

Quality Assurance Scheme for Advocates

Bar Standards Board Equality Analysis

Date of Assessment	July 2012
Assessor Name & Job Title	Chris Nichols – Senior Policy Officer
Name of Policy/Function to be Assessed	Quality Assurance Scheme for Advocates (QASA)
Aim/Purpose of Policy	<p>QASA is a quality assurance scheme for criminal advocates that has been developed by the Joint Advocacy Group (JAG), which comprises members of the Bar Standards Board (BSB), Solicitors Regulation Authority (SRA) and ILEX Professional Standards (IPS).</p> <p>The need for a quality assurance scheme for criminal advocates was first suggested in the Carter Report in 2006, which identified concerns about the quality of publicly funded advocacy and included a recommendation that a system of quality monitoring should be established.</p> <p>JAG has already conducted three public consultations on the scheme (the first being in 2009) and will launch a fourth consultation in July 2012. It has also conducted significant targeted consultation with specific representative groups and consumer groups.</p> <p>Under QASA, all criminal advocates will need to be assessed and accredited at a level between 1 and 4. Cases will also be assigned a level between 1 and 4, relating to the seriousness and complexity of the case. Criminal advocates will only be permitted to undertake cases at their level or below. Advocates will be able to progress through the levels by demonstrating competence through assessment. Those who remain at the same level for a period of 5 years will need to apply for re-accreditation.</p> <p>The scheme will be funded by fees charged to practitioners for accreditation under the scheme.</p> <p>The scheme has been developed in the public interest and in order to protect consumers from underperformance. In addition to consumer protection, it is hoped that the scheme will assist in the fair and proper administration of justice.</p> <p>The scheme is scheduled to become operational in January 2013.</p>

1. Evidence

What evidence will you use to assess impact on equality?

QASA is a new scheme and therefore there is limited evidence in many areas. For example, it is not even known exactly how many criminal barristers will come within the scheme. This has created a challenge and therefore some of the potential issues identified in this analysis have come from anecdotal information. In circumstances where the evidence is unverified or inconclusive, in this EIA the most cautious line has been taken to assume the possibility of a negative impact which might require mitigation.

This EIA has been prepared utilising the following evidence sources:

- Barristers' working lives: A Biennial survey of the Bar 2011
- Bar Barometer 2011
- Pupillage supplementary survey 2010/11
- Information from the Bar Council Records Department on the numbers of practising barristers

Key findings from these include:

- 34% of barristers spend the majority of their time on criminal work
- Proportionally fewer barristers in criminal and family law went to fee-paying schools, Oxbridge or hold first class degrees

On the basis of the above information it is estimated that in total approximately 5,500 criminal barristers will register for QASA and will therefore be directly impacted upon by the scheme.

The BSB will maintain this Equality Impact Assessment as a living document. It will be updated following responses to the fourth consultation. Once the scheme becomes operational systems will be in place to collect all of the evidence that is currently lacking. For example, all criminal advocates to whom the scheme applies will, during the course of 2013, need to register with the BSB. At this point they will be encouraged to complete diversity monitoring information. Therefore by the end of 2013, when registration has concluded, the BSB should have a reliable evidence base as to the numbers of barristers included within each category examined in this EIA.

One of the benefits of the scheme is that it will provide a wealth of equality and diversity monitoring information. This will allow for the true impact to be measured and for any necessary changes to the scheme, in order to address negative impacts or enhance positive impacts, to be identified.

2. Impact on Equality

QASA will primarily impact upon criminal advocates, who will need to adhere to additional requirements in order to continue to undertake criminal advocacy. This EIA focuses on the impact of QASA on criminal barristers. The Solicitors Regulation Authority and ILEX Professional Standards have conducted their own equality analysis into the impact of QASA on the criminal advocates that they regulate.

<p>QASA should also have an impact upon consumers of advocacy services. It is hoped that this impact will be largely positive. However, there is a risk that any negative impacts on criminal barristers could result in negative impacts on consumers (for example, if QASA leads to a less representative profession, the impact will also be felt by consumers). As the potential for negative impacts on consumers largely flows from the potential for negative impacts on the profession, the focus on this EIA is on the profession.</p>	
Race	<p>9% of criminal barristers are BME. Overall, 10% of barristers are BME. Therefore there will not be an inherently disproportionate impact upon BME practitioners. However, the following risks have been identified:</p> <ul style="list-style-type: none"> • <u>Assessment bias:</u> In order to be accredited to undertake trials under QASA, criminal barristers will need to be assessed, live in trial, by the judiciary. As with all assessment there is the risk of subconscious bias from the assessors. Action: The judiciary already receives high quality equality and diversity training. This will be supplemented by specific training in how to objectively assess advocates for the purposes of QASA and how to avoid subconscious bias. Judges will need to have completed this training in order to undertake assessment as part of the scheme. In addition, JAG will monitor evaluations in order to identify any potential trends in assessments which might suggest bias.
Gender	<p>37% of criminal barristers are women, which matches the 37% of all barristers who are women. Therefore there will not be an inherently disproportionate impact upon women practitioners. However, the following risks have been identified:</p> <ul style="list-style-type: none"> • <u>Affordability</u> - Amongst employed barristers, women are more likely than men to work part-time (27% of women employed criminal barristers work part-time). Similarly, according to The Biennial Survey: “the small amount of part time working that does take place in the self-employed Bar is predominantly undertaken by women.” Criminal barristers will be expected to cover the fees for applications under QASA and therefore these will represent a higher proportion of overall income for those who are working less hours. Action: The fees policy was developed with affordability in mind, as the whole criminal bar is under significant financial pressure. There will be subsidies for those returning to work (see below) but the fees are not thought to be high enough to justify specific reductions for part-time workers. • <u>Assessment bias</u> – as above for race. • <u>Maternity and career breaks</u> – see Maternity section below.
Disability	<ul style="list-style-type: none"> • <u>Career breaks</u> – barristers with a disability are more likely to take a career break than those without a disability (The Perceptions Survey found that 39% of disabled advocates had taken at least a 3month career break, compared to an average of 13% across the whole bar). Therefore any

negative impacts of the scheme upon those taking career breaks would have a disproportionate impact on disabled advocates. There is the potential for the scheme to create an additional burden for advocates seeking to return to work after a career break or period of absence.

Action: Advocates seeking to enter or re-enter the scheme after a career break will be able to do so in a similar fashion to initial registration under the scheme. Therefore they will apply for a provisional licence and will then be able to seek assessment in trials when they are back at work. They will not be required to be assessed in their first trial and will also be able to undertake other non-trial hearings before submitting themselves for assessment. The cost of registering will not be greater than the cost of other assessment, meaning that the financial burden will be equivalent to that borne by other advocates. In some cases, an advocate might have a career break within the currency of their accreditation, in which case they could return to work without re-registering. As long as the risks are appropriately managed, the scheme should provide for a structured return to practice at the appropriate level, which should make returning to practice easier rather than harder.

- **Assessment bias** – As set out above in relation to race, there is the potential risk of assessment bias, which will be mitigated through training and monitored once the scheme is operational. However, in relation to disabled practitioners, there is the additional risk that some of the standards against which advocates will be assessed might be potentially indirectly discriminatory. Examples that have been identified include performance indicators such as “maintains eye contact”.

Action: All of the performance indicators have been RAG rated to test their ability to provide reliable assessments. In addition, the performance indicators have been assessed by the BSB’s Equality Advisor and those indicators that represent a risk of unfair assessment for those with a disability have been identified. During the compulsory training, the judiciary will be trained in how to make reasonable adjustments where necessary in relation to higher risk performance indicators. The BSB will monitor how successful the training has been in this regard.

- **Assessment opportunities** – in order to apply for initial registration, progression or re-accreditation under QASA an advocate will need to provide a range of evaluation forms which will need to have been completed by at least 2 different judges. Those who practise predominantly in small court centres in front of the same judge will be expected to attempt to seek trials in front of other judges in order to satisfy this requirement. Those with mobility impairments or special provisions at their regular court centre might not be able to do so.

Action: In limited circumstances the BSB will be able to deploy Independent Assessors to assess an advocate in trial, in place of judicial assessment. This will include circumstances where an advocate cannot reasonably be expected to be assessed by more than one judge. Disabled advocates in this position would therefore be able to satisfy the assessment criteria through requested assessment in this manner. There

	<p>would be no additional charge to the barrister for this service and the barrister concerned would still be assessed in the course of their normal practice.</p> <ul style="list-style-type: none"> • <u>Technological burdens</u> – applications under the scheme will be made through Bar Connect, which is online. There will be some additional technological requirements in that advocates will be expected to scan and send in completed evaluation forms. The technological interface will be designed to require as low a level of IT literacy as possible. However, some people with physical disabilities may be unable to use computers or certain software or hardware e.g. scanners. Action: The BSB will operate a similar policy in this regard as it has adopted in relation to Bar Connect. The majority of barristers will be expected to complete their applications online through Bar Connect, however, those who are not able to do so will be assisted to complete their applications in hard copy.
Age	<ul style="list-style-type: none"> • <u>Costs of scheme</u> – the costs of the scheme will be borne by criminal barristers. More junior practitioners will earn less on average than older, more senior practitioners and therefore the same costs would have a disproportionate impact on younger barristers. Action: The scheme has been developed in consultation with the Young Barristers Committee (YBC). A specific consultation on the fee structure was conducted in summer 2011 and the YBC responded to this. The fee structure provides for a gradation of fees, with higher fees for accreditation at higher levels. This will protect more junior practitioners from disproportionately high costs. • <u>Technological burdens</u> – applications under the scheme will be made through Bar Connect, which is online. There will be some additional technological requirements in that advocates will be expected to scan and send in completed evaluation forms. The technological interface will be designed to require as low a level of IT literacy as possible. However, those with no skills or confidence with computers might find the operational requirements difficult to comply with. Any such impact may potentially be felt disproportionately by older practitioners. Action: The BSB will operate a similar policy in this regard as it has adopted in relation to Bar Connect. The majority of barristers will be expected to complete their applications online through Bar Connect, however, those who are not able to do so will be assisted to complete their applications in hard copy.
Sexual Orientation	<p>There are no identified risks in relation to sexual orientation, aside from the potential for assessment bias identified above in relation to race.</p>

Religion/Belief	There are no identified risks in relation to religion/belief, aside from the potential for assessment bias identified above in relation to race.
Gender Reassignment	There are no identified risks to those who have undergone gender re-assignment, aside from the potential for assessment bias identified above in relation to race.
Pregnancy/ Maternity	<ul style="list-style-type: none"> • Additional burden - The scheme could potentially provide an additional burden for advocate's seeking to return to work after a period of maternity leave. Action: Advocates seeking to enter or re-enter the scheme after a period of pregnancy or maternity will be able to do so in a similar fashion to initial registration under the scheme. Therefore they will apply for a provisional licence and will then be able to seek assessment in trials when they are back at work. They will not be required to be assessed in their first trial and will also be able to undertake other non-trial hearings before submitting themselves for assessment. The cost of registering will not be greater than the cost of other assessment, meaning that the financial burden will be equivalent to that borne by other advocates. In some cases, an advocate might have a period of maternity within the currency of their accreditation, in which case they could return to work without re-registering. As long as the risks are appropriately managed, the scheme should provide for a structured return to practice at the appropriate level, which should make returning to practice easier rather than harder.
Marriage and Civil Partnership	N/a – only applies in employment settings.
Rurally located advocates	<ul style="list-style-type: none"> • Assessment opportunities – in order to apply for initial registration, progression or re-accreditation under QASA an advocate will need to provide a range of evaluation forms which will need to have been completed by at least 2 different judges. Those who practise predominantly in small court centres in front of the same judge will be expected to attempt to seek trials in front of other judges in order to satisfy this requirement. This is potentially more likely to impact upon those who practise in rural areas. Action: In limited circumstances the BSB will be able to deploy Independent Assessors to assess an advocate in trial, in place of judicial assessment. This will include circumstances where an advocate cannot reasonably be expected to arrange to be assessed by more than one judge. There would be no additional charge to the barrister for this service and the barrister concerned would still be assessed in the course of their normal practice.
Socio economic impact	<ul style="list-style-type: none"> • Affordability - Criminal barristers will be expected to cover the fees for applications under QASA which might have a disproportionate impact upon those from lower socio-economic backgrounds who earn less or have less of a support network to provide financial security.

	<p>Action: The fees policy was developed with affordability in mind, as the whole criminal bar is under significant financial pressure. The fees are also graduated, so that those at the lower levels undertaking less lucrative work will pay less. Overall, any potential negative impact on those from lower socio-economic groups are seen as small and justified in light of the benefits of the scheme in terms of providing an objective and transparent assessment framework which will allow for progression through demonstrating competence as opposed to education or other factors.</p>
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How does the policy advance equality of opportunity?

The ongoing equality and diversity monitoring will ensure that due regard is paid to the progression through the levels by different groups. The potential for the collected evidence to help the BSB promote equality in the profession beyond this scheme is considerable. The scheme will provide data on the spread of particular groups throughout the different levels (which can be used as a proxy to seniority) and the relative speed of a group's advancement in their career.

As an indicator of quality assurance, the practising level of an advocate will become a marketable feature. Providing a verifiable indicator of their competence not only gives confidence to consumers but will also provide some self-assurance for the advocate.

A further benefit of a levels based scheme is that it will provide a structured and more transparent method of career progression. Anecdotal evidence suggests that a major reason advocates join the employed bar is a lack of structured progression in the self-employed bar. The scheme also gives advocates, who may have been held back in their career, the chance to demonstrate their competence to perform at a higher level.

QASA will also provide a method of identifying advocates who are struggling to perform at their current level. The scheme will offer support and recommend paths of remedial training. This proactive relationship of support would be an extension of the BSB's current activities.

Returners to work will also benefit from a scheme which provides a structured path back to the level they were previously practising at. This will not only assure them of their own competence at a certain level but will also eliminate any discrimination they may be subject to due to the time away from practice.

How does the policy promote good relations between different groups?

Through providing a level playing field and a more structured and transparent route for progression through careers, it is hoped that different groups will have confidence that they are being treated fairly as compared to other groups.

3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking?		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	You will continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	X
c. Adjust the policy and continue	You will take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision: Subject to adherence to the action plan below, the risks identified in this impact assessment are not unlawfully discriminatory and can be managed and monitored.		

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.		
Action Required	Person responsible	Timescale
Equality and diversity evidence to be gathered and analysed through operation of scheme.	Salim Nazir (Assessment Manager)	Ongoing
EIA to be maintained and updated as scheme policy is finalised	Chris Nichols (Senior Policy Officer) and Jennifer Hart (Administrative Assistant)	Ongoing
Ensure judicial training successfully mitigates the risk of training bias	Salim Nazir	Initial development of material (by October 2012); Monitoring and review thereafter (October 2012 onwards)

Review of performance indicators to ensure objective assessment	Salim Nazir	Throughout 2013
Review of number of effective trials to ensure sufficient assessment opportunities	Salim Nazir	Throughout 2013