

Research into the Operation of the Qualified Persons Rule

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Executive Summary

Background

The Bar Standards Board (BSB) Handbook requires that barristers of under three years' standing should have a more experienced barrister (or other authorised individual such as a solicitor-advocate) available to provide guidance if they exercise rights of audience; supply legal services to the public; conduct litigation; or undertake Public Access work. That more experienced practitioner is known as a "Qualified Person" (QP). The publication of the BSB Handbook in 2014 introduced new rules around the QP requirement for newly qualified barristers to improve flexibility in the way the arrangement was operating. The BSB wanted evidence as to how effective the new requirements were, focusing on the typical relationship between barristers and QPs, including the level of contact, the level or type of support QPs provide, and how useful the profession found the requirement. Research was carried out to gather evidence from barristers and QPs who had been involved in a QP arrangement within the past year.

The objectives of the research were to:

- develop an evidence base to better understand how current arrangements between QPs and barristers work and the roles QPs have; and
- to gather evidence as to how the current QP rules are viewed by the profession, in particular, whether they are seen as proportionate and performing a useful function.

Key Findings

The research used an online survey open from July to September 2017 to gather views on the QP requirement from both newly qualified barristers and barristers who were currently acting as a QP. The survey was completed by 232 respondents (110 QPs and 122 new practitioners) and focused on the level and type of support received and provided as part of the QP arrangement, the frequency of contact between barristers and QPs, and views on the usefulness and proportionality of the QP requirement.

Key findings are as follows:

- The most common form of contact between QPs and new practitioners is face to face meetings, with this answer given by 60 per cent of QP respondents and 59 per cent of new practitioners. QPs were considerably more likely to answer that the arrangement had involved meetings of over 30 minutes (54.5%) than new practitioners (40.2%). Where these meetings did take place, 55.2 per cent of QPs and 56.3 per cent of new practitioners stated that they occurred more than six times a year. Fewer than a third of QP and new practitioner respondents who had these meetings stated they occurred fewer than four times a year.

- When asked what kind of guidance had been provided as part of the QP arrangement, the most common guidance given was advice or guidance on the law, given by a large majority of both QP and New Practitioner respondents.
- The majority of QP respondents (66.4%) stated that they had provided advice or guidance on advocacy – however, among new practitioner respondents, fewer than half (41.8%) stated they had received advice in this area. A minority of both groups of respondents (30% of QPs and 23.8% of new practitioners) stated that a review of the new practitioner’s performance had been part of the QP arrangement.
- The majority of QPs (83.9%) felt that the requirement was helpful for new practitioners. In contrast, a majority of new practitioners (51.7%) stated that the requirement was not helpful. Those who had received advice on their performance as part of their QP arrangement were most likely to see the QP requirement as helpful (82.8%). Those who had face to face meetings over six times a year also had a large majority who felt the requirement was helpful (77.8%). In contrast, a large majority (69.1%) of those who had not had lengthy face to face meetings with their QP felt the requirement was not helpful. Those who had not had advice covering any of the specific areas covered in the survey overwhelmingly felt the QP requirement was not helpful (87.5%).
- The majority of respondents felt that the Alternative Qualified Person (AQP) requirement, which specifies a level of support and contact for the new practitioner considerably beyond that required from QPs, was both helpful and proportionate. However, close to half of current QPs stated the additional stipulations of the AQP arrangement would deter them from acting as an AQP.
- A number of respondents felt that for some new practitioners (such as those in chambers for whom a number of more senior barristers were available to offer help and support), the formal QP requirement itself was unnecessary. Others felt that while the requirement should be maintained in some form, the requirements should be made either more or less prescriptive, or that clearer guidance should be issued by the BSB as to what should be involved in the role.

The responses to the survey suggest that the level of contact, level of support, and types of advice provided as part of the QP arrangement vary considerably. This clearly impacts upon the view new practitioners have of the QP requirement – not surprisingly, those who had more frequent, face to face contact, and who received advice on a wider range of issues, were much more likely to feel the arrangement was valuable. However, responses to the survey suggest that current QPs could well be put off acting as a QP should a more prescriptive approach (such as is taken for the AQP arrangement) be introduced.

1 Introduction

About the Bar Standards Board

1.1. The Bar Standards Board (BSB) regulates barristers called to the Bar in England and Wales. Our mission is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest. The key regulatory objectives of the BSB are:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of citizens' legal rights and duties;
- promoting and maintaining adherence to the five professional principles.

1.2. We are a risk and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services, so as to identify all of the potential risks that could prevent the regulatory objectives from being met.

Background

1.3. The Bar Standards Board (BSB) Handbook¹ requires barristers of under three years standing² to have an appropriate Qualified Person (QP) in order to undertake any of the following activities:

- exercising rights of audience;

1. The Bar Standards Board Handbook, rules SrS20 and rS21 https://www.barstandardsboard.org.uk/media/1933294/bsb_handbook_version_3.3.pdf

2. Years standing a barrister shall be treated as being of a particular number of years' standing if they:
a) have been entitled to practise and have practised as a Barrister (other than as a pupil who has not completed pupillage)
b) have made such practice their primary occupation; and
c) have been entitled to exercise a right of audience before every court in relation to all proceedings, for a period of at least that number of years.

- supplying legal services to the public;
- conducting litigation; and/or
- undertaking Public Access work.

This qualified person should be a barrister or other authorised individual at the barrister's main place of practice who is readily available to provide guidance, and meets certain requirements in terms of their level of experience and the types of activities they are authorised to undertake.

1.4. In 2017, the BSB began to review the operation of the QP rule in response to several issues that had been identified since the rule was introduced. The scope of the review was:

- To review the QP requirement in response to the revised 2016 Professional Statement³;
- To respond to specific concerns relating to the QP requirement which had been raised by stakeholders;
- To respond to evidence collected through the BSB supervision department which indicated issues of non-compliance with the QP rule, as well as a lack of clarity around what is expected; and
- To consider the inconsistency between QP requirements for self-employed barristers and employed barristers, as well as Alternative Qualified Person (AQP) arrangements.

1.5. To elaborate on each of these points: the requirement to have a QP in place if under three years' standing needs to be reviewed in light of the Professional Statement which sets out the competences barristers are expected to have on 'day one' of practice. In view of the baseline competences now expected of new practitioners, the QP rule needs to be reassessed in terms of the outcomes it is intended to achieve.

1.6. The Bar Association for Finance, Commerce and Industry (BACFI) had also raised concerns⁴ around the QP requirement in relation to experienced employed barristers, suggesting that current rules are disproportionate and unnecessary in certain circumstances: for example, where an employed barrister with many years' experience wishes to move to self-employed practice and has not met the QP requirement. If a barrister has not spent three years or more in chambers before becoming employed, it is difficult to comply with this rule. This has resulted in the BSB granting waivers from the requirement to have a QP to employed barristers, based on the level of experience of the barrister concerned.

3. Professional Statement for Barristers (BSB 2016) https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf

4. <http://www.bacfi.org/files/Policy%20Notes.pdf>

- 1.7. The BSB's Supervision department found that it was devoting a significant amount of resource to investigating potential issues of non-compliance with the QP rule, including where:
- A QP had been nominated by more than two barristers;
 - A barrister had set up as a sole practitioner before having complied with the three year rule;
 - There was confusion over whether a nominated QP met the requirements;
 - There was a dispute between chambers and the barrister as to whether the barrister had in fact practised from the chambers or the duration for which they had practised from the chambers, meaning the barrister was likely to have been working without a QP; and
 - The QP did not know they had been nominated as an individual barrister's QP.
- 1.8. Those cases of most concern and requiring the most resource involved cases where there was a lack of clarity around whether the barrister had set up as a sole practitioner whilst still being subject to the QP rule – a specific risk the QP requirement had been intended to mitigate. This was of particular concern due to the additional risks associated with sole practitioners, which may be exacerbated if newly qualified barristers are able to practise in this way. For example, research indicates that sole practitioners are more likely to be subject to complaints, and more likely to have complaints against them escalated to disciplinary action⁵.
- 1.9. In many cases, it can be easier for self-employed barristers to comply with the QP rule than it can for employed barristers. Employed barristers working for a solicitors firm or non-authorized body, for example, may not have easy access to someone who meets the necessary QP requirements in their place of work, in particular, someone who meets the requirement to have rights of audience before every court. In response to this, the BSB introduced a rule that employed barristers who are only exercising rights of audience or conducting litigation for certain types of clients listed in the BSB Handbook only require a QP if they are under one year's standing. This means there is arguably an inconsistency between the QP requirement between employed and self-employed barristers.
- 1.10. Barristers can also apply either for a waiver from the QP rule entirely, or apply for the BSB to approve an Alternative Qualified Person (AQP) arrangement, where the role of a QP is undertaken by a more experienced barrister who does not work at the same organisation as the barrister subject to the three-year rule.
- 1.11. AQP arrangements enable barristers to practise when their primary place of work does not have anyone qualified or able to act as a QP. As such they enable

5. Complaints at the Bar: An analysis of ethnicity and gender 2012-2014 (BSB 2016)

barristers who would normally require a QP to practise as a sole practitioner, or work as an employed barrister for an organisation that does not employ a QP. When an AQP is appointed, they are required to:

- meet with the barrister for at least an hour, every two months;
- report back to the BSB on the arrangement every six months; and
- complete an overall assessment when the arrangement comes to an end.

This overall assessment must confirm that, in the AQP's opinion, the barrister is 'competent to exercise full rights of audience as a sole practitioner.' No such monitoring or requirements are in place under the standard QP arrangement, and the rule is not intended to ensure competency. Even if ensuring competency were the intended outcome, no mechanisms exist by which the BSB could ensure the arrangement is serving its purpose.

1.12. In order to respond to these potential concerns about the operation of the QP rule, the BSB needed evidence as to how the arrangement was currently operating, in particular, the level of contact barristers typically have with their QPs, the level or type of support QPs provide, and how useful the profession finds the requirement. As a result, research was undertaken to provide further clarity on the way that the QP rule was operating in practice.

Research Objectives

1.13. The objectives of the research were to:

- Develop an evidence base to understand better how current arrangements between QPs and barristers work and the roles QPs have; and
- To gather evidence as to how the current QP rules are viewed by the profession, in particular, whether they are seen as proportionate and performing a useful function.

This involved gathering evidence from barristers and QPs who had been involved in a QP arrangement within the past year, to understand better how current arrangements worked, and assess the advantages and disadvantages of the QP rules.

2. Methodology

Research Design

- 2.1. The research used online surveys to gather views on the QP requirement from both newly qualified barristers and barristers who were currently acting as a QP. Two different surveys were designed – one for barristers acting as a QP, and another for barristers required to have a QP. This ensured that survey questions were relevant to each group while covering the same topics. The surveys focused around the level and type of support received/provided as part of the QP arrangement, the frequency of contact, and views on the usefulness and proportionality of the QP requirement. They were developed in collaboration between the BSB's Research team and Professional Standards team.
- 2.2. The surveys comprised both multiple choice and open text responses (a copy of the survey questions is included in Annex A). The surveys were hosted online on the Survey Monkey website, and were launched on the 17 July 2017 and left open for responses until 10 September 2017. Links to the relevant surveys were emailed to all barristers registered as a QP as of July 2017, and to all barristers who had completed their second six pupillage less than three and a half years ago as of July 2017 (this was to ensure the survey was sent to all barristers who currently were required to have a QP, as well as those who had recently completed the three years in practice that require a QP to be in place). At the date the survey was launched, this consisted of 1238 new practitioners and 1358 QPs.
- 2.3. The two surveys were undertaken by a total of 232 respondents – 110 QPs and 122 new practitioners. This represents a response rate of 8.3% for QPs and 9.4% for new practitioners. The survey directed respondents through questions relevant to their own situation, and thus not all respondents answered all questions. Numbers of respondents for the relevant question are included below the key charts within this report.
- 2.4. Qualitative responses (open text answers) were analysed using a thematic analysis approach. This involves identifying the key themes that emerged from the data that have relevance to the research question or topic of interest through careful reading of the data. Quotations have been selected to be illustrative of the key themes and issues raised in responses to certain questions, while being used in a way that preserves the anonymity of respondents. They do not represent the full range of experiences or opinions expressed by respondents to the survey.

Ethical Issues

- 2.5. In undertaking the research, there were two key ethical considerations. Participation was based on valid informed consent - all participants were provided with a full explanation as to the purpose of the research and how the findings would be presented and used. Survey responses were anonymous and the reporting of the results ensures no individuals are identified or identifiable.

Limitations

- 2.6. The response rate for the survey was relatively low (fewer than 10% of potential respondents). In addition, the sample was self-selecting rather than random due to the nature of the online survey methodology. As a result, it is impossible to rule out non-response bias⁶, and the profile and experiences of the survey respondents may not be representative of the whole population of QPs and new practitioners. Instead, they should be treated as indicative of the experience of QPs and new practitioners rather than as a statistically representative sample.

6. Non-response bias occurs when those that respond to a survey are not representative of the population as a whole.

3. Findings

Profile of Respondents

3.1. The majority of QP respondents (85.5%) were self-employed barristers practising from Chambers. The remainder (14.5%) were employed barristers, practising either from BSB-authorized entities, other legal services providers, or non-legal services firms. In contrast, although there was still a majority of self-employed practitioners among the new practitioner respondents (75.4%), 18.8% were operating as some form of employed practitioner. The majority of QP respondents were junior⁷ barristers (84.3%), and 14.8 per cent were Queen's Counsel. One QP respondent was a solicitor.

Figure 1

	QPs		New Practitioners	
	Number	%	Number	%
Self-employed barrister in chambers	93	84.5%	92	75.4%
Employed in an authorised non-BSB body	4	3.6%	12	9.8%
Employed barrister in a non-authorized body	2	1.8%	10	8.2%
Other	6	5.5%	7	5.7%
Employed barrister in a BSB entity or ABS	4	3.6	1	0.8%
Solicitor	1	0.9%	0	0.0%

N:232

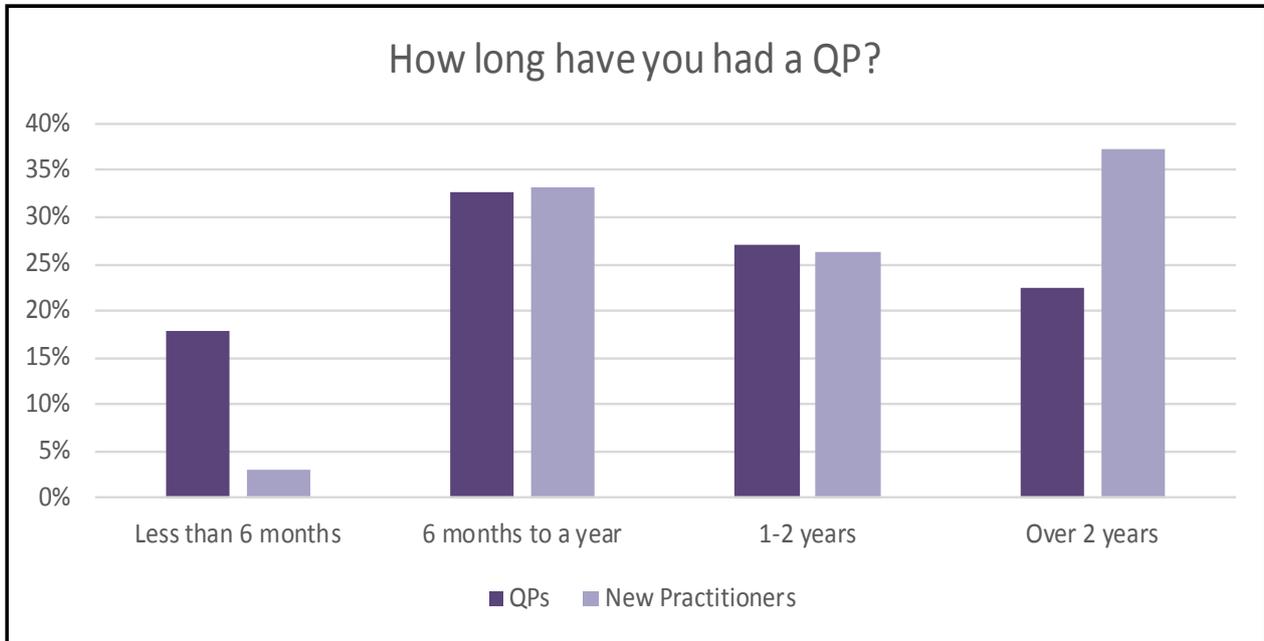
Operation of the QP Arrangements

- 3.2. The majority of QP respondents (68.2%) were acting as a QP for a single barrister. Nearly a third (31.8%) were acting as a QP for two barristers. The maximum number of new practitioners for whom a barrister or solicitor can act as a QP is two.
- 3.3. New practitioner respondents were asked for how long they had had a qualified person, and QPs were asked how long they had been acting as a QP for their current new practitioners (if they were QP to more than one barrister, they

7. A 'junior barrister' is a barrister who has not taken silk so is not a Queen's Counsel.

were asked for the longest running arrangement). The majority (63.7%) of new practitioners had a QP for over a year, whereas just over half of QPs (50.5%) had been in their current longest-standing QP arrangement for less than a year.

Figure 2



N:209

3.4. New practitioner respondents were asked if their QP fulfilled the requirements of becoming a QP. These requirements are that the barrister:

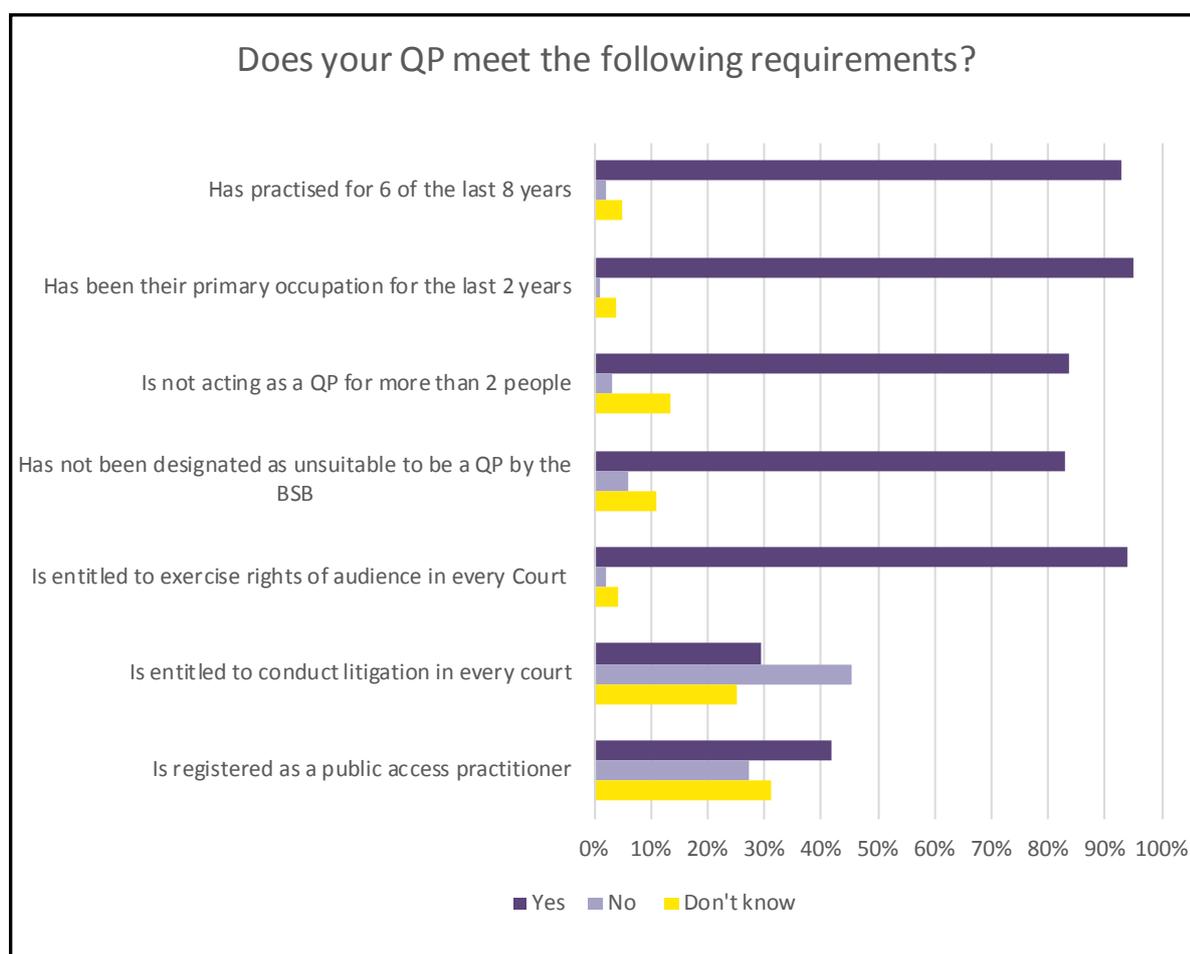
- has been entitled to practise and has practised as a barrister or has been authorised to practise by another approved regulator for a period of at least six years in the previous eight years; and
- for the previous two years has made such practice their primary occupation; and
- is not acting as a qualified person in relation to more than two other people; and
- has not been designated by the BSB as unsuitable to be a qualified person.

In addition:

- If a barrister is exercising rights of audience, their QP must have been entitled to exercise a right of audience before every Court in relation to all proceedings;
- if a barrister is conducting litigation, their QP must be authorised to conduct litigation before every court in relation to all proceedings; and
- if a barrister is undertaking public access work, their QP must be registered as a public access practitioner.

3.5. The majority of new practitioners stated that their QP met the conditions that are required for all barristers acting as a QP. Very few respondents stated that their QP did not meet one or more of these requirements, and for two of the conditions (not acting as a QP for more than two people, and not being designated as unsuitable by the BSB) over one in ten respondents – 13 and 11 per cent respectively - did not know if they met the requirement or not. Fewer than half of new practitioners stated that their QP was entitled to conduct litigation or registered as a public access practitioner, but the majority of respondents who conducted those activities themselves (92.3% and 88.5% respectively) stated that their QP met the requirements in this area, with the remainder not knowing if they did or not.

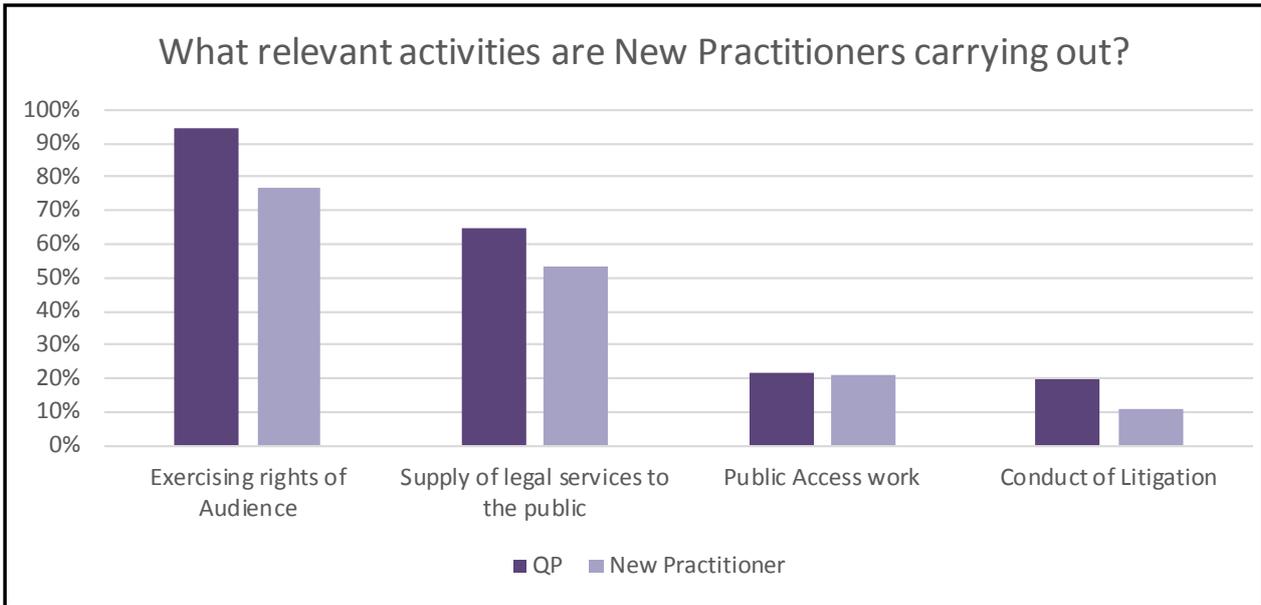
Figure 3



N:101

3.6. The vast majority of new practitioners are exercising rights of audience – this was reflected both in the answers given by QPs (94.3% of whom said those for whom they were acting as a QP exercised rights of audience) and by new practitioners (77%). A smaller majority were supplying legal services to the public, whereas only a minority were conducting public access work or litigation.

Figure 4



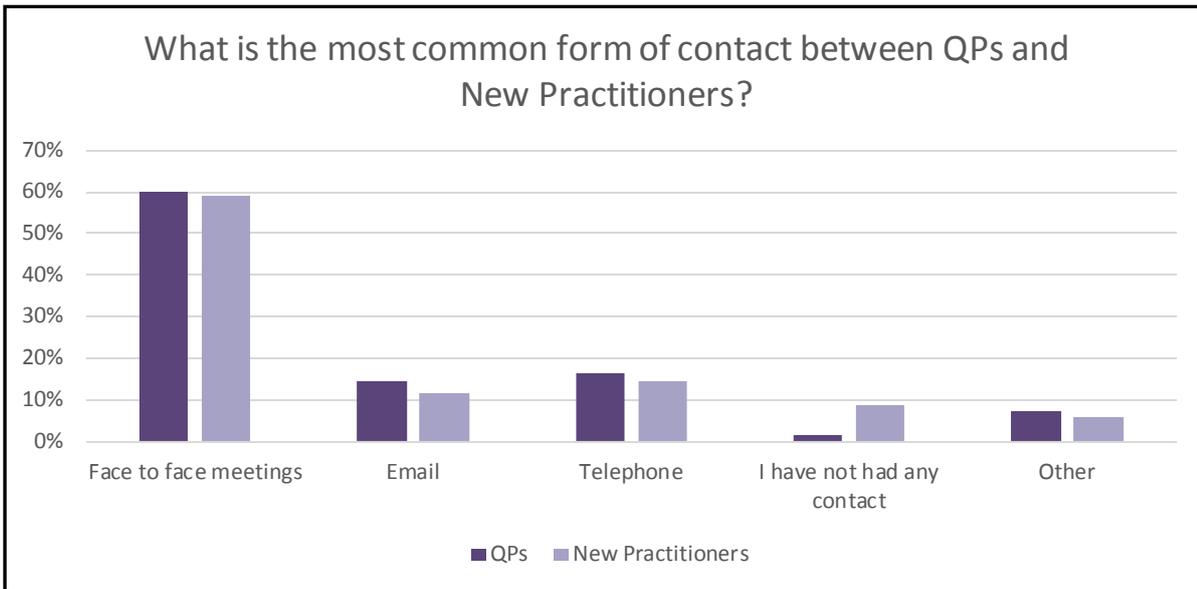
N:224

3.7. Given the nature of the response rate to the survey, it is unwise to draw firm conclusions from the generally lower response of new practitioners to the questions relating to the relevant activities they are carrying out. However, the differences may suggest that in some cases QPs believe their new practitioners are carrying out activities that in reality they are not.

Levels of Contact

3.8. The most common form of contact between QPs and new practitioners is face to face meetings, with this answer given by 60 per cent of QP respondents and 59 per cent of new practitioners. Responses are broadly similar across both QP and new practitioner responses to this question, although new practitioners are more likely to say they have not yet had any contact with their QP (9.0%).

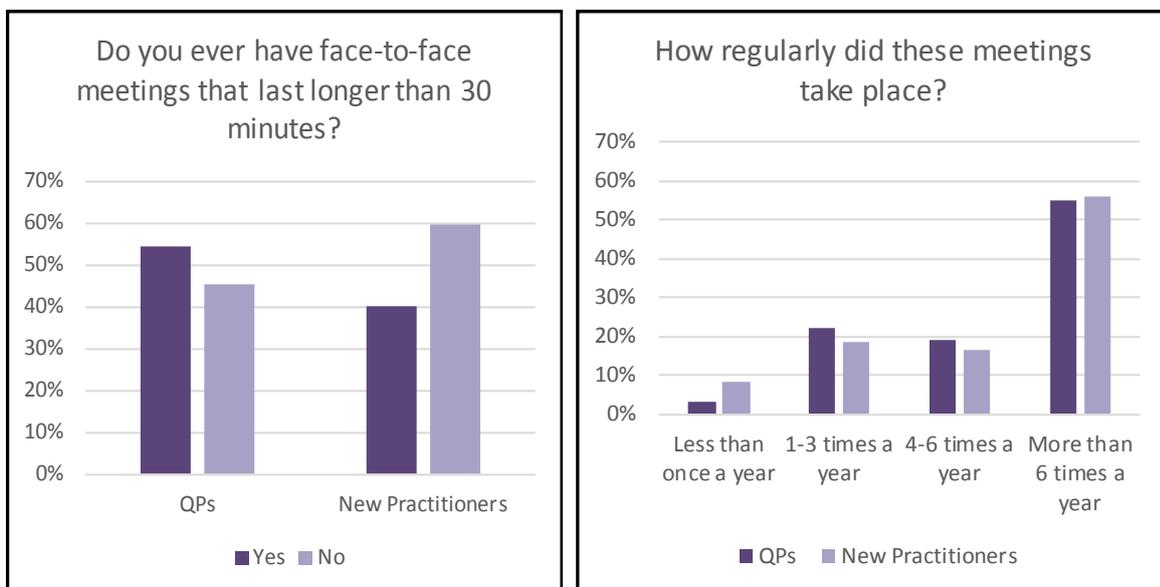
Figure 5



N:232

3.9. In contrast, there is a notable difference between the responses given by QPs and new practitioners when asked if their QP arrangement has involved face to face meetings of more than 30 minutes. QPs were more likely to answer that the arrangement had involved such meetings (54.5%) than new practitioners (40.2%).

Figure 6



N:232

N:106

3.10. Respondents who had stated that their QP arrangement involved meetings of longer than 30 minutes were also asked how regularly these meetings took place. Responses given to this question from QPs broadly matched those given by new practitioners, with the majority among both groups of respondents (55.2% of QPs and 56.3% of new practitioners) stating that these meetings occurred more than six times a year. Less than a third of QP and new practitioner respondents stated they had these meetings less than four times a year (25.8% of QPs and 27.1% of new practitioners).

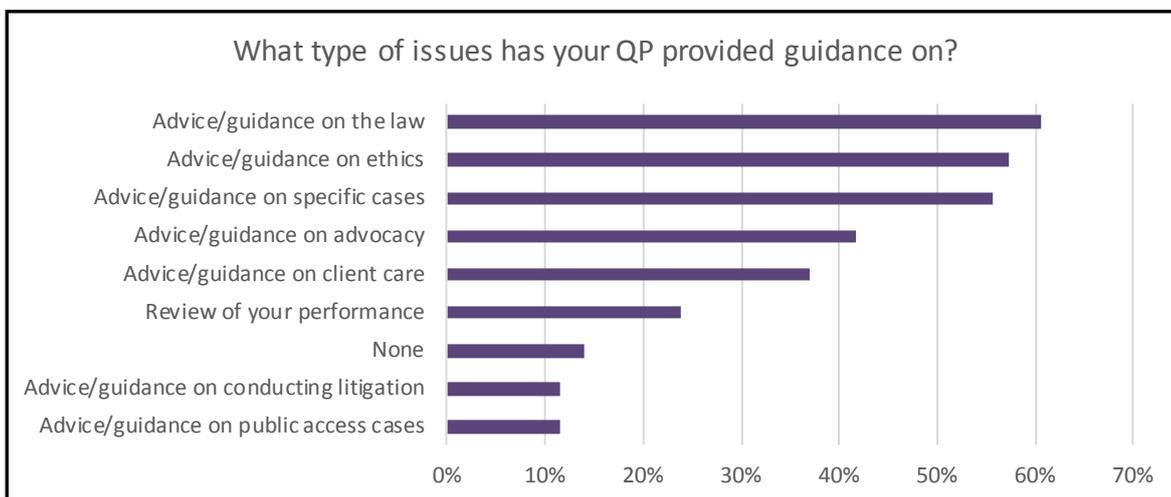
Type of Guidance Provided

3.11. When asked what kind of guidance had been provided as part of the QP arrangement, the most common response given by both QP respondents and new practitioner respondents was advice or guidance on the law. This was given by a large majority of both groups of respondents (67.3% of QPs and 60.7% of new practitioners). However, there were notable differences between the responses given by QPs and new practitioners in terms of whether advice and guidance had been provided relating to particular issues.

3.12. The majority of QP respondents (66.4%) stated that they had provided advice or guidance on advocacy – this was the second most common area where QPs stated they had provided advice or guidance. However, among new practitioner respondents, less than half (41.8%) stated they had received advice in this area, and it was the fourth most common area where they had received advice.

3.13. The majority of both QP and new practitioner respondents stated that advice had been provided on both ethics and on specific cases, and for both groups of respondents the majority stated that no advice had been provided relating to client care, public access or litigation. Similarly, the majority of both groups of respondents stated that a review of the new practitioner's performance had not been part of the QP arrangement.

3.14. A number of both new practitioner and QP respondents stated that the QP arrangement had not involved advice on any of the listed issues (4.5% of QPs and 13.9% of new practitioners). Across all the areas listed in Figures 7 and 8 below (other than no advice or guidance), a smaller proportion of new practitioners than QPs stated that the QP arrangement had involved advice in that particular area.

Figure 7**N:110****Figure 8****N:112**

3.15. QPs were asked if they provided any additional advice or support that was not listed. The most common answer given was pastoral support. Some respondents also cited advice on practice management.

“Pastoral care in terms of their general wellbeing”

“Check management arrangements are working. General wellbeing.”

“Advice on handling the clerks and other members of chambers”

3.16. New practitioners were also asked if their QP provided any additional advice or support that was not listed. As with QP respondents, the most common answer given was pastoral support. Some respondents also cited advice on practice management, networking, and career development.

“Further links to the Bar through a small community of employed barristers in my firm.”

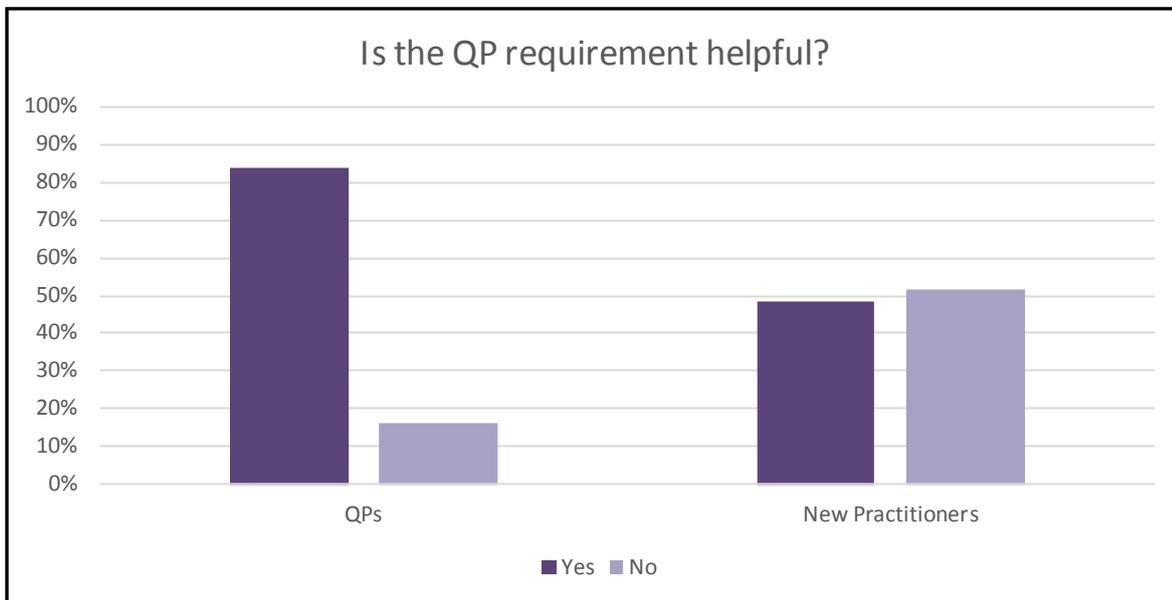
“General advice and practice management”

“General career guidance, advice on life at the Bar”

Views on the QP Requirement

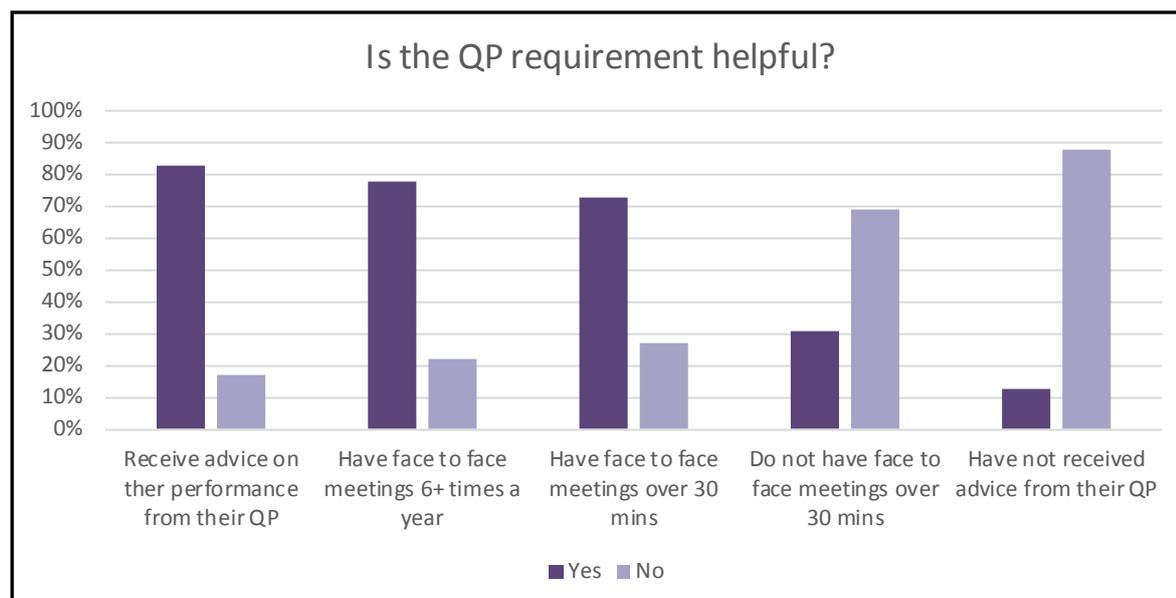
3.17. When asked if the requirement to have a QP was helpful for new practitioners, responses were sharply split between QPs and new practitioners. The vast majority of QPs (83.9%) felt that the requirement was helpful for practitioners. In contrast, a slight minority of new practitioners (48.3%) answered that the requirement was helpful.

Figure 9



N:209

3.18. Answers to this question by new practitioners varied significantly dependent on the levels of contact they had with their QP, and whether they had received advice or guidance on any of the areas covered in Figure 8. The highest proportion of respondents who answered that the QP requirement was helpful were those who had received advice on their performance as part of their QP arrangement (82.8%). Those who had face to face meetings of 30 minutes or more over six times a year also had a large majority who felt the requirement was helpful (77.8%). In contrast, a large majority (69.1%) of those who had not had face to face meetings lasting over 30 minutes with their QP felt the requirement was not helpful. Of those who had not had advice covering any of the areas specified in Figure 8, they overwhelmingly felt the QP requirement was not helpful (87.5%).

Figure 10**N:116**

Benefits

3.19. New practitioner respondents mostly highlighted having a source of advice and support as the key benefits of the QP requirement, with many specifically highlighting the benefits of having a named individual who was expected to offer this support. Other specific benefits given by respondents were advice on particular cases, a supervisory relationship with a more senior practitioner, and the fact that it restricted certain unscrupulous types of practice (such as running chambers with a high proportion of unsupervised new practitioners). Some respondents stated there was no real benefit to the arrangement, either as support was available from other colleagues, or because the arrangement was seen as a ‘tick-box’ exercise.

“A continuation (but at an appropriately lower level) of the support you had as a pupil”

“A fixed source of guidance who has specifically agreed to perform that role.”

“Someone who is “required” to help you, so you feel more comfortable imposing on their time.”

“Preventing unscrupulous people from running chambers which just have large numbers of largely unsupervised baby juniors or pupils.”

“In a chambers environment, there are few or no benefits. I have all the support and advice I could require from colleagues in chambers. Usually it makes sense to go to more junior members first.”

3.20. When asked what the benefit of the QP requirement was for new practitioners, the most common response given by QP respondents was that it enabled them to

easily to access support, guidance and mentoring. Some respondents specifically highlighted the fact that having an individual named as a source of support was a benefit for new practitioners, and others that the QP requirement helped to encourage new practitioners to seek advice early in their career.

“Support in the early years; access to someone with more legal knowledge and experience; making the barrister feel supported generally.”

“It’s a bridge to independence and also puts in place the habit of consulting your fellows”

“Clear point of contact for any difficulties that may arise”

“Having a formal system is a good safety net”

3.21. QP respondents were also asked the key benefits to them of acting as a QP.

The most common response was that it helped to foster stronger relationships within their organisation. Other answers given were that it contributed to improved service offered by their organisation as a whole, that it helped them improve their own practice or skills, that it benefitted the profession as a whole, or that it was personally rewarding.

“It helps build strong relationships in chambers because of the need to keep in contact.”

“It probably improves the quality of the service offered by chambers as a whole.”

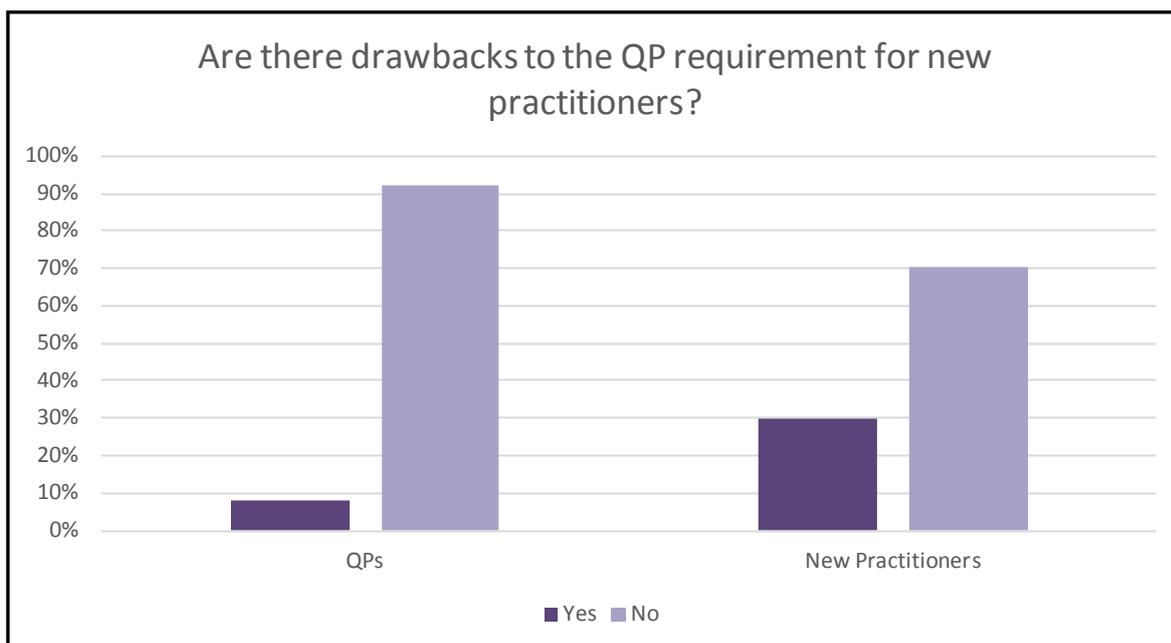
“It helps the QP reflect on his/her own practice, helps to transition the supervised barrister into the given set of chambers and ensure concordance with individual and professional ethics.”

“It makes me reflect on my practice. Co-writing is a pleasure and I learn from it.”

“Giving back to the profession and supporting someone starting out at the Bar.”

Drawbacks

3.22. The majority of both QP and new practitioner respondents felt that there were not any drawbacks associated with the QP requirement for those barristers who fell under the requirement, although new practitioner respondents (29.8%) were more likely to feel that the requirement had drawbacks than QP respondents (8%).

Figure 11**N:204**

3.23. When asked what the drawbacks were for them in the QP requirement, the most common drawback mentioned by new practitioner respondents was that often their designated QP was not the most suitable person to offer advice on given issues. Other drawbacks mentioned were the administrative burden of the arrangement, the difficulty of finding someone suitable to act as a QP, lack of availability of (busy) QPs when seeking advice, and the fact that the requirement could place restrictions on their ability to practise. Some respondents highlighted a general lack of awareness of the requirement, or the fact the role was not well defined.

“Seems to be a waste of time in my chambers as I have others to whom I would more readily turn for assistance.”

“Not enough QPs in certain environments to account for the number of individuals requiring a QP.”

“I suspect my QP has very little awareness that he is formally carrying out that role.”

“My practice has been dictated by my QP’s practice. I am Direct Access trained but cannot register as my QP is not Direct Access trained.”

“It doesn’t require any real supervision or stipulate the number of contact hours”

3.24. When asked what the drawbacks were for new practitioners of the QP requirement, QP respondents mentioned the administrative burden, the fact that it could be difficult to find a suitable QP, the fact that the arrangement could impact on a new practitioner’s confidence, and the fact that it could prompt them to seek advice from their QP when others would be more suitable.

“Sometimes you struggle to find someone to act as a QP.”

“Generally the barrister will approach anyone who is proximate or they get on with for advice and having a QP may be restrictive.”

“Some may feel like they are still on supervision or some sort of probationary period.”

3.25. The majority of QP respondents (78.7%) did not feel that there were any drawbacks associated with acting as a QP. However, 21.3 per cent did feel there were drawbacks associated with acting as a QP. The most common reason given was the time commitment acting as a QP involved. Other reasons included administrative challenges, the difficulty of being available when required and the lack of clarity surrounding the role of a QP.

“Only time/availability as often queries arise at short notice.”

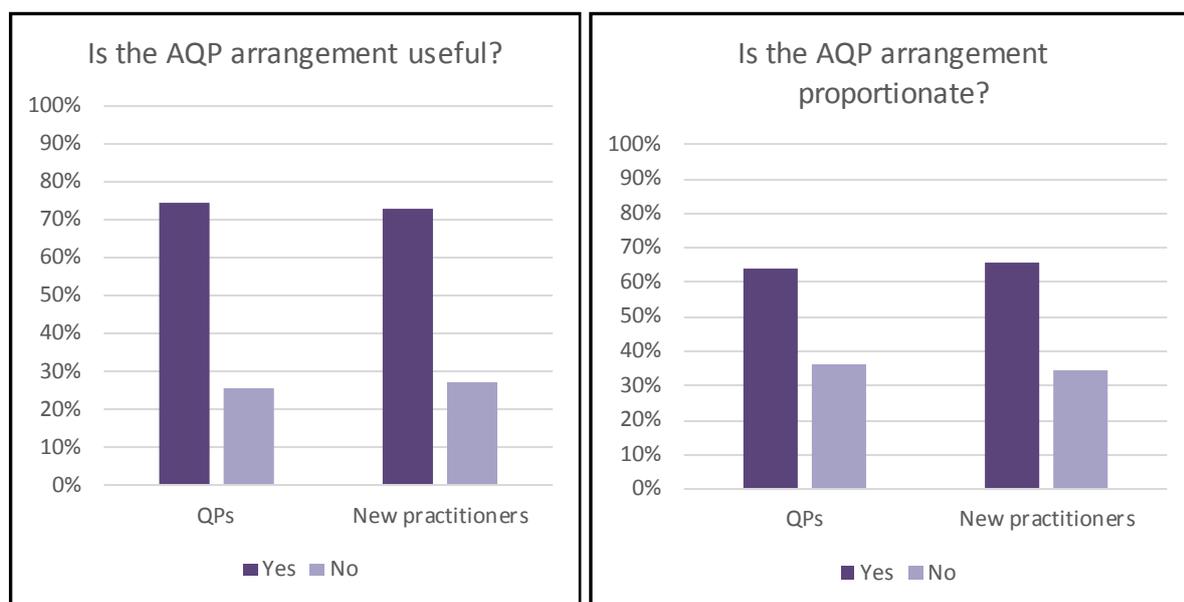
“It can take up time, and involves some administration to keep a check on who still requires a QP.”

“Undefined role. Unclear remit.”

Views on the Alternative Qualified Person Requirement

3.26. Respondents were also asked for their views on the 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, ie a QP who has a different place of practice from the barrister. The requirements for an AQP are more prescriptive than those for a QP – in these cases, the BSB stipulates that:

- the AQP meets with the barrister for at least one hour every two months, and keeps a record of this;
- the AQP reports back to the BSB every six months; and
- that the AQP completes an ‘overall assessment’ to confirm the barrister is competent to practise independently when the arrangement comes to an end.

Figure 12**N:205****N:205**

3.27. Survey respondents were asked whether this arrangement was useful for the new practitioner using the AQP arrangement. The proportions of both QPs and new practitioners who felt the arrangement was useful were closely matched, with a majority of both groups (74.5% of QPs, 73% of new practitioners) feeling the AQP arrangement was useful. Similarly, when asked if the AQP requirement was proportionate, a similar majority of both QP (63.8%) and new practitioner (65.8%) respondents agreed.

3.28. However, when current QPs were asked if the additional stipulations of the arrangement would deter them from acting as an AQP if they were nominated as one, responses were more evenly split. Although a narrow majority (54.3%) said they would not be deterred, close to half (45.7%) stated that they would. This suggests that while the majority of current QPs may feel that the AQP arrangement is useful and proportionate, many of those who are happy to act as a QP under the current requirements might not be prepared to act as a QP under a more prescriptive arrangement.

Suggested Changes to QP Requirement

3.29. In order to act as a QP, barristers must currently meet a number of requirements set by the BSB, as detailed in paragraph 3.4. QPs were asked if these requirements were necessary, and if they should be changed. The vast majority of respondents (92.6%) felt that the requirements were necessary. Similarly, a large majority of respondents felt that the requirements for acting as a QP should not be changed (88.3%). Those who felt the requirements should be changed suggested that QPs should be able to perform this role for more than two barristers, and that the rules should not exclude those returning from maternity leave from acting as a QP.

“The removal of item (iii). Given the limited load that QP’ing imposes, 3 or 4 fledglings can easily be nursed”

“Do not exclude women returning from maternity leave”

3.30. When asked what changes they would like to see to the current QP arrangement, QP respondents gave a range of different views. Some felt that the requirement should be removed altogether as it was unnecessary for some (or all) new practitioners, while others felt the arrangement should be less prescriptive. In contrast, others felt that the arrangement should be more prescriptive about what was required, or that there should be official guidelines setting out what was expected or required of QPs. Other suggestions were that the responsibility should be shifted to the organisation, that the requirement for regular meetings (in the AQP requirements) should be reduced, or that the period for which a QP was required should be reduced.

“The barrister in need of QP should be required to have a more proactive role during this period, in terms of keeping records and regular contact with the QP.”

“There should be better and clearer guidance from the BSB on best practice and structure. Supervision meetings should be at least monthly.”

“While I understand the rationale for the arrangement, most substantial commercial Chambers encourage new tenants to raise issues with any member of Chambers and so the QP regime adds little if anything.”

“It is arguable that the period for which a member of the Bar needs a QP is a little too long.”

“There should be no requirement to identify a QP. Instead, a person of less than 3 years’ experience ought to be required to practise from a chambers where there is a sufficient number of people of more than 5 years’ experience”

“I would make it a requirement of the employer or organisation (Chambers for example) to ensure that each NP [New Practitioner] has access to someone suitably qualified to be able to consult on questions of an ethical nature etc. It should be for the organisation to certify that this is the case, and provide details if necessary to BSB.”

3.31. New practitioners were also asked whether they felt the current QP requirements should be changed/improved. The most common comments from new practitioner respondents were that the requirements should be made more flexible, that they should be made more prescriptive, or that the requirement should be removed – either for certain types of practitioners for whom it was seen as unnecessary, or removed altogether. Other suggestions included doing more to raise awareness of the QP requirement and what it should involve.

“I do think it is really important to be required to have a QP. When you first start out it is crucial you have someone with more experience than you to provide guidance and support.”

“It is difficult to see why it is required save where a barrister is practising unsupported by chambers - so it may make sense for (some areas of) the employed Bar or sole practitioners, but not for those within chambers.”

“There should be more flexibility to take account of the differing nature of employed and self-employed practice.”

“More stringent requirements. Most QPs are absorbed by their own practice.”

“Clearer knowledge in chambers of QP rule and low-level formalities to be complied with.”

4. Conclusions and Implications

- 4.1. The responses to the survey suggest that the level of contact, level of support, and types of advice provided as part of the QP arrangement vary considerably. This clearly affects the view new practitioners have of the QP requirement – those who had more frequent face to face contact, and who received advice on a wider range of issues, were much more likely to feel the arrangement was valuable. Indeed, those who felt the arrangement was most useful were those whose arrangement came closest to the requirements of the AQP arrangement (i.e. regular face to face meetings with feedback on performance).
- 4.2. In addition, there is a considerable level of support for the necessity and proportionality of the AQP arrangement among both QP and new practitioner respondents. This could suggest that a more prescriptive approach to QPs generally could be well received among many in the profession. The findings of the survey suggest that this would mean that new practitioners are more likely to find the arrangement helpful, and it would help to address the inconsistent level of contact and support involved in the current arrangements. However, there is a definite risk associated with this approach, as responses to the survey suggest that current QPs could well be put off acting as a QP should a more prescriptive approach (such as is taken for the AQP arrangement) be implemented.
- 4.3. A number of respondents felt that for some new practitioners (such as those in chambers for whom a number of more senior barristers were available to offer help and support), the formal QP requirement itself was unnecessary. Others felt that while the requirement should be maintained in some form, the requirements should be made either more or less prescriptive, or that clearer guidance should be issued by the BSB as to what should be involved in the role. This suggests that there are considerable differences of opinion in how the requirements for new practitioners should be addressed in general.

Annex A

Survey Questions – New Practitioners

1. What is your current practising status?

- Self-employed barrister in chambers
- Employed barrister in a BSB entity (incl. an alternative business structure)
- Employed in an authorised non-BSB body (eg an SRA-regulated law firm)
- Employed barrister in a non-authorised body (eg in-house lawyer or consultant)
- Other (please specify)

2. In what area of law do you most regularly practise?

- Criminal
- Civil
- Family
- Employment
- Commercial litigation
- Other (please specify)

3. Are you still required to have a qualified person?

To contain description (If self-employed) – “You are required to have a QP if you are a barrister of fewer than three years’ standing and you supply legal services to the public or exercise any right of audience by virtue of authorisation from the BSB, or you conduct litigation by virtue of authorisation by the BSB.”

(If employed) – “You are required to have a QP if you are of fewer than one year’s standing and you provide legal services, exercise a right of audience or conduct litigation for those persons listed at Rule rS39.1 to rS39.6.”

- Yes
- No

4. [If yes] For how long have you had a QP?

- Fewer than 6 months
- 6 months to a year
- 1-2 years
- Over 2 years

5. Which of the following activities do you undertake? (please tick all that apply)

- Rights of audience
- The supply of legal services to the public
- The conduct of litigation
- Public access work

6. [If exercising rights of audience, litigation, or public access], Do you have a QP that

- i) for the previous two years has been entitled to exercise a right of audience before every Court in relation to all proceedings?
- ii) is entitled to conduct litigation before every court in relation to all proceedings;
and
- iii) is registered as a public access practitioner?

[for each option]

- Yes
- No
- Don't know

7. Do you have a QP that:

- iv) Has been entitled to practise and has practised as a barrister or has been authorised to practise by another approved regulator for a period of at least six years in the previous eight years;
- v) for the previous two years has made such practice his/her primary occupation,
and

vi) is not acting as a qualified person in relation to more than two other people; and

vii) has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

[For each option]

- Yes
- No
- Don't know

8. Which of the following is/was the most regular form of contact between you and your QP [select one]?

- Face to face meetings
- Email
- Telephone
- I have not had contact with my QP
- Other (please specify)

9. Do you/did you ever have face-to-face meetings that last longer than 30 minutes with your QP?

- Yes
- No

10. (If yes) How regularly did you have such meetings?

- Fewer than once a year
- 1-3 times a year
- 4-6 times a year
- More than 6 times a year

11. What type of issues has your QP provided guidance on? Please tick all that apply.

- Review of your performance
- Advice/guidance on advocacy

- Advice/guidance on the law
- Advice/guidance on ethics
- Advice/guidance on client care
- Advice/guidance on public access cases
- Advice/guidance on specific cases
- Advice/guidance on conducting litigation
- Other (please specify)
- None

12. Do they provide you with other types of support? Please provide details.
[open text]

13. In your experience, is/was the requirement to have a QP helpful?

- Yes
- No

14. If so, what are the key benefits of the QP requirement? [open text]

15. In your experience, are there drawbacks to the QP requirement?

- Yes
- No

16. If so, what are the key disadvantages of the QP requirement? [open text]

When a barrister does not have a QP within the same principal place of practice, the BSB can approve an arrangement for an Alternative Qualified Person (AQP), ie a QP who has a different place of practice from the barrister. Current AQP arrangements require that:

- i) the AQP meets with the barrister for at least one hour every two months, and keeps a record of this;
- ii) the AQP reports back to the BSB every six months; and
- iii) the AQP completes an 'overall assessment' to confirm the barrister is competent to practise independently when the arrangement comes to an end.

17. Do you think this arrangement is useful for the barrister required to have an AQP?

- Yes
- No

18. Do you think this requirement is proportionate?

- Yes
- No

19. Do you think the QP arrangement could be improved? If so how? [open text]

Survey Questions – Qualified Persons

1. What is your status?

- Junior Counsel
- Queen’s Counsel
- Solicitor

2. What is your current practising status?

- Self-employed barrister in chambers
- Employed barrister in an authorised body (Entity, including ABS, regulated by the BSB or another regulator, such as the SRA)
- Employed barrister in a non-authorised body (eg in-house lawyer or consultant)
- Solicitor
- Other (please specify)

3. Are you currently acting as a Qualified Person for more than one barrister?

- Yes
- No

4. For how long have you been acting as a QP for the barrister(s) for whom you are acting as a QP? If you are currently a QP for more than one barrister, please answer in relation to the longest running QP arrangement.

- Fewer than 6 months
- 6 months to a year
- 1-2 years
- Over 2 years

5. Does the barrister for whom you act as a QP undertake any of the following activities? (please tick all that apply)

- Exercising rights of audience
- The supply of legal services to the public

- The conduct of litigation
- Public access work

[For each option]

- Yes
- No
- Don't know

6. Which of the following is/was the most regular form of contact between you and the barrister for whom you are acting as QP [select one]?

- Face to face meetings
- Email
- Telephone
- I have not had any contact with my New Practitioner(s)
- Other (please specify)

7. Do you/did you ever have face-to-face meetings that last longer than 30 minutes with the current barrister for whom you are acting as a QP?

- Yes
- No

8. (If yes) How regularly did you have such meetings?

- Fewer than once a year
- 1-3 times a year
- 4-6 times a year
- More than 6 times a year

9. What type of issues have you provided guidance on to barristers for whom you are acting as a QP? Please tick all that apply.

- Review of their performance
- Advice/guidance on advocacy

- Advice/guidance on the law
- Advice/guidance on ethics
- Advice/guidance on client care
- Advice/guidance on public access cases
- Advice/guidance on specific cases
- Advice/guidance on conducting litigation
- Other (please specify)

10. Do you provide any other types of support to those for whom you are acting as a QP? Please provide details. [open text]

11. In your experience, is the requirement to have a QP helpful for those barristers required to have one?

- Yes
- No

12. If so, what are the key benefits of the QP requirement for those barristers required to have one? [open text]

13. In your experience, is acting as a QP for barristers beneficial from the QP's perspective?

- Yes
- No

14. If so, what are the key benefits for barristers of acting as a QP? [open text]

15. In your experience, does the requirement to have a QP have any disadvantages for those barristers required to have one?

- Yes
- No

16. If so, what are the key disadvantages of the QP requirement (for barristers required to have a QP)?

17. In your experience, are there disadvantages associated with acting as a QP?

- Yes
- No

18. If so, what are the key disadvantages for barristers of acting as a QP? [open text]

When a barrister does not have a QP within the same principal place of practice, the BSB can approve an arrangement for an Alternative Qualified Person ((AQP). Current AQP arrangements require that:

- i) the AQP meets with the barrister for at least one hour every two months, and keeps a record of this;
- ii) the AQP reports back to the BSB every six months; and
- iii) the AQP completes an 'overall assessment' to confirm the barrister is competent to practise independently when the arrangement comes to an end.

19. Do you think this arrangement is useful for the barrister required to have an AQP?

- Yes
- No

20. Do you think these requirements are proportionate?

- Yes
- No

21. If a barrister nominated you to act as their AQP, would the requirements deter you from acting in that role?

- Yes
- No

In order to act as a Qualified Person, a barrister must:

- (i) Have been entitled to practise and has practised as a barrister or has been authorised to practise by another approved regulator for a period of at least six years in the previous eight years;
- (ii) for the previous two years has made such practice his/her primary occupation, and
- (iii) is not acting as a qualified person in relation to more than two other people; and

(iv) has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

(v) [If a barrister is exercising rights of audience] their QP must have been entitled to exercise a right of audience before every Court in relation to all proceedings;

(vi) [if a barrister is conducting litigation] their QP must be authorised to conduct litigation before every court in relation to all proceedings; and

(vii) [if a barrister is undertaking public access work] their QP must be registered as a public access practitioner.

22. Do you think these requirements are necessary?

- Yes
- No

23. Do you think these requirements should be changed?

- Yes
- No

[If so] What changes would you like to see to the current requirements? [open text]

24. Do you think the QP arrangement could be improved? If so how? [open text]

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