



Assuring advocacy standards consultation response

July 2020

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Executive summary

1. This document outlines our response to our [assuring advocacy standards consultation](#).
2. In our consultation, we proposed making changes to the way we assure advocacy standards to better address ongoing concerns about the quality of advocacy provided by the solicitors we regulate.
3. Our proposals included:
 - Continuing to grant rights of audience to solicitors practising in the lower courts rather than requiring additional assessment in witness handling.
 - Revising our arrangements for higher court advocacy including:
 - i. Updating our Higher Rights of Audience (HRA) standards.
 - ii. Introducing a single HRA assessment provider.
 - iii. Requiring that the HRA qualification should be taken post admission.
 - Requiring youth court solicitors to pass our higher court advocacy qualification where they are acting as advocates in a case which would go to the crown court if brought against an adult.
 - Providing resources to help solicitors meet our advocacy standards, including publication of aggregated and anonymised information to highlight common themes in the reports we receive.
 - Providing resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors.
 - Supporting appropriate reporting to help us act on concerns about a solicitor's competence to conduct advocacy.
4. We have already published [full analysis of the consultation responses](#) we received. This document should be read alongside that report.
5. Having analysed each consultation response, engaged further with stakeholders, and considered how we can mitigate potential risks we have identified, we will:
 - Continue to grant rights of audience for solicitors practising in the lower courts without introducing a requirement to be assessed in witness handling.
 - Introduce revised HRA standards to be assessed by existing providers in early 2021.
 - Proceed with the procurement of a single assessment provider to begin assessment against our revised standards not before summer 2022.
 - Require that the HRA assessment is taken post admission to coincide with assessment against the revised standards by existing providers in 2021.
 - Undertake a random sample of learning and development records from solicitors practising in the youth court. We will request training records to be provided to us for us to review in summer 2021.

- Develop online resources to support solicitors practising criminal and civil advocacy. These will be available in summer 2021.
 - Publish resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors in summer 2021.
 - Publish an aggregated and anonymised summary of the reports we receive raising concerns about criminal and civil advocacy and practice in summer 2021. This will also include a summary of regulatory action we taken, if any. We will use reports we have received from the previous 12 months to inform this summary.
 - Encourage appropriate reporting about advocacy standards from autumn 2020.
6. We will not proceed with our proposal to require that solicitors advocating serious cases in the youth court must have a higher rights qualification. Instead, we will:
- Work with youth court practitioners to check their training records to gain assurance and understanding about how they maintain their competence.
 - Engage with solicitors, firms, and youth court stakeholders to further develop our evidence about standards and risks. This will include face to face engagement and carrying out a literature review.
 - Consider whether we can further articulate the standards we expect from solicitors practising in the youth court.
 - Provide updated resources to support solicitors practising in the youth court to meet our standards.
 - Collect more accurate data on solicitors and firms by introducing a youth court work category in our Practising Certificate Renewal Exercise.
7. This document explains our rationale and our next steps. It also builds on the [initial impact assessment we published in August 2019](#) which highlighted the potential benefits and challenges of our proposals. Few respondents identified any additional impacts through the consultation, but we outline how we will mitigate any risks with implementation of our final positions in this document.
8. We have analysed our final positions against the 2010 Equality Act, the Regulatory Objectives, and the Principles of Better Regulation. Overall, our view is that our measures are a targeted and proportionate response in line with our regulatory objectives.
9. The measures we will put in place reflect our ongoing commitment to assuring the standards of advocacy considering the available evidence, which remains persistent but anecdotal. They enable us to obtain a better understanding as to the scale and nature of concerns so that we can keep our approach under review and continue to provide relevant support to solicitors and firms.
10. Through our ongoing engagement with solicitors, firms, wider stakeholders, we can constantly review our approach and consider whether additional regulation is required.

Background

11. Advocacy is a high-risk practice area. Poor advocacy can result in consumer detriment, miscarriages of justice and threaten the rule of law.
12. As a public interest regulator, we are committed to making sure that solicitors practising criminal and civil advocacy have met and continue to meet the high standards we and the public expect.
13. Ongoing concerns have been raised about the standard of solicitors' advocacy, for example, in the Jeffrey Review in 2014 and in research we conducted jointly with the Bar Standards Board in 2019 into judicial perceptions of the quality of advocacy.
14. These concerns are persistent but the evidence to support them is largely qualitative, and it is difficult to establish whether poor advocacy is a widespread problem or not.
15. Against this background, we proposed measures to improve how we currently regulate the quality of civil and criminal advocacy.

Who did we hear from?

16. Our consultation was launched on 21 August 2019 and closed on 13 November 2019. We promoted the consultation to our stakeholders through our social media channels and our newsletters.
17. We also engaged with a wide range of stakeholders during the consultation to discuss our proposals, for example, our advocacy reference group¹, the judiciary, the Crown Prosecution Service, the Solicitors Association of Higher Court Advocates, the Public Defender Service, Just for Kids Law, Citizens Advice, local law societies and the Law Society.
18. We received 61 responses to the consultation from a wide range of stakeholders, including consumer organisations, solicitors, firms, education and training providers and solicitor representative groups. Many of these organisations welcomed our continued focus on this area.
19. We are grateful to everyone who took the time to respond to our consultation. We have reviewed all the comments we received and have given each one careful consideration in developing our final policy positions.

¹ A cross sector group of criminal and civil advocacy stakeholders who have been involved in discussing our approach to assuring advocacy standards.

Our final policy positions

20. In this section we outline each consultation proposal. We set out a high-level summary of the responses we received, our next steps and how we will mitigate risks we have identified with our approach. The [consultation responses document](#) sets out a more detailed analysis on the responses we received to each proposal.

Consultation proposal 1: Should we place a restriction on solicitors' rights of audience in the lower courts until they have been assessed in witness handling?

What did we propose?

21. Solicitors have full trial rights in the lower courts on admission. We have already concluded that the Solicitors Qualifying Examination (SQE) will not include the assessment of witness handling. Our view is that this would be disproportionate, expensive, and out of step with most solicitors' work.
22. Against this background, the consultation considered whether we should place a restriction on solicitors' rights of audience in the lower courts until they have been assessed in witness handling. We proposed that we should not do so. Whilst concerns about the standard of advocacy are persistent, the evidence is largely qualitative, and it is difficult to establish whether poor advocacy is a widespread problem.
23. Given that this is the case, there is a risk that a broad restriction on all solicitors advocating in the lower courts, irrespective of their competence, is not targeted or proportionate and could act as a barrier to practising advocacy. This could restrict access to justice.
24. We proposed instead to rely on solicitors' and firms' obligations in our Code of Conduct only to undertake the work which they are competent to perform.

Summary of responses

25. Most responses agreed with our proposal including almost all individual solicitors, firms, and representative bodies because it was felt that:

- Our current regulatory framework which requires individuals only to undertake work which they are competent to perform works well in practice.
 - Additional regulation would burden firms and impact on the supply of criminal and civil solicitors.
 - There is a lack of evidence to justify intervention.
26. A small number of respondents, including the Legal Services Consumer Panel, disagreed with our proposal. Respondents felt the potential risk of detriment to even a small number of clients because of poor advocacy justifies requiring that solicitors who wish to work in the Magistrates Court and upwards should be assessed in witness handling.
- What we will do next**
27. We agree with consultation responses that imposing a restriction on solicitors' rights of audience in the lower courts, until they have been assessed in witness handling, is at this stage, unnecessary. Instead, we will rely on solicitors' and firms' obligations in our Code of Conduct only to undertake the work which they are competent to perform and identifying poor advocacy through encouraging appropriate reporting.
28. We will assess the legal knowledge of witness handling through the first SQE assessment. We also provide guidance to help solicitors understand the standard of witness handling we expect. Encouraging appropriate reporting will also help us identify where a solicitor is acting above their competence. Where we identify this, knowingly or recklessly acting outside their competence is an aggravating factor in any enforcement action we may take.²
29. Our approach balances the available evidence³, assuring standards and not placing unnecessary regulation on solicitors and firms that discourages them from practising advocacy, and therefore restrict competition and access to justice.
30. We will keep this proposal under close review and will look again if we see evidence of concerns specifically in relation to solicitors' ability to competently examine and cross-examine advocates. Should we identify an issue, we will take further regulatory action, for example, we could review the learning and development records of solicitors to assure ourselves they are taking appropriate steps to keep their examination skills up to date.

² Our Competence and Standard of service topic guide This guidance focuses on our approach to investigating individuals and firms when the level of competence and standard of service falls below what we would expect.

³ We said in our consultation document that evidence of concerns related to criminal advocacy practised in higher courts and in the youth courts, not the magistrates' court.

Consultation proposal 2: Should we introduce revised HRA standards?

What did we propose?

31. We proposed revised standards for the criminal and civil HRA assessment to make sure they fully assess the competences required for effective and modern-day practice. Our proposed standards were developed with a wide range of external stakeholders including subject matter experts, current practitioners and existing training and assessment providers.
32. Revisions to our standards included:
 - Greater focus on the skills required for modern practice, for example, including standards on witness handling and dealing with vulnerable clients.
 - Using clearer language and introducing more detail so that solicitors and assessment organisations better understand the required standard.
 - Aligning assessment objectives with associated assessment criteria and the relevant knowledge, skills and understanding.

Summary of responses

33. Many responses agreed with the proposed changes to the HRA standards because they:
 - Provide clarity for solicitors in helping understand their ongoing competence requirements.
 - Better reflect the legislative and procedural challenges of modern practice.
34. A small number of respondents felt that revisions were not required because of the lack of evidence that the existing standards consistently produce poor quality higher court advocates. In addition, some felt that the introduction of revised and strengthened standards could result in fewer solicitors meeting the standard we require and therefore reducing the supply of solicitors practising in the higher courts.

What we will do next

35. Our role is to ensure that candidates are assessed and meet the standards required to practise effectively in the higher court. We welcome the positive response from stakeholders to our revised standards. We will proceed with the introduction of revised HRA standards and will begin assessment against these by existing assessment providers in early 2021.

36. The minor drafting changes suggested by a small number of respondents will be considered as part of finalising how the standards will be assessed.
37. We disagree with respondents who suggested that the standards should not be changed because of the lack of evidence of poor-quality higher court advocates. Whilst we recognise that there is a lack of quantitative evidence about poor standards in the higher courts, this should not prevent us from introducing standards that better reflect current demands of practice and offer greater public protection.
38. We have considered the needs of solicitors who may wish to obtain their HRA qualification in making our decision. The revised standards will be assessed from early 2021 which provides sufficient time for training providers to adapt their courses and candidates to understand the competences they need to demonstrate. We will work with existing providers to help them introduce the new standards.

How we will mitigate risks

39. Our final position means that our standards are more clearly assessed. They are not intended to set a different standard to the one currently used; they define more precisely the competencies needed for safe advocacy practice.
40. It is important we assess our revised standards at the appropriate level. Too high and this could act as barrier for some solicitors seeking HRA. Too low and there is a public protection risk that solicitors awarded the HRA qualification are not competent.
41. We will make sure that we assess the revised standards at the appropriate level. We have set up a group of external assessment and criminal and civil subject matter experts to help us consider how the standards can be assessed at the right level and in a way that is fair, consistent, robust and valid.
42. We will also put in place contractual and quality assurance arrangements with appointed assessment organisation so that assessment of the revised standards is at the appropriate standard. These include:
 - Requiring the use of recommended standard settings methods for setting the standard.
 - Requiring policies, processes and procedures are in place around key assessment activities, for example, training and monitoring of assessors and monitoring questions.
 - Carrying out external quality assurance activities to make sure policies, processes and procedures are being followed.

43. We will also publish sample assessment questions and make sure that training providers can engage with the appointed assessment provider, so that they fully understand the content and the assessment standard. This will help individuals and training providers in their preparation and better understand the required standard.
44. We will monitor performance of individuals against the new standards, including those from protected characteristic groups, to identify any unintended negative impacts. Should any issues emerge, we will work with the appointed assessment provider to address them.
45. The new standards, once introduced, will only apply to candidates taking the HRA qualification. Solicitors holding the existing HRA qualification will not be affected. However, clarity over the expected HRA standard will help solicitors who currently hold the qualification maintain their competence to carry out their role and keep their professional knowledge and skills up to date as required by Regulation 3.3 in our Code of Conduct for Solicitors.

Consultation proposal 3: Should we introduce a single assessment provider for HRA?

What did we propose?

46. We proposed to appoint a single assessment provider for the HRA qualification. This is designed to address the risk that the current multiple assessment provider model does not guarantee that solicitors awarded the HRA qualification are assessed to a consistent standard.

Summary of responses

47. Respondents were broadly split on this proposal. Those that agreed with the introduction of a single assessment provider did so because it would increase assessment robustness, consistency, accuracy, and fairness. Others felt that a single provider model offered a clearer and simpler assessment pathway for solicitors seeking higher rights.
48. Those respondents that disagreed did so because they felt a single assessment provider would result in reduced assessment availability and increased assessment cost. This could lead to fewer candidates taking the assessment and result in reduced availability of higher court solicitor advocates for the public.
49. Several respondents suggested alternatives to a single assessment provider. They felt that the robustness and consistency of the current assessment could be improved by introducing greater standardisation of teaching and assessment

processes between existing providers, while retaining a multiple assessment model.

What we will do next

50. We will proceed with our proposal to appoint a single assessment provider and will begin assessments against the revised standards not before summer 2022.
51. In reaching this decision, we considered alternative approaches suggested by respondents. Over the last 18 months we have worked with current HRA providers to standardise the existing assessment format. For example, we have facilitated regular meetings between providers to discuss assessment and marking approaches.
52. Whilst this has improved standardisation and consistency, a multiple assessment provider model inevitably means different cohorts of candidates are taking different examinations, marked by different assessors. This model therefore does not offer the same assurance as a single assessment model that all solicitors awarded the HRA have been assessed to the same standard.
53. Our next step is to begin the procurement process to appoint a single provider. We anticipate appointing a provider in 2021 with first assessments, against our revised standards, commencing not before summer 2022.
54. We will regularly update solicitors, firms, and wider stakeholders on progress as we move towards a single provider and outline what they need to consider when looking to obtain the HRA qualification under our new arrangements.
55. We will also retain our consultation position that the appointed provider should not deliver training without our consent or where there is any perceived or actual conflict of interest.

How we will mitigate risks

56. We recognise concerns raised by some respondents that a single assessment model could restrict the number of solicitors awarded HRA qualification through higher assessment costs and reduced geographical availability.
57. We do not consider that this should prevent us from proceeding. There is no evidence at this stage to suggest that our approach will lead to an increase in the cost of the HRA assessment or reduced availability.
58. We were also clear in our initial impact assessment that we will mitigate these risks by:
 - Including assessment cost as a factor in our tender process and appointment decision for the assessment organisation.

- Making sure that:
 - The appointed assessment organisation provides sufficiently frequent assessments and that there is appropriate geographical availability.
 - Venues used to carry out the assessments do not prevent those with a disability from undertaking the assessment, for example, avoiding assessments carried out in buildings with restricted access
59. Advocates who qualified under the current HRA system will continue to be able to exercise advocacy rights in the higher courts. Naturally, we expect them to take steps to maintain their competence in line with our revised standards.

Consultation proposal 4: Should we require that the HRA assessment is taken post admission?

What did we propose?

60. We proposed changing our regulations to make clear that the HRA assessment may only be attempted by qualified solicitors. Given that the HRA is a higher qualification, we suggested that it was not appropriate for aspiring solicitors who have not been admitted taking this advanced assessment of advocacy rights which only qualified solicitors may exercise. Some candidates currently take it prior to admission as part of the Professional Skills Course (PSC).

Summary of responses

61. Most respondents agreed with our proposal including most solicitors, firms, and representative bodies. It was felt that a solicitor seeking the HRA qualification would benefit from experience and exposure to advocacy in practice before attempting the assessment.
62. A small number of respondents suggested the assessment should only be attempted by admitted solicitors with at least two years' advocacy practice post qualification experience.
63. A small number of respondents disagreed with our proposal because:

- It was the role of the regulator to assure competence and prescribe when rights can be exercised, rather than specify when the assessment can be taken.
- There is no evidence that undertaking the HRA assessments as a trainee is linked with poor advocacy.

What we will do next

64. We retain our view that HRA is a higher qualification and should only be attempted by qualified solicitors. We will therefore proceed with introducing a rule, subject to approval by the Legal Services Board, that only admitted solicitors can attempt the HRA qualification.
65. This requirement will help establish external confidence in HRA as a higher qualification, conferring greater practice rights than people gain on admission. This approach means that individuals who wish to conduct higher court advocacy can build on the skills and knowledge assessed through the SQE by getting more experience of advocacy practice, through observation, or conducting simple applications or trials in the lower courts before they apply for their higher rights.
66. In addition, the PSC will be phased out with the advent of the SQE. So, the opportunity it currently provides for trainees to gain the qualification will fall away.
67. We also considered whether it was appropriate to introduce a period of post admission practice before an individual can take the HRA qualification as some respondents suggested. We have discounted this suggestion at this stage as any period set would be arbitrary and could dissuade solicitors from seeking to obtain the qualification.
68. We will submit our application to the LSB in summer 2020 with a view to introducing the rule to coincide with assessment against the new HRA standards in early 2021. This will provide enough time for any individual who is currently preparing for the HRA qualification to obtain it before our requirement is introduced. We will communicate with all existing HRA training and assessment providers to update them when our rule approval is agreed and before we move to a single assessment provider.
69. The introduction of our requirement does not restrict solicitors from exercising their lower court rights before they apply for higher court rights.

Consultation proposal 5: Should solicitors advocating serious cases in the Youth Court have a higher rights qualification?

What did we propose?

70. We proposed requiring solicitors practising in the youth courts to have the criminal HRA qualification where they are acting as an advocate in any case which would go to the Crown Court if it were brought against an adult.
71. We felt this would address concerns raised about the standard of advocacy and align practice rights with the jurisdiction of the youth court given it has changed to

include most cases against an adult under 18, except for murder, manslaughter and certain firearms offences.

Summary of responses

72. Some respondents welcomed our approach to addressing concerns about standards in the youth court. However, a significant majority disagreed on the grounds it could damage the quality and supply of youth court solicitors because:
- Experienced and competent youth court solicitors would be restricted from practising in serious cases and could be replaced by solicitors (with a higher rights qualification) who were inexperienced in youth court work.
 - Experienced and competent youth court solicitors without higher rights may not wish to obtain or pass the qualification and would therefore not be eligible to practise in the youth court
 - There would be a financial impact on small firms employing youth court solicitors without higher rights, because they would therefore need to instruct counsel. As a result, firms might no longer see providing youth court advocacy as commercially viable.
73. Respondents who disagreed with our proposal suggested that the higher rights standards were not aligned with the skills, knowledge and experience required for competent practice in the youth court. A small number of those that disagreed said we should develop specific standards, require mandatory training, or require periodic accreditation for solicitors practising in this area.
74. Other respondents felt that our proposal was unnecessary as it would duplicate existing quality assurance regimes which assess the competence of youth court solicitors.

What we will do next

75. Our responsibility is to ensure that solicitors practise competently and safely. We recognise the potential detrimental market impact and access to competent youth court solicitors if we proceed with our proposal.
76. We also recognise the force in the suggestion that the HRA qualification is not necessarily well aligned with the competences required for safe practice in the youth court.
77. We will not therefore proceed with our proposal. Instead, we will review and develop the resources available for solicitors practising in the youth court, and we will do more work to look at the quality of work in this area.
78. We expect all solicitors practising in this area, in line with their regulatory obligation, to maintain their competence to carry out their role and keep their professional knowledge and skills up to date.

79. Given the concerns raised by stakeholders about the challenges of youth court practice and our work to articulate the risks and the standard we expect, we wish to have a greater understanding of how solicitors are maintaining their skills and knowledge.
80. This will involve sampling the training records of solicitors practising in the youth courts. We will request training records to be provided to us for us to review in summer 2021.
81. This will enable us to obtain a deeper understanding of the current and emerging issues and risks with practice in the youth court and provide the basis from which we can develop our approach.
82. We will look at how solicitors are maintaining their competence, how they identify and address their learning and development needs. For example, are they evaluating the communication skills needed to engage effectively with young people? Do they understand the specific legal and sentencing requirements which apply in the youth court? Are they keeping their legal knowledge up to date? This will increase our understanding about the level of risk solicitors pose in this area and enable better address concerns about standards.
83. If, as a result of our review of training records, we have concerns about whether a particular individual has met their regulatory obligations, we will contact them to seek an explanation as to why and remind them of their regulatory responsibilities. In line with our enforcement strategy, a failure to consider or address training and development needs may be considered as an aggravating factor in determining whether we take regulatory action.
84. There are more BAME solicitors, older solicitors, male solicitors, and small firms practising criminal advocacy, we recognise that requesting learning and development information could impose a small burden of on these groups. We do not consider this a significant burden as solicitors should already have these records. We will make sure that our review is balanced given these circumstances.
85. In addition, we will also:
- Continue to engage with solicitors, firms, and youth court stakeholders to further develop our evidence about the quality of practice in this area (spring 2021)
 - Look at whether we can further articulate the standards we expect from solicitors practising in the youth court.
 - Provide updated resources to support solicitors to meet our standards (summer 2021).

86. We also want to know more precisely which solicitors and law firms regularly practise in the youth court. We will begin collecting this information through our Practising Certificate Renewal Exercise from 2021.
87. Based on the outcome of this work, we will consider whether we need to undertake further work to explain the standards we expect of solicitors in the youth court and update our existing youth court resources.
88. We will keep our approach to assuring standards in the youth court under review. If we have concerns about widespread shortcomings, we will consider further measures, including mandatory training or accreditation.

Consultation proposals 6 and 7: Should we provide resources to help advocates meet our standards? Are there particular topics you would like to see included in our advocacy resources?

What did we propose?

89. We proposed increasing the resources we provide to solicitors practising criminal and civil advocacy. These would encourage solicitors to maintain their competence throughout their careers by helping them to reflect on the quality of their work and address the learning and development needs they identified. We also proposed:
 - To develop resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors.
 - We also propose to publish aggregated and anonymised data on advocacy reports we receive.

Summary of responses

90. Most respondents supported this proposal on the basis that it would promote higher standards. Respondents suggested we should focus resources on sentencing and dealing effectively with vulnerable clients in all courts. Many respondents also agreed with our proposal to develop resources for the public and other stakeholders to explain to the public the criminal and civil advocacy standards we expect of solicitors.

What we will do next

91. We will develop online resources to support solicitors practising criminal and civil advocacy to help them meet their regulatory obligation of maintaining their

competence to carry out their role by keeping their professional knowledge and skills up to date.⁴

92. Our initial focus will be on providing practical resources to help solicitors build trust with Black, Asian, and Minority Ethnic clients (BAME) and how to identify and engage with individuals who may be vulnerable or have learning difficulties. We will publish these resources in summer 2021.
93. We will work with wider stakeholders, the public and the profession to identify further topics and to consider how we can best present our resources.
94. Following further stakeholder engagement, we will publish annually in our resources, a short and high-level summary of the most common report themes made to us about advocacy and criminal and civil litigation practice rather than just advocacy as we originally proposed in our consultation. This will also include a summary of the types of regulatory action we have taken, if any.
95. This approach will help us:
 - Focus learning and development on all aspects of criminal and civil practice and not just advocacy.
 - Make sure resources we publish better reflect the wider practice challenges solicitors and firms face.
 - Build our evidence base on criminal and civil practice issues and help us to be an informed voice this area.
 - The information we gather can be used to help evidence and target our regulatory approach, for example, focus our forward plan of reviews of learning and development records.
96. We will publish this summary in summer 2021. The information will be based on reports received in the last 12 months and published in our advocacy resources. We will clearly explain that this is a high-level summary and that we do not act on all reports we receive.
97. We will develop material to help the public involved in criminal and civil cases understand what to expect from their solicitor if they are undertaking advocacy as well as litigation services. Our starting point will be our youth court leaflet which clearly explains what young people can expect and how to report.
98. We have already started to develop material to help the public involved in criminal and civil cases understand what to expect from their solicitor. We have engaged with a range of consumer representative bodies, for example, Keyring, Revolving Doors and Support through Court to help us identify what matters most to the

⁴ Code of Conduct for Solicitors, RELs and RFLs, Regulation 3.3

public and identify how best we can present this information. We aim to publish these resources in summer 2021.

How we will mitigate against risks

99. We have not identified any significant risks with the publication of aggregated and anonymised data on the reports we receive. We will contextualise information by stating that it is based on all reports we have received and that the reports may not have led to investigation or further regulatory action. Given the information will be aggregated and anonymised, it will not be possible to identify an individual or firm, including their ethnicity, or whether any regulatory action was taken.
100. Our initial impact assessment suggested greater representation of small firms, male solicitors, older solicitors and BAME solicitors amongst solicitors providing criminal work when compared to the wider profession.
101. Concerns have been raised through our ongoing stakeholder engagement that the publication of a summary of aggregated and anonymised reports could result in some people drawing inaccurate conclusions that these groups are responsible for poor advocacy. This could have a detrimental reputational impact on these groups.
102. We recognise this risk, but our approach is justified as it is designed to support solicitors to meet the standards we expect. It will not be possible to identify an individual or firm from the aggregated information we publish so any potential reputational damage is minimised.
103. Some respondents pointed out that our resources should not simply duplicate what is available elsewhere. Our materials will sign-post and build on other useful resources where appropriate.

Consultation proposal 8: Should we support reporting about advocacy standards?

What did we propose?

104. Good information about the standard of solicitors' practice is fundamental to the effectiveness of our regulation. Without it, it is difficult for us to understand the nature and scale of any concerns or identify solicitors and firms who are falling short of the standards we expect.
105. We proposed measures to support appropriate reporting including introducing simpler reporting mechanisms, working with the judiciary to raise awareness of how and when to report and reminding solicitors and firms of their regulatory responsibilities.

106. We also proposed working with the public and representative groups to explain the standards they should expect of solicitors and how they can make a report to us if these standards are not met.

Summary of responses

107. Responses to this question were broadly split. Those in favour of our proposals agreed that it was desirable for consumers, judges, and other stakeholders to find it easy to make a complaint if and where they witnessed poor advocacy. It was also considered appropriate for us to identify those solicitors who do not regularly meet the standard we require.

108. Some respondents who disagreed were worried that a fear of being reported might cause a solicitor not to pursue issues in a case that did not find favour with a judge but were in the client's interests to raise. They suggested this might undermine the independence of solicitors.

109. Others felt that encouraging reporting could disadvantage higher court solicitors because it was felt that some judges could have an unjustified and negative view of higher court solicitor advocates. This could result in a greater number of reports made against BAME solicitors, male solicitors' older solicitors and small firms practising criminal advocacy given their greater numbers⁵ and result in increased or inappropriate regulatory action.

What we will do next

110. There is a clear regulatory justification for proceeding with supporting appropriate reporting. It will help us ensure the standards of advocacy by:

- Enabling us to take appropriate and justified regulatory action against solicitors who fall short of our standards.
- Developing a much richer picture of the quality of solicitor's advocacy practice including whether the ongoing concerns raised by external stakeholders are justified.
- Providing targeted resources to solicitors and firms to help them meet the standards we expect and address the challenges of practice.
- Helping all stakeholders understand how we assess reports made to us and help them consider whether to report to or not.

⁵ <https://www.sra.org.uk/sra/consultations/consultation-listing/advocacy/#download>

- Better protecting the public through our supporting solicitors and taking appropriate action where necessary against those that do not meet our standards.
111. Our research shows that only 1% of firms, 0.6% of private practice solicitors and 1% of in-house solicitors have ever reported poor advocacy to us.⁶ We also receive relatively few formal reports from judges, although through our research we know that some experience poor advocacy but do not report to us because of a number of reasons, for example, dealing with poor advocacy at the point at which it happens.⁷
112. We will therefore carry out a programme of work to support appropriate reporting. This will include engaging with members of the public, with criminal and civil advocacy stakeholders and with the judiciary to explain how they can make a report to us and what we do with the information we receive.
113. We will continue to work with consumer representative groups to understand how best to promote our existing reporting channels, what needs to be considered when making a report and how the information we receive helps us assure standards. We will also use Legal Choices and consumer representative groups to draw this information to the attention of consumers.
114. From autumn 2020, we will engage with the judiciary to help improve their understanding of our regulatory approach. We will:

- Develop a short and accessible guide that explains the standard we expect based on our Statement of Solicitor Competence and HRA standards.
- Raise awareness with judicial bodies, including Magistrates, about how they can make a report to us where they have concerns about the standard of advocacy of a solicitor who appears before them.
- Work with judicial bodies and Magistrates to develop training material that explains to judges, Magistrates, and court staff how and what to report to us. This will include:
 - How to make a report to us.
 - What we do when a report is made to us.
 - What issues we consider to be serious.

⁶ <https://www.sra.org.uk/globalassets/documents/sra/consultations/advocacy-in-the-solicitors-profession-research-report.pdf?version=4a40e1>

⁷ <https://www.sra.org.uk/sra/how-we-work/reports/criminal-advocacy/>

- What factors we consider when determining appropriate regulatory action.
115. Finally, we will also remind those that we regulate of their responsibility to make a report to us where they witness poor advocacy which may amount to a serious breach of a solicitor's professional responsibility to provide a competent standard of service⁸. We will remind those we regulate of the ways in which a report can be made for example, through our online form, through our Ethics help line or via our anonymous reporting email address.
- How we will mitigate risks of our proposals**
116. We understand the concerns raised by stakeholders in proceeding with our approach. We have considered these in determining our final position and how best we can mitigate them.
117. The risk of inappropriate regulatory action is mitigated through our current approach to assessing reports we receive. We already have in place a clear, proportionate, and transparent approach to decide whether to or not we should investigate a report or complaint made to us. Our [Assessment Threshold Test](#) (ATT) helps us understand:
- Has there been a breach of the SRA's standards and regulations?
 - Is the potential breach or risk of sufficiently serious that we would take action?
 - Is the breach or risk capable of being evidenced to the required standard?
118. A complaint or report will only pass the ATT and will be investigated further, where the answer to all three stages is "yes". In making this decision as to whether there has been a breach, we will not take as read a complainant's description of events but will use our judgment to identify the relevant issues.
119. In addition, we will not investigate a potential breach that is minor in nature, where the evidence suggests it is unlikely to be repeated and there is no ongoing risk. We will keep a record of the reports to help us identify any patterns that indicate a more serious issue.
120. This approach will help us establish the rationale behind any report we receive, irrespective of who the report comes from and whom it is against. It will also help make sure that we are focusing on the serious issues and that any further regulatory action we may decide to take is proportionate, justified, and fair.

⁸ Para. 7.7 of the Code of Conduct for Solicitors, RFLs and RELs.

121. Our programme of engagement with the judiciary is designed to provide clarity about our approach to regulation, what we expect from solicitors, when to report and the factors we will consider in acting on any reports. We will be clear in our engagement that reports made to us need to be evidenced, fair and justified. Increased understanding could result in less reports being made in the future which could reduce any potential impact on solicitors or firms practising criminal and civil advocacy, for example, a minor issue that could have been reported to us may be dealt with in other ways.
122. We will monitor and evaluate the impact of this proposal to identify any unintended consequences on all solicitors including those from BAME backgrounds.

Assessment against Better Regulation, Regulatory objectives and 2010 Equality Act

123. We have assessed our proposals against the Better Regulation Principles Regulatory Objectives and the 2010 Equality Act. Despite the risks we have identified, we have put in place measures to mitigate them and there is a clear regulatory justification for proceeding with our approach.

Assessment of our final positions against our Regulatory Objectives

Regulatory Objective	Impact
Protecting and promoting the public interest	<p>Our measures will protect the public by making sure that solicitors practising criminal and civil advocacy meet the standards we and the public expect. This will increase public confidence in the justice system, and how we regulate.</p> <p>Our requirement as to when the HRA qualification can be taken will enhance confidence in the qualification.</p> <p>A single assessment provider for the HRA qualification will ensure that all higher court advocates are assessed to the same, consistent standard and will provide better public protection.</p>

	<p>The publication of aggregated, anonymised data about the reports we received will enable us to highlight potential risks with the provision of advocacy and wider litigation services. This, alongside encouraging appropriate reporting, will help us to provide resources for solicitors to help them consider whether their skills and knowledge are up to date in these areas. We have outlined how we manage risks associated with our approach in this document.</p>
Supporting the constitutional principle of the rule of law	Effective advocacy supports the rule of law.
Improving access to justice	<p>There is no data to suggest that our measures will reduce the supply of solicitors providing criminal and civil advocacy. We will not proceed with requiring solicitors in certain youth court cases to have HRA.</p>
Protecting and promoting the interests of consumers	<p>Our final policy positions are designed to make sure that solicitors we regulate providing criminal and civil advocacy meet the standards we and the public expect. They protect the public from detriment through poor advocacy, for which there may be no financial redress.</p> <p>The appointment of a single assessment provider for the HRA qualification will ensure that all higher court advocates are assessed to the same, consistent standard and will provide public protections.</p> <p>The publication of aggregated, anonymised data about the reports we received will enable us to highlight potential risks with the provision of advocacy and wider litigation services. It will also encourage solicitors to consider whether their skills and knowledge are up to date in these areas. As well as</p>

	<p>providing helpful data to help us assess the longer-term impacts of our proposals.</p> <p>We will develop material that helps increase public awareness of the standard we expect from solicitors and what they can if they do not receive this standard.</p>
Promoting competition in the provision of services	<p>Our measures will not materially affect the supply of solicitors providing criminal or civil advocacy. We will keep the impact under review through our evaluation programme.</p>
Encouraging an independent, strong, diverse, and effective legal profession	<p>There is no evidence at this stage to suggest that our changes will restrict the supply of solicitors entering the profession.</p> <p>A rigorous HRA assessment will build confidence in solicitor advocates. As we have described, a single assessment provider provides a clearer pathway for HRA qualification whilst revised standards could potentially increase the number of solicitors seeking the qualification. We have outlined how we will ensure that the revised HRA standards are assessed appropriately.</p> <p>Our resources will help solicitors to meet the standards we expect. We have said that we can also better support solicitors to meet our standards by publishing aggregated and</p> <p>We have identified a potential risk that publishing aggregated and anonymised reporting could have a negative reputational impact on BAME solicitors. We do not believe this a significant factor and have put mitigations in place.</p> <p>Concerns were raised that encouraging appropriate reporting could lead to increased reports (and regulatory action) against older and BAME solicitors. We have explained how we will mitigate this risk.</p>

Increasing public understanding of the citizen's legal rights and duties	Our proposal to work with public to explain what good advocacy looks like will help them get the legal help they need. Our work will increase understanding of expected quality of service and what action can be taken where this standard is not achieved.
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Assessment of our final positions against our Better Regulation Principles

Proportionate	Our measures are a proportionate regulatory response. We have considered carefully considering the available evidence how we can best assure standards without restricting the supply to good quality solicitors and placing unnecessary burdens on those that we regulate.
Accountable	Our measures respond to ongoing concerns about the standard of advocacy raises to us through our engagement and through our consultation. We have carefully considered all consultation responses in making our decisions.
Consistent	Our approach is consistent with our wider approach to regulation and enforcement, for example, regulation based on available evidence and risk and our approach to assessing reports made to us. The introduction of a single assessment provider for the HRA qualification will ensure that all solicitors are assessed to the same robust and consistent standard.
Transparent	We have engaged extensively with a wide range of stakeholders to explore our approach. This includes our consultation. We will support solicitors to understand the standard we expect by carrying our further

	<p>work to articulate what good practice looks like.</p> <p>We will publish anonymised and aggregated data on reports we receive which will lead to greater transparency about of concerns in this area and whether concerns raised to us are valid.</p>
Targeted	<p>Our proposals are targeted at an identified risk and only affect those solicitors we regulate who provide criminal or civil advocacy.</p> <p>Our measures to understand in more detail the extent of concerns with solicitors' advocates will help us consider whether further targeted regulatory intervention is required and help target our resources to help solicitors meet the standard we expect.</p>

Impact of our final positions on the Equality Act 2010

Protected Characteristic	Impact
Age	<p>Older solicitors practising criminal advocacy are overrepresented. There could be an impact on them because of encouraging appropriate reporting. We have set out in this response how this risk is mitigated.</p> <p>Our resources, based on reports we receive, we will benefit older and younger solicitors by helping them meet the standards we expect.</p>
Disability	<p>We do not have accurate data on solicitors with a disability practising advocacy. We have outlined how we will make sure that HRA assessments and locations and venues are accessible to those with a disability. We</p>

	will engage with solicitor disability representative groups to share our thinking during the development of the HRA assessment by a single assessment provider
Marriage and civil partnership	The consultation did not raise any evidence to suggest that our changes will have a differential impact on solicitors in respect of their marital or civil partnership status.
Pregnancy and maternity	The consultation did not raise any evidence to suggest our changes will have a differential impact on solicitors who are pregnant or on maternity leave.
Race	We have identified a potential risk that publishing aggregated and anonymised reporting could have a negative reputational impact on BAME solicitors. We do not believe this a significant factor and have put mitigations in place.
Religion or belief	The consultation did not raise any evidence to suggest that our changes will have a differential impact because of the religion or belief of a solicitor.
Gender	There are more solicitors practising criminal advocacy. There could be a potential impact of supporting appropriate reporting. We have outlined in this document how we mitigate any risks on this group of supporting reporting and publishing aggregated and anonymised high-level summary of reports we receive.
Sexual orientation	The consultation did not raise any evidence to suggest that our changes would negatively impact on the sexual orientation of solicitors.

Delivery timetable

Action	Delivery date
Engage with judiciary to encourage appropriate reporting	Autumn 2020
Remind solicitors of their responsibility to report poor advocacy to us	Autumn 2020
Engage with consumer representative groups and public to explain how they can report poor advocacy to us	Autumn 2020
Introduce revised HRA standards to be assessed by existing providers	Early 2021
Require that the HRA assessment is taken post admission to coincide with assessment against the revised standards by existing providers	Early 2021
Appoint single assessment provider	Early 2021
Engage with youth court solicitor and solicitors, firms, and youth court stakeholders to further develop our evidence about the quality of practice in this area	Spring 2021
Undertake a random sample of learning and development records from solicitors practising in the youth court	Summer 2021
Resources to help solicitors published	Summer 2021
Resources for the public and other stakeholders to explain the criminal and civil advocacy standards	Summer 2021
Publish an aggregated and anonymised summary of the reports we receive raising concerns about criminal and civil advocacy and practice	Summer 2021
Provide updated resources to support solicitors practising in the youth court	Summer 2021

Start collecting data on solicitors and firms practising in the youth court	Autumn 2021
Single provider begins assessment against new standards	Summer 2022
Evaluation completed	2023