

SRA BOARD

9 March 2016

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Quality Assurance Scheme for Advocates: appeal rule change

Purpose

- 1 To seek Board approval of changes to the appeals rules in the Quality Assurance Scheme for Advocates (QASA/the Scheme).

Recommendations

- 2 The Board is asked to:
 - a) make the SRA Quality Assurance Scheme for Advocates (Crime) (Appeals Amendment) Rules [2016] (paragraphs 3 to 10 and Annex 1).

If you have any questions about this paper please contact: Crispin Passmore, Executive Director, crispin.passmore@sra.org.uk.

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Quality Assurance Scheme for Advocates: appeal rule change

Background

- 3 QASA is a compulsory accreditation scheme for all criminal advocates, which requires advocates to register and then have their advocacy periodically assessed to ensure that they are competent to practise. Advocates are either assessed by judicial evaluation or by attending an assessment centre.
- 4 The Joint Advocacy Group¹ consultation on changes to QASA (recommended by the courts in the course of the Judicial Review challenge to QASA) was issued on 1 October 2015 and closed on 24 December 2015.
- 5 Board members will recall approving our response to the consultation at their meeting on 20 January 2016. There was one outstanding issue on which we said we would come back to the Board, namely the alignment of the respective QASA appeals rules between the SRA and the Bar Standards Board (BSB).
- 6 The proposed SRA appeals rules, on which we consulted, permitted appeals on the grounds of “irregularity” and “procedural error”. The BSB’s rules permit appeals on the grounds that the decision is unreasonable, or that there has been a procedural error in the assessment or decision making process which has had a material impact on the decision reached.
- 7 At its January 2016 meeting, the Board was informed that a number of responses to the consultation called for further consistency between our appeals rules and those of the BSB.
- 8 The Law Society suggested that the SRA rules should include provision for an appeal to be made to the SRA on the grounds of bias or unfairness in the judge’s approach. The Junior Lawyers Division also called for greater consistency between the SRA and BSB grounds of appeal.
- 9 While we intended bias or unfairness to be comprised within irregularity and procedural error, we recognised in our consultation response² that consistency between both regulators’ appeals rules was desirable. We said that we would work with the BSB to explore how we could further align our appeal rules with theirs. We said that we would bring revised rules back to Board for approval once this work had been completed.
- 10 We have now amended our appeals rules to address this point. We have added in an additional ground, permitting an appeal where “a decision reached was unreasonable”. We propose issuing guidance to outline what we mean by

¹ The Joint Advocacy Group (JAG), comprising CILEx Regulation, the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB) is responsible for the development and implementation of QASA

² Approved by Board on 20th January but not yet public as it still requires approval by the BSB and Cilex Boards in March 2016

SRA BOARD

9 March 2016

CLASSIFICATION –PUBLIC



“unreasonable” on the basis that the grounds as a whole are intended broadly to align with the grounds for Judicial Review.

Recommendation: the Board is asked to make the SRA Quality Assurance Scheme for Advocates (Crime) (Appeals Amendment) Rules [2016] (Annex 1).

Next Steps

- 11 Should the Board agree to the proposed rules, we will, subject to the outcome of the BSB and CILEx Regulation Board meetings, submit an application to the LSB seeking approval for changes to the scheme as outlined in our consultation response as well as this rule change. In addition, we will update our consultation response to reflect our revised position recognising the desirability of greater consistency in the wording of appeals rules for all advocates, and agreeing to change our rules so as to address that.

SRA BOARD

9 March 2016

CLASSIFICATION – PUBLIC



Supporting information

Links to the Strategic Plan and / or Business Plan

- 12 The proposed rule changes support strategic objective 2 (work with solicitors and firms to raise standards and uphold core professional principles). QASA is designed to ensure that those undertaking criminal advocacy – a high risk area - are competent to do so. The proposed rule change will improve the operation and clarity of the scheme, and so better achieve this aim.

How the issues support the principles of better regulation

- 13 QASA is a proportionate and targeted response to the risk of consumer detriment as a result of poor advocacy.
- 14 Clarification of the scheme's appeals rules will enable those required to comply with QASA to better understand their regulatory obligations. The change will clarify the grounds on which an appeal can be made and therefore reduce any unnecessary costs associated with the processing of appeals.

How the action will be evaluated

- 15 JAG has committed to a two-year evaluation of QASA. This will include exploring the operational and equality impact of the scheme.

What engagement approach has been used to inform the work (and what further communication and engagement is needed)

- 16 The proposed rule change has been subject to a 12 week consultation. All major representative groups responded. A Communications and Stakeholder engagement plan has been developed. JAG (and the SRA) will communicate changes through our wider communication channels, for example, through our website and direct communications to those we regulate.

What equality and diversity considerations relate to this issue

- 17 QASA has been subject to extensive EDI impact analysis. In particular, a full EDI report was provided as part of the LSB approval of the Scheme. In terms of the changes being proposed, we have not identified any further equality and diversity issues.
- 18 As part of the scheme's approval by the Legal Services Board in 2013, JAG carried out a comprehensive equality impact assessment. The proposed rule change and subsequent work to align the appeals rules with the BSB have not identified any further equality issues. JAG will monitor the equality impact of implementation as part of the two year operational review.
- 19 We have not identified any significant operational, financial or consumer impact with our proposed rule change. It is a technical change designed to address consultation concerns and clarify the operation of the Scheme

SRA BOARD

9 March 2016

CLASSIFICATION – PUBLIC



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Annex 1 Proposed SRA Quality Assurance Scheme for Advocates (Crime)
(Appeals Amendment) Rules [2016]

SRA Quality Assurance Scheme for Advocates (Crime) (Appeals Amendment) Rules [2016]

Rules made by the Solicitors Regulation Authority Board on [9 March 2016] under sections 2, 79 and 80 of the Solicitors Act 1974.

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 on []

Rule 1

Regulation 20 of the SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013 shall be replaced with the following:

"20.1 *You* may appeal to the *SRA* against any decision reached by it under these regulations.

20.2 An appeal under regulation 20.1 may only be brought on the grounds that:

- (a) the decision reached was unreasonable; and/or
- (b) there was a procedural error, unfairness or irregularity in the assessment, evaluation or decision-making process which was sufficient to have materially affected the *SRA's* decision.

20.3 *You* may bring an appeal to the *SRA* within 28 days from the date on which notice of the relevant decision is given.

20.4 Subject to regulation 20.2, *you* may not appeal to the *SRA* against the outcome of:

- (a) an assessment by an assessment organisation; or
- (b) an individual evaluation conducted by an external assessor or a judge."

Rule 2

These amendment rules come into force on 1 April 2016 or on the seventh day after the date of approval by the Legal Services Board, whichever is the later.