

Advocacy in the solicitors' profession

21 August 2019

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

We carried out a survey to gain a better understanding about advocacy in the profession. Specifically, on who is providing advocacy services, what types of advocacy they provide and the types of courts they practise in.

This builds upon our previous research into judicial perceptions of the quality of criminal advocacy [<https://www.sra.org.uk/sra/how-we-work/reports/criminal-advocacy.page>] and our criminal advocacy thematic review [<https://www.sra.org.uk/sra/how-we-work/reports/criminal-advocacy.page>] , both published in 2018.

The findings have also been used to help inform proposals within our Assuring advocacy standards consultation [<https://www.sra.org.uk/sra/consultations/consultation-listing/advocacy/>] .

Background

This research was informed by an online survey taken by 2,830 individual solicitors and 851 firms. It looks specifically at advocacy in the profession within the context of the different areas of law of advocacy, and was designed to cover a wide range of topics.

We used online questionnaires to survey¹ [n1] :

- Firms providing advocacy
- Solicitors working in law firms
- Solicitors working in-house

Within each survey we looked at different types of advocacy:

- Criminal
- Civil (excluding family)
- Family
- Tribunals
- Other types of advocacy

Open all [#]

Key findings

Areas of law

- Almost two thirds of firms (60%) are providing civil advocacy, 32% providing criminal advocacy, 47% in the area of family law and 45% providing advocacy at tribunals. Other niche areas of advocacy (8%) included arbitration, prison law and inquests.
- For the individual solicitors providing advocacy within law firms: 44% focused on civil advocacy excluding family, 34% provided advocacy in family law, and 27% in criminal advocacy. Other niche areas of advocacy (12%) included arbitration, court of protection cases and inquests.
- Almost half of the firms dealt with money claims (48%). The types of claims that firms deal with are 82% in the fast track, 76% in the multi-track and 68% in the small track.² [#n2]

Higher Rights of Audience (HRA)

- HRA [<https://www.sra.org.uk/solicitors/accreditation/higher-rights-of-audience.page>] is a qualification that allows a solicitor to act as an advocate in the higher courts in England and Wales. The current total number of solicitor advocates with HRA is 6,764. This represents around 5% of all practising solicitors.

Casework and courts

- The majority of criminal advocacy takes place in the lower courts. The majority of civil, family and other types of advocacy takes place in the county court and family courts.
- The findings show that criminal advocacy is carried out mainly in house by small practices. Most of the advocacy is carried out in the magistrates' courts and youth courts. For those that hold Criminal HRA, over one third obtained it at least 10 years after qualifying showing that those providing advocacy in complex cases in the higher courts are experienced solicitors.
- Most criminal advocates will defend clients at sentencing and guilty plea hearings. This is borne out in the criminal statistics where there are now more guilty pleas entered prior to trial. Only a minority work regularly on full trials.
- Civil (non family) is the largest area of law where the most advocacy is provided. Family law practitioners are least likely to hold HRA. HRA are obtained and used in practice less frequently. A small proportion of solicitors need their HRA for the majority of the advocacy they provide.
- The majority of tribunal cases were related to employment and most of these solicitors do not hold HRA.



- Almost a quarter of solicitors working in law firms who hold HRA have never used their HRA qualification to provide advocacy in the higher courts.

Vulnerable clients

- People who have a legal issue that is heard before a court are likely to be vulnerable due to the distressing circumstances. Solicitors (with the exception of those working in-house) regularly provide advocacy services to people on low income, low literacy and with mental health issues yet, a quarter of firms stated they had never provided training on supporting vulnerable people.
- Despite this, many solicitors were providing a range of reasonable adjustments to assist their clients and solicitors felt that advocates skills in dealing with vulnerable people had improved in the last few years.

Quality assurance and monitoring

- Organisations and solicitors also influence the quality of advocacy by the processes used for assigning cases to solicitor advocates, how they supervise and quality assure the work of solicitor advocates, and how they approach training to make sure of continuing competence and professional development. Firms tended to view the frequency of their quality assurance and monitoring processes in a much more positive light than solicitors. For example, almost half of firms said they monitored the quality of advocacy per case but only a quarter of solicitors within firms said this happened. This figure was even lower for in-house solicitors.
- Across all respondents there was a consensus that court observations were hardly used to monitor quality.

Perceptions of advocate competency

- When asked about core skills related to advocacy such as knowledge, presentation of a case, clear submissions and focused questioning, most firms and solicitors thought these were very good or good.
- On looking at specific skills, sentencing (criminal) seemed to be the weakest area which is in line with findings related to training where almost half of solicitors within law firms had never received training on sentencing.

Training

- Overall, the availability and high cost of appropriate training seems to be an issue particularly for in-house solicitors.

Reporting poor advocacy

- We want to make it easier for stakeholders to report concerns to us and remove any potential barriers.



- The survey results showed that only 1% of firms, 0.6% of solicitors within firms and 1% of in-house solicitors had ever reported poor advocacy to us.
- Over half of firms and a third of solicitors felt there were no barriers to reporting, however, they also felt that there is a need to make it easier and clearer for stakeholders to report concerns to us. The main barrier to reporting was a perceived lack of clarity about how to report.

Perceptions of advocacy

- The main issues as perceived by firms and solicitors are that there are very few opportunities for advocates to learn advocacy skills. Many did not think advocates took on cases beyond their skills and competence.
- Criminal advocates said they were increasingly dealing with more serious cases in the magistrates' courts. Specifically, within criminal advocacy, the overwhelming majority felt that solicitors leaving or retiring from this area were not being replaced by younger solicitors and skilled advocates were being lost to other sectors.
- Within civil advocacy many felt that cuts in legal aid have resulted in a significant reduction in demand for advocates and conversely, they were dealing more with litigants in person which is creating an extra burden on them as they are having to assist these litigants.
- Finally, the view from around approximately one third of firms and individual solicitors was that the overall quality of advocacy had improved over the last 10 years. An equal proportion thought it had stayed the same. Around one fifth of respondents thought quality had declined.

Next steps

We will use these findings to continue working with solicitors and other stakeholders to make sure users of legal services have access to consistently high standards of advocacy representation.

The research has also been used to help inform proposals within our Assuring advocacy standards consultation

[<https://www.sra.org.uk/sra/consultations/consultation-listing/advocacy/>] .

The findings will help us to develop better ways of assuring advocacy standards. The research provides information and evidence to feed into the programme of work on advocacy standards focusing on:

- how we can assure the standard of criminal and civil advocacy more effectively
- reviewing the HRA standards
- initiatives to support solicitors to maintain standards.

1. We also surveyed individual solicitors working for the Crown Prosecution Service (CPS). The CPS survey received a total of 73 responses and was too low to report meaningful results. These have therefore been excluded from the analysis.
2. The small claims track involves claims not exceeding £10,000. The fast track is the normal route for claims between £10,000 and £25,000. More complex and important cases are assigned to the multi-track.