia Dato

student

Abdulrahim Swaleh Mohamed

35 people, all responding in an individual capacity, wished to remain confidential.