



Human Assets

Quality Assurance for Advocates: Research Report

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Executive Summary

Quality Assurance for Advocates (QAA) was called for in the Carter review in 2006. It requires a scheme of assessment of the skills of a large number of professional people operating largely in a self-employed capacity and with allegiance to three different professional backgrounds.

The scheme being developed by regulators is to assess each advocate's competence to work at one of four levels of advocacy. The levels are based broadly upon the complexity of cases. Advocates will be assessed for minimum competence at their chosen level. Once the specification of the minimum competence for each level is complete, the scheme for assessment can be fully developed. In specifying the minimum competence for each level, it is important that the specifications are clear and transparent and lend themselves to self-assessment and assessment by others.

The criteria being employed for choosing the method of assessment are robustness and proportionality. No one method offers the perfect solution by being straightforward, low-cost, reliable, valid, credible and fair.

It is helpful to separate the two objectives of QAA and look at possible assessment schemes for each objective. First QAA is being used to admit people to practise at a particular level. Secondly, it is being used to re-accredit people who are working at a level. We discuss methods of assessment for each objective and distinguish between those that are mild, medium and rigorous.

Regulators might wish to introduce schemes initially at different levels of rigour for different levels of advocacy and/or objectives and later move to more rigorous methods more comprehensively. They may also wish to consider introducing a mild/medium scheme that upon identification of below standard performance triggers a more rigorous method of assessment. What we see as the major available methods are summarised in the tables on the next two pages.



Methods for Admission to a Level

	Mild	Medium	Rigorous
Admit Level One	Attend Training	Local Assessment by accredited and inspected establishments	Centralised Assessment run by accredited and inspected establishments
Admit Level Two	Attend Training CPD Record	Local Assessment by accredited and inspected establishments +CPD	Centralised Assessment run by accredited and inspected establishments +CPD or Observation + CPD for 'provisional' status; then Observation of 'provisional' advocates
Admit Level Three	CPD Record	Judicial Evaluations + CPD for 'provisional' status; then Judicial Evaluations of 'provisional' advocates	Judicial Evaluations + CPD for 'provisional' status; then Observation of 'provisional' advocates or Assessment in simulations of transitional competencies +CPD
Admit Level Four	CPD Record	Judicial Evaluations + CPD for 'provisional' status; then Judicial Evaluations of 'provisional' advocates	Judicial Evaluations + CPD for 'provisional' status; then Observation of 'provisional' advocates or Assessment in simulations of transitional competencies +CPD



Methods for Re-accreditation at a Level

	Mild	Medium	Rigorous
Re-Accredit Level One	Evidence of CPD and Practice Hours	Judicial Evaluations using highly structured form, plus observation of marginal candidates +CPD (+ Interview)	Observations + CPD (+Interview)
Re-Accredit Level Two	Evidence of CPD and Practice Hours	Judicial Evaluations, plus observation of marginal candidates +CPD (+interview)	Observations + CPD (+Interview)
Re-Accredit Level Three	Evidence of CPD and Practice Hours	Judicial Evaluations, plus observation of marginal candidates +CPD (+interview)	Observations + CPD (+Interview)
Re-Accredit Level Four	Evidence of CPD and Practice Hours	Judicial Evaluations, plus observation of marginal candidates +CPD (+interview)	Observations + CPD (+Interview)



Broadly, the cost and time required for the scheme will increase with its rigour.

For any option that is of medium or high rigour, there will need to be significant training (probably lasting two days) for those carrying out the assessment so that there is agreement amongst assessors (judges, observers etc) on:

- Minimum competence at the level of advocacy being assessed
- How to observe, classify and rate the standards, with particular attention to the effects of diversity.

Systems for monitoring results and for dealing with appeals will need to be put in place and it is highly desirable to have a suitable training and development infrastructure so that all candidates can make best use of the feedback generated by the QAA process and candidates deemed below minimum competence have clear support for improvement.

Key Messages

From our discussion of the introduction of QAA and the different methods of assessment, we offer the following as key considerations for LSB in reviewing a scheme:

1. Are the standards and all the specifications associated with the standards (behaviours, performance indicators etc) at each level worded in such a way that they are open to the minimum of interpretation and clearly communicate minimum competence at the level? Are they based on observable behaviour? To the extent that they are, the likelihood of agreement between raters on a candidate's competence is increased.
2. Is it candidates or regulators who decide the sample of work that is reviewed for the QAA process? To the extent that it is the candidates who decide, the process might be seen as unnecessarily generous to candidates.
3. Does the scheme cover all the main facets of an advocate's competence and not just court-room advocacy?
4. Is the decision about a candidate based upon several independent pieces of evidence, preferably including different methods of assessment to achieve triangulation?
5. Crucially, is adequate training included in the introduction of the scheme, including full training on diversity considerations? There should be provision for checking that groups of trainees agree, at least amongst their group, upon the ratings that should be given to examples of advocacy used in the training.
6. If assessments are 'sub-contracted', for example to training providers, is there an adequate system of inspection/ accreditation to ensure that very similar standards are being applied across assessment organisations?
7. Is there a system for monitoring the outcomes of the scheme, particularly in relation to its equality of impact across demographic groups?



We hope that our report is helpful to the members of JAG who are designing and implementing the QAA process. We believe that covering the above points will increase the scheme's credibility in the eyes of those who want to be sure that QAA is an appropriate and proportionate control on the ability to practise at a particular level of advocacy. In addition, we believe the following will also add to the scheme's credibility:

1. Ensuring that the scheme is embedded within a system of training and development and that all the methods of assessment offer useful feedback to all candidates.
2. Providing the real cost of judicial evaluation, even if some of that cost is waived. This will ensure that the real cost of judicial evaluation is seen, particularly by its critics, to be acknowledged.
3. Providing for an adequate secretariat for the scheme. Administering the scheme will be a large task and it is important that there is adequate resource to carry out properly the monitoring of the results, particularly in terms of equal opportunities and diversity.
4. Ensuring that the standards and all the specifications associated with the standards are kept as straightforward as possible and communicated in a way that will encourage their use by advocates.



Introduction

Quality Assurance for Advocates

The quality of advocacy is crucial for the delivery of justice. Poor quality advocacy could result in a person's liberty being lost or conversely a guilty person going free. The pressure for a Quality Assurance for Advocates (QAA) scheme can be traced back to Lord Carter's review and has been taken up by various bodies. Aside from the regulators and the Legal Services Board (LSB), those promoting QAA include the Legal Services Commission (LSC) and the Legal Services Consumer Panel (LSCP). The Crown Prosecution Service (CPS) has developed its own scheme of advocate assessment.

Lord Carter's original recommendation was that 'a proportionate system of quality monitoring based on the principles of peer review and a rounded appraisal system should be developed'.

The LSC has published 15 requirements that they have of a scheme and these are reproduced in Appendix 1. The LSB has also published its requirements of the scheme. Their seven requirements are reproduced in Appendix 2.

QAA is seen as particularly important because there has been a sense that the quality of advocacy is declining¹. However, there is neither hard evidence of the extent of the problem nor any indication of whether it is concentrated at certain levels of advocacy or aspects of the advocate's role. A further driver for the scheme is the changing environment, including increased competition, regulatory change and changes in Government funding for advocacy. There is a wish to ensure minimum standards are maintained in the face of these changes.

Responsibility for developing a QAA scheme has been taken up by the Joint Advocacy Group (JAG). JAG is made up of the three professional bodies' regulators, the Solicitors Regulation Authority (SRA), The Bar Standards Board (BSB) and ILEX Professional Standards.

The QAA scheme will assess advocates against the agreed competencies contained in Appendix 3. The competencies are generic to all advocacy but four levels of advocacy have been identified as shown in Appendix 4. JAG has produced a detailed 37 page draft specification of the standards and the performance indicators for each standard at four levels of advocacy that are titled Capable, Experienced, Proficient and Expert. A rendition of the competencies is contained in a Generic Evaluation Form. The QAA process must assess an advocate for minimum competence with reference to the levels as specified. The process could either ratify an advocate's competence at a particular level or assess the level at which the advocate is competent.

¹ LSC Quality Assurance for Advocates. Feb 2010 Para 1.9.24



Terms of Reference

You asked us to provide a report based upon the following Aims and Objectives:

You asked for independent, expert advice on addressing the key challenges associated with delivering the first phase of a robust Quality Assurance for Advocates scheme, designed to assess the performance of criminal advocates. The advice on the scheme design and delivery plan should be in a form that could be used by the legal market regulators to inform the design of the scheme. In particular the research report should cover the following distinct areas:

1. A discussion (based on existing literature and discussion with relevant parties) of best practice in methods of assessing minimum competence standards in a professional services context (legal and other sectors);
2. Drawing on the available evidence, including the work to date on QAA, provide advice on the best approach to the detailed design for a robust and proportionate scheme to assess the advocacy standards agreed by the Joint Advocacy Group in the context of criminal advocacy. This should include advice on how the key issues and challenges identified with the delivery of the scheme could be addressed in a way that meets the regulatory objectives under the Legal Services Act and the key principles and requirements set out by the Legal Services Board. There are a number of issues that need to be considered, including:
 - The extent to which the requirements of the scheme could be integrated with the existing education and training framework
 - The appropriate balance between different assessment methods required to ensure a robust, evidence-based assessment – including the role of judicial evaluation of live cases, the role of simulated role-play exercises and the role of written assessments or self-assessment portfolios
 - Potential weaknesses of the various assessment methods, for example:
 - 1) whether assessors are likely to be proactive in highlighting poor performance;
 - 2) whether different assessment methods could lead to bias, or the perception of bias, for advocates from different professional or social backgrounds or in different geographical locations;
 - 3) The extent to which the assessment reflects the reality of practice for advocates who specialise in different area of criminal advocacy – for example complex fraud, sexual offences or regulatory crime.
 - How the scheme can best be delivered – including designing assessments, geographical coverage, appointing assessors and logistical/administrative arrangements



- How the effectiveness of the scheme might be evaluated to ensure it is achieving its objective of ensuring minimum quality standards at each of the four levels of criminal advocacy
 - Quality Assurance of the assessment approach – moderation, benchmarking etc
 - The need to ensure a cost-effective approach that minimises the regulatory burdens imposed on the legal sector
3. To advise on the best approach to implementation, including a delivery plan outlining the key tasks required to complete the detailed design and implementation of a scheme (with indicative costings) by July 2011.

Sources of Information

In writing this report we have drawn upon:

1. Our 30 years experience as business psychologists working on assessment processes. We have specific experience of designing selection systems for members of the judiciary as well as the QC selection system and we have a published expertise in the areas of competencies and assessment systems. Marie Stewart MBE has specific expertise in diversity, including extensive experience with the legal profession.
2. Meetings with the people listed in Appendix 5a
3. Reading the documents listed in Appendix 5b



A discussion of best practice in methods of assessing minimum competence standards in a professional services context (legal and other sectors)

A. The Foundations for Assessment

There are various foundations that need to be considered before discussing the design and implementation of an assessment scheme. They will be discussed with specific reference to the QAA scheme.

Objectives of the Scheme

Before looking at the methods of assessment, it is helpful to define what the QAA scheme is setting out to achieve. In the documents we have seen, there does not seem to be a precise definition of 'quality assurance'. However, there are two objectives for the scheme:

1. Admitting people to practise at a level
2. Check on the competence of advocates practising at a level.

The second objective has two sub-objectives:

- A1 A first check on the competence of advocates practising at a level.
- A2 Re-accreditation of those who have been checked already.

Each of these objectives might be met in the same way or by different schemes. We believe that what will be proportionate, practical and legitimate for admitting people to practise at a level might be seen as disproportionate, impractical and illegitimate as a check on those already practising. Conversely what might work for those already practising might not be a logical option for admitting new practitioners.

We also caution against expecting too much from any single assessment scheme. In particular, it is trying to achieve too much to assume that someone can take an assessment and be assigned to one of the four levels as opposed to taking the assessment for a particular level. It is hard to see how an observer could observe a candidate in a Level 4 case and say with any confidence that they should be Level 2 qualified and the opposite scenario of observing a level 2 case and deciding the candidate has actually reached level 4 seems quite impossible.

Consideration will also need to be given to the QC Appointments Process and how the QAA scheme might run successfully alongside it. For example, what if the two schemes throw up different results?

We also wonder whether there are particular levels of advocacy or aspects of advocacy that are priorities for quality assurance. These might be addressed first before introducing a comprehensive scheme. If this approach were adopted, there would be a need to ensure that there was not a lengthy delay to extending quality assurance beyond the identified priorities.



Different Schemes for Different Levels

Just as the different objectives might require different methods of assessment so too might the schemes differ by the level of advocacy. An objection that might apply to an assessment option for one level might not apply to another level. To take a simple example, judicial evaluation might not work in the magistrates court for level 1 advocates because of the difficulty of training the very large number of lay magistrates (28,000 was mentioned at the LSB-hosted roundtable meeting on 2 March 2011). However, it might work in the higher courts with judicial training.

Specifying Minimum Competence

The competence framework reproduced in Appendix 3 contains 35 behaviours (e.g., B 4.1 'makes appropriate factual representations to the court on sentencing') under 11 standards (e.g., B4 'Understands and applies sentencing guidelines') across five domains (e.g., B 'Case Presentation/ Advocacy'). JAG has also produced a very detailed schedule of performance indicators for each standard at each level. However, there remains a need to clarify and communicate exactly what constitutes minimum competence at each of the four levels of advocacy. To achieve this clarity, the following need to be addressed;

- How the performance indicators (e.g., up to 23 for the expert level of Standard A1) will be used to arrive at an overall rating for a behaviour and/or standard.
- Some of the performance indicators would benefit from further clarification. For example, the first Level 4 indicator is 'has a superior grasp of the law and practice...' Just what constitutes a *superior* grasp would benefit from clarification. All the indicators should be reviewed to ensure they are of maximum transparency and require the minimum of interpretation.
- Exactly what constitutes the minimum competency for each performance indicator / behaviour/ standard at each level. For QAA to work successfully it is necessary to convey with clarity the minimum competence standard of each of the four levels. We wonder whether the JAG wording (which at one stage had the titles of Capable, Experienced, Proficient and Expert and now ranges from 'novice' to 'expert') carries the risk of defining progress through levels of excellence rather than step-changes in minimum competence.

Atomised or Overall Competence

There is a need to clarify whether a candidate must pass all behaviours or all standards or all domains or whether there is latitude for strengths to compensate weaknesses. In some professions there is a real debate between those who believe it important that every competence is achieved and those who advocate, say, allowing the technical expert with poor interpersonal skills to practise.

The decision on whether all behaviours, standards or domains must be passed has implications for the assessment method. The score for any particular criterion that must be passed needs to be soundly based. There is increasing error in the score for any particular criterion the fewer the number of measures of that criterion. So, if the criterion is a behaviour, it should be measured more than once. Indeed, if different behaviours are



measured only once and by different methods, there is a vast literature on the assessment centre method to suggest that the scores a person achieves are likely to depend more on the method than on the behaviour. Relatedly, there is evidence that the ratings for different behaviours tend to be swamped by the overall performance of the candidate and that the more molar the level of measurement the better the prediction of performance.²

Setting the pass mark

It is important to recognise that measuring competences is not an exact science. Any score given to a candidate will be only an approximation of their actual competence. Therefore, in setting a minimum threshold it must be recognised that a candidate who scored at just below the threshold might actually be somewhat above it. With this in mind, the minimum acceptable score might be set somewhat below the desired minimum competence.

Defining the Levels

Assuming that the levels can be defined rigorously and in a way that reflects genuine step-changes in advocacy, it is reasonable that people must pass an assessment before being allowed to practise at a new level. However, concerns about the levels as presently drafted might be raised by the Cardiff Law School work that found that “candidates found it difficult to categorise with any certainty either their own level or that of the cases with which they mostly dealt”.³

The CPS has operated a four-level system for classifying cases for several years. They start with non-contested work at level 1 and levels 2 to 4 cover trials of increasing duration and complexity. Trials appropriate for Silk have their own level.

Before producing a final version of the competences, it will be necessary to produce the final version of the categorisation of cases. It is not entirely clear whether the categorisation summarised in Appendix 4 is a final agreed version.

Differentiating Competences

A scheme could measure all the behaviours at each level. However, it is unclear whether all the competences vary between levels or whether there are supra-competences (e.g., intellect and interpersonal skill) that vary and affect performance on many of the detailed behaviours. For example, the JAG performance indicators for C1.2 ‘Takes all reasonable steps to help the client understand the process’ and C1.3 ‘ensures that the decision making process is adequately recorded’ are identical across levels. We wonder whether this invariance across levels might apply to other behaviours. For example, the requirement ‘communicates clearly and audibly’ (Standard B1.4) seems unlikely to vary between levels except to the extent that the candidate fails to grasp the complexity of the case. We recognise, however, that JAG has produced different performance indicators across the levels for this competency.

² Meachin, J and Lucks, S. (2010). Improving the validity of selection decisions: The granularity of competencies’ *Assessment and development matters*. 2(3), pps 5-8.

³ Legal Services Commission. Quality Assurance for Advocates Annex Ci Cardiff Law School’s Evaluation Report November 2009 Page 23



If this line of argument is pursued it could affect the scheme for progression between levels. Rather than having to be tested and to pass all the behaviours, candidates could be tested simply on the transition competencies.

Progress through the Levels

A scheme that restricts people from practising at a higher level until they have passed the QAA has the inherent problem of trying to assess someone for a level at which they are not currently able to practise. If one purpose of the scheme is to act as a gateway to the levels, it will need to be designed to try to get around this difficulty. The LSC were very aware of it and in their report suggested giving a candidate a 12 month ticket to practise at a higher level if they passed a 'gatekeeper assessment' of 'some of the key competences for the next level'⁴.

B. Methods of assessment

Methods of assessment are judged fundamentally by their reliability (how consistent is the assessment) and validity. There are different forms of reliability (e.g. the similarity of results obtained from a test and re-test or from two alternate measures) and validity (e.g., how accurately does the method measure the quality being assessed or how well does it predict a criterion). Steps need to be taken to assess the potential impact of each method on different groups of candidates and to minimise bias and discrimination in the assessments.

In the context of measuring minimum competence, the key requirement for reliability is that the measure of a person against a minimum competence standard produces the same result using different assessors. In terms of validity, the measure should ideally be a perfectly accurate measure of the particular competence standard being assessed. However, measures of competences are always limited in their reliability and validity. For example, assessors never wholly agree on their assessments (reliability) and the validity of assessments is limited by this unreliability as well as other imperfections in the measure. Notably, an assessment of competence is based upon a sample that will never perfectly match the totality of how the person behaves in terms of the competence.

Best practice assessment of competence aims to maximize the reliability and validity of the assessment. The assessment method is chosen that is most likely to yield reliable and valid results. Then the method is put into practice in a way that aims to ensure that its reliability and validity are realised. As examples, best practice emphasises ensuring that assessors are properly trained and that interviews take place without interruptions. Diversity awareness should be an integral part of training.

A great deal of research has been undertaken over the years to examine the reliability and validity of different methods of assessment and to specify the conditions that are conducive to reliable and valid assessments. These have been gathered together in several meta-analyses of assessment methods⁵. Very broadly speaking, the closer the method of

⁴ LSC Quality Assurance for Advocates. Feb 2010 Section 3.39

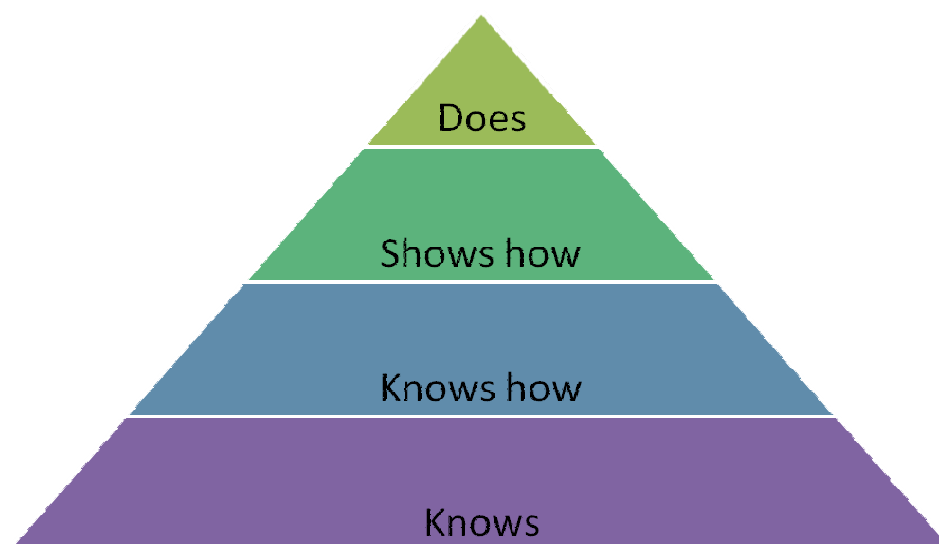
⁵ Schmitt, N., Gooding, R. Z., Noe, R.A. and Kirsch, M. Meta-analyses of validity studies published between 1964 and 1982 and the investigation of study characteristics. *Personnel Psychology*. Vol 37 pp 407-422



assessment comes to directly measuring the person's behaviour in terms of the competence, the more valid it will generally be.

Diversity and equality are implicit in the concept of validity. A method that acts against people on the basis of any characteristic that is irrelevant to competence is by definition of limited validity. However, as the LSC have made clear, the diversity credentials of a method go beyond considering the bias or otherwise in the method itself to addressing the bias in the context within which the method is embedded. For example, one method might be capable of extending the diversity of people who are assessed whereas another method might be inherently restricted to a narrower pool of candidates.

The findings from meta-analyses of validity dovetail with a useful categorisation of assessment methods that has been provided by Miller⁶. He describes methods as forming a pyramid from 'knows', 'knows how', 'shows how' and 'does'.



The ultimate goal is to assess 'does'. It is both the most valid and the most certain measure of competence. However, measures of what a person 'does' tend to be limited by being samples of performance. In addition, when making important decisions about people as much evidence as possible should be gathered using different methods. This process is called triangulation. Use of this process means that if somebody is having an 'off day' they would not be put at a major disadvantage. Equally, triangulation can identify persistent problems. For example, a minor error picked up in a one-off assessment may become a more significant problem if it persists across a number of situations. For example the medical profession uses a number of measures for assessment. The foundation programme (for post-graduate doctors) consists of four methods of assessment: multi-source feedback,

Gaugler, B. B.; Rosenthal, D. B.; Thornton, G. C.; Bentson, C.. Meta-analysis of assessment center validity. *Journal of Applied Psychology*, 72(3), pp 493-511.

Arthur, W., Day, E.A., McNelly, T.L., and Edens P.S. A meta-analysis of criterion-related validity of assessment center dimensions. *Personnel Psychology*, 56(1) pp 125-154.

⁶ Miller GE. The assessment of clinical skills/competence/performance. *Acad Med*. 1990; 65:S63-7



case-based discussion, mini-clinical evaluation exercise and direct observation of procedural skills⁷.

With these thoughts in mind, the different conventional assessment options will now be discussed. These methods are all frequently used to assess people for employment or promotion.

1. Assessment of 'Knows'

Testing

Some elements of minimum competence might be open to testing.

Knowledge requirements. If it is essential to competence that a person knows certain facts, these can be tested. However, the test of knowledge will only be a partial test of competence and will need to be supplemented by assessing how the person uses the knowledge. Outside the professional arena, the driving test consists of exactly this two stage test of competence. In professional services, for a knowledge test to be valid, it is important to be sure that, to be competent, the person's knowledge has to be available to them as contrasted with them knowing that the knowledge exists and where to find it.

Tests of ability and personality. Cognitive abilities and personality dispositions might contribute to professional competence and in selecting people these tests might be used to indicate the likelihood that a person will display competent behaviour. However, there is a far from perfect link between the ability or disposition and competent behaviour and it would certainly not be reasonable to declare someone below a minimum threshold of competence because they fall below a certain score on an ability or personality measure.

In addition, although cognitive tests are generally one of the better predictors of success across a wide range of jobs, there is a consistent problem with them of adverse impact, particularly for black candidates.

2. Assessment of 'Knows How'

The two methods are the written self-description and the interview. These methods are intrinsically limited by candidates being able to select what they report. Best practice is aimed at refining the methods to produce as accurate an assessment of competence as possible within the overall constraint of the method.

The Written Self-Description

Written self-descriptions of competence are frequently part of an application form. They were included in the Cardiff pilot as a portfolio. (Here 'portfolio' is referring to a collection of write-ups by the candidate and is rather different from the portfolio as a collection of the actual unedited work of the candidate.) Best practice makes it very clear to candidates that they are being asked to provide evidence of particular competencies. Generally, candidates are prompted with questions such as 'please give an example of when you have...' (e.g. dealt appropriately with vulnerable witnesses). This highly structured approach can be contrasted with one where the candidate is simply asked to describe a piece of work. Unguided

⁷ Jackson, N. (2007) *Assessment in Medical Education and Training: a practical guide*. Oxford: Radcliffe.



descriptions are likely to include material that is irrelevant to the competencies and the omission of material that is relevant and, with the differing expectations of diverse candidates, have a particular risk of discrimination.

Written self-descriptions suffer from the potential error of incompetent candidates fabricating evidence. Just as important and perhaps more common is the problem of competent candidates failing to convey their competence. In our experience, even if the task seems to be well-explained, candidates often produce poor answers that suggest they need training in how to answer the questions. Best practice would provide that training and give candidates sample answers to make the assessment as accurate as possible. Candidates would also be given guidance on the considerable time that can be required for producing their answers. Even with these enhancements, the self-description will only be an approximate guide to the person's competence. The sample that the candidate chooses to describe is bound to be less than fully representative of their actual level of competence.

With candidates from diverse social and cultural backgrounds, the written self-description could suffer generally from differences in styles of self-presentation, with some candidates being more modest in their descriptions or self-censoring in what they present as evidence of their competence.

Even if the candidate produces the most informative answer, the assessment of competence then depends on the further mediation of the person reading it. Best practice requires that the assessors are trained and checks should be made of their assessments. This might involve double marking all or a sample of the written self-descriptions. However, it must be recognised that marking written self-descriptions will never be anything near 100 per cent reliable. Furthermore marking is time-consuming and rapidly becomes quite tedious.

Interview

The other method by which a candidate can describe their competence is through some variant of the interview. Best practice interviews are structured around the competences and use trained interviewers. Unstructured interviews have very low validity and reliability. However, when the best practice steps are taken, interviews can attain a validity that puts them among the better assessment methods. The advantage of the interview is that the interviewer can probe responses both to check veracity and to ensure a candidate has given a full account of their competence. However, the disadvantage is that the interview is a less certain (valid) check on competence than actually seeing the person behave competently. It is one thing for the interviewee to describe competent behaviour; it is another for them to perform it.

Validity is also limited by the inevitable intrusion of communication skills into the scores of competence. Communication might, of course, be one of the competences. However, it should not affect the scores of all the competencies.

Furthermore, there is bound to be an upper limit on the reliability of the interview. Interviewers will always be limited in the extent to which they a) elicit the same information from an interviewee and b) draw the same conclusions about competence even with identical material. For these reasons the interview will need to be supplemented as a check



on competence. It does, however, clearly have a role in checking a candidate's experience which has relevance to but does not guarantee competence.

Given a diverse group of candidates, the main drawback for the interview is the potential biases of interviewers and in best practice schemes these are addressed at thorough interviewer training. Additional steps to increase the interview's diversity credentials will include increasing the diversity of interviewers themselves and monitoring the ratings given by interviewers to candidates of different backgrounds.

As an example of a variant of the interview, the medical profession uses case-based discussion as part of the Foundation assessment. This involves a structured discussion/interview of real cases in which the doctor has been involved. The aim is to explore the thinking behind the notes the doctor made. Assessors are trained to probe on a number of areas e.g. 'professionalism', 'record keeping'.

3.Assessment of 'Shows How'

Although they are not at the peak of Miller's pyramid, demonstrating competence in a test or simulation off-the-job (which require the candidate to 'show how') can be very close to confirming that the candidate actually 'does' the desired behaviours at work. There is a trade-off between the control that tests and simulations can employ and the total realism that comes from measuring actual work performance.

Work Samples

The meta analyses referred to earlier (by Schmitt et al., Gaugler et al. and Arthur et al) show that one of the most accurate methods of assessment is the work sample and this is not surprising. With the typing test as an example, the work sample gets people to perform the very skill that they have to demonstrate at work. For professional services, it is often not possible to present candidates with an actual sample of work and so, instead, simulations of work are used. This is the assessment centre approach.

Assessment Centres

Assessment centres get people to produce competent behaviour under controlled conditions using simulations of work, rather than a sample. For example, a role play is a simulation but it still gets the candidate to produce behaviour that can be assessed. Assessment centres use simulations and the best assessment centres get as close as they can to being work samples. They reproduce the main elements of work and assess people's performance using trained assessors.

Assessment centres that are well-designed can achieve high but far from perfect levels of reliability and validity. Reliability between assessors will never be perfect, despite training. Assessment centres will also never be perfectly valid. How a person behaves in a simulation of work will not be a perfect measure of their competence at the work itself. This links to a particular criticism of assessment centres which is that some candidates might act the part at an assessment centre (for example of being a good listener) but fail to display the behaviours of competence at work.

Assessment centres are also expensive to design and operate. The simulations must be carefully written to ensure that they capture the key elements of the role and give an



adequate opportunity to assess the competences. An example of a professional body that uses the principles of an assessment centre approach is the General Medical Council (GMC). The Objective Structured Clinical Examination (OSCE) is based on a circuit of stations each designed to get the candidate to demonstrate a clinical or consulting skill. The stations include meeting 'patients' (trained lay people). A range of skills are tested in a standardised and repeatable way that would not be possible with real patients. Assessors and role-players are all trained. However, the running of these assessments is "expensive. administratively complex and time consuming to design and set up...a 20 station OSCE for 240 Final Year medical year students in Cardiff in 2005 closed the outpatient department of a major hospital for three days, required 50 examiners, 30 real patients and 20 simulated patients per session and generated 4800 Opscan marksheets" ⁸

Training Course Assessments

A particular form of direct observation is the observation of the practical skill on a training course. If trainees have to take part in simulations during their training, then performance on the simulations could be taken as an assessment of competence. However, for the assessment to be considered robust, the simulations would have to be undertaken in controlled conditions and there would need to be an assurance that all training providers operated to similar standards. If these conditions were met, the training assessment would be the equivalent of an assessment centre.

4.Assessment of 'Does'

There is a range of methods of assessment based upon observation of the candidate's behaviour in the workplace rather than the candidate's description of behaviour or simulations. The following are the main methods:

References

References are based upon the referee's observation of the candidate and have the potential to give a good insight into whether the candidate meets the minimum competence standards. To do so, they must be properly structured around the competences that are being assessed. However, in practice, references suffer from a number of shortfalls. Firstly, even with structure, referees differ in their ability to understand what is required of them and therefore give evidence of very differing level of usefulness. In practical terms, the only training that can be provided is an explanation with the reference form. Secondly, references suffer from the possibility of mixed motives by the referee. They are potentially torn between loyalty to the candidate and loyalty to the person asking for the reference. Where the latter is greater, the reference is probably of more value. References appear to work well in the academic world. However, in many professional services, loyalty to the candidate will outweigh loyalty to the profession and referees will be reluctant to give a poor reference, perhaps preferring to decline to give one.

Once the reference is written, it has to be marked. This introduces further opportunity for unreliability and lesser validity. All the comments on marking self-descriptions apply to marking references.

⁸ Jackson, N. (2007) *Assessment in Medical Education and Training: a practical guide* p35, Oxford: Radcliffe.



References also suffer from obvious disadvantages with diverse groups of candidates. To the extent that the profession is dominated by an 'inner circle', the candidate who manages to obtain referees from this group will be at an advantage over someone whose referees are unknown because greater weight will be placed on known and influential referees.

The referee system for QC candidates tackles some of the problems with references by using professional interviewers to interview referees. Interviewers can probe the evidence on which the referee's opinion is based and increase the pertinence of the material from the referees. However, this is clearly an expensive option.

Appraisal

Appraisal by a manager can be based on a very good sample of the candidate's work and should therefore give an accurate reflection of competence. However, in practice, organisations find they can place limited trust in appraisal ratings. Managers shy away from giving poor ratings and the idiosyncrasies of the different appraisers can intrude to an unacceptable degree into the appraisals that are given. For this reason, many organisations use a different form of assessment, such as expert assessments, as the basis for important decisions about people's strengths and weaknesses.

To maximise the validity of appraisal, it is important that a well-structured form is provided based around the competencies. Appraisers need to be trained to focus the appraisals on the competences. They need specific training on the effects of diversity.

In a professional services context, appraisal could work well when the appraiser has a good oversight of the candidate's work. However, to the extent that the professional works independently, the appraiser might well have to rely upon indirect and sparse evidence. Furthermore, as a measure of minimum competence, it seems relatively unlikely that an appraiser will declare that they employ or manage someone who is not competent, at least for their current role. Appraisal seems better suited to grading someone in their current role than confirming they are minimally competent. It might also be used to gain an indication of potential. However, great care needs to be taken to ensure that the ratings of potential are based upon solid evidence.

360 Feedback

360 feedback broadens the sweep of appraisal to include peers, direct reports, and perhaps clients and suppliers. It has the advantage of broadening the perspective on the candidate. The medical profession, for example, use this approach as an assessment tool for Foundation doctors. However, as an assessment of minimum competence, it suffers from the problem of the manager's appraisal concerning how good an oversight each rater has of the candidate's work. It also suffers from the problem of references in that people will prefer not to declare someone below a standard of minimum competence. Including clients and suppliers raises the question of how representative the sample of clients would be. The motivations of clients and suppliers might also be questioned. For example, suppliers might well prefer to give favourable reports even if they are assured of anonymity. Clients might also have a limited insight of the competences as opposed to the result the candidate has achieved.



By its nature, if the raters providing 360 feedback extend beyond the organisation to which the candidate belongs, any training of raters is limited to guidance provided to them. There is no guarantee that such guidance will be followed.

Observation

A professional observation of the candidate offers the benefit of seeing the candidate's actual work. It is generally interpreted as taking the form of observing the candidate in interaction (e.g., observing a teacher or a General Practitioner). However, observation can be extended to reviewing a portfolio of the candidate's written work or creative work. To make the method reliable, observers must, of course, be fully trained in observation skills. Indeed, such training is the heart of observation as a method. It is also important that an adequate sample of the candidate's work is observed to be sure that it is representative. With written work that is simply sent in by the candidate, there remain such questions as whether the portfolio is representative of the person's work and produced unaided by the person.

'Live' observation, in practice, is a more straightforward option in some professional contexts than others. For example, Ofsted observes teachers conducting lessons and this is relatively straightforward. In particular, observing advocates in court is made difficult by the unpredictability of when they will appear and by the time required to achieve a representative sample of work. Nevertheless, the CPS has implemented a process for observing their advocates and this has resulted in some 1500 advocates being assessed on a five-point scale for their competence for one of four levels of case.

The CPS scheme covers not just in-court advocacy but also includes observing the advocate's written work, professional ethics, application of CPS policies and planning and preparation.

The CPS approach includes an introduction by the assessor to the advocate, enabling the advocate to make the assessor aware of any particular circumstances that might affect the quality of advocacy such as having been handed the case at very short notice.

A Robustness Hierarchy.

The above discussion covers a range of standard methods of assessing competence, each of which has its merits and limitations in terms of reliability and validity. Nonetheless, some methods are more reliable and valid than others and therefore more robust. These are the more rigorous methods. There are three tiers of methods in terms of robustness:

Tier 1. Direct observation by trained observers. The most robust methods in terms of accuracy allow competence to be directly observed and assessed. Ideally, to assess whether someone reaches the minimum competence requirements, trained observers will observe and assess their performance in an adequate sample of actual work. A similar level of robustness should be achieved by a work sample. Assessment centres also use trained observers with simulations of work that are designed to be equivalent to observing the work itself.

Tier 2. Reports based upon observations of work. Appraisals, 360 feedback and references are all based on observing candidates' behaviour at work. However, reporters



might have differing opportunities to observe the candidates and it can be difficult to train reporters to deliver accurate reports or use a rating scale reliably.

Tier 3. Self-reports of competence. Written self-reports and self-reports derived by trained interviewers can show that the candidate at least knows what behaviour is required for competence. However, there remains the uncertainty over whether they typically behave in line with their self-reports. Conversely, some candidates will fail to do themselves justice and under-report their competent behaviour.

In addition to the above there is a fourth tier that would not normally be considered a proper test of competence.

Tier 4. Inferred competence. The fact that someone has been practising might be taken as evidence of some minimal level of competence. Of course, there is no robustness to this assessment, but it confirms that the skill has been exercised. However, it is potentially indirectly discriminatory as it would act against those who have taken a career break. A little more robust would be taking evidence of CPD as inferring competence. Many professional/regulatory bodies have a rule of conduct that their members shall undertake CPD. For example, the Royal Institute of Chartered Surveyors, the Institute of Chartered Accountants and the General Dental Council. Carrying out CPD shows commitment. However, there is no guarantee that the development will have increased competence.



Advice on the best approach to the detailed design for a robust and proportionate scheme to assess the advocacy standards agreed by the Joint Advocacy Group in the context of criminal advocacy.

Key Considerations

In assigning methods of assessment to the tiers outlined above, reliability and validity or robustness has been the sole consideration. However, in designing a QAA scheme a series of other considerations need to be taken into account aside from reliability and validity. Of particular importance are:

Fairness and Accessibility. Fairness is a component of robustness in that bias and discrimination would undermine the validity and reliability of individual assessments. Each assessment will need to be equality-proofed. In addition, the scheme as a whole needs to be fair and accessible. The scheme must not disadvantage any social or cultural group, type of advocate or candidates from any geographical location. It should be designed to be able to accommodate any reasonable adjustments that may be required by disabled candidates. It must be fair and accessible to all and promote diversity within the profession. The procedure should therefore be subjected to equality impact assessments at each stage of development and implementation.

Scale of task. A method might be reliable and valid but be limited in its feasibility because of the time, accommodation, and other resources it requires. For example, a scheme might require an input from assessors that is simply unavailable. These issues will be reflected in the cost of the scheme and this, in turn, will be judged against the scheme's proportionality. A scheme will be proportionate to the extent that the scale of the problem it solves justifies the cost of the solution. If the scheme was simply meant to identify a handful of marginally incompetent advocates it would presumably need to be relatively minimal to pass the proportionality hurdle. On the other hand, if incompetence is widespread a more substantial scheme is justified. Unfortunately, at this time, there is no hard evidence on the scale of the problem.

Cost. The scale of the task is not the only basis for deciding the reasonableness of the cost of the scheme. Several people we interviewed stressed that criminal advocacy is not particularly well-rewarded and felt that the person being accredited should not be faced with a charge greater than the "low hundreds" of pounds. Certainly there is a potential problem with the cost of the scheme for people practising part-time or returning to practise after a career break. These people are more than likely to be concentrated amongst particular demographic categories so the level of costs could be indirectly discriminatory. The issue of costs then becomes a question with implications for diversity and equality.

Credibility of scheme. A method might be valid in the sense that it measures the competency but it must also be seen as valid by those being assessed and other stakeholders. It needs to have a further type of validity, known as 'face validity'. Those being assessed might be deprived of their livelihood or at least have their earning restricted as a result of the scheme. They will rightly subject the scheme to careful scrutiny. If the scheme does not appear to them to be robust, it is bound to be derided. For example, if the scheme



used professional observers it is likely to be derided if these observers are not seen as being at least the professional equals of the assessed.

Credibility also has to be achieved with all of the other stakeholders in the scheme. Of particular importance are the LSB and LSC, each of which has published their requirements of the scheme.

Purpose of assessment. A scheme that is simply aimed at deciding whether a candidate meets a threshold level of competence might be very different to one that is aimed at making quite fine distinctions about a person's level of competence. For example, the test of having to read a number plate is acceptable as a test of minimal sight requirements for driving but is very different to what is required for a graded test of eyesight. Our brief is to look at minimum competence.

Practicality. The nature of advocacy and the advocacy profession makes it difficult to use some of the standard methods of assessment without adaptation. In particular, there is no real line management relationship that would enable appraisals to be carried out; if an observer attends court, there is no certainty that the advocate will be performing; adequate simulations of higher level advocacy would require voluminous casework to recreate the complexity; arguably a test of knowledge is less relevant than a test of knowing where to find knowledge.

Options

With these considerations in mind, the different methods of assessment can be examined as potential components of a QAA scheme. We start by looking at the methods generally and then look at them in relation to the two objectives of QAA, namely accreditation to practise at a level and re-accreditation.

1. Self-Descriptions

Enabling the candidate to present evidence of competence appears to have legitimacy from the candidate's point of view. It allows them to choose from across the entire range of their practice to illustrate their competence. However, as a component of QAA, the method has the following limitations:

Gaining good marks requires the candidate to know how to present their evidence. It is undoubtedly true that some candidates will not do themselves justice and this is not because they have not really been bothered to complete the form correctly; rather it is because they do not fully understand the requirements or are influenced by different social or cultural styles of self-presentation. At the same time, the method suffers from the credibility gap that it is at least theoretically possible for a candidate to present themselves in an unjustifiably favourable light.

In practical terms, marking written evidence is time-consuming and laborious. There is a limitation in the extent to which evidence can be marked reliably against a particular level. Double checking is required.

In short, the method is costly in the time required both to present the evidence and to mark it.



2. Interviews

Coupling the self-description with an interview would overcome some of the limitations of the self-description on its own. Interviewers could draw out evidence that has not been clearly presented and verify claims made by candidates. Indeed knowledge that an interview is part of the procedure should discourage exaggeration.

However, there is a danger that interviewers will short-circuit the process with some candidates, reaching an overall conclusion about a candidate's strengths and encouraging them to present confirmatory evidence. This could become quite pernicious if the interviewer perceives the candidate as 'one of us' and, with the kindest of motives or quite unconsciously, endeavours to get him/her through the examination. Interviewers would have to be from the advocacy profession to be credible and this increases the likelihood of candidates being of varying degrees of similarity (e.g., same or different professional background, etc) to the interviewer.

The diversity implications of interviewers being from the majority group and conducting interviews with under-represented groups are obvious. Even with diversity training, there remains the challenge of recruiting a representative sample of senior interviewers from currently under-represented groups.

Interviews would be more reliable and credible if conducted by pairs of interviewers, but this would of course double the cost. The time for an interview will be quite considerable, allowing for preparation (reading the candidate's submission), the interview itself and the assessment of the interview.

3. References

The advantage of references is that they can cover a wide sample of the candidate's work. They can thereby address how the candidate habitually performs rather than focussing on a peak or trough of performance. However, the problems they carry are daunting. First, referees are untrained and will differ in terms of their ability to fill out even structured reference forms and in how they operate a rating scale if one is included.

References also suffer from the human problem that people prefer not to give bad references. Rather than doing so, they will generally decline to give a reference at all.

Furthermore, it is not clear who would be asked to give references. If it is clients, then several would have to be approached to build a reliable view of the candidate. However, it is unclear whether a single poor reference among several good ones should be ignored as an aberration or taken very seriously as evidence of inconsistent and sometimes incompetent performance. If the references are from those instructing the advocate or from the advocate's colleagues, they are likely to have only a partial view of the competences and might be influenced by hearsay.

In addition to the problem of gaining references on advocacy, there is the problem of rating those references. In the case of references from peers, raters are likely to be influenced by whether the referee is known to them. In turn, this creates an inequality for candidates who are not at the centre of the profession and generally this effect will work to the disadvantage of those not in the white male group.



Some of the problems with references could be overcome by verifying references, for example by interviewing referees. This is likely to be prohibitively costly, but might be justified for higher level advocacy.

4.Appraisal

Advocacy does not lend itself to appraisal in the conventional sense of appraisal by line management. First, many advocates are self-employed and do not have a line manager. Secondly, superiors within the candidate's chambers or firm do not have a good sight of their advocacy skills.

A particular form of appraisal of advocates that is feasible is appraisal by members of the judiciary. Judicial evaluation carries an obvious appeal. Judges have an excellent opportunity to observe the advocate's performance and they have a clear understanding of advocacy standards. Furthermore, their inclusion in the scheme is seen by them and by advocates generally as legitimate.

Judicial evaluation is also perceived as an extremely cost-effective option, although the true costs (particularly training, carrying out the evaluations and administration) need to be specified. The extent to which the judges' time is indeed provided free of charge also needs to be clarified. The MoJ have stated that the amount of judicial time they are willing to invest will depend on how good a measure of quality the scheme provides. The MoJ also stated that there would need to be a convincing case made for use of judicial time beyond a short period because of the associated opportunity costs.

It would be desirable to have a proper analysis of the judicial evaluation option with judges' time (for training and operating the scheme) costed properly, together with the cost of the administrative infrastructure that will trigger and collate the evaluations.

There are the following issues with judicial evaluations:

- a) Unlike appraisal by a manager covering say an entire year's work, judicial evaluations will have to be based on single cases to make them comparable with each other. If the advocate chooses the cases for evaluation, there will be a natural tendency only to choose cases in which the candidate feels they have performed well; if the case is chosen for the advocate for example by the administrators of the scheme, then it might be a case that gives an unfair representation of the advocate's competence.
- b) As with references, if the evaluation is optional, judges might well prefer to decline to evaluate than to give a poor evaluation.
- c) As with appraisals by managers, there can only be relatively limited control of judicial evaluations. A large number of judges will be involved (one estimate quotes more than 600 circuit judges) and clearly it is difficult to imagine that this number of people will achieve a high level of reliability. Nonetheless, this problem is not confined to judicial evaluations. With the number of advocates to be assessed, any system will require a large cohort of assessors. Any chosen system will require assessments to be monitored to determine whether some assessors are consistently lenient or severe. Judges will need thorough training so that they operate as consistently as



possible. Such training can be provided by the Judicial Studies Board but it clearly carries a cost, not least in terms of the judges' time.

- d) Judges do not have the opportunity to see all the advocacy standards. For example, they do not see all the advocate's interactions with the client (C1.1 and C1.2).
- e) In our experience, members of the judiciary do not welcome being constrained by structured forms but such form-filling is a necessary part of the system. The system would require judges to provide evidence and ratings of competence. It would be unreasonable for ratings to be assigned by a third party because the accuracy of the ratings would depend entirely on the quality of the evidence. However, there will certainly be forms completed for which the rating does not seem to follow from the evidence.
- f) The Cardiff pilot suggested that there might be an issue in getting judges to complete forms. The Cardiff researchers only received judicial evaluations on 22 of the 148 candidates who could have been evaluated.
- g) There is a potential problem of any appraiser being influenced by hearsay and reputation and other contaminating facts such as being from similar professional or social backgrounds. There is, for example, the view that judges are more nurturing towards members of the Bar than Solicitor Advocates. This raises concerns about the diversity implications of judicial evaluations. Diversity would need to infuse the training of members of the judiciary to carry out their role as appraisers.
- h) There is concern that the clients of an advocate might use a poor judicial evaluation of the advocate as grounds for appeal.
- i) There is also concern that advocates sometimes have to be assertive with members of the judiciary and might be constrained if they know they might be being evaluated.
- j) QAA would have to be based upon several evaluations (to allow the idiosyncrasies of any one evaluation to be diluted) and these would have to be by different judges (because it far less likely that an evaluation will be contradicted by the same judge than by a different one). However, meeting these conditions might be difficult for some advocates.
- k) There seems to be debate as to whether the system could be extended to magistrates. The Council of the Inns of Court do not seem to see this as a problem in principle⁹.
- l) Although judicial evaluation is highly credible for many advocates, it does not enjoy the same credibility for other stakeholders in the QAA process. They see particular weaknesses inherent in judicial evaluation (the partial coverage of the standards; the natural preference by judges not to disrupt an advocate's career) as well as

⁹ The Council of the Inns of Court. Further response by the Council of the Inns of Court to the joint Advocacy Group of SRA/ILEX/BSB on accreditation and proposed new Advocacy Standards Council. Para 67



weaknesses in proposed schemes for judicial evaluation (the advocate choosing cases to be evaluated, quite limited training of judges) and question its robustness.

Judicial evaluation is not the perfect answer to QAA. However, there is no perfect answer. We are aware that the above list of issues is lengthier than that for other methods but that does not mean that judicial evaluation is peculiarly problematic. It is one of the more credible methods of evaluation. However, for it to be acceptably reliable and valid, the key issues must be addressed and this means that judges must be properly trained to make them, in effect, similar to expert observers. Judicial evaluations will also be more straightforward if judges are working with clearly observable competencies. Furthermore, it is likely that their job will be easier to the extent that they are deciding whether someone is or is not at a minimum level of competence rather than having to make fine-grained distinctions on precisely how competent someone is.

Although judicial evaluation could be part of QAA, we have been given the impression that the judiciary would prefer a further system to deal with the people who are found not to be competent by them. Judicial evaluation, then, has to be part of a package.

5.360 Feedback

360 feedback in the context of advocacy is similar to a combination of references and judicial evaluation. The only addition is the possibility of input from clients and the Court Service. However, in practical terms these will give some insight into only a small subset of the competences. In addition, client references are likely to be heavily influenced by the outcome of the case. It is hard to imagine a defence advocate's career being influenced by the appraisal of convicted clients.

6.Observation

Observation would lend a professional accuracy to ratings and would constitute an expert appraisal. Although it was deemed impractical by Cardiff Law School¹⁰, because of the uncertainty of the appearance of an advocate when the observer attends court, the Crown Prosecution Service has implemented a scheme successfully. Nevertheless, the observation might have to extend over several hours or even days to afford an adequate sample of the advocate's skills and the difficulty of observing the advocate one wishes to assess increases with the level of the case.

The CPS has assessors in each region and they are able to use their initiative to juggle the list of people they are assessing according to who is available to be assessed.

Aside from advocacy in court, observation of an advocate's written work is feasible as long as considerations of confidentiality can be overcome. However, such written work will apply more to some advocates than others and is therefore of limited relevance to a scheme that must apply to all.

¹⁰ Legal Services Commission. Quality Assurance for Advocates Annex Ci Cardiff Law School's Evaluation Report November 2009. Para 2.2.1



The great merits of observation are:

1. It is clearly assessing the advocate's performance skills.
2. It uses a relatively small pool of thoroughly trained observers. This should lend consistency (i.e., reliability) to observation as a method.

The weaknesses to consider are:

1. It will require a team of trained assessors operating across the country.
2. More time will be required to observe an advocate in high level cases because such cases are more likely to include long periods of time with relatively little contribution from the advocate.
3. Like judicial evaluation, observation might not cover all the standards. For example, will the observer see all the advocate's interactions with the client (C1.1 and C1.2)?
4. It is a costly alternative, likely to cost in excess of £1,000 per assessment.

7. Testing

Testing of knowledge is a reliable and objective approach. However, it suffers from the objection that people who are perfectly competent might be unable to summon knowledge during a test; conversely someone might be very knowledgeable but, in practice, incompetent. When Cardiff Law School piloted the use of a Multiple Choice Test only 51 per cent of Level 2 candidates passed and "a regular complaint was that they would have looked up the answers to these questions".¹¹

Testing also suffers from the practical constraint that, for it to have credibility, it has to be supervised. Inevitably, this means candidates having to attend test centres at set times. Setting up the arrangement will have some cost and attendance will also carry financial cost and inconvenience. In addition, the test will need to be refreshed regularly to counter concerns that the content has leaked.

Above all, though, testing will only cover a very limited range of the practical skills of advocacy as set out in the standards to be assessed. The cost of testing would need to be set against what it achieves in terms of quality assurance.

8. Assessment Centres

Assessment centre simulations offer the opportunity to observe the advocate in controlled conditions. Their advantages are:

- a) Simulations can be written to ensure adequate coverage of the competencies
- b) All candidates have an equal task to perform

¹¹ Legal Services Commission. Quality Assurance for Advocates Annex Ci Cardiff Law School's Evaluation Report November 2009 Page 44.



- c) They give candidates who have been held back in their career the chance to demonstrate their competence to perform at a higher level. As such, they could be used to promote diversity.

However assessment centres carry their weaknesses:

- a) Different simulations will be necessary for the different levels of advocacy. In writing a simulation for levels 3 and 4, it will be extremely difficult to capture the complexity of cases at that level. Equally, in running the simulations for those levels, it will be difficult for candidates to accept that it is a faithful simulation of their actual experiences of working in court.
- b) To the extent that candidates specialise in particular types of case, they will see it as unfair if the simulation is outside their area of specialism.
- c) The simulations will need to be refreshed regularly and there is bound to be questioning as to whether the content has leaked.
- d) It seems implausible that advocates could be re-accredited with an assessment centre. Those who fail will object that they behave differently in a 'real' court. The advocacy simulations will never achieve the credibility and fidelity of the flight simulator.
- e) There is no guarantee that the candidate who is energised to display competent behaviour in the assessment centre will actually do so in practice. For example, a candidate might exhibit exemplary professional etiquette in a role-play but behave in a less competent fashion when in an actual courtroom.
- f) Assessment centres are costly to design and run. Candidates will be faced with paying not just for the design and the assessors' time but they will also have to bear the cost of foregone earnings.

Assessment centres are undoubtedly one of the most accurate methods of assessment if they are properly designed and implemented. However, they are costly and their shortcomings seem likely to be focused upon by anyone who fails to be re-accredited having attended an assessment centre. On the other hand, an assessment centre simulation might well be seen as a normal conclusion to training and as a gateway to at least some levels of practice.

9. Training Course Assessments

At present, the assessment of training in advocacy skills appears to vary between training establishments. However, both the barristers' and the solicitors' training in advocacy has the reputation of people rarely if ever failing to pass through it. JAG describe how the New Practitioner Programme "cannot easily be failed".¹² For the assessment at the conclusion of training to be a robust part of the QAA process, JAG will need to inspect and accredit each training provider.

¹² Joint Advocacy Group. Consultation paper on proposals for a quality assurance scheme for criminal advocates. August 2010. Para 51.



Without such inspection and accreditation, the system is likely to suffer from the perception that people rarely fail their training. However, if a robust system of inspected and accredited assessment marks the end of training for a particular level of advocacy, that assessment would be similar to if not the same as an assessment centre. For example, the Royal Institute of Chartered Surveyors require a 3000 critical analysis followed by a presentation and interview at the end of the Assessment of Professional Competence (APC), the pass rate of which is approximately 70%.

10. Experience

The precise extent to which advocacy skills need to be exercised for competence to be maintained is unclear. However, people we interviewed were generally of the view that those who specialise in criminal advocacy tended to be more competent.

It must be noted that, if experience is used as a method for maintaining accreditation, there is clearly a risk of discriminating against people who, for one reason or another have taken a career break or work part-time. On the face of it, women seem more likely than men to be disadvantaged, resulting in indirect sex discrimination.

11. CPD

Undertaking CPD is a marker of a candidate's motivation to maintain competence. It is not a guarantee of competence and could not be described as robust.

Designing a Scheme to Assess Advocacy Standards

In designing a scheme, it is necessary to cover the two main objectives of QAA:

1. Admitting people to practice at a level
2. Check on the competence of advocates practising at a level.

We will deal first with admitting people to a level.

Admitting People to Practice at a Level

Training Course Assessments. If admission to the level is preceded by formal training, then passing the practical advocacy element of that training offers a way of assessing the person. The robustness of this assessment will depend on the extent to which it is standardised across training providers, inspected and accredited. As already noted, a very standardised, inspected and accredited system would be the equivalent of having an assessment centre for the level of advocacy addressed by the training. On the other hand, without a common and robust inspection and accreditation across training providers, the system is analogous to gaining a driving license by attending driving school and without passing the test. There is, of course, standardisation within the barristers' profession (by the Council of the Inns of Court's Advocacy Training Council) and within the solicitors' profession. However, the Smedley report for the Law Society makes it very clear that across professions "it cannot reasonably be argued that the BPTC and the LPC put young barristers and solicitors in the same, or even similar, positions regarding preparation for exercising rights of audience. Equally, six months' and twelve months' pupillage provides far more robust preparation for advocacy than does six or twelve months' training as part of a Training



Contract”.¹³ The same report also makes clear the differences between the training received by barristers and solicitors for Higher Rights, describing how, for solicitors, “currently, it is possible to acquire higher rights in a matter of days”¹⁴.

At present, we also came across the belief that few fail the latter stages of training for either solicitors or barristers, yet these are the stages when practical advocacy skills might be demonstrated.

Furthermore, passing training successfully appears at present only to apply to the first levels of advocacy. Whilst training clearly precedes entry to Level One and the gaining of higher rights, it does not appear to precede entry to the other levels of advocacy. It is also unclear to what extent progression to those levels is a matter of training versus a matter of the experience.

Assessment Centres. An assessment centre is a robust method for admitting someone to practise at a level. They are able to demonstrate the minimum level of the generic advocacy skills in the context of a particular level of casework. However, assessment centres appear to be a less viable option as the level of advocacy increases. To build a realistic and convincing simulation of a higher level advocate’s work would be extremely difficult and to run it successfully would take a good deal of time. To be valid, the simulation must be just that: a simulation of what the higher level advocate does. Furthermore, there is the potential objection that as advocates gain in seniority they specialise. Any given simulation might be declared by the candidate as invalid because it is off his/her home territory. Whilst this is a slightly contentious objection because advocates should be able to demonstrate their skills across cases, unsuccessful candidates might appeal to the commonsense that they have been treated unfairly.

The other methods of assessment, which all rely on assessing advocates at work all suffer from the problem that, by definition, the person would be unable to demonstrate the skills at a level until they had passed into that level. This seems a logically insuperable problem. Thus, a candidate cannot write about their skill at level 2 if they have only worked at level 1; nor can a judge be expected to say that a person was so good at a level 3 case that he or she is ready to carry out level 4 work. Apart from the judge having to project the candidate into a level 4 case, the option raises all sorts of questions: How many judges would have to say this? How would the difficulty of the level 3 case be taken into account? What happens to people who are blocked from appearing in difficult cases at their level?.

As already noted, many of the advocacy skills might be the same across levels and are independent of context. As noted in the introduction, maybe, we could divide advocacy skills into those that require evidence of being applied in the context of the higher level and those that can be adequately demonstrated in a lower level context. This would suggest that advocates wanting to progress to the next level could be assessed on the invariant skills while they are working at the current level (maybe via the re-accreditation process). However, their passing these invariant competences in no way indicates their standing on the transition competencies. For those transition competencies to be assessed other than by

¹³ Smedley, Nick. Solicitor Advocates: Raising the bar. The Law Society, November 2010 Para 37

¹⁴ *ibid* Para 46



a simulation would require 'provisional' accreditation to the next level. Then, advocates could be assessed at the next level by one of the methods that looks at their actual work, notably through observation or judicial evaluation. People who fail at the higher 'provisional' level would revert to their previous level of advocacy.

Of the two methods, judicial evaluation is based on seeing entire cases, simpler to run and is less costly than observation. On the other hand, observation is likely to be more reliable and valid unless judges can be trained to be the equivalent of professional, highly trained, observers. In addition, as noted, the judiciary would want to see another method used with those people they found not competent. It seems likely that these people would need to be observed to confirm their level of competence. Alternatively, they would be subject to further training and development in the same way as people deemed not competent by any system.

Conclusions on Moving into a Level

The most robust method of assessment for progress into a level would be based upon an assessment centre for lower levels of advocacy (1 and 2) for which there is training. This might be carried out by the training organisation preparing the candidate for the next level or by an independent assessment centre run on behalf of the regulators. The most robust system for progress into the higher levels would be marked by observation of the advocate at the level below (for behaviours that are common to the two levels) coupled with a simulation that addresses the transition competences between the levels. Alternatively, it would be by further observation once the advocate had been granted Provisional status to work at the next level. The most robust option is to have an independent assessment before admission to a level.

Robustness will be increased to the extent that the candidate's competence is confirmed by more than one source of evidence. This is the concept of triangulation. Robustness is also increased to the extent that all the facets of advocacy, as set out in the standards, are covered.

The most light-touch option would be to continue with the status quo (where training applies) and admit everyone to the level for which they have been trained. Light touch admission to higher levels of advocacy would be based on performance at the current level coupled with a suitable record of CPD. They would be labelled light touch because neither method verifies competence at the next level.

Judicial evaluation seem likely, in practice, to be a medium rather than highly robust option for admitting people to the higher levels of advocacy. However, as noted, the precise robustness depends on the extent to which the concerns about judicial evaluation can be addressed by training.

Judicial evaluations could be used both to grant provisional and confirmed accreditation. Alternatively, they could be used to grant provisional accreditation but, to increase robustness, an independent observation might be used to confirm accreditation at the next level. As noted, the judiciary might well insist on this extra stage for candidates they do not deem competent.



Check on the Competence of Advocates Practising at a Level

The design of a system to ratify current practitioners and/or to re-accredit those who have been given accreditation needs to tread a difficult path between:

- a) The need to have a system that is robust. There is no point in having a scheme to re-accredit people if there is no real possibility of them failing to be re-accredited.
- b) Recognition that the process could deprive a practitioner of their livelihood.

The LSCP presents the appealing analogy of having an MOT test with the implication that the QAA scheme will be based on the commonsense of excluding incompetent practitioners. The problem with the MOT analogy is that measurement of minimum competence is a far from precise science, whatever the method of assessment. Any rating of competence is only an approximation of the truth. We would therefore urge that the process of checking on the competence of existing advocates must be embedded within a process of career development that means that advocates get robust feedback from the process. Those found to be below standard should have the opportunity to develop and assemble evidence to gain re-accreditation. We understand that the Advocacy Training Council is addressing this matter and support their intention to design the process of career development before implementing the process of assessment. The only alternative is to design the assessment and then design a career development process to make it work.

In designing a system of re-accreditation, JAG makes the distinction between periodic routine re-accreditation and the 'traffic light' system that will draw attention to people whose re-accreditation is a priority.

Periodic Re-Accreditation

To make the process useful to all the candidates, any evidence gathered about a candidate during re-accreditation should be fed back to the candidate and used to build a development plan for each candidate. In the case of evidence of the candidate failing to meet minimum competence standards:

- a) There should be agreed degrees of failure that trigger different action plans. Given the imperfections of any method of assessment, we suggest that an action plan culminating in the need to go again through the re-accreditation process should only be triggered in severe cases of failure.
- b) Candidates must have the opportunity to appeal against evidence on them
- c) Candidates required to repeat re-accreditation should have the chance to improve within an agreed timeframe and undertake the re-accreditation process again
- d) If the person failed to be re-accredited for the second time within the development timeframe, this would be the equivalent to the traffic light alert.



Traffic-Light Re-Accreditation

The proposal by JAG is that two judicial alerts about an advocate should trigger action¹⁵. After the opportunity for appeal, we suggest that the action should be formal assessment against the competences for re-entry to the level at which the person is practising.

However, for this Traffic Light system to gain credibility as part of a robust system, judges will have to issue alerts on a significant number of advocates. The Council of the Inns of Court point out that the Traffic Light system is “little more than the existing BQR Board set up by the Bar Council”. There has been “only a handful of referrals in three years”¹⁶

Looking at the possible methods available to ratify an advocate’s competence or give re-accreditation, we have the following comments:

Self-evaluation. The method will give evidence of competence but it is hard to imagine depriving someone of their living because of some shortcoming of a written self-report. Equally, it is hard to imagine asking them to re-write their self-report. Such a process could be derided as one of essentially having to learn how to jump through hoops.

Interview. The method will give scrutinised evidence of competence and avoids the problem of people failing because they do not present their evidence convincingly. However, it is expensive and suffers from the candidate being selective in their choice of evidence.

References. As noted, it seems very unlikely that references uncorroborated by an interview with the referee would add to the re-accreditation process. A poor reference seems a remote possibility. Even if one were obtained it would only have weight if supported by other evidence.

Appraisal. Judicial evaluations are an obvious possible method of assessment for the re-accreditation process. A minimum number of such evaluations would need to be set. It would be preferable for each of these to be by a different judge. It would also be preferable for the evaluations to be without the advocate’s prior knowledge or choosing. This will avoid any doubts of the advocate playing up to the evaluation process or only choosing to be assessed if they have performed particularly successfully.

A difficulty lies with Level One Advocates. The question of whether magistrates would be able to give evaluations still seems to be open. If they would, there would be a very considerable training task to ensure that their evaluations are reliable and valid.

360 Feedback. As noted before, 360 feedback, whilst superficially appealing, has such limitations that it is not a viable option.

Observation. Observation is a robust but expensive option for ratifying competence. Whilst the CPS has employed the method with their advocates, the logistic problems of covering all criminal advocates with professional observation will present a challenge. To be credible

¹⁵ JAG Ibid paras 74-82

¹⁶ The Council of the Inns of Court. Further response by the Council of the Inns of Court to the joint Advocacy Group of SRA/ILEX/BSB on accreditation and proposed new Advocacy Standards Council. Para 39



and acceptable, the observers will have to be at least the professional peers of the candidates.

Testing. Testing a sample of the knowledge that is unarguably required to practise at a level is a reasonable option but only covers a small subset of what is required to be an advocate. The test would need to be re-written regularly.

Assessment centres. As a re-accreditation tool, assessment centre simulations will undoubtedly meet the objection from candidates and their colleagues that the person was performing perfectly satisfactorily at their level and were misjudged in a brief simulation of the 'real thing'. No counter-arguments are likely to satisfy the sense of grievance that will be felt and that might well be justified given the imprecision of any measure of competence.

Training course assessments. It is not thought that these apply to re-accreditation, apart from CPD assessments (please see below).

Experience. A light touch re-accreditation would simply require the advocate to present evidence of having practised for a certain number of hours. However, this clearly offers no guarantee of the competence of that practice. On the other hand, a lack of experience (dabbling) does appear to be linked to a lack of competence.

CPD. Another light-touch method would be to require the candidate to present a CPD log for re-accreditation. Again, this gives no assurance that competence has been attained. On the other hand, it might well be found that a lack of CPD is linked to a lack of competence.

Conclusions on Re-Accreditation.

Very light-touch approaches would be to require CPD and/or a number of practice hours. The option would be made more robust if coupled with a test of unarguably-required knowledge.

A number of judicial evaluations would be a medium robust option, with the precise robustness depending on the training that can be achieved with the judiciary. Robustness of this method would be increased if it were coupled with an independent re-accreditation interview.

Most robust would be the introduction of observations, with robustness further increased by the addition of a re-accreditation interview.

First-Time Re-Accreditation

Given that the scale of the problem of incompetence is unknown, it seems unreasonable and disproportionate to force every advocate to be assessed for the level at which they are practising as if they were applying to move into that level of work. Furthermore, it means developing a system that is geared up to handling all advocates in a batch, only then to scale it down so that it can handle the next re-accreditation on a five-year cycle.

It seems better to passport people into the level at which they are currently operating via some simple process of them self-selecting their level of operation and having this endorsed, perhaps by a senior colleague and/or members of the judiciary. They would then go into the normal re-accreditation process but their first re-accreditation would be sooner, the less experience they have of operating at a level. Operating at a level would be taken as a very crude marker of successfully operating at that level.



Conclusions on the Overall QAA Scheme regarding Robustness and Proportionality

As specified, this scheme is required to ensure minimum competence as opposed to identification of excellence and it also needs to be proportionate. Consideration might therefore be given to an approach which starts out as light/medium-touch for all advocates that becomes more robust once below standard performance is identified. For example, for admittance to Level 3, the scheme could consist of judicial evaluation +CPD. If these methods identified an issue with the advocate's standard of performance he/she would then, and only then, be observed in court or take part in a series of simulations. Robustness, in terms of more pieces of evidence (triangulation) and validity and reliability of assessment, would increase only at the point when important decisions are being made about people's livelihood and not before. This would help ensure the proportionality of the scheme.



Advice on the best approach to implementation, including a delivery plan outlining the key tasks required to complete the detailed design and implementation of a scheme (with indicative costings) by July 2011.

Implementation involves a logical sequence as follows:

1. Agree the levels of advocacy and the requisite skills.

The result must be a clear specification of minimum competence at each level. The skills must be defined in a manner that is observable and minimises interpretation and opinion. For example 'demonstrates superior ability....' relies entirely upon agreement on what is meant by 'superior'. It would be preferable to couch the requirement in terms that are less open to interpretation.

2. Decide matters of policy

These include:

1. the level of assessment. Is it each performance indicator, each behaviour, each standard, each domain?
2. the rating scale for each unit that is assessed
3. what constitutes a pass
4. the 'environment' for the assessments, in particular the process of feedback, training and development (if any) within which the scheme will be embedded.
5. What records are to be kept and what rights of access do candidates have to information about them.
6. the appeal process

3. Decide the methods of assessment.

Making the decision requires anticipation of the design and implementation stages with respect to the assessment methods. A number of detailed decisions have still to be taken. Quite apart from deciding the broad method of assessment, agreement is needed on the detail for each method. For example if references were used, how many are required? How many judicial evaluations are needed from separate judges? How recent must the evidence be for self-descriptions? How will the methods best be combined to form the scheme?

As part of the blueprint, a grid summarising the method(s) of assessment to cover the skills represented at the level of generality agreed in 3 above should be produced.



At this point, the screening stage of an Equality Impact Assessment should be completed to identify any potential adverse impact and facilitate remedial action at an early stage before further development takes place.

4.Engage in the communication exercise for the process.

This will be a large task and can only really take place once the process is clear.

5.Establishment by the regulators of the resource to administer, diversity check, monitor, quality assure the chosen method of QAA.

6.Design the methods of assessment.

All the methods of assessment revolve around the competencies. We do not know which methods will be chosen and provide below some comment on implementing each method. Diversity/equality proofing will be built into the design of each method.

1.Self-Descriptions

Self-descriptions require the design of a form that will ask the candidate to present evidence of the competencies. This might be by asking them to describe cases bearing in mind the competencies or it might simply ask them to give evidence of the competencies from an assortment of cases. The form is simple to produce and to pilot. It could be produced and piloted within one month.

Assessors will need to be trained to rate the evidence. This requires approximately one day of training and assessors can be trained in batches of 12 per trainer.

2.Interviews

Interviews would most conveniently be based around self-descriptions.

The additional material for interviews will be guidance on probing the evidence that the candidate has provided and guidance on rating the competencies. An interviewers' assessment form will be required. None of this will require more than two weeks.

Interviewers will require training and the extent of the training will depend upon the delegates' experience as interviewers and the training they have received already. As a guide, we would recommend at least two days training for new interviewers to include guidance on questioning skills, listening skills and diversity in the interview.

3.References

A system of references seems an unlikely option but is straightforward to design. It requires a competency-based reference form to be designed together with guidance for referees. This would need to be piloted and amended as required.

Those marking the references would need to be trained and the training is similar to that required for marking self-descriptions.



4.Appraisal

The most viable form of appraisal is judicial evaluation. Implementation requires the design and piloting of a form for judges to record their evidence and ratings of the candidate. Guidance will also be required.

Judicial evaluation will also require all judges to be trained in the skills of competency-based assessment. The focus of the training is to ensure reliability and validity of ratings and the relevance of evidence to the competencies being assessed.

The design of the form is straightforward and should be done collaboratively with the judiciary. It should be achieved in one month. On the other hand, we imagine training will require quite a lengthy period because of the numbers involved. The design of training will also be complex. For it to be useful, groups of judges would observe an advocate and then discuss and agree the evidence and ratings flowing from what they have observed. This will require recordings of advocacy of suitable duration. It will also require trainer training to ensure different trainers deliver similar training to their delegates.

The MoJ raised the point that attendance on a training course might need to be accompanied by an assessment of judges in terms of their competence to appraise. Extra training might be necessary for some.

5.360 Feedback

360 feedback does not seem a viable option but is, like references, relatively straightforward to design. It requires a competency-based feedback form to be designed together with guidance for respondents. This would need to be piloted and amended as required.

Those marking or reviewing the feedback would need to be trained and the training is similar to that required for marking self-descriptions.

6.Observation

Implementing independent observation will need a process similar to implementing judicial evaluation. However, it must be preceded by the recruitment of observers and this will require a job description, advertisement and selection.

We understand that the CPS estimates that observation costs a little in excess of £1,000 per candidate and we would use this as the cost estimate for using the method for QAA. It is hard to know how this compares with Judicial Evaluation, the true cost of which is largely hidden if judges' time is provided free of charge.

7.Testing

Testing of knowledge requires agreement on the coverage of tests for the levels of advocacy to which the method is being applied. It then requires the writing and piloting of tests on a regular basis. There needs to be arrangement for test centres. Marking will be objective and straightforward



8. Assessment Centres

Assessment centre simulations need to be written and piloted and separate simulations will be needed for each level to which they are being applied. The simulations will need to be piloted and ancillary materials (particularly marking guides, rating sheets and timetables) must be produced.

Assessors will require training in the skills of observation and rating.

Simulations will need to be replaced on a regular basis to counter any concerns about the leakage of material.

The writing of simulations and the training course for assessors could be centralised or 'franchised' to different providers. Centralisation ensures standardisation. Franchising would require accreditation and inspection.

Overall, the design and operation of an assessment centre is a relatively expensive option. There are fees for design, piloting and training assessors and role players. These fees will depend very much on the level and complexity of the centre. However, for any particular suite of exercises, the cost could easily exceed £50,000. Assessment centres typically have two candidates per assessor and so the minimum cost to each candidate of a one day centre is the fee for half a day for an assessor plus a share of the fee for administration, the venue and role players. It is most likely to exceed £1,000. However, this estimate is extremely tentative and it may be that the costs could be greatly reduced, depending on the precise format of the centre.

9. Training Course Assessments

The more robust method of the assessing of trainees will require training establishments to write simulations that require essentially the same process as that discussed above.

10. Experience

Simply monitoring experience carries few requirements. It is essentially a self-certification scheme.

11. CPD

Monitoring CPD simply requires guidance on the expectations for CPD and a system to check whether those expectations are being met.

It would be possible to design and implement such a system rapidly and should take no more than two months.

7. Training

Many of the methods of assessment, and certainly the more robust ones, will require training of those carrying out the assessments. This is an essential step to achieving reliability and validity, including ensuring that diversity requirements are met. Training should not be skimped on as even the best method of assessment will be compromised if training is inadequate.



Training should cover:

- The QAA process. For example, those being trained will want to know what happens to the candidate if they give a poor rating.
- The qualities being assessed
- The standards of minimum competence. It is vital that all raters have a common understanding of minimum competence at each level of advocacy
- Observing, classifying and rating behaviour. There is standard advice across assessment methods to avoid errors in ultimately arriving at ratings of competencies.
- Diversity in assessment. It is particularly important that raters are aware of potential errors in ratings that can arise from sources of unconscious bias such as preconceptions and stereotypes.

8. Feedback & Development

Establish the process for giving feedback to candidates and supporting those who are not deemed to have achieved minimum competence.

9. Monitoring

Whatever the method of QAA, it should be periodically evaluated with particular attention paid to its impact in terms of diversity. This will, of course, require the gathering of monitoring data.

Monitoring should take place at different levels ranging from the overall success rates of different groups (male/female; barrister/solicitor/ILEX; regions; ethnicity; etc) in the system down to the ratings of each rater.

The monitoring process is vital to establishing the credibility of the system.

10. Appeal Process

The appeal process will need to be designed and implemented. As most methods will be based on assessments of unrecorded (i.e. not filmed) examples of advocacy there is no opportunity to review the original evidence upon which the rating was based. It therefore seems likely that the appeal process will have to rely, in the first instance, upon reviewing the write-up of evidence leading to the rating. There will then need to be a decision on whether to gather additional information about the candidate's competence and what the source of this evidence will be.

11. Introducing QAA

The introduction of QAA across all levels in a 'big bang' approach seems to be a high risk option. The design and implementation of the system is a large undertaking and it might be preferable to introduce it in a phased approach. However, it would seem vital that the early phases will prove to be fundamentally effective, thereby establishing a good reputation for the QAA process. There should also be a clear plan to complete the scheme's introduction in a timely manner.



Appendix 1: LSC's Proposed Minimum Requirements for QAA

Requirement 1 - A scheme applicable to all advocates funded by legal aid

Requirement 2 – A scheme covering all criminal advocacy funded by legal aid

Requirement 3 – Owned by the professions

Requirement 4 – Simple to apply and outcomes are available to customers

Requirement 5 – Scheme is competency- based, objectively measurable and complete

Requirement 6 – Exemption and passporting is evidentially justified

Requirement 7 – Assessment is independent and consistent

Requirement 8 – Re-accreditation and/or ongoing accreditation applies for all

Requirement 9 – Assessment data is available to the LSC

Requirement 10 – Scheme is accessible for different types and levels of advocates

Requirement 11 – Reviews of the scheme are routinely scheduled

Requirement 12 – Ultimately covers crimes, family and civil advocacy

Requirement 13 – Delivers competence in context

Requirement 14 – Follows a full impact assessment

Requirement 15 – Accommodates reasonable differences



Appendix 2: LSB Key Principles for QAA:

1. **Independence** – of the scheme and assessment process from those being assessed or their professional bodies;
2. **Consistency** – one scheme (with the possibility of multiple providers delivering it or parts of it);
3. **Differentiation** – multiple levels of assessment, from entry level to the most senior level;
4. **Tailored assessment** – according to area of law and level;
5. **Compulsory participation** - any advocate wishing to practice in an area of work covered by the scheme would need at least the minimum level of accreditation for that area of work, but with clients choosing above that level the relevant level of advocate that suits their case, budget and personal preference subject only to limited restrictions in place to protect the interests of justice;
6. **Limited exceptions** – passporting and exemption only where this is demonstrably in the consumer interest and supported by proper evidence.
7. **Periodic reaccreditation** – probably at least five yearly.



Appendix 3: Common Standards for Criminal Advocacy

Preliminaries and preparation

A1	Has the appropriate level of knowledge, experience and skill required for accepting a case
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A2	Is properly prepared
1	Has a clear strategy for the case.
2	Understands client's and opponent's case and identifies the issues
3	Understands the relevant law and procedure for the matter in hand

A3	Provides a proper contribution to case management
1	Complies with appropriate Procedural Rules and judicial direction
2	Is aware of the requirements regarding disclosure in the case and how they affect the client's case
3	Provides appropriate disclosure of evidence
4	Keeps or ensures that the court is kept promptly informed of any timings problems/delays
5	Complies with court imposed timetables

Case presentation/advocacy

B1	Presents clear and succinct written and oral submissions
1	Drafts clear skeleton arguments which:
1.1	<i>Show clarity of purpose and expression</i>
1.2	<i>Have a logical structure and identify the issues</i>
1.3	<i>Make appropriate reference to authorities and documentary reference to external materials</i>
2	Makes relevant and succinct submissions by reference to appropriate authority
3	Uses materials appropriately
4	Communicates clearly and audibly
5	Maintains appropriate pace throughout the course of the trial

B2	Conducts focussed questioning
1	Conducts examination-in-chief appropriately
2	Conducts cross examination appropriately
3	Observes restrictions and judicial rulings on questioning
4	Questions to witnesses are clear and understandable
5	Questioning strategy relevant to issues
6	Avoids introducing irrelevant material



B3	Handles vulnerable, uncooperative and expert witnesses appropriately
1	Gives clear guidance to own witnesses
2	Deals appropriately with vulnerable witnesses
3	Deals effectively with uncooperative witnesses
4	Uses and challenges expert evidence effectively

B4	Understands and applies sentencing guidelines
1	Makes appropriate factual representations to the court on sentencing
2	Takes appropriate steps to ensure that relevant legal materials necessary for sentencing are before the court

Working with others (where applicable)

C1	Assists clients in decision making
1	Any advice given to a client is clear and accurate
2	Takes all reasonable steps to help the lay client understand the process
3	Ensures that the decision making process is adequately recorded

C2	Establishes professional relationships in court
1	Observes professional etiquette and ethics in relation to the client and to third parties
2	Is professional at all times

Integrity

D1	Observes professional duties
1	Observes duty to act with independence
2	Advises the court of adverse authorities and, where they arise, procedural irregularities
3	Assists the court with the proper administration of justice

Equality and diversity

E1	Has a demonstrable understanding of equality and diversity principles
1	Recognises the needs and circumstances of others and acts accordingly
2	Treats clients, colleagues and parties fairly and does not discriminate against them



Appendix 4: The LSC's four Levels Agreed and Tested in the Pilot

Level	Description
Level 1	Magistrate's court, appeals to the Crown Court and committals.
Level 2	Straightforward Crown Court cases – e.g. Jury trials including lesser offences of theft, dishonesty, deception and handling, assault (ABH and section 20) burglary (not aggravated), lesser more straightforward drug offences and lesser offences involving violence or damage, plus straightforward robberies and non-fatal road traffic offences. Also, less serious offences against children and minor sexual offences.
Level 3	More complex cases heard in the Crown Court and above – More serious cases of dishonesty and fraud. Drug offences (such as possession with intent to supply), blackmail, aggravated burglary, violent disorder, arson, complex robberies, serious assaults, driving offences involving death, child abuse and sexual offences under the Sexual Offences Act 2003, plus more serious sexual offences.
Level 4	The most complex Crown and High Court cases. Very serious, sensitive and complex cases, including serious sexual offences, substantial child abuse, very serious and multi handed murder trials, cases involving issues of national security, serious organised crime, terrorism and complex and high value frauds.



Appendix 5A: People Consulted

Name	Organisation
Lord Justice Thomas	Royal Courts of Justice
Diane Lawson	Solicitors Regulation Authority (JAG)
Mandy Gill	Solicitors Regulation Authority (JAG)
Oliver Hanmer	Bar Standards Board (JAG)
Chris Nichols	Bar Standards Board (JAG)
Ian Watson	ILEX Professional Standards (JAG)
Peter Jones	Legal Services Commission
Sinead Reynolds	Legal Services Commission
Mark Stobbs	Law Society
Steven Durno	Law Society
Angela Devereux	Cardiff University
Keith Milburn	Crown Prosecution Service
Alanna Linn	Legal Services Consumer Panel
Neil Wightman	Legal Services Consumer Panel
Peter Lodder QC	General Council of the Bar of England and Wales
Mark Hatcher	General Council of the Bar of England and Wales
Charles Haddon-Cave QC	Advocacy Training Council
Sarah Albon	Ministry of Justice



Appendix 5b: Documents Read

Document Name
Joint Consultation by the Solicitors Regulation Authority, ILEX Professional Standards and the Bar Standards Board: Advocacy Standards. December 2009
Legal Services Commission. Quality Assurance for Advocates: A discussion Paper. February 2010
Legal Services Commission. Quality Assurance for Advocates: Discussion Paper Annexes. February 2010. Annex A: Equality and diversity policy paper.
Legal Services Commission. Quality Assurance for Advocates: Discussion Paper Annexes. February 2010. Annex B: Summary report of the QAA Equality and diversity data survey and focus groups.
Legal Services Commission. Quality Assurance for Advocates: Discussion Paper Annexes. February 2010. Annex Ci QAA Cardiff Law School's Evaluation Report November 2009
Legal Services Commission. Quality Assurance for Advocates: Discussion Paper Annexes. February 2010. Annex Cii QAA Cardiff Law School's Evaluation Report Annexes November 2009
Legal Services Commission. Quality Assurance for Advocates: Discussion Paper Annexes. February 2010. Annex_E_QAA Competency Framework
Oliver Hanmer and Mandy Gill (JAG)Quality Assurance of Advocacy Scheme: Progress Report, January 2011.
Joint Advocacy Group. Consultation paper on proposals for a quality assurance scheme for criminal advocates. August 2010
Joint Advocacy Group. Analysis of responses to Joint Advocacy Group. Consultation paper on proposals for a quality assurance scheme for criminal advocates. 20 January 2011
Annex 3 Common standards for criminal advocacy
Bar Standards Board. Paper 105 (10) Quality Assurance Committee Report, 22 November 2010
JAG Press release on Lord Justice Thomas Advisory Group, 26 January 2011
JAG. Generic Evaluation Form
Charles Haddon-Cave QC. Quality Assurance for Advocates: It is coming - September 2010.
Council of the Inns of Court Paper on Advocacy Standards (Accreditation and Architecture) - Final Final(01/07/10)
Council of the Inns of Court. Response to joint consultation (25/03/10)
Council of the Inns of Court. Further Response to joint consultation (01/07/10)



Legal Services Consumer Panel. Consultation response. SRA/IPS/BSB Advocacy Standards. March 2010
Legal Services Consumer Panel. Consultation response. Joint Advocacy Group: QAA. November 2010
Legal Services Consumer Panel. Quality in legal services. November 2010
LSC-proposed minimum requirements-QAA
Legal Services Board. QAA: Update on development of a scheme for criminal advocates. Board Paper (10) 83. 30 November 2010
Cardiff Law School Pilot Judicial Evaluation Form
JAG QAA Project plan. January 2011
JAG. Statement of Standards 27 January 2011
Legal Aid: A market-based approach to reform. (Lord Carter)
The Law Society / Nick Smedley. Solicitors Advocates: Raising the Bar. November 2010
JAG QAA Scheme documentation, presented at LSB Roundtable meeting 2 March 2011
Advocacy Training Council of the Bar of England & Wales. Brochure and Training the Trainers DVD