



# THE CITY OF LONDON LAW SOCIETY

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12 November 2010

**By email – [trainingconsultations@sra.org.uk](mailto:trainingconsultations@sra.org.uk)**

Quality Assurance of Advocates consultation  
Education and Training Unit  
Solicitors Regulatory Authority  
Ipsley Court  
Berrington Close  
Redditch B98 9TD

Dear Sirs

**Joint Advocacy Group (JAG) – Consultation paper on proposals for a quality assurance scheme for criminal advocates**

We write to express our views about the above Consultation.

While our members practise predominantly in the civil courts, we are committed to supporting and maintaining the highest standards of advocacy in all courts. We have significant reservations about the proposals in the Consultation paper, which we believe to be unnecessary to address the rare cases of poor advocacy. For the same reasons, we would resist any suggestion in the future that a scheme such as that proposed in the Consultation paper for criminal advocates be required for civil advocates.

Our members believe that market forces can be relied upon to ensure quality of advocates. Even if it is accepted, as the JAG suggests, that market forces alone are insufficient to ensure the quality of advocacy in criminal matters, we believe that the proposals in the Consultation paper are unnecessarily complex and likely to lead to unnecessary and unjustified expense. Our members consider that there are more proportionate ways of improving the quality of advocacy, while avoiding the significant costs and heavy administrative burden of the proposal.

If, contrary to these submissions, the JAG goes ahead with the scheme, we believe the commencement date of July 2011 is extremely ambitious, especially given, as the paper itself acknowledges, that there are significant preparatory steps that need to be taken before then.

The JAG estimates in the Consultation paper, that the number of advocates with criminal higher rights of audience is approximately 8,500. We have previously expressed our concern at the significant cost of training and examination for the new higher courts (civil advocacy) qualification. If the per head cost was equivalent for the current proposal, the total initial training and examination budget for the 8,500 advocates would need to be in the order of £20 million (at *circa* £2,000 per head). This does not take account of the loss of earnings during any training period. Costs of such magnitude may prove to be a significant deterrent for smaller firms.



There would also be a very substantial cost to the judiciary in the time taken, and training necessary, to complete the proposed judicial evaluation forms (the common standards on which these forms are to be based extend to three-and-a-half pages). The consultation paper indicates that a full financial assessment has yet to be made.

The proposed scheme has a complex system of accreditation. In addition, it is proposed that there be reaccreditation every five years and that Queen's Counsel will not be exempted from the accreditation process. This poses a significant financial and administrative burden upon criminal advocates and, for those advocates who are employed, also their employers.

In our view, for those advocates who are employed there will typically be other systems in place to maintain standards in the form of regular performance reviews; and, for self employed advocates, market forces do present a very powerful mechanism for removing the weaker advocates. The present system of Layers 1 and 2 (which we do not oppose) should address the more extreme cases of poor advocacy and we are unconvinced by the proposed additional Levels 3 and 4. Whilst the highest standards should be the aim, those to whom it is addressed are likely to be less amenable to this kind of system; market forces on the other hand do reward excellence.


It is also proposed that the scheme will be managed by an independent body (the Performance of Advocacy Council), accountable to, and with oversight from, the three regulators of advocates (the Solicitors Regulation Authority, ILEX Professional Standards and the Bar Standards Board). We question whether there really is a need for an additional layer of regulation and bureaucracy.

As a result of the costs identified above (especially the hidden costs of lost income) we are concerned that the scheme would only be adopted by those in a more privileged position, and that it will be a barrier to entry to those who do not have the support of a substantial firm or chambers which can provide the infrastructure and financial support to facilitate compliance with the proposed scheme.

We are also concerned at the proposed institutionalisation of judicial appraisal of the performance of advocates. If advocates consider that their advancement is very heavily dependent upon regular judicial approval it may create an atmosphere of increased (and unnecessary) deference to the Bench and, possibly, may even act as a deterrent against raising controversial or unpopular points for fear of provoking an unfavourable judicial reaction in that appraisal process. There is a public perception that such behaviour can occasionally occur in the period up to a senior barrister's appointment as a QC and the proposals might lead to a risk that such behaviour would become more common.

For the reasons set out above we do not agree with the proposal in the paper. We recommend that the JAG consider more proportionate plans. It may be that the current system, or a much more "light touch" form of intervention, is appropriate. As the JAG notes, the judiciary has already felt able to respond on competence and performance.

Yours faithfully

  
**Simon James**  
**Chair, Litigation Committee**

**THE CITY OF LONDON LAW SOCIETY  
LITIGATION COMMITTEE**

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The CLLS responds to issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Litigation Committee.

Individuals and firms represented on this Committee are as follows:

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