

Introduction

1. The Joint Advocacy Group (JAG) has committed to a review of the Scheme. The time period for the first point of the review is set for two years from the opening of the first registration phase. The review will provide a comprehensive analysis of the Scheme including the assessment of the performance of key processes with a view to increasing efficiency and assessing whether the Scheme
 - promotes the regulatory objectives,
 - weeds out the incompetent advocate and improves the standards of advocacy in the criminal sector, and
 - enables the public interest to be served.
2. JAG is committed to ensuring that the scheme is transparent and accessible for the consumers of legal services. Regulators will:
 - make publically available a list of all advocates accredited within the scheme and the level at which they are accredited
 - on an annual basis publish data on the competency of the advocacy profession

Sources of data

3. Much of the data for the review will be generated through the operation of the Scheme. This will include:
 - Information about who is accredited at what level at any given time and how they progress through the scheme
 - Completed CAEFs (including evaluations from independent assessors and on going monitoring forms)
 - When and how applications are made
4. Regulators will ensure that all operational data is collected and stored in compatible forms and utilising comparable fields and filters so as to allow for useful collation and analysis of information across the regulators.
5. The full list of areas that will be covered in the 2 year review are set out below. Some of these will not be capable of meaningful assessment through data that will be generated

through the normal operation of the scheme. There will therefore be the need for some specific and targeted research and evidence gathering.

6. Prior to the scheme commencing JAG will produce a full research schedule which will detail all of the issues that need to be covered in the review, what evidence will be required to allow for proper analysis and how this information will be gathered. This will serve to identify what additional research and evidence gathering is required, as well as what type of operational data needs to be gathered to allow for meaningful review of each of the key issues.

Publication

7. The full review will be published. However, in the interim the regulators will seek to publish all relevant data and evidence. At the least this will include annual updates on the number of advocates within the scheme and the type and level of accreditation that they have.

Areas to be covered

8. The review will cover issues relating to QASA policy and operational issues. The key areas that will be covered in the JAG review are set out below.
9. Each regulator will also be responsible for reviewing their own performance in certain areas (such as IT and usability, fees and equality impacts).

Policy issues

10. There are a number of policy issues that will form part of the review. They include:

The criminal advocacy market

11. The Scheme will provide data for the first time on the operation of the criminal advocacy market. We will gather data on:
 - The overall level of competence within the criminal advocacy market
 - The number of criminal practitioners broken down by level and circuit
 - The impact on the criminal advocacy market to identify any issues with access to justice
 - Who progresses through the levels and how quickly and whether there are regional variations
 - Number of assessments producing not competent evaluations including and frequency of not competent evaluations against each of the CAEF standards
 - Equality and diversity issues in the criminal advocacy market

- The impact of QASA fees on the criminal advocacy market
12. This data will be useful for the future development and refinement of the Scheme but also to assist the regulators more widely to determine strategic priorities.

Judicial Evaluation

13. Judicial evaluation (JE) of advocates is a central pillar of the scheme and it is therefore imperative to ensure that it is working consistently, fairly and effectively. In particular, it is suggested that the two year review should consider;
- The proportion of advocates using judicial evaluation.
 - Whether the standards provide an accurate and precise measure of advocacy in actual trials
 - Whether judicial evaluation produces consistent results
 - Whether trials allow for assessment against all of the standards;
 - Whether the advocate's behaviour changes during an evaluation
 - The effectiveness of the judicial training in enabling judges to assess advocates against the standards
 - Analysing any comments/feedback recorded and how this relates to the performance indicators that support the standards
 - Comparing the outcome of evaluations between independent assessors and judges
 - Analysing the outcome of independent assessors reports for those judges in instances where underperformance has been highlighted through monitoring referrals
 - A breakdown of the protected characteristics of the advocates who have received JE

Independent Assessors

14. Where an advocate is unable to gain the requisite evidence for accreditation, perhaps due to limited trial opportunities or only being able to gain judicial evaluation from one judge or where an advocate believes there may be bias on behalf of the assessor, an advocate may request an independent assessor. The two year review should seek to analyse the effective use and frequency of requests for an independent assessment. Outlined below are some suggested areas in which we should gather data:-

- The total number of requests for independent assessors
- How many requests are approved
- Frequency and reasons for approval
- How many are rejected
- Frequency and reasons for rejection
- The reliability of the independent assessor's evaluations

- How many requests are as a result regulators' concerns about an advocate
- The administrative process when allocating an independent assessor
- How requests are managed (speed, efficiency, ease of organisation)
- How quickly an independent assessor can be allocated
- Any frequent issues which may cause the delay of allocation
- The geographical variance of independent assessor requests

Trial opportunities

15. The two year review will also seek to analyse the availability of Judicial Evaluation. It will be imperative to establish whether advocates have enough trial opportunities to gain accreditation within their 24 month accreditation window and that this is the case wherever they are located. The review will cover the number of trials and the number of advocates seeking accreditation at each level.

16. Some suggested factors which may hamper trial opportunities are outlined below:-

- Geographical location
- The exclusion of Recorders from the assessment process
- The level of the advocate
- Working part-time
- Advocates with protected characteristics

Other forms of assessment

17. There are different patterns of criminal practice and the Scheme has been developed to reflect the fact that some advocates, whilst competent to do so, do not undertake trials. JAG has taken the view that the Scheme is not designed to alter patterns of practice and so accreditation to undertake non-trial work at levels 2 and 3 can be by accredited assessment organisation only across the full range of competences. Data gathering will be undertaken during the first two years of the Scheme to enable a decision to then be made on whether or not to continue these arrangements.

Client communication

18. Each regulator will develop clear and appropriate regulatory arrangements to ensure proper communication with and disclosure to individual clients about how far the individual advocate will be able to progress their case. Such arrangements need to be in a form susceptible to monitoring and audit. The review will look at the effectiveness of the regulators' arrangements in this regard.

19. It is important to note that the Scheme is not designed to address potential failings in the criminal justice system or the application of the criminal procedure rules. If there are

concerns, for example, that the trial advocate is not undertaking the pre-trial hearings to the detriment of the proper administration of justice or that advocates are advising clients to plead guilty purely for financial gain then this is a matter that must be addressed more generally by all parties to the criminal justice system.

Assessment Organisation

20. The review will also analyse the effectiveness of assessment organisations. This will include:

- The reliability of the assessments used to assess advocates against all of the standards
- The volume and type of advocates who attend an assessment organisation and the pass rates
- Whether there are geographical variations between assessment organisations
- A comparison between the results of assessment from assessment organisations and judicial evaluation
- The number of advocates who have attended an assessment organisation who are subsequently judicially evaluated in full trials,
- A breakdown of the protected characteristics of the advocates who have attended an assessment organisation and identifying any trends

Subjectivity in assessment

21. JAG is committed to ensuring that the scheme is applied fairly and consistently across different assessment methods. The review will seek to identify whether there are instances during assessment where assessment criteria have not been correctly and consistently applied and whether there has been detrimental impact on particular groups of advocates, for example, those with protected characteristics.

Managing underperformance

22. One of the key aims of the two year review will be to provide a more comprehensive overview of the level of competence within the advocacy market. The data to be gathered by the review will seek to confirm that the approach of the Scheme meets the regulatory objectives by identifying areas of concern and managing underperformance.

23. It may be necessary for individual regulators to require an advocate to undertake further development against particular standards where there may be issues with their competence. The review will identify these advocates, track the outcome and therefore determine the effectiveness of development.

Standards

24. The standards that all advocates are assessed against provide the structure of the four levels and the foundation of the scheme; it is therefore essential to review these standards after two years to ensure that they remain the best indicators of quality in criminal advocacy. There have been a number of pilots involving the standards and there has been relative success with their application within the first phase of judicial training. The review will build upon this to assess the validity and applicability of the standards in determining competence.
25. JAG will review whether the standards and the guidance help differentiate between the levels. It may be that there are some areas that overlap between the levels and the indicators are not helpful in distinguishing the cut-off point.
26. The standards will be reviewed for anomalies, including any that are disproportionately passed or failed and any that are regularly marked as 'no evidence available'. The consistency of assessing against the standards by judges and assessment centres should also be considered as well as whether the standards are easy to mark against and whether they continue to provide a comprehensive representation of skills needed for effective criminal advocacy.
27. An analysis of completed CAEFs will provide the core data. This could be supplemented by interviewing or providing surveys for the judiciary and assessors for a review on how advocates perform against the standards and where there are any potential anomalies.

Levels

28. Registration allows advocates to self-assess and progress between four separate levels. These levels are the safeguard against advocates accepting work for which they are not currently competent. JAG will review these levels to ensure that they remain effective and relevant.
29. In addition it will be necessary to review the process by which cases are allocated a level to see whether it is the most effective and reliable means of ensuring that the appropriate level of representation is provided.
30. JAG will also review whether there has been any misallocation of levels and what the consequences are. We will be able to measure the number of cases where the judge has not agreed with the level of the case agreed between the instructing solicitor and the barrister.

Specialist Practitioners

31. The Scheme will apply to all criminal practitioners with some limited exceptions regarding specialist practitioners. These include those that undertake advocacy in the criminal courts but not in relation to typical criminal cases, such as advocates who specialise in regulation, planning, and health and safety. The two year review should assess which criminal cases require a specialist practitioners and fall outside of the scope of the scheme.

Scheme Operation

32. In addition to policy issues the review will also encompass operational elements of the scheme.
33. The internal administration of the Scheme must run efficiently for the Scheme to operate successfully. The two year review will provide the opportunity for each regulator to demonstrate how the internal operation is functioning. Each regulator will be able to report against agreed performance indicators and expected levels of service.
34. The baseline for this review will be the internal standards and targets set by each regulator in regards to responding to applications etc. and the original forecast of volume of paper applications. The results of this research will be used for internal process planning and to ensure continuous improvement in the area of operational effectiveness.
35. The operational areas for review include:

Compliance

36. The success of the Scheme in achieving its objectives relies on advocates complying with the rules set out by each of the separate regulators. It is therefore necessary to review the levels of compliance after two years, by carefully measuring any reasons for non-compliance and the consequent range of disciplinary action. We should be able to test the success of any disciplinary action by reviewing changes in behaviour. The information may help lead to changes in the approach to enforcement.
37. In monitoring compliance we will be able to identify those advocates who have operated above the level of their accreditation. If we identify any trends in non compliance in any particular areas we can then target our monitoring activities as required.

Extensions

38. In certain circumstances where an advocate is unable to gather the requisite evidence to gain accreditation at their chosen level within the 24 month accreditation window or when seeking reaccreditation or progression, they will be able to apply for an extension. Advocates will be able to apply for extensions due to a multitude of reasons, such as illness, bereavement or care responsibilities. The two year review will need to carefully review the reasons when extensions were granted and when they were rejected and consistency between regulators. Further analysis in relation to extension requests will include;
 - The total number of requests for extensions
 - How many requests were approved
 - Criteria met for granting extensions
 - How many were rejected

- Rationale for not granting the extensions
- The administrative process when allocating an extension
- How requests are managed (speed, efficiency, ease of organisation)
- How quickly an extension can be granted
- Any frequent issues which may cause a delay
- The frequency of extension requests from advocates whom are members of a group with protected characteristics

Ongoing Monitoring referrals

39. If a judge has concerns that an advocate is performing below the standard expected, they may independently submit an on going monitoring referral which is an assessment of the advocate's performance. This process is important for enabling judges to take a more active role in monitoring and supporting consistent standards. The two year review will analyse the volume of monitoring referrals submitted, the resulting actions taken and an analysis of the judges using this process. It will also analyse which advocates monitoring referrals are being received in relation to in order to establish whether underperformance is more prevalent at any particular level or in relation to any particular type of practise. Should it be possible, it may also be useful to assess whether judges' confidence in making a monitoring referral has increased since the implementation of the Scheme.

Consumers

40. As the scheme is designed with public interest it will be essential to understand the level and extent of awareness about the Scheme between the stakeholders.
41. It will be important to understand the impact of the Scheme on the range of consumers which extends beyond the client, such as CPS, LSC, Judiciary, instructing parties and the public at large. Research should focus on gathering the perceptions of these stakeholders regarding the standards of criminal advocacy in court. The majority of this work will be carried out through surveys and interviews. This research is necessarily qualitative in nature rather than quantitative.
42. The judiciary as a primary consumer of advocacy will be able to analyse the impact of the Scheme by reviewing their perceptions prior to its launch. More specifically, they will be able to review the changes in advocacy performance from the moment they have been trained up to and beyond the two year period. Their completed evaluation forms will provide the hard evidence base, so that we can review whether there are trends. This can be supplemented by qualitative research which would help explain the trends in more detail and to what extent this is a direct consequence of QASA or whether there are other factors at play.

Appeals

43. Under the Scheme the advocate will be able to appeal a decision made by the regulator which:

- refuses their application for accreditation, re-accreditation or progression; or
- revokes their accreditation at their current level.

44. Under the review we can analyse the appeals based on the:

- Number of appeals
- Grounds for appeal – effectiveness
- The success rates for appellants
- Key lessons learned which may have led to an amendment in the guidance, process or actions for future development.

Summary

45. There are a number of areas that will require formative evidence gathering before we can make an overall assessment on the performance of the Scheme and the impact it has made. The criteria for monitoring the scheme have been embedded in the operational systems so that the data can be captured systematically. Many of the strands of the review listed above are interlinked and an analysis of the collated CAEFs will help identify trends and more importantly generate further questions. This may require more targeted research which extends beyond the routine data generated through the normal operation of the Scheme.