

**Application made by the Solicitors Regulation Authority Board, Bar Standards Board and ILEX Professional Standards to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of the Quality Assurance Scheme for Advocates (QASA)**

**A Executive summary**

1. The purpose of this paper is to ask the Legal Services Board (LSB) to approve the proposed regulatory arrangements for the Quality Assurance Scheme for Advocates (Crime) (referred to throughout this paper as QASA or the Scheme) on behalf of the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS).
2. The Joint Advocacy Group (JAG) has been responsible for the design and development of the Scheme. JAG comprises representatives from each individual regulator.
3. Implementation of the Scheme requires amendments to the regulatory arrangements of the SRA, BSB and IPS. The rules required to implement the Scheme are annexed to this Application (Annexes A1 to A3).
4. The QASA Handbook, which provides information for advocates on operational aspects of the scheme, is also annexed to this Application (Annex B).
5. A brief overview of previous JAG consultations is annexed to this Application (Annex C). Detailed analysis and JAG's response to the recent 4th QASA consultation is also annexed (Annex D).
6. The Scheme will be reviewed after 2 years of operation. A paper setting out further details on the contents of the review is included at Annex E.
7. Ensuring compliance with the requirements of the scheme is essential to the ongoing integrity of the scheme. The supervision and enforcement approaches of each regulator is outlined in Section J and further detail has been annexed to this Application, alongside further material on operational implementation that is specific to each regulator (Annexes F1 to F3). The scheme will be applied consistently by each regulator, however, each regulated community is different. As a result, individual Equality Impact Assessments have been carried out by each regulator and are included in this annex.

## **B Nature and effect of current regulatory arrangements**

8. Advocates appearing in the criminal courts have qualified through different branches of the profession and undergone different methods of education, training and assessment. It is essential that consumers of criminal advocacy can be confident that all advocates, irrespective of their original route to qualification, are competent.

## **C Nature and effect of the proposed amendments**

9. The aim of QASA is to assess and assure the competence of all advocates conducting criminal advocacy in courts in England and Wales. Any advocate wishing to undertake criminal advocacy will require QASA accreditation and only those who successfully demonstrate their competence will be permitted to practise. It is estimated that the regulatory requirements of the Scheme will apply to around 16,000 advocates.
10. The scheme will be operated and applied consistently by the SRA, BSB and IPS for the advocates that they regulate. The single Scheme has been built on the following principles:
  - a single, common set of advocacy standards against which all advocates will be assessed
  - accreditation of an advocate at one of four levels
  - opportunities for advocates who wish to progress through the four levels (subject to rights of audience) by demonstrating through assessment that they meet the required standard for the next level
  - periodic reaccreditation of all advocates within the Scheme
  - dependent on the level of an advocate, assessment by one of three methods: assessed continuing professional development, assessment organisation or by judicial evaluation
  - the option for trained judges in the Crown Courts to assess advocates of their own initiative if they have concerns about the advocate's performance and to submit such evaluations directly to the appropriate regulator for consideration.

Full details on the operation of the Scheme can be found in the Scheme Handbook (Annex B).

## **D Rationale for amendment**

11. The reasons for the proposed regulatory changes are:

(i) *To improve confidence in criminal advocacy*

Advocacy is a vital part of an effective justice system. Members of the public involved in litigation rely on effective advocacy for the proper presentation of their case. Those involved in decision making whether as Judge or jury rely on advocacy for the proper administration of justice. For defendants reliant on effective advocacy in the criminal courts the stakes are high: loss of liberty may be an outcome. It is therefore in the public interest that regulators assure the quality of advocates.

There is currently no single mechanism for assessing the competence of criminal advocates appearing in courts in England and Wales. QASA has been developed to respond to this issue: accreditation of criminal advocates will ensure that those involved in the criminal justice system can be confident in the competence of advocates.

(ii) *To ensure quality*

A key element of professional responsibility is the maintenance of professional standards. The changing legal landscape coupled with competition and commercial imperatives are putting pressure on the provision of good quality advocacy. The economic climate, both generally and in terms of legal aid, has raised concerns that advocates may accept instructions outside of their competence. QASA will ensure that all advocates in criminal courts undergo a process of accreditation so that they only deal with cases within their competence.

(iii) *Achieve consistency across the profession*

The public interest and consumer protection require a more proactive, systematic and consistent approach to assuring advocacy competence across the profession. QASA has been devised to respond to concerns about the standards of advocacy in the Crown Court and will ensure that in future, the performance of all advocates are measured against the same set of standards, regardless of the advocate's previous education and training.

## **E Statement in respect of the LSA Regulatory Objectives**

### ***Protecting and promoting the public interest***

12. Public confidence in criminal advocacy is a vital component of an effective criminal justice system. The SRA, BSB and IPS consider that the proposed

changes and their operational implementation will ensure greater protection and promotion of the public interest in criminal advocacy within England and Wales. The systematic assessment and accreditation of the competence of advocates will provide consumers of criminal advocacy with tangible reassurance that their advocate has the necessary competence to handle their case.

13. The Scheme is founded on common and consistent principles and objectives and these have been translated into operational implementation and governance by each individual regulator. The overarching feature of the Scheme is a single set of advocacy standards which apply across four levels of advocate. Measurement of competence against the standards will be assessed in the same way for all advocates, regardless of their original route to qualification.

### ***Supporting the constitutional principle of the rule of law***

14. QASA ensures that the proper administration of justice is not prejudiced by incompetent advocates and that mechanisms are in place to identify and take action with those advocates that are not performing to the expected standards.

### ***Improving access to justice***

15. The proposed regulatory changes promote access to justice. Access to competent advocates should be available to all within the legal system and not just the financially privileged. The proposed regulatory changes will ensure that all consumers of advocacy, including the most vulnerable, can be confident and reassured that the advocate dealing with their case is competent to do so.
16. The consultation exercises carried out by JAG and analysis undertaken by each regulator has not identified any obvious impacts or barriers in terms of geographical access to justice created by the proposed changes.

### ***Protecting and promoting the interests of consumers***

17. The protection and promotion of the interests of consumers has been central to the development of the proposed regulatory changes. The SRA, BSB and IPS believe implementation of the Scheme will limit the likelihood of consumers experiencing poor quality criminal advocacy. The rules will ensure that only those advocates who have been assessed, accredited and meet the overall requirements of the Scheme are permitted to practise criminal

advocacy. The review of the Scheme in 2015 will seek to explore its impact on consumers and to ensure that their interests are adequately protected.

18. Each regulator has established rules that state that those advocates wishing to undertake criminal advocacy are required to obtain QASA accreditation. Advocates will only be able to practise at the level at which they have been accredited.
19. The Scheme is based on four levels which reflect the increasing complexity and seriousness of criminal advocacy cases. Advocates will be accredited at one of the four levels and the range of work that they will be able to undertake will be determined by the level at which they are accredited. Advocates may move through the levels or may choose to base their practice at one level. The standards for the Scheme are supported by performance indicators which assist in further defining what is expected of an advocate at each of the four levels.

### ***Promoting competition in the provision of services***

20. The SRA, BSB and IPS do not consider that the proposed regulatory changes restrict competition in the provision of services. The availability of information about the level and accreditation of an advocate should help to promote competition by providing more information to consumers and assisting them to make an informed decision about their choice of advocate.
21. A levels-based Scheme creates a structure for career progression which enables an advocate to monitor how their career has developed. This will encourage competition and as a result promote quality as an indicator of success as an advocate.
22. Common advocacy standards across all advocates means that all branches of the legal profession will be assessed within the same framework. This will promote competition not only with respective professions but across the wider legal market.

### ***Encouraging an independent, strong, diverse and effective legal profession***

23. The SRA, BSB and IPS do not consider that the proposed regulatory changes will negatively impact on any of the protected characteristics. Each regulator has undertaken equality impact assessments, which are attached at Annex D. No human rights issues are expected from the regulatory changes or implementation of the scheme.

### ***Increasing public understanding of the citizen's legal rights and duties***

24. The SRA, BSB and IPS believe that the proposed regulatory changes will promote this objective. The Scheme will ensure clarity and transparency regarding the competence of criminal advocates and the subsequent level of service they will receive.

### ***Promoting and maintaining adherence to the professional principles***

25. The SRA, BSB and IPS consider that the proposed regulatory changes will promote this objective. The rules set clear and accessible guidelines on what is expected of an advocate to meet the Scheme's requirements. This is a risk managed approach: only those advocates that meet the requirements will be permitted to undertake criminal advocacy and those that are accredited can deal only with cases within their competence.

### **F Statement in respect of the Better Regulation Principles**

26. The SRA, BSB and IPS consider that the detail of the Scheme fulfils our obligation to have regard to the Better Regulation Principles, under section 28 of the Legal Services Act. The following section summarises how the scheme meets these principles.

#### ***Proportionality***

27. Protecting the public interest and interest of consumers of criminal advocacy has been at the heart of the design and development of the Scheme.
28. The SRA, BSB and IPS believe that the proposed Scheme and regulatory changes are proportionate to the objective of protecting the interests of consumers of criminal advocacy. The proposed changes will ensure consistent and systematic assessment of competence of advocates and result in advocates taking on only those cases in which they are competent to act.
29. Significant work has been undertaken by each regulator to ensure that the operation of the Scheme and subsequent impact on those advocates required to meet the proposed regulatory changes are proportionate. Throughout the development of the Scheme, amendments have been made to key components of the Scheme to mitigate disproportionate impacts on the practice patterns of advocates, for example, in the light of responses received to the 4<sup>th</sup> consultation, the period of time in which advocates can obtain the judicial evaluations required to gain initial accreditation under the Scheme has been extended from 12 to 24 months.

30. The levels based approach adopted within the Scheme ensures that the competence of an advocate is assessed by an appropriate method dependent on the level at which they are operating. Advocates at level one will be assessed by continuing professional development, advocates at level two by assessment organisation or by a trained judge or independent assessor and those at levels three and four by a trained judge or independent assessor.

### ***Accountability***

31. The proposed Scheme meets the requirement of accountability both to the LSB and to a wide range of stakeholders who have commented on the design of the Scheme. Stakeholder engagement and involvement has been central to the design and development process: there have been four separate consultations and each individual regulator has been proactive in ensuring an open and accessible dialogue with the communities they regulate.
32. Many responses to the Scheme's consultation exercises have been supportive of the aim and objective of the Scheme; that is, QASA will help improve public confidence in the standard of criminal advocacy in the courts in England and Wales. However, concerns have been raised by the profession and bodies representing particular groups during the development of the Scheme in relation to various operational elements.
33. Each regulator has been committed to developing a Scheme that balances a number of competing priorities; the original aims of the Scheme, operational practicality for advocates and the Legal Services Act Regulatory Objectives. After each consultation exercise all responses have been carefully considered and as a result, revisions to elements of the Scheme have been made, where these were consistent with the regulatory objectives and in particular the public interest, to reflect stakeholder views.
34. The SRA, BSB and IPS are fully committed to ensuring that the ongoing operation of the Scheme continues to meet each of these priorities. Each regulator through JAG, has already committed publicly to a review of the Scheme in 2015 and further targeted research work, for example, in relation to the application of the Scheme to Youth Court work.

### ***Consistency***

35. QASA is a single scheme based on core shared principles and objectives. It supports the objectives of each individual regulator and the regulatory objectives of the Legal Services Act. It will be applied consistently across the advocacy profession by the SRA, BSB and IPS. Significant work has been undertaken by each regulator since the 4<sup>th</sup> consultation exercise to ensure

that individual regulatory rules achieve consistency of outcome to support the single Scheme. Development work by JAG and four consultation exercises has not identified any inconsistencies with other regulatory rules.

### ***Transparency***

36. The proposed regulations on behalf of each individual regulator are clear and understandable. Guidance and support will be developed by JAG to support advocates to meet the requirements of the Scheme.

### ***Targeted***

37. The proposed changes are targeted in two respects:
- the requirements of the Scheme have been developed to ensure that regulatory rules are only applicable to those advocates who fall within the Scheme's definition of criminal advocacy
  - the Scheme has been designed with the clear objective of ensuring the competency of criminal advocates and therefore promoting the interests of consumers.

## **G Statement in relation to desired outcomes**

38. The SRA, BSB and IPS seek the following outcomes from the proposed regulatory changes:
- Greater consistency in the demonstration of criminal advocacy by those who are QASA accredited
  - increased public confidence in the standard of criminal advocacy
  - a scheme that meets the Legal Services Act Regulatory Objectives.
39. The SRA, BSB and IPS will assess these outcomes as follows:
- by using regulatory mechanisms to ensure advocates comply with QASA rules
  - by undertaking a full review of the scheme in 2015.
  - by undertaking targeted research and data gathering in order to develop an evidence based upon which to make decisions about the future scope of the Scheme

## **H Consultation**

40. Stakeholder engagement has been critical to the development of the scheme. JAG has carried out 4 consultations covering policy, regulatory and operational issues in relation to the development of the scheme. Stakeholder views were analysed and suggested amendments were incorporated where they were consistent with the regulatory objectives and in particular the public interest. A summary of each consultation outlining key issues raised and subsequent changes is annexed to this Application (Annex C). Detailed analysis and JAG's response to the recent 4th QASA consultation is also annexed (Annex D).

## **I Ongoing Governance**

41. JAG was established to take forward the design, development and implementation of QASA. It has been responsible for developing the overarching policy framework that enables each individual regulator to effectively and consistently apply the scheme to those that they regulate. The policy development work to underpin the implementation of the scheme has now been completed and is reflected in the scheme Handbook.
42. The priority now for each individual regulator is to ensure that the scheme is effectively launched and implemented. As a result, JAG will continue to meet regularly. It will focus on the operational implementation of the scheme and its key objectives will be to ensure that the overall scheme continues to meet its aims and that it is consistently applied by each regulator. JAG will also be the vehicle by which each individual regulator continues to agree, manage and implement the following aspects of the scheme:
- review and revision of the scheme handbook
  - ongoing review of individual regulator's systems to ensure consistency
  - ongoing management of key operational aspects of the scheme as outlined in Section N
  - ongoing review of the Appeals process to ensure consistency between individual regulators
  - coordination of research, data gathering and publication of data
  - undertaking the 2 year review and any subsequent amendments to the scheme
  - identifying areas of further joint working to deliver the schemes objectives
  - monitoring the impact of the scheme for unintended consequences and adverse equality impacts

## **J Supervision and enforcement**

43. Ensuring advocate compliance with the scheme is critical to protecting the public interest and ensuring that the scheme is credible. Each regulator has submitted details of how they intend to ensure that the advocates they regulate comply with the overall requirements of the scheme (Annexes F1 to F3).
44. In addition to the approaches adopted by each individual regulator, JAG has identified the following potential sources of evidence that could be used to identify those who are conducting criminal advocacy without accreditation:
- Evidence from court records about who has appeared
  - Visits by staff to court centres to ascertain who is appearing and in what type of cases
  - Evidence from the CPS about those advocates who are undertaking criminal advocacy for the CPS
  - Referrals from the judiciary
45. Each regulator will also undertake spot checks following registration to check that advocates have not registered at an unrealistic level. Those who are within the scheme but act beyond their competence should be identified through ongoing monitoring.

## **K Review**

46. JAG will monitor the impact of the QASA, including undertaking and publishing a review of the Scheme. The time period for the first point of the review is set for two years from the beginning of the opening of the registration period. Details on what is proposed in the review are provided at Annex E.

## **L Publication of data**

47. JAG recognises the need for transparency in the operation of the scheme and the need for consumers to be able to access information that will assist them to make more informed decisions. To this end, the QASA level and status of all advocates will be publically available so that consumers can search for their advocate and ascertain their level.
48. The regulators will also seek to publish other relevant information on the operation of the scheme in advance of the publication of material following the two year review. This will include annual updates on the number of advocates within the scheme and the type and level of accreditation that they have.

## **M Statement in relation to impact on other Approved Regulators**

49. The SRA, BSB and IPS do not consider that the proposed changes outlined in Annex A will impact on any of the other Approved Regulators under the Legal Services Act 2007.

## **N Implementation timetable and operational readiness**

50. Each regulator has included details of their arrangements in relation to the aspects of the implementation of the scheme that are unique to them (Annexes F1 to F3). There are three key workstreams that will be delivered by individual regulators on behalf of JAG. The timelines for each of these are set out below:

### *Judicial training*

51. The BSB is responsible for the delivery of judicial training within the scheme. JAG will continue to monitor and review the effectiveness of judicial training. The timetable for implementation is as follows:

Midlands and Western Circuits	October –December 2013
South East Circuit	November 2013 – February 2014
North East, Northern, Wales and Chester Circuits	March 2014 – May 2014

### *Independent assessors*

52. JAG will recruit a panel of independent assessors to be deployed to undertake assessments in the circumstances prescribed in the Handbook. The recruitment will be managed and administered by JAG with each regulator represented and the same panel of independent assessors will be available to each regulator. However, for corporate governance reasons each regulator will need to have their own contract with each independent assessor. The independent assessors will receive similar training to the judiciary. The timetable for appointing and training independent assessors is as follows:

Posts advertised	May 2013
Deadline for applications	July 2013
Candidates shortlisted	August 2013
Interviews held	September 2013
Successful candidates selected and informed	September 2013
Training	October 2013
Successful candidates to take up post from	October 2013

## *Level 2 Assessment Organisation*

53. Accreditation by approved assessment organisation against of the required standards will be available to those advocates who do not undertake full trials. The timetable for implementation is:

Tender documents developed and issued	August 2013
Submission deadline for tenders	November 2013
Approved organisation appointed	December 2013
Opportunities for assessment commence	February 2014

54. The SRA's notification exercise carried out in 2012 provided data on the number of advocates likely to enter the scheme by level and circuit. It has therefore been possible to calculate the number of advocates seeking assessment by approved assessment organisation. Based on this information, a March launch will allow a sufficient number of advocates to have entered the scheme and make assessment operationally viable. This approach will not disproportionately disadvantage those advocates seeking assessment by this route.

## **O Further explanatory information**

- Annex A1 BSB rules
- Annex A2 SRA regulations
- Annex A3a Associate Prosecutor Rights of Audience and Litigation Certification Rules
  - b Rights of Audience Certification Rules
- Annex B Scheme Handbook
- Annex C Overview of previous consultations
- Annex D JAG response and analysis to 4th Consultation
- Annex E Two year review paper
- Annex F1 BSB additional information
- Annex F2 SRA additional information
- Annex F3 IPS additional information

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