



THE CITY OF LONDON LAW SOCIETY

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15 April 2009

Dear Sirs

**RESPONSE OF THE CITY OF LONDON LAW SOCIETY TO THE SOLICITORS' REGULATION
AUTHORITY CONSULTATION PAPER DATED 21 JANUARY 2009:
"PROPOSAL FOR MANDATORY RE-ACCREDITATION"**

I write on behalf of the City of London Law Society Litigation Committee in response to the Solicitors' Regulation Authority Consultation Paper dated 21 January 2009: *Proposal for Mandatory Re-accreditation*.

This letter contains our responses to the questions in the consultation questionnaire form that accompanied the Consultation Paper. We also set out at the end information about us.

Preliminary comments

1. Our basic approach to the issue of mandatory re-accreditation has not changed since we submitted our response to the previous consultation paper dated 2 May 2008.
2. We accept that there needs to be formal accreditation for advocates but cannot see that:
 - (a) it should be more onerous than any accreditation scheme for barristers, and should not therefore go beyond what would be required of barristers in any assessment of solicitors' eligibility to advocate;

- (b) we see no warrant for the introduction of mandatory re-accreditation any more than we do in respect of barristers--to insist on such a process is effectively to cement in to the system a two-tiered approach.
3. We believe that the overall objective of the current proposals, which is to protect the public, ought to be consistent with achieving equality of opportunity and rights as between the two branches of the profession.

Question 1

Do you think that clients who are represented by an accredited advocate would reasonably expect the regulator to assess their skills on a periodic basis?

Answer

4. We believe the public would expect any assessment of suitability to be made on the initial application for advocacy rights. We do not see that the public would expect the regulator to carry out a formal process of re-assessment on a periodic basis any more than it does with the solicitor's right to practise and advise on substantive law; there is no reason to differentiate between advocacy and any other of the solicitor's skills; poor advocacy is no more hazardous to the public than wrong advice on the law.
5. Solicitors are already highly regulated and there exists sufficient protective machinery for any client who feels that a solicitor's standard of professional care or competency has fallen below the required mark.
6. In any event, in so far as it is felt that a re-accreditation scheme should be applied to solicitors, there is no reason why it should not apply also to the Bar. If that is not felt necessary, it ought to follow that it is not necessary in the case of solicitors either.

Question 2

In paragraph 2 of the consultation paper, we suggested that the SRA's key objectives in the development of the higher courts qualification scheme are to

- **provide the public and clients with confidence in the standard of solicitor higher court advocates,**
 - **provide assurances that appropriate standards are being met and maintained, and**
 - **ensure that any regulatory requirements are open, fair, transparent and proportionate.**
- (a) **Which of the options presented do you think most effectively meets all of these objectives? "Option 1 - Re-accreditation for all," "Option 2 - Targeted re-accreditation," or "Option 3 - No re-accreditation"?**
- (b) **Do you think there are any equality and diversity implications with any or all of these options? If you answer "yes", please outline what you believe the equality and diversity implications to be.**

Answer (a)

7. Option 3: No re-accreditation.

8. With respect, we think that the way this question is posed is wrongly slanted. The right question is: what is the right system? What should it be aiming to achieve?
9. In our view, what this policy ought to be aimed at achieving is the correct level of protection for the public at the same time as a fair, and competitive, market for advocacy services.
10. We believe it is highly questionable that the third objective (fairness, transparency and proportionality) would be met were a mandatory re-accreditation scheme to be introduced for solicitor advocates. At the same time, neither is it at all clear that the first and second objectives cannot be met by the standards to be imposed for the initial advocacy qualification. Providing those standards are adequate, and that they are publicised and accessible to potential clients, there should not be any further need for assurance.
11. Accordingly it seems to us that no re-accreditation is the only option which is consistent with all three of the objectives set out in the question.
12. It is always possible to have more regulation and consequently more accreditation. But the issue is whether it is needed in circumstances where there exists a properly rigorous qualification process plus the safeguard of a CPD system. The introduction of mandatory re-accreditation will inevitably lead to increased cost, which will ultimately be borne by the public.
13. It is certainly the case that to impose a periodic re-assessment would be to require solicitors to meet a higher requirement than those practising at the Bar, even those whose work is mainly advisory rather than consisting of appearances in Court.
14. We are therefore against the imposition of mandatory re-accreditation for the following reasons:
 - (a) it is an unnecessary additional layer of bureaucracy;
 - (b) it is not proportionate to any perceived need;
 - (c) it will result in unwarranted public expense;
 - (d) it fails to strike a proper balance between adequate safeguards and a reasonable and fair system;
 - (e) it imposes an anti-competitive restriction on solicitors;
 - (f) it perpetuates an undesirable distinction between the two branches of the profession, and
 - (g) for all these reasons, it represents a retrograde step.

Answer (b)

15. No.

Question 3

If you believe that re-accreditation should be mandatory for all holders of the higher courts qualification, should passported members still be required to undertake an advocacy assessment within a specified period before they are due for re-accreditation?

Answer

16. We do not believe that re-accreditation should be mandatory in all cases.
17. If, contrary to our view, re-accreditation is to be made mandatory, we can see no justification for making passported individuals undertake any separate assessment, any more than we can see a justification for requiring barristers who may have qualified under a previous training regime to be subjected to a modernised qualification process.

Question 4

- (a) **If you believe that re-accreditation should be targeted, do you think that the SRA should require only those advocates who have not regularly practised and applied their skills to be re-accredited?**
- (b) **Should this approach be accompanied by a mandatory and targeted advocacy CPD requirement?**
- (c) **Do you have any suggestions for overcoming the practical difficulties with a targeted approach detailed in paragraph 14?**
- (d) **If a targeted approach to re-accreditation is adopted, should all passported members who have not previously undertaken an advocacy assessment be required to do so within a specified period?**

Answer

18. We do not support re-accreditation at all, whether targeted or otherwise. The following answers are given subject to that overall qualification.
 - (a) Not applicable: we do not believe that re-accreditation should be targeted.
 - (b) CPD: Not applicable. We have the following additional comments:
 - (1) We can see no reason why any perceived need for re-accreditation cannot be met by a suitable CPD requirement.
 - (2) Since all solicitors must comply with CPD requirements, maintenance of skills levels by this means would apply to all.
 - (3) We do not think the CPD requirement for advocacy should be in addition to any other assessment process.
 - (4) We believe that a suitable CPD target should be 3 to 4 hours, as part of the existing total CPD requirement and not in addition to it.
 - (c) Practical difficulties with targeting. If, contrary to our view, there is to be re-accreditation, we consider that there would be practical difficulties with targeting if this were to be introduced with a view to identifying "less experienced" advocates

requiring re-accreditation. Using the CPD option avoids the need for targeting. The CPD process is by definition self-certifying and is deemed to be sufficient for solicitors to be licensed to continue to practise as such.

- (d) No. We have already explained why we oppose mandatory re-accreditation for solicitor advocates. So far as concerns solicitors who are already qualified as higher courts advocates, we consider that no good case has been put forward for now restricting their existing advocacy rights in the way proposed.

Question 5

If you do not believe that re-accreditation is necessary at all, should passported members who have not previously undertaken an advocacy assessment still be required to do so within a specified period?

Answer

19. No.

ABOUT US

The City of London Law society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the Solicitors' Regulation Authority Consultation Paper dated 21 January 2009: *Proposal for Mandatory Re-accreditation* has been prepared by the CLLS Litigation Committee. The Committee is made up of a number of solicitors from City of London firms who specialise in litigation. The Committee's purpose is to represent the interests of those members of the CLLS involved in this area of law.

If you have any questions about this response, please do not hesitate to contact Lindsay Marr, Chair of the CLLS Litigation Committee, at lindsay.marr@freshfields.com or on 020 7832 7317.

Yours sincerely



David McIntosh

Chairman