

Regulatory Update July 2018

Blog: Monthly message from our Chair, Baroness Blackstone

We know that more of you are reading these monthly Regulatory Update emails from your mobile devices so, we are trialling a new way for you to access our important regulatory messages in an attempt to make things easier for you. This is a shorter email in which I have highlighted the key regulatory updates below and provided links for you to read more on our website.

We published a report which we jointly commissioned with the Solicitors Regulation Authority looking at the judiciary's perceptions of criminal advocacy standards. This found that judges find the quality of advocacy which they experience in the criminal courts to be generally competent and sometimes very good. But they also acknowledged that some of the pressures on criminal advocates – not least current financial pressures – do threaten the quality of advocacy and that there are also some examples of poor performance. Read more [on our website](#).

We also published research about the effectiveness of our rules that require barristers with less than three years' standing to have readily available access to an experienced Qualified Person (QP) for support and guidance. The research suggests that the level of support made available to newly qualified barristers by QPs varies considerably and that this influences how positively new practitioners think about the requirement within our rules.

Further to our decision last year not to implement the Quality Assurance Scheme for Advocates, we published more information explaining how we assure competence at the Bar by taking a targeted and proportionate approach to the way in which we regulate.

Finally, in response to one of the Competition and Market Authority's recommendations we published new guidance about engaging with client feedback. It was developed with input from barristers and is designed to encourage you to follow good practice whenever you receive either positive or negative feedback from your clients. We also offered guidance to consumers on how to leave and use feedback. You can read more about this new guidance [on our website](#).

--

We are always ourselves keen to receive feedback about the information we provide for you in these Regulatory Update emails, so if you have any comments about this new approach or how we might improve our communication with you, please do not hesitate to get in touch via contactus@barstandardsboard.org.uk

The following articles are also available in this month's Regulatory Update:

- **CPD spot checks begin**
- **BSB invites tenders for legal support**

- **BSB appoints two new members to the Governance, Risk and Audit Committee**

[List of headings linking to additional articles on the website. NB: This will be end of this version of RU.]

Regulators publish reports into criminal advocacy standards

Barristers and solicitor advocates representing clients in criminal courts are generally delivering a competent service to the public, two reports released last month have found.

Published by the BSB and the Solicitors Regulation Authority, the first report explores the views of the judiciary on the current quality, provision and regulation of advocacy within the criminal courts.

Jointly commissioned with the BSB and produced by the Institute for Criminal Policy Research of Birkbeck, University of London, the [Judicial Perceptions Report](#), involved in-depth interviews with 50 High Court and circuit judges.

Alongside this the SRA's Thematic Review of Criminal Advocacy, was informed by data gathering and interviews with 40 solicitors' firms actively involved in providing advocacy by solicitors within the courts.

Overall the two reports suggested that while the quality of advocacy was generally meeting the required standards, there were some examples of poor advocacy.

Key findings of the jointly commissioned judicial research included:

- While judges viewed the current quality of advocacy as competent, some felt that standards were declining in some areas, especially in relation to core courtroom skills such as case preparation and dealing with some witnesses.
- Advocates' skills in dealing with young and vulnerable witnesses are largely improving.
- The most commonly cited barrier to high quality advocacy was advocates taking on cases beyond their level of experience.
- Judges were uncertain over when, and how, they should report poor advocacy to regulators.

Key findings of the SRA's thematic review included:

- Firms use in-house solicitors to support the vast majority of criminal work in magistrates' courts and youth courts (90 percent), and 29 percent of work in the Crown Court.
- The solicitors' advocacy market is dominated by smaller firms and increasingly ageing individuals, while the number of new entrants to the market is falling.
- Levels of complaints regarding advocacy work are relatively low (22 recorded complaints in two years across all 40 sample firms).

- Approaches to training are inconsistent, with its delivery often infrequent, limited or not planned.

Building upon the findings of both reports the SRA will be undertaking further work to understand the work of solicitor advocates. We have also published [our strategy for assuring the quality of advocacy](#).

CPD spot checks begin

The spot check of 2017 CPD records is now underway. You may have already been contacted by us with a request to submit your records. If you have not heard from us, please ensure your contact details are up-to-date as we may be trying to contact you. More information on CPD and the spot check can be found [on our website](#).

BSB invites tenders for legal support

Last month we invited tenders to provide legal advice and representation for the next three-year period from September 2018 until September 2021.

The successful bidder will be retained by us to provide legal advice and support in relation to our regulatory decision making.

We require the successful bidder to be able to demonstrate experience in regulatory and disciplinary law as well as acting on behalf of public bodies.

[Read the full invitation to tender document on our website](#). The closing date to submit tenders is 5pm Friday 13 July 2018

BSB explains how it assures competence at the Bar

Following [our decision last year](#) not to implement the Quality Assurance Scheme for Advocates (QASA), we have published more detail about how we assure the competence of barristers.

The approach reflects our move in the last few years to become a more risk-and evidence-based regulator that takes better targeted action to maintain standards of practice at the Bar. This means that more focused regulation can be introduced where concerns about professional competence have been identified – for example, the recently introduced competence and registration requirements in relation to [Youth Court advocacy](#).

As well as specific targeted regulation, our approach to assuring standards includes a range of additional measures that have already been implemented. These include:

- our Future Bar Training reforms that include a clearly defined set of knowledge, skills and attributes expected of all newly qualified barristers on their first day of practice, as specified in [the Professional Statement for Barristers](#);

- the introduction in 2017 of the new [Continuing Professional Development \(CPD\) scheme for experienced barristers](#) which, aligned with robust monitoring by the regulator, places greater responsibility on individual barristers to reflect upon their learning and development, set learning objectives and review them annually; and
- existing regulatory controls stemming from a requirement in our Handbook that barristers should not undertake work unless competent to do so.

The paper also explains how we use external indicators of the profession's competence to inform our regulatory approach. These include existing measures of barristers' competence such as assessments to join specialist panels like the Treasury Panel or for appointment as a QC.

If there are areas of the Bar's work that need further regulatory initiatives in the future, we will take appropriate and proportionate action to address such risks.

The approach explains why we have decided not to implement QASA and why we recently applied to the Legal Services Board to have the Scheme's rules removed from our Handbook.

More detail about our approach to assure competence is [available on our website](#).

Newly qualified barristers benefit from regular guidance by experienced practitioners but levels of support vary

We have published [a research report](#) about the effectiveness of our rules that require newly qualified barristers with less than three years' standing to have readily available access to an experienced practitioner – a Qualified Person (QP) – for support and guidance.

The research, which is accompanied by [a summary](#), found that the levels of contact, support and advice available to newly qualified barristers vary considerably and that the arrangement was considered more valuable by those who had received more guidance from a QP. The findings also suggest that should a more prescribed approach be introduced by us, it could well deter current QPs from taking up an equivalent role in the future.

We conducted this research through an online survey and received views from both newly qualified barristers and barristers currently acting as a QP. The survey focused on the level and type of support received or provided as part of the arrangement, the frequency of contact between barristers and QPs, and views on the usefulness and proportionality of the arrangement.

The research found that:

- face to face meetings are the most common form of contact between QPs and newly qualified barristers;

- a majority of QPs (but a minority of new practitioners) stated they had regular meetings lasting over 30 minutes as part of their QP arrangement;
- a large majority said that guidance on the law was the most common form of advice given as part of the QP arrangement;
- a majority of QPs said that they provided advice on advocacy, but a majority of new practitioners said that they had not received advice in this area;
- a minority of QPs and new practitioners said that advice on the new practitioner's performance formed part of the arrangement;
- a majority of QPs felt that the requirement was helpful for new practitioners whilst the majority of new practitioners stated that the requirement was not helpful;
- the majority of new practitioners who had received advice on their performance or had regular face to face meetings as part of their QP arrangement felt the QP requirement was helpful; in contrast, the majority of new practitioners who did not have regular meetings with their QP felt it was not helpful; and
- most respondents said that the Alternative Qualified Person (AQP) requirement - when new practitioners do not have a suitable QP within their principal place of practice, the BSB can approve an arrangement for an AQP who has a different place of practice from the barrister - was both helpful and proportionate but nearly half of QPs said that the additional stipulations of an AQP agreement would deter them from acting as an AQP.

BSB appoints two new members to the Governance, Risk and Audit Committee

We have announced two appointments to our Governance, Risk and Audit Committee (GRA).

Elizabeth Butler fills the current vacancy and she joined the committee on 1 July 2018. Stephen Hickey is to fill the vacancy that becomes available at the end of the year and he will start on 1 January 2019.

The GRA Committee meets eight times a year and is responsible for ensuring that our corporate governance standards and internal controls are maintained. The Committee keeps under review and advises our Board on all matters relating to the risk management framework and our internal audit function.

Short biographies of the new members are available [on our website](#).

BSB shares good practice for barristers and advice for clients on consumer feedback

Last month we published new [guidance](#) that aims to encourage barristers to follow good practice when they receive feedback from their clients. We also published a [guide](#) for the public about using and leaving feedback about barristers' services. Along with the other legal regulators, we were asked by the Competition and Markets Authority (CMA) to produce this guidance as one of the recommendations in its 2016 study into the legal services market.

The guidance for barristers, which was developed with input from barristers, practice managers and clerks, aims to share:

- examples of good practice and practical advice to improve the systems that barristers and chambers already have in place;
- some of the barriers barristers face when collecting feedback and how they can be overcome;
- the sort of questions to ask when seeking feedback; and
- how barristers and chambers can use the information they receive.

The guide for the public is for people who are:

- looking for feedback to help them choose a barrister;
- looking to instruct a barrister based on feedback they have received from someone or have seen somewhere else; or
- wanting to give feedback on the service they have received from a barrister to help them improve their practice or to help others choose a barrister.

Have we got correct details of your practice address?

Please ensure that you have informed us of your correct practice address in accordance with rS69 of our Handbook. If your practice address changes, you must inform our Records Department within 28 days.

Give us your feedback

If you have any thoughts about how we can improve the Regulatory Update or what content you would like to read, please email contactus@barstandardsboard.org.uk.