

## QUALITY ASSURANCE SCHEME FOR ADVOCATES RULES

### Interpretation

1. In these Rules:

“Accreditation” means the status required under the Scheme to be permitted to undertake criminal advocacy in the courts of England and Wales;

“Advocate” means a person entitled to undertake criminal advocacy in the courts of England and Wales

“Approved assessment organisation” means an organisation approved by the Joint Advocacy Group to assess the competence of advocates to conduct criminal advocacy against the Statement of Standards published by the Joint Advocacy Group;

“Criminal advocacy” means advocacy in all hearings arising out of a police or SFO investigation, prosecuted in the criminal courts by the Crown Prosecution Services or Serious Fraud Office.

“Criminal advocacy evaluation form” means a form completed by a judge to record the competence of a barrister to conduct criminal advocacy against the Statement of Standards published by the Joint Advocacy Group;

“Effective trial” means a trial that allows for the assessment of a barrister against standards 1-5 as set out in the Statement of Standards;

“Full accreditation” means accreditation that permits a barrister to undertake criminal advocacy in the courts in England and Wales for a period of up to five years;

“Independent assessor” means a person appointed by the Joint Advocacy Group to attend court to assess the competence of a barrister to conduct criminal advocacy against the Statement of Standards published by the Joint Advocacy Group;

“Joint Advocacy Group” means the group established by the Bar Standards Board, the Solicitors’ Regulation Authority and ILEX Professional Standards, in order to oversee and administer the quality assurance and accreditation of criminal advocacy;

“prescribed” means as set out in the QASA Handbook and the QASA Rules

“Progression” means the process by which a barrister can increase their Level under the Scheme;

“Provisional accreditation” means accreditation that permits a barrister to undertake criminal advocacy in the courts in England and Wales for a period of up to 12 months, but which requires further steps to be taken to obtain full accreditation;

“Re-accreditation” means the process by which a barrister demonstrates their competence and renews their accreditation at their existing level for a further five years.

“Registration” means the process by which barristers undertaking criminal advocacy enter QASA

“Statement of Standards” means the standards against which the competence of advocates will be assessed for the purposes of accreditation, re-accreditation and progression.

### **Scope of the scheme**

2. You may not undertake criminal advocacy unless accredited to do so in accordance with these Rules and with the QASA Handbook.
3. Barristers who are not accredited under the Scheme are permitted to undertake criminal advocacy if:
  - a) the case is a mixture of offences and the primary offence does not fall within the definition of criminal advocacy in 1 above; or
  - b) they have been instructed specifically as a result of their specialism
4. Accreditation shall be awarded under these Rules at levels of competence from 1 to 4, corresponding to the increasing seriousness and complexity of criminal cases falling within those levels, as set out in the levels documentation published by the Joint Advocacy Group.
5. You shall only accept instructions to conduct advocacy in criminal trials which you are satisfied fall within the level at which you are accredited, or any level below the

same, unless you are satisfied that you are competent to accept instructions for a case at a higher level in light of the particular circumstances of the case, and strictly in accordance with the criteria set out in the QASA Handbook.

### **General provisions relating to applications for accreditation**

6. You may apply for accreditation, re-accreditation or progression under these Rules, including an application to convert provisional accreditation to full accreditation, by:
  - 6.1 completing the relevant application form supplied by the Bar Standards Board and submitting it to the Bar Standards Board;
  - 6.2 submitting such information in support of the application as may be prescribed by the QASA Handbook; and
  - 6.3 paying the appropriate fee in the amount determined in accordance with the Bar Standards Board's published fees policy.
7. An application will only have been made once the Bar Standards Board has received the application form completed in full, together with all information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.
8. You are personally responsible for the contents of your application and any information submitted to the Bar Standards Board by you or on your behalf, and you must not submit (or cause or permit to be submitted on your behalf) information to the Bar Standards Board which you do not believe is full and accurate.
9. On receipt of an application, the Bar Standards Board shall decide whether to grant or refuse the application, and shall notify you accordingly, giving reasons for any decision to refuse the application.
10. Before reaching a decision on the application, the Bar Standards Board may appoint an independent assessor to conduct an assessment of your competence to conduct criminal advocacy at the relevant level.

**Registration and provisional accreditation**

11. Provisional accreditation may be granted on registration to QASA or on application for progression to a higher level.
12. In support of an application for provisional accreditation, you shall submit such information in support of the application as may be prescribed by the QASA Handbook or as requested by the Bar Standards Board.
13. Provisional accreditation will be valid for 12 months from the date on which it was granted.

**Full accreditation**

14. Where provisional accreditation is granted you must apply to convert this to full accreditation by submitting the prescribed number of completed criminal advocacy evaluation forms demonstrating that you have met the prescribed competencies at the level at which provisional accreditation has been granted.
15. The Bar Standards Board will consider your application and make a decision as to whether you are competent at that level and should be granted full accreditation based on the assessment framework and definition of competence as described in the QASA Handbook.
16. On entry to QASA, if your application for full accreditation is unsuccessful, you shall be granted provisional accreditation at the Level below and shall be required to apply to convert this to full accreditation at that lower level in accordance with Rule 14.

**Re-accreditation**

17. If you are accredited to conduct criminal advocacy, you must apply for re-accreditation at the level at which you are accredited within five years from the date on which your accreditation was granted.
18. You shall submit, in support of an application for re-accreditation, evidence to demonstrate your competence to conduct criminal advocacy at the level at which you are accredited, comprising:
  - 18.1 if you are accredited at Level 1, evidence of the assessed continuing professional development undertaken by you in the field of advocacy in the

period since you were accredited at Level 1 or, if you have previously been re-accredited at that level, since your most recent re-accreditation;

- 18.2 if you are accredited at Level 2, 3 or 4, the prescribed number of criminal advocacy evaluation forms.
19. Your application must include all completed criminal advocacy evaluation forms obtained by you in the 12 months preceding the application, which shall number no more than five.
20. The Bar Standards Board will consider your application and make a decision as to whether you are competent at that level and should be granted full accreditation based on the assessment framework and definition of competence as described in the QASA Handbook.

### **Lapse of accreditation**

21. Failure to apply for full accreditation within the period set out in Rule 13 or re-accreditation in the period set out in Rule 17 will result in the lapse of your accreditation at your current level.
22. If your accreditation lapses, you may not undertake criminal advocacy in accordance with Rule 2.
23. If your accreditation lapses, you may re-apply for accreditation at that level in accordance with Rule 14, save that if you are applying for accreditation at Level 1 you shall submit evidence of the assessed continuing professional development undertaken by you in the field of advocacy in the period since you were accredited at Level 1.

### **Progression**

24. If you are accredited to conduct criminal advocacy, you may apply for accreditation at the next higher level than your current level by submitting an application accompanied by evidence to demonstrate your competence to conduct criminal advocacy at the higher level.

**Progression to level 2**

- 24.1 A barrister wishing to progress to Level 2 must first obtain provisional accreditation at Level 2 by notifying the BSB of their intention to progress
- 24.2 Once provisionally accredited, the advocate must submit the prescribed number of completed criminal advocacy evaluation forms confirming that you are competent in Level 2 trials in accordance with the competence framework detailed in the QASA Handbook.
- 24.3 Where your application is successful, in respect of applications for progression to Level 2, you shall be granted full accreditation at Level 2, which is valid for 5 years from the date of issue.

**Progression to Level 3 and 4**

- 24.4 Where you are applying for progression to Level 3 or 4, in order to be provisionally accredited at Level 3 or 4, you must submit the prescribed number of criminal advocacy evaluation forms confirming that you are competent at your current level in accordance with the competence framework detailed in the QASA Handbook.
- 24.5 Where your application is successful, In respect of applications for progression to Level 3 or 4, you shall be granted provisional accreditation at the higher level, which is valid for 12 months from the date of issue. You must apply to convert your provisional accreditation to full accreditation in accordance with Rule 14.
25. Your application must include all completed criminal advocacy evaluation forms obtained by you in effective trials, which shall number no more than five.
26. Where your application for progression is refused, you may continue to conduct criminal advocacy at your current level until the expiry of your current accreditation.

**Barristers not undertaking trials**

27. Any barrister who does not undertake criminal trials may register and be accredited under QASA at Level 1 and 2 via an assessment organisation approved by the Joint Advocacy Group in the manner prescribed in the QASA Handbook.

**Applications for variation**

28. Where your individual circumstances result in you encountering difficulties:
- 28.1 in obtaining completed criminal advocacy evaluation forms, then you may apply to the Bar Standards Board for your competence to conduct criminal advocacy to be assessed by an independent assessor, and you may submit the results of the assessment in support of your application for re-accreditation or progression in the place of one criminal advocacy evaluation forms; or
  - 28.2 in obtaining completed criminal advocacy evaluation forms within the specified period, you may apply to the Bar Standards Board for an extension of time to comply with the requirements.

**Managing underperformance**

29. The Bar Standards Board may receive criminal advocacy evaluation forms raising concerns regarding your competence to conduct criminal advocacy at any time.
30. Where concerns regarding your competence to conduct criminal advocacy are brought to the attention of the Bar Standards Board, either during the course of its consideration of an application brought by you under these Rules, or as a result of concerns raised under Rule 29, it may decide to do one or more of the following:
- 30.1 appoint an independent assessor to conduct an assessment of your criminal advocacy;
  - 30.2 recommend that you undertake, at your own cost, such training for such period as it may specify;
  - 30.3 revoke your accreditation at your current level; and/or
  - 30.4 refer you for consideration of your health or conduct under the Fitness to Practise Rules or the Complaints Rules, as it considers appropriate,
- and shall notify you accordingly, giving reasons for its decision.
31. Subject to Rule 32 below, where your accreditation has been revoked or your application for re-accreditation refused, you shall be granted provisional accreditation

at the level below and shall be required to apply to convert this to full accreditation in accordance with Rule 14.

32. Where you have applied for accreditation or re-accreditation at Level 1, and your application has been refused, you will not be entitled to accept any instructions to conduct criminal advocacy, and the Bar Standards Board may recommend that you undertake training in accordance with Rule 30.2 before you re-apply for accreditation or re-accreditation as appropriate.
33. Where you have undertaken training under Rule 30.2, the Bar Standards Board shall, at the end of the specified period, assess whether you have satisfactorily completed the training before reaching a decision in relation any further steps that it may consider appropriate to take in accordance with Rule 30.

### **Appeals**

34. You may appeal to the Bar Standards Board against any decision reached by it to:
  - 34.1 refuse your application for accreditation, re-accreditation or progression, including an application to convert provisional accreditation to full accreditation under Rule 24; or
  - 34.2 revoke your accreditation at your current level,save that where a decision was reached on the basis of an assessment of your competence conducted by an approved assessment centre, any appeal against the decision will be made to the centre in accordance with its own appeal procedures.
35. You may bring an appeal to the Bar Standards Board under Rule 34 by serving notice in writing on the Board within 21 days from the date of the notice of the relevant decision.
36. A notice of appeal under Rule 35 shall confirm:
  - 36.1 the decision appealed against;
  - 36.2 the grounds of appeal; andand shall be accompanied by any fee payable in accordance Bar Standards Board's fee policy.

37. An appeal may only be brought on the grounds that:
- 37.1 the decision reached was one which no reasonable person would find comprehensible; and/or
  - 37.2 there was a procedural error in the assessment or decision-making process and that you suffered disadvantage as a result which was sufficient to have materially affected the decision, making it unsound.

### **Procedure for considering appeals**

38. An appeal shall be considered on the papers at a meeting, in private, unless the Chair of the Panel, at their discretion, decides that a hearing in person is required.
39. The Panel shall, no less than 28 days before the date of the meeting or hearing at which the appeal is to be determined, serve notice on you, specifying the date, time and venue of the meeting or hearing. Notice shall be served on you in accordance with Rule 32(1)(a)-(c) of the Disciplinary Tribunal Regulations 2009.
40. The Panel may admit any evidence which it considers fair and relevant to the appeal, whether or not such evidence would be admissible in a court of law, save that no person is to give oral evidence at a hearing unless the Panel considers such evidence is desirable to enable it to discharge its functions.
41. The appeal shall be by way of a re-hearing.
42. The Panel may at any time, whether of its own motion or upon the application of a party, adjourn the proceedings until such time and date as it thinks fit.
43. You may be required to attend at an appeal hearing and you can be represented, however, in those circumstances, where you are neither present or represented, the Panel may nevertheless proceed to consider and determine the appeal if it is satisfied that all reasonable efforts have been made to serve you with notice of the hearing in accordance with Rule 39.
44. No member of the Panel may abstain from voting.
45. Decisions of the Panel are to be taken by simple majority and, where the votes are equal, the Chair is to have a casting vote.
46. The Panel may:

- 50.1 dismiss the appeal;
  - 50.2 allow the appeal in whole or part;
  - 50.3 substitute for the decision appealed against any other decision that it is open to the Bar Standards Board to make under these Rules; or
  - 50.4 remit the decision to the Bar Standards Board for reconsideration on such terms as the Panel considers to be appropriate in the circumstances.
47. The Panel may order, in the event of a successful appeal, a refund of any appeal fee paid to the Bar Standards Board in accordance with Rule 36 above.
  48. The Panel shall give notice of its decision in writing, together with reasons for its decision.
  49. There is no appeal against a decision of the Panel.

### **Transitional arrangements**

#### **The coming into force of the Rules**

50. These Rules will come into force in respect of barristers whose registered practising address is within:
  - 50.1 the Midland and Western Circuit, from 14 January 2013 to 12 April 2013
  - 50.2 the South Eastern Circuit, from 17 June 2013 to 13 September 2013
  - 50.3 the Northern, Northeastern and Wales and Chester Circuit, from 16 September 2013 to 13 December 2013

#### **Registration of barristers currently undertaking criminal advocacy**

51. Barristers currently undertaking criminal advocacy are required to register under the Scheme in accordance with the phased implementation programme as set out at paragraphs 2.7 – 2.13 of the QASA Handbook.

**Accreditation of barristers who took silk between 2010 and 2013**

52. The modified accreditation route for barristers who took silk between 2010 and 2013 inclusive is set out in paragraphs 4.10 – 4.12 of the QASA Handbook.

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