

Assuring advocacy standards: consultation

August 2019

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About this consultation

As a public interest regulator, we are committed to making sure that solicitors practising criminal and civil advocacy meet the high standards we and the public expect. In doing so, our approach should be proportionate, targeted and based on clear evidence of risk.

This consultation outlines proposals to improve how we currently regulate the quality of civil and criminal advocacy.

You can find our initial impact assessment in annex 1.

This consultation is running from 21 August until 13 November 2019.

After this consultation closes, our next steps will be to collate and analyse all the responses. We will then decide what proposals we need to take forward.

How to respond

Questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response and complete it later. You can download a copy of your response before you submit it.

[Start your response now.](#)

Reasonable adjustment requests and questions

We offer reasonable adjustments. [Read our policy to find out more.](#)

Contact us [insert relevant email] if you need to respond to this consultation using a different format or if you have any questions about the consultation.

Publishing responses

We will publish and attribute your response unless you request otherwise.

Background to consultation

1. The purpose of this consultation is to outline targeted proposals to improve on how we currently regulate advocacy and protect consumers by:
 - revising our arrangements for higher court advocacy by:
 - Introducing revised Higher Rights of Audience (HRA) criminal and civil standards
 - Introducing a single, centralised HRA assessment
 - Requiring that the HRA assessment is taken after admission
 - requiring youth court solicitors to pass our higher court advocacy qualification where they are acting as advocates in a case which would go to the crown court if brought against an adult.
 - providing resources to help solicitors meet our standards.
 - supporting reporting about advocacy standards to help us act when we have concerns about a solicitor's competence to conduct advocacy.

Our rationale for change

Why are we concerned with the standard of advocacy?

2. Criminal and civil practice are high risk areas of legal practice. Poor advocacy may result in consumer detriment, miscarriages of justice and threaten the rule of law. Wrongs may go unpunished or clients may lose basic rights and freedoms. In either case, financial redress is inadequate. With so much at stake, it is crucial that solicitors' advocacy is of a high standard: a fair justice system relies on effective advocacy.
3. Clients involved in both civil and criminal trials may be vulnerable. This could be because of their personal characteristics (such as: age, drug, alcohol or mental health problems, low literacy skills or for whom English is a second language). We know, for example, that 33 percent of boys and 41 percent of girls entering youth custody have mental health concerns. But even the most sophisticated and empowered clients can be vulnerable when they are dealing with critical, often life-changing and distressing circumstances.

Evidence of standards falling short

4. We know that there are many competent solicitor advocates who meet our standards and provide a high standard of service to their clients.
5. However, persistent concerns have been raised about the standard of solicitors' advocacy. These have mainly focused on criminal rather than civil advocacy. And although most solicitors practise their advocacy in the magistrates' courts,

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concerns have been focussed on practice in the higher courts. Concerns include:

- The Jeffrey Review: Commissioned by the Ministry of Justice in 2013, this raised concerns about the quality of criminal advocacy. It reported Judicial disquiet about the quality of advocacy; concern over solicitors retaining work beyond their competence and concern over the advocacy training of solicitors and solicitor advocates.
 - Judges involved in the judicial review proceedings challenging the introduction of the Quality Assurance Scheme for Advocates (QASA) concluded that there was enough evidence of poor practice in criminal advocacy, given the need for public protection in this area, to justify the introduction of QASA¹.
 - Youth courts advocacy proceedings review: Published in 2015 by the Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEx), this found that advocates were lacking in training in specialist procedures and sentencing powers in the youth courts. Advocates also had difficulty in communicating and engaging with young defendants and were not always adequately prepared.
 - The Taylor Review of the youth courts system: Commissioned by the Government in 2016, this recommended that training should be mandatory for legal professionals in the youth courts.
 - Coroners' court advocacy: Bishop James Jones' report into the lessons to be learned from the Hillsborough litigation (2017)² and Dame Elish Angiolini's report into Deaths and Serious Injuries in police custody (2017)³ both criticised overly aggressive and adversarial advocacy in coroners' courts and enquiries.
6. We have carried out research, commissioned jointly with the BSB, to understand in more detail the size and nature of these concerns and where advocates are failing to meet our standards. But it has proven difficult to establish robust evidence that accurately identifies how widespread the problem is.
7. Our work involved qualitative interviews with 46 circuit judges and four high court judges. Key findings from the research were:

¹ The Quality Assurance Scheme for Advocates was a joint scheme developed by the Bar Standards Board, the Solicitors Regulation Authority and CILEX Regulation. The Scheme was designed to regulate the quality of all advocates appearing in the criminal courts in England and Wales, whether they were barristers, solicitors, or legal executives.

² The patronising disposition of unaccountable power' A report to ensure the pain and suffering of the Hillsborough families is not repeated, 1 November 2017, The Right Reverend James Jones KBE

³ Report of the Independent Review of Deaths and Serious Incidents in Police Custody, Rt. Hon. Dame Elish Angiolini DBE QC, January 2017

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- Most of the judges thought that most current advocacy is of an adequate standard but viewed good/very good advocacy as relatively infrequent.
 - While the quality of advocacy was generally competent, there was room for improvement across several areas, especially in relation to core courtroom skills such as case preparation and dealing with witnesses.
 - The judges tended to think that the quality of advocacy had declined over time. Almost two thirds of interviewees said that it was common practice for advocates to take on cases beyond their level of experience.
 - Judges felt regulators should be more robust in responding to poor advocacy when alerted to problems. There was also some uncertainty amongst interviewees about whether or how they should report poor advocacy to regulators.
 - In many circuits, judges knew and could identify who the poor advocates were.
8. We have also published our thematic review of criminal practice. This found that solicitors practising criminal advocacy relied heavily on the number of years' post qualification experience as a measure of competence and to justify undertaking little ongoing professional development.
9. But all this evidence is anecdotal. There is little evidence about whether poor advocacy is a widespread problem. We have looked at our internal data, but this does little to identify whether there is a widespread problem. For example, we receive relatively few reports of poor advocacy from judges and the courts. Only 89 complaints were received between 1 January 2015 and 28 February 2018. Of these, only three percent related specifically to the solicitor's competence.

The Quality Assurance Scheme for Advocates

10. We have previously attempted to address concerns about criminal advocacy through the Quality Assurance Scheme for Advocates (QASA). This scheme was developed over many years in collaboration with the BSB and CILEx. It was subject to a judicial review from barristers claiming it was unlawful. The litigation was appealed to the Court of Appeal and then to the Supreme Court. Despite all courts upholding the scheme and ruling that there was enough evidence to justify it, none of the regulators have implemented it.
11. We no longer consider it fit for purpose or in line with our current regulatory approach. It would require all solicitors to be formally and periodically assessed, despite the fact they have already been assessed through the qualification process, and regardless of whether we have concerns about their competence. We will be applying to the Legal Services Board to remove the QASA regulations.

How do we currently assure standards of advocacy?

12. We automatically grant all solicitors rights of audience in the magistrates' court and the County Court at point of admission. By then, they must have passed advocacy assessments on the Legal Practice Course (aligned to basic skills needed for day one as a trainee) and the Professional Skills Course (aligned to rights of audience on admission).
13. We require all solicitors who want to practice advocacy in the Crown Court and High Court to pass an additional assessment (the HRA) which tests their knowledge of evidence, procedure, witness handling, ability to conduct a full trial and ethics in the higher courts and their advocacy skills.
14. Following admission, solicitors have an obligation under our existing rules to act only where they are competent to do so. This will continue to be the case when our new Standards and Regulations are introduced in November 2019.
15. Our Continuing Competence regime requires all solicitors to regularly reflect on the quality of their practice and address any identified learning and development needs. Solicitors should use our Statement of Solicitor Competence to do this. The statement was developed with a wide range of stakeholders and reflects the competences required for safe practice. Solicitors must make an annual declaration to tell us that they have done this. We follow up with solicitors who have not completed this requirement.

Should we change how we currently assure standards of advocacy?

16. As stated, there is a lack of robust evidence on the scale and nature of concerns about the standard of advocacy provided by solicitors. We have reflected carefully on the available evidence and concluded that there is justification for taking targeted action to improve our current approach to promoting high standards. This is because:
 - a. Advocacy remains a high-risk practice area and we have concerns about the currency and consistency of our higher rights of audience assessments.
 - b. This area is of current interest to key stakeholders and relates to our public interest obligations to protect consumers of legal services.
 - c. The concerns about advocacy standards, particularly criminal advocacy in the higher courts, have persisted for several years but with limited hard evidence. We wish to improve the information we have about solicitor advocates so that we can target our efforts where we have evidence of a problem.

Benefits

17. We have worked with a wide range of organisations to help us identify the impacts of our proposals. We have set out the potential impacts and benefits we have identified if we implement our proposals in our initial impact assessment (see Annex 1). Subject to the outcome of this consultation, we will evaluate the impact of our proposals after they are implemented.

18. The key benefits of our proposals are:

- a. The public and other stakeholders will have greater assurance that solicitors practising criminal and civil advocacy have the necessary skills and knowledge.
- b. Solicitors will have better resources to help them meet the standards we expect.

Acknowledging challenges

19. We have summarised the key challenges from our initial impact assessment and mitigating factors in the table below. We welcome views from stakeholders on the impacts we have identified.

Challenge	Mitigating this challenge
<p>Revised HRA standards could increase the failure rate and reduce the supply of solicitors in the higher courts.</p>	<p>Our intention is to standardise the HRA assessment, not to introduce a more difficult assessment.</p> <p>Our data tells us there that there is already a sizeable number of solicitors (6836) who have the necessary qualification to provide advocacy in the Crown Court.</p> <p>If we proceed with this proposal, we will monitor the assessment failure rate and to make sure we do not unintentionally restrict the supply of solicitors.</p> <p>We will also issue guidance on the standards and assessment level to provide clarity to training providers and candidates.</p>
<p>A single assessment provider could reduce the availability of assessments</p>	<p>We will take steps to make sure that there is an appropriate level of assessments provided to meet demand and that these are accessible for those with disabilities.</p>
<p>A single assessment model could increase assessment cost</p>	<p>We will include cost controls in any agreement with a provider of the single assessment. Training will be provided through a competitive market.</p> <p>A single provider model could lead to economies of scale, reduced operational costs and increased</p>

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	revenue as a result of whole market share.
Changing existing rights of audience in the youth courts, to require an HRA qualification for cases which would be heard in the Crown Court, were they against an adult defendant could impact on the supply of solicitors.	<p>We know from our research that 40 percent of solicitors with criminal HRA already practise in the youth courts. Individuals who currently hold criminal HRA would still be able to practise in the youth courts as they do now for all case types.</p> <p>Solicitors without HRA can continue to provide advocacy as they do now except for those indictable only, or serious triable either way offences, which would be heard in the Crown Court if they were brought against an adult defendant. For these cases, the solicitor can still undertake the litigation for the young person.</p>

Arrangements for assessing the advocacy skills of intending solicitors

The Solicitors Qualifying Examination (SQE)

Background

20. In our response to the second SQE consultation, we made clear that we will require all intending solicitors to undertake a rights of audience assessment before admission.
21. We recognise that solicitors have full trial rights in the lower courts and have considered whether we should include witness handling in the SQE assessment. We have concluded that we should not. It would be disproportionate, expensive, and out of step with most solicitors' work. Through our testing phase of development of the SQE, we will therefore be piloting a role-play exercise in the form of a plea-only or interim application.

Our approach and proposal

22. Against this background, we have considered whether we should place a restriction on solicitors' rights of audience in the lower courts until they have been assessed in witness handling. We take the view that we should not do so. Evidence of concerns relates to criminal advocacy practised in higher courts and in the youth courts, not the magistrates' court. The risk of a broad restriction on practice in lower courts is that it could discourage solicitors from practising advocacy, and therefore restrict competition and restrict access to justice.
23. Instead we will propose relying on solicitors' and firms' obligations in our code of conduct to undertake only the work which they are competent to perform. We will supplement this with guidance and support, and rigorous enforcement action where standards fall short.
24. We will look to further develop our existing package of measures to encourage better practice in the youth courts, where there is evidence of concern, including a greater emphasis on vulnerable witness and client training in both the SQE and the HRA qualification as well as encouraging reports of poor practice.
25. We will keep this approach under review. If evidence of concerns emerges, we will look again at whether a restriction, further assessment or further regulation is required.

- 1 Do you agree with our proposal not to change existing practice rights, and to rely on the obligation on solicitors not to undertake witness handling where they are not competent to do so?**

Revising our arrangements for higher court advocacy

Background

26. The assessment for the HRA qualification is run by several different organisations who we accredit. Each provider designs its own assessments, so assessment models vary across providers. All the providers also offer preparatory training for the qualification as well as delivering and marking the assessments. The standards for the assessment have not been revised for some time.
27. We consider that we need to review and update the current assessment approach because:
- a. The standards do not reflect the requirements of modern practice, including the increasing awareness of the needs of vulnerable clients and witnesses.
 - b. We cannot be confident that candidates are being assessed to an equivalent standard across providers.
 - c. We want to remove any potential conflict of interest by requiring the assessment provider we appoint to have strict safeguards separating assessment and delivery of training.

Revised Standards

Our approach and proposal

28. We have reviewed the standards for the HRA assessments to make sure they properly assess the competences that are required by modern day higher court advocates. We have:
- a. included skills required for modern practice, for example, including standards on witness handling and dealing with vulnerable clients
 - b. used clearer language and introduced more detail so that solicitors and assessment organisations better understand the required standard
 - c. aligned assessment objectives with associated assessment criteria and the relevant knowledge, skills and understanding.
29. We have produced revised standards through engagement with a wide range of external stakeholders including subject matter experts, current practitioners and existing training and assessment providers. We will also explore with the BSB

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and CILEx how we can ensure that these standards are aligned with those which apply to barristers and chartered legal executives.

30. We would welcome views on the revised draft standards.

2 Do you have any comments on our revised HRA standards?

Introducing a single, centralised assessment

Our approach and proposal

31. We have also looked at whether the arrangements for assessing the standards for higher court advocates are sufficiently robust. Currently, there is no single, standardised test for the HRA qualification. Instead, we delegate the responsibility for assessing competence to a range of providers.

32. This means that if pass rates vary between providers, we do not know whether this is because of candidate cohorts of different ability levels, variations in the quality of teaching, or inconsistent standards. An extensive quality assurance regime could provide a measure of reassurance about consistent standards. But it would be resource intensive, and it would not provide the same assurance as a single, standardised assessment. In addition, HRA providers now provide preparatory training as well as assessment. This creates a potential conflict of interest and adds an extra challenge to assuring standards.

33. Therefore, we propose to appoint a single assessment organisation for the HRA qualification. We will go through an open procurement process and will require that the appointed provider does not deliver training without our consent or where there is any perceived or actual conflict of interest. This will enable us to be sure that all candidates are being assessed against the same, consistent high standard.

3 Do you agree that we should introduce a single assessment organisation for the HRA qualification?

Requiring that HRA assessment is taken post admission

Our approach and proposal

34. We are aware that some aspiring solicitors take the HRA assessment as an elective course on the Professional Skills Course (PSC), before they have been admitted. We do not consider this to be appropriate for an advanced assessment of rights which only admitted solicitors may exercise.

35. We therefore propose changing our regulations to make clear that the HRA assessment may only be attempted by admitted solicitors. This requirement will

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help establish external confidence in the qualification as a higher qualification, conferring greater practice rights than people gain on admission. In addition, it gives time for solicitors who wish to conduct higher court advocacy to get more experience of advocacy practice, through observation, or conducting simple applications or trials in the lower courts before they apply for their higher rights.

- 4 Do you agree with our proposal that the HRA assessment can only be attempted by admitted solicitors?**

New requirement for youth courts solicitors acting as an advocate in more serious cases

Our approach and proposal

36. We propose requiring solicitors practising in the youth courts to have the criminal HRA qualification where they are acting as an advocate in any case which would go to the Crown Court if it involved an adult. The jurisdiction of the youth courts has changed to include most cases against an adult under 18, except for murder, manslaughter and certain firearms offences.
37. Advocacy practice rights do not reflect this change: the youth courts are lower courts, and so solicitors practising there do not currently need to have the HRA qualification. This presents a risk to youth courts clients and could put them at a disadvantage compared to adult clients, even though they are likely to be more vulnerable.
38. We believe that this approach is justified because it will:
- a. make sure there is a consistency of approach with cases brought against adults.
 - b. protect youth courts clients who are charged with serious offences.
39. Our analysis suggests that around half of solicitors currently practising in the youth courts already have the HRA qualification so only those without the qualification will be directly affected. We have conducted an initial impact assessment which will be published alongside our consultation. We will seek stakeholder views on the potential impact of this proposal.

- 5 Do you agree that we should impose a new youth courts requirement that solicitors practising in the youth courts must hold the criminal HRA qualification where they are acting as an advocate in any case which would go to the Crown Court if it involved an adult?**

Providing resources to help solicitors meet our standards

Background

40. All solicitors, including advocates, have an obligation to maintain their competence throughout their careers. They must reflect on the quality of their work and address the learning and development needs they identify. All solicitors must make an annual declaration to us that they have done this.
41. We recognise that practising criminal and civil advocacy presents specific challenges. We have already set out the concerns which have been raised about the quality of advocacy in the youth courts, in handling vulnerable witnesses and about the appropriateness of advocacy styles in inquisitorial settings such as enquiries. We want to provide resources to help solicitors practise competently in these sensitive and complex areas.

Our approach and proposal

42. We have already developed online resources for practitioners in the youth courts to help them advise young people and children effectively. They provide support and advice on a range of issues, from communicating with young people with learning difficulties to working effectively with Youth Offending Teams.
43. Our resources have been well received by practitioners and stakeholders. There have been more than 5,500 views of our materials. Our resources have been welcomed by the Association of Youth Offending Team Managers and the National Appropriate Adult Network. The UCL Great Ormond Street Institute of Child Health described our work as a “much needed initiative [which] provides poorly supported youth advocates with a good introduction to working with children and young people in the criminal justice system”.
44. We will increase the support we provide to solicitors practising criminal and civil advocacy. We will build on the content of our youth courts tool kit. We propose to launch these resources in spring 2020.
45. Through research and engagement with a wide range of stakeholders including our criminal practice and advocacy reference group, we have already begun to explore how we could provide additional support. For example, we could:
 - a. make sure our standards are clear and accessible, and provide examples of them in practice, so that a solicitor can understand how to meet them
 - b. develop targeted resources which concentrate on specific areas of concern, for example, building trust with Black, Asian and minority ethnic clients (BAME).

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46. We propose developing resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors. This will help clients, including vulnerable clients, to recognise when a solicitor does not meet them. Using our Statement of Solicitor Competence as a starting point, we will work with the profession, wider stakeholders and the public to present advocacy standards in an accessible way.
47. We will promote these resources to the public and stakeholders, for example, using Legal Choices. Legal Choices is the website run by legal regulators in England and Wales to provide information about legal issues and lawyers to consumers of legal services. We will also develop a programme of engagement with stakeholder groups to help them understand the standards we expect. For example, we wish to work with those groups who represent BAME consumers to increase understanding of what good advocacy looks like and how to report concerns to us when practitioners fall short. This is important because research⁴ suggests BAME users are less satisfied with both the service they receive and the outcome of their matter than White British users.
48. In addition, we also propose to publish aggregated and anonymised data on advocacy reports we receive. We believe this information will help solicitors and firms. It will help drive up standards of service by providing information that can be used to improve service delivery and maintain standards. This data will also help us make sure that any resources we provide are focused on those issues where solicitors may need additional support.

6 Would you find it helpful to have access to a suite of resources aimed at supporting practitioners to meet high advocacy standards?

7 Are there particular topics you would like to see included in our advocacy resources?

⁴ Tracker Survey 2016, Briefing note: experiences of Black and Minority Ethnic groups in legal services, Legal Services Consumer Panel, November 2016

Supporting reports about advocacy standards

Background

49. We recognise that there is a balance to be struck; we need to support solicitors and firms to meet the high standards needed for safe practice and take robust and proportionate regulatory action where standards are not met. We have set out in our new enforcement strategy the action we will take where an individual or firm we regulate falls short.

50. Good information about the standard of solicitors' practice is fundamental to the effectiveness of our regulation. Without it, it is difficult for us to identify solicitors and firms who are falling short of the standards we expect and who may need our support and attention. It helps us to understand the nature and scale of issues and whether concerns relate only to an individual or firm or represent a wider problem.

Our approach and proposal

51. We want to support appropriate reporting. This will help us better understand the extent and nature of concerns about solicitors' competence to conduct advocacy. It also enables us to take targeted action where appropriate. But we know that many stakeholders, for example, the judiciary and the public, do not raise concerns with us when they witness poor advocacy.

Our research shows the following views amongst the judiciary	Research about perceptions and experiences of other stakeholders shows the following
A lack of awareness and clarity about how and where to make a report	Consumers want information on our website, about what to do when there is a problem with a solicitor, to be easier to find
Unwillingness to raise a concern about a solicitor as the origin of the report is easily identifiable (particularly relevant in small court areas)	Consumers often express or report dissatisfaction to a third party. For instance, a YouGov 2012 survey estimated six out of ten complainants went straight to the Legal Ombudsman without making a complaint to their solicitor
A failure to meet standards is often dealt with at the time or after the event	Certain groups of consumers are less likely to raise concerns if they feel they have a problem. For instance, the Legal

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	Services Consumer Panel's (LSCP) tracker survey showed women are less likely than men to raise a concern.
Perception that making a report will result in no action or inappropriately strong disciplinary action	Despite an obligation to report misconduct there is limited reporting from solicitors about poor advocacy standards. An unwillingness to report may be a contributory factor.
A lack of clarity about when poor standards becomes a regulatory matter	
Unwillingness to make a report because it may not be known if client instructions were to blame for apparent failure to meet standards	
Our reporting forms are difficult to find and complete	

52. We have identified a range of measures we believe will help address these barriers.

Simpler reporting

53. As part of our ongoing drive to improve the way we work; we are looking at improving the processes by which stakeholders raise concerns with us. For example, can we make our online reporting form simpler to use and easier to find? Can we do more to raise awareness of reporting through Legal Choices? We have already developed a leaflet with the Legal Ombudsman (LeO) for front line organisations and charities that explains when concerns should be raised with LeO and when with us. We will continue to promote this material.

Working with the judiciary

54. Judges and court staff are uniquely placed to recognise whether the standard of advocacy provided by solicitors falls short of what we expect.

55. We want to encourage judges to raise concerns with us where they see advocacy that falls short of the necessary standard. We will:

- a) make sure that the standards we expect in our Statement of Solicitor Competence and HRA standards are clear to judges

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- b) raise awareness with judicial bodies about how they can make a report to us where they have concerns about the standard of advocacy of a solicitor who appears before them
- c) work with judicial bodies to develop training material that explains to judges and court staff how and what to report to us. This could include:
 - i. how to make a report to us
 - ii. what we do when a report is made to us
 - iii. what issues we consider to be serious
 - iv. what factors we consider when determining appropriate regulatory action.

Reminding solicitors and firms of their regulatory responsibilities

56. We recently clarified our position on solicitors' [reporting obligations](#). Solicitors and firms are required to report to us concerns which require investigation and this includes alleged or suspected misconduct. We will work with solicitors and firms to remind them of this responsibility in the context of criminal and civil advocacy.
57. As well as enabling us to take targeted action when solicitors fall short of the standards we set, this information will help us to develop a much richer picture of possible issues with the standard of criminal and civil solicitor advocates across the sector.

Working with wider stakeholders and consumers and consumer groups

58. Many consumers and other stakeholders may find it difficult to identify whether a solicitor has met the standards we require. We propose to engage with stakeholders, consumers and consumer representative groups to help explain how they can make a report to us.

- 8 **Do you agree with these proposals? Do you have other suggestions about how we might improve our reporting processes?**

Consultation questions in full

We are keen to hear your views on our proposals to improve how we assure the standards of criminal and civil practice. An uninterrupted list is below.

- 1 Do you agree with our proposal not to change existing practice rights, and to rely on the obligation on solicitors not to undertake witness handling where they are not competent to do so?
- 2 Do you have any comments on our revised HRA standards?
- 3 Do you agree that we should introduce a single assessment organisation for the HRA qualification?
- 4 Do you agree with our proposal that the HRA assessment can only be attempted by admitted solicitors?
- 5 Do you agree that we should impose a new youth courts requirement that solicitors practising in the youth courts must hold the criminal HRA qualification where they are acting as an advocate in any case which would go to the crown court if it involved an adult?
- 6 Would you find it helpful to have access to a suite of resources aimed at supporting practitioners meet high advocacy standards?
- 7 Are there particular topics you would like to see included in our advocacy resources?
- 8 Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?
- 9 Do you have any further information to help inform our impact assessment?

Get involved

Your views matter, which is why we are keen to engage with you outside formal consultations.

Attend one of our events

To attend one of our events, or to see us at an event we are participating in, keep an eye on all our upcoming events by visiting our [website](#).

Invite us to speak at your event

If you would like to invite an SRA speaker to your event, please fill in [speaker request form](#).

Follow us on social media



Join a virtual reference group

Our [virtual reference groups](#) allow you to stay in touch and learn more about what we are working on.

SRA Evolve

We recognise good user experiences are essential. That's why we need you at the heart of our work to modernise our IT and simplify what we do. SRA Evolve is one of the ways we are making sure that users call the shots in our IT change programme.

forms.sra.org.uk/s3/evolve

Diversity matters

Members of our Diversity matters reference group are helping us to think about how we can progress our work on equality, diversity and inclusion.

forms.sra.org.uk/s3/diversitymatters

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Looking to the Future

We are setting out major changes we think are necessary to the way we regulate. We want to hear what you think of our proposals and how they might work in practice.

forms.sra.org.uk/s3/Virtual-reference-group-Looking-to-the-future

Small firms

We want to make sure that thinking about how our work affects sole practitioners and other small firms is embedded in our operations and our regulatory reform programme.

<http://www.surveygizmo.com/s3/1905202/Virtual-reference-group>

Solicitors Qualifying Examination

We want to hear from anyone – academics, training providers, employers, solicitors, students, trainees and members of the public – interested in making sure that any new approach to qualification is rigorous, fair and consistent.

forms.sra.org.uk/s3/SQEReference

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Introduction

1. This initial impact assessment explores the potential impacts, both positive and negative, of the proposals in our advocacy standards consultation. It should be read together with our consultation
2. Our proposals are designed to make sure that solicitors practising criminal and civil advocacy meet the high standards we, and the public, expect. We propose to:
 - revise our arrangements for higher court advocacy by
 - introducing revised Higher Rights of Audience (HRA) standards
 - introducing a single, centralised HRA assessment
 - requiring that the HRA assessment is taken after admission
 - requiring youth courts solicitors to pass our higher court advocacy qualification where they are acting as advocates in a case which would go to the Crown Court if it were brought against an adult.
 - provide resources to help solicitors, consumers and the judiciary to better understand our standards and report concerns
 - publish aggregated and anonymised data on the reports we receive about the standard of solicitors providing criminal and civil advocacy.
3. We have analysed our [firm diversity data](#) collection in 2017 to understand the impact of our proposals. We have also undertaken a survey, spoken to stakeholders and engaged with our Advocacy Reference Group. We have analysed potential impacts on:
 - solicitor advocates and their employers, including solicitors within groups with protected characteristics
 - consumers
 - the legal services market.
4. We have also analysed our proposals against the [regulatory objectives](#) and the [Principles of Better Regulation](#).

5. Where we have identified potential risks, we have set out how we will manage these.
6. Some of the proposals in our consultation are not changes to our current policy. They will involve targeted engagement and the provision of resources to stakeholders. We have not assessed the impact of these proposals. They are simply designed to help solicitor advocates, the judiciary, consumers and other stakeholders understand the standards we expect and how they can raise concerns with us.
7. We will use this consultation and ongoing engagement to further explore the impact of our policy proposals. We will publish a final impact assessment alongside our consultation response document in spring 2020.

Summary of potential impacts

8. Our initial analysis has highlighted that:
 - overall, our proposals should have the positive effect of encouraging high professional standards in advocacy, and enhancing consumer protections, particularly for vulnerable consumers
 - our proposals will not have any negative impact on existing holders of the higher rights of audience qualification. They will provide additional support and resources for these solicitors
 - we are proposing two new regulatory restrictions which will impact on solicitor advocates without higher rights of audience and aspiring higher court advocates. These are: requiring a HRA qualification for advocacy in the youth courts in cases which are so serious they would be conducted in the Crown Court were they against an adult defendant and requiring that the HRA qualification must be taken post admission. Our assessment of these proposals against the Better Regulation Principles and the regulatory objectives has concluded that there are clear regulatory justifications for these new requirements
 - our proposal to require that HRA is taken post admission is unlikely to significantly limit the numbers of solicitor advocates
 - our proposal to require solicitors to have an HRA qualification in order to undertake cases in the youth courts which would be heard in the Crown Court, were they brought against an adult defendant, may have some impact on the numbers of solicitors able to advocate serious cases. We are unable to assess the exact extent of any impact but believe it to be low. We will explore this further during the

consultation period. We believe any impact is justified by the need to protect young people in the criminal justice system

- there is no evidence at this stage to suggest that our proposal to revise our HRA standards and introduce a single assessment provider will materially affect the numbers who successfully complete the HRA qualification and therefore the supply of solicitor advocates
- male solicitors, older solicitors and BAME solicitors are overrepresented amongst solicitors providing criminal work when compared to the wider profession. It is possible that our new requirements may impact more solicitors in these groups. We have a clear regulatory justification for the introduction of these requirements, as set out in our consultation, and we believe any potential impact is justified by the need to protect young people and other consumers in the criminal justice system. We will continue to explore any potential impact through the consultation period.

The criminal and civil advocacy market

9. Our analysis of the advocacy market is attached at annex 1. In summary:

- Although we hold data on the number of solicitors with the higher rights of audience qualification, we do not have data on the number of solicitors practising advocacy in the lower courts. When we surveyed the profession in 2012, around 5,500 said they worked in the magistrates' courts. We do not have data on the numbers of solicitors undertaking civil advocacy for which they do not need an HRA qualification.
- There are 6,836 solicitors with an HRA qualification. Of these, 2,309 have civil HRA, 3,116 have criminal HRA and 1,411 have both. Many of those providing advocacy in complex cases are likely to be more experienced solicitors.
- Our survey has shown that few solicitors seem to be using their HRA qualification for the advocacy services they provide. 26 percent of those we surveyed have never used their HRA qualification in the higher courts. A quarter of private practice respondents stated that the advocacy they provided did not require HRA. Only 14 percent of respondents required their HRA for over 70 percent of the advocacy services they provide.
- Firms providing advocacy services tended to be relatively small with two to four partners. Sole practices also account for over one third of

all the advocacy across the five areas we surveyed. Based on our survey it is rare for large firms to carry out advocacy.

- Almost two thirds of firms surveyed provide civil advocacy, 32 percent provide criminal advocacy, 47 percent work in the area of family law and 45 percent provide advocacy at tribunals. Firms are likely to provide advocacy to clients on low incomes (47 percent), with low literacy (36 percent), with health problems (28 percent), with English as a second language (28 percent) and with mental health issues (27 percent).
- Criminal advocacy is carried out mainly by small practices or by sole practitioners. Most advocacy is carried out in the magistrates' courts and youth courts. The most frequent types of hearings are sentencing and guilty pleas. A minority of solicitors do full trials on a regular basis and appeals from the magistrates' courts are rarely conducted. For those providing criminal advocacy, more serious offences such as murder accounted for only two percent.
- Most solicitors practising criminal advocacy are within the 35-44 age group. And there are more solicitors practising criminal advocacy in the 45-64 age group and significantly fewer solicitors practising criminal advocacy in the 25-34 age group, when compared to the solicitor's profession overall.
- There is an equal split between men and women practising criminal advocacy. In comparison with the wider profession, women are underrepresented, and men are overrepresented, in this practice area.
- For criminal advocacy, there are more BAME solicitors than in the general body of solicitors. There are also fewer white solicitors in this practice area than in the general body of solicitors. There are more BAME solicitors practising as sole practitioners than in the general body of solicitors. This suggests that more of these practices are undertaking criminal advocacy than in the general population of law firms.

Detailed impact of our proposals

Revised Higher Rights of Audience standards

10. We have updated the standards required in the HRA assessments to make sure they properly assess the competences that are required by modern day higher court advocates. For example, we have included clear obligations in relation to vulnerable clients and clarified what is required of solicitors.

11. The revised standards will help existing higher court advocates understand the standard of competence they are expected to demonstrate on an ongoing basis. The revised standards are not intended to make it harder for aspiring higher court advocates to pass the qualification, simply to provide clarity about the standards we expect. We will make sure that the revised standards are assessed at the appropriate level of difficulty through contractual and quality assurance arrangements with the appointed assessment organisation. We do not expect that the revised standards will have any significant impact on the numbers of solicitors who obtain the qualification. In any event, it is right that standards are up to date and provide proper protection for consumers.
12. We have already obtained views on the draft standards from the current HRA providers and representative groups. We will use this consultation and ongoing stakeholder engagement with solicitor representative groups to seek further views on the appropriateness of the proposed new standards.

Appointment of a single assessment provider

13. We currently delegate responsibility for providing the HRA assessments to seven providers. This means that if pass rates vary between providers, we do not know whether this is because of candidate cohorts of different ability levels, variations in the quality of teaching or the inconsistent application of standards.
14. We propose to appoint a single assessment provider. This should provide a greater measure of public protection because all solicitor advocates will demonstrably have been assessed to the same consistent standard.
15. This proposal will not have any impact on existing higher court advocates. The purpose is to ensure consistency of assessment, not to introduce a more difficult assessment for aspiring higher court advocates. So, the new assessment should not materially limit the numbers of individuals qualifying as solicitor advocates. We will have contractual and quality assurance arrangements in place to make sure that the assessment organisation sets the assessment at the appropriate standard.
16. There is a risk that introducing a single assessment provider could result in a disconnect between assessment and training. If this happened, more solicitors might fail the assessment because training providers do not fully understand how the assessment works.
17. The revised standards will provide greater clarity to providers on what will be assessed. And we will provide guidance on the level of difficulty of the assessment. We will put in place appropriate quality measures to make sure the assessment is set at the correct level. We will also publish sample assessment questions and make sure that training providers can engage with the assessment provider, so that they fully understand the content and level of difficulty. All of

these measures will minimise any risk of disconnect between assessment and training.

18. The current cost of the HRA assessments can be between £495 to £600. Stakeholders have suggested that a single provider model could lead to an increase in the cost of assessment. This could restrict some solicitors from obtaining their HRA qualification and reduce public access to this group of solicitors.
19. There is no evidence at this stage to suggest that a single assessment provider will lead to an increase in the cost. We will use this consultation and ongoing stakeholder engagement to further explore with providers the likely cost impact of developing and implementing the new HRA assessments. If we proceed with this proposal, assessment cost will be a factor in our tender process and appointment decision for the assessment organisation. We will also put in place mechanisms to control costs.
20. There is a risk that a single provider model could reduce the availability of assessments, for example, by frequency or geographical coverage. We know that higher rights assessments are currently delivered relatively frequently. Most assessments are carried out in Manchester or London. Candidates from further afield are therefore already required to travel and incur cost to undertake the assessment.
21. If we proceed to appoint a single assessment provider, we will work with them to make sure that there are enough assessments available and that there is appropriate geographical options. We will also take steps to make sure that the locations used to carry out the assessments do not prevent those with a disability from undertaking the assessment, for example, avoiding assessments carried out in buildings with restricted access.
22. The above measures will mitigate against the risk that a single assessment provider will restrict consumer access to solicitors with an HRA qualification.

Requiring that the HRA assessment is taken post admission

23. We propose to change our regulations to make clear that the HRA assessment may only be attempted by admitted solicitors. Some candidates currently take it prior to admission as part of the Professional Skills Course (PSC).
24. If we go ahead with this proposal, those solicitors wishing to practise higher court advocacy from the point at which they are admitted will not be able to do so. However, all solicitors will be able to exercise their lower court rights before they apply for higher court rights. This should enhance their ability to pass the HRA qualification. It should also give the public and other stakeholders greater confidence in the qualification.

25. We do not consider this proposal will significantly affect the supply of solicitor advocates. Our proposal restricts only the timing for obtaining an HRA qualification. Our data shows that very few individuals obtain HRA before admission. Further, the PSC will be phased out with the advent of the [SQE](#). So, the opportunity it provides for trainees to gain the qualification will fall away.

New requirement for solicitors taking more serious cases in the youth courts

26. Practising in the youth courts requires particular skills and knowledge. We are committed to making sure that vulnerable young people in the criminal justice system receive advocacy to the standard we expect. We have demonstrated this commitment in the SQE by requiring all candidates to show they can meet the service needs of all clients, including those with a vulnerability.

27. Our consultation proposes reviewing solicitors' rights of audience in the youth courts. It also proposes to require an HRA qualification when undertaking advocacy in cases which would be heard in a crown court, if they against an adult defendant.

28. During our pre-consultation engagement, some stakeholders told us they were concerned that, if we proceed with this proposal, we could restrict the supply of solicitors undertaking advocacy in the youth courts. This could impact on young people accessing an advocate of their choice.

29. We do not consider at this stage that our proposal presents a significant risk to the supply of solicitors. Individuals who currently hold criminal HRA would still be able to practise in the youth courts as they do now for all case types. Solicitors without HRA can continue to provide advocacy as they do now except for those indictable only, or serious triable either way offences, which would be heard in the crown court if they were brought against an adult defendant. For these cases, the solicitor can still represent the young person in the litigation, although they may not undertake the advocacy themselves.

30. This proposal will positively benefit clients in the youth courts by making sure that solicitors representing clients in more serious cases have demonstrated higher level advocacy skills. We consider that this benefit outweighs any potential risk to the supply of solicitors.

Publication of aggregated and anonymised data on reports we receive to drive up standards

31. We propose to publish aggregated and anonymised data on the reports we receive about the standard of solicitors providing criminal and civil advocacy. Publishing this information annually means we can highlight potential risks with the provision of advocacy and encourage solicitors to consider whether their skills

and knowledge are up to date in these areas. It will also provide helpful data to help us assess the longer-term impacts of our proposals.

32. The information will be aggregated and anonymised. So, it will not be possible to identify an individual firm, solicitor or client from the information we publish. We do not consider that there will be an adverse impact on solicitors or firms if we proceed with this proposal.

Impact of our proposals on solicitors with protected characteristics

33. Information we hold on solicitors practising criminal advocacy by protected characteristics is attached at annex 2. We have also looked at gender and ethnicity of those solicitors who currently hold criminal and civil HRA.
34. As male solicitors, older solicitors and BAME solicitors are overrepresented amongst criminal advocates, our new regulatory requirements may affect more of these solicitors who are seeking the HRA qualification. However, our proposals to provide resources and support to solicitor advocates will also have a positive impact on more solicitors in these groups.
35. We recognise that if we apply unnecessary regulatory burdens on existing criminal practitioners, there is a risk that we may inadvertently distort supply. For example, an additional cost burden or restrictions could mean that:
- existing practitioners, who tend to be older, may decide not to practise or
 - younger solicitors, who are already underrepresented in this group, may be deterred from practising criminal advocacy.
36. We have assessed our proposals against the Better Regulation Principles and against the regulatory objectives. We believe that there is a clear regulatory justification for the new restrictions. These out in our consultation and we summarised them in our analysis below. The new restrictions will not affect existing higher court advocates, only aspiring higher court advocates and advocates wishing to take serious cases in the youth courts.
37. As we set out in paragraph 29, individuals who currently hold criminal HRA would still be able to practise in the youth courts as they do now for all case types. Solicitors without HRA can continue to provide advocacy as they do now except for those indictable only, or serious triable either way offences, which would be heard in the crown court if they were brought against an adult defendant. For these cases, the solicitor can still represent the young person in the litigation, although they may not undertake the advocacy themselves.
38. As we set out in paragraph 25, the proposal to require the HRA assessment to be taken after admission, does not restrict the ability of an individual to obtain HRA,

only when they can. Our data shows that very few get the HRA before admission. Further, the PSC will be phased out when the SQE is introduced in autumn 2021. So, the opportunity it provides for trainees to gain the qualification will fall away.

39. We believe the new restrictions, together with the engagement and support of solicitor advocates, will provide confidence in the standard of this advocacy, particularly for younger, more vulnerable clients. These benefits will outweigh any potential negative impacts for solicitors from protected groups or risk to the supply of solicitors from these groups.
40. We do not have accurate data on solicitors with a disability practising advocacy. If we proceed with our proposals to appoint a single assessment provider, we will make sure that the assessments and location are accessible. We will use this consultation to engage with disability groups to further explore our impacts with representative groups.
41. We do not have accurate data on solicitors by sexual orientation.
42. Female solicitors with criminal and civil HRA are underrepresented when compared to all female solicitors. As a result, we do not consider that there will be a significant impact on this group. This is also the case for male solicitors with existing civil HRA. Given that males with existing criminal HRA are overrepresented when compared to all male solicitors, there may be more of an impact on this group, for example, more reports about males with existing HRA being made. We do not expect our proposals to have a greater impact on BAME solicitors with existing criminal and civil HRA as these solicitors are underrepresented when compared to all solicitors holding HRA.
43. We will continue to explore potential impacts with stakeholder during this consultation and through our ongoing engagement.

Analysis of our proposals against our Regulatory Objectives and Better Regulation Principles

Assessment of our proposals against our Regulatory Objectives

Regulatory Objective	Impact
Protecting and promoting the public interest	All of our proposals are intended to protect the public by making sure that solicitors practising criminal and civil advocacy meet the standards we and the public expect. They will enable us to take targeted and proportionate action against those solicitors who fall short of the required standards. They will increase public confidence in the justice system, and how we regulate.

	<p>The proposed new restriction on practice in the youth court will make sure that young people in the criminal justice system are properly represented.</p> <p>The proposed new restriction on when the HRA qualification can be taken will enhance confidence in the qualification.</p> <p>The proposed appointment of a single assessment provider for the HRA qualification will ensure that all higher court advocates are assessed to the same, consistent standard and will provide better public protections.</p> <p>The proposed publication of aggregated, anonymised data about the reports we received will enable us to highlight potential risks with the provision of advocacy. It could also encourage solicitors to consider whether their skills and knowledge are up to date in these areas. As well as providing helpful data to help us assess the longer-term impacts of our proposals.</p>
Supporting the constitutional principle of the rule of law	Effective advocacy supports the rule of law.
Improving access to justice	<p>We are proposing two new restrictions on practice:</p> <ul style="list-style-type: none"> • Requiring a higher rights qualification for advocacy in the youth courts in cases which are so serious they would be conducted in the Crown Court were they against an adult defendant. • Requiring admission as a solicitor as a pre-requisite for the HRA assessment. <p>These proposals are carefully targeted, so they are no wider than needed to make sure minimum advocacy standards. They are</p>

	<p>justified by the need for proper public protections in a high-risk area.</p> <p>We have assessed the potential impact of these new restrictions on the supply of solicitors and believe this risk to be low. See paragraphs 23 to 30.</p>
<p>Protecting and promoting the interests of public</p>	<p>Our proposals are designed to make sure that solicitors we regulate providing criminal and civil advocacy meet the standards we and the public expect. They protect the public from detriment through poor advocacy, for which there may be no financial redress.</p> <p>The new restriction on practice in the youth court will make sure that young people in the criminal justice system are properly represented.</p> <p>The new restriction on when the HRA qualification can be taken will enhance confidence in the qualification.</p> <p>The appointment of a single assessment provider for the HRA qualification will ensure that all higher court advocates are assessed to the same, consistent standard and will provide public protections.</p> <p>The publication of aggregated, anonymised data about the reports we received will enable us to highlight potential risks with the provision of advocacy. It will also encourage solicitors to consider whether their skills and knowledge are up to date in these areas. As well as providing helpful data to help us assess the longer-term impacts of our proposals.</p>
<p>Promoting competition in the provision of services</p>	<p>Our proposals are targeted and proportionate, given the risks in this area of practice. We do not believe our proposals will</p>

	materially affect the supply of solicitors providing criminal or civil advocacy.
Encouraging an independent, strong, diverse and effective legal profession	<p>We do not believe our proposals will negatively impact on this objective. A rigorous HRA assessment will build confidence in solicitor advocates. Our proposals in the round will encourage a strong and effective profession.</p> <p>We have conducted an analysis of the impact of the proposals on solicitors providing criminal work from protected groups such as older solicitors, male solicitors and BAME solicitors. We believe that overall the new restrictions, together with the proposed engagement and support of solicitor advocates, will provide confidence in the standard of this advocacy, particularly for younger, more vulnerable clients. These benefits will outweigh any potential negative impacts for solicitors from protected groups or risk to the supply of solicitors from these groups.</p>
Increasing public understanding of the citizen's legal rights and duties	Our proposal to work with public to explain what good advocacy looks like will help them get the legal help they need. Our work will increase understanding of expected quality of service. Our proposal to improve reporting where standards have not been met will also enable people to more easily raise concerns with us.

Assessment of our proposals against our Better Regulation Principles

Better Regulation Principle	Impact
Proportionate	<p>We believe our policy proposals are proportionate and targeted to the risks and issues we have identified. The proposals do not have any negative impact on existing holders of the HRA qualification.</p> <p>There is no evidence at this stage to suggest that a single provider model will lead to an increase in the cost of assessment. We will</p>

	<p>however monitor this going forward and ensure they are set at a level that does not place disproportionate regulatory costs on solicitors or groups of solicitors.</p> <p>We believe that our proposals to introduce two new practice restrictions will provide protections for young people in the criminal justice system and for clients in the higher courts.</p>
Accountable	Our proposals to revise our HRA standards and identify what good practice looks like should establish clear standards for solicitors and wider stakeholders.
Consistent	The introduction of a single provider of the HRA qualification will make sure consistency of assessment and that all solicitor advocates meet the minimum standard.
Transparent	Our proposal to publish anonymised and aggregated data on reports we receive will lead to greater transparency about the nature and extent of concerns in this area. It will also help us to evaluate the longer-term impact of our proposals.
Targeted	<p>Our proposals are targeted at an identified risk and only impact on those solicitors we regulate providing criminal or civil advocacy. The new restrictions are targeted at solicitors taking serious cases in the youth courts, where clients are particularly vulnerable, and at aspiring higher court advocates where public confidence is important.</p> <p>Our measures to help stakeholders understand what good advocacy looks like and make it easier to report concerns to us enables us to take a targeted regulatory approach to those solicitors that fall short of the standard we expect.</p>

Conclusion

44. We believe that our proposals should have the positive effect of encouraging high professional standards in advocacy, and enhancing public protections,

particularly for vulnerable people. They will not have any negative impact on existing holders of the higher rights of audience qualification. They will provide additional support and resources for these solicitors.

45. We have identified some potential risks with our two new regulatory restrictions which will affect solicitor advocates without higher rights of audience and aspiring higher court advocates. Our assessment of these proposals against the Better Regulation Principles and the regulatory objectives has concluded that there is clear regulatory justification for these new requirements.
46. We have concluded that some of our proposals could result in a risk to the supply of solicitor advocates. But again, we think these risks are low. We have measures in place to mitigate these risks. And we believe that the risks are outweighed by the benefits to the public from the new restrictions.
47. Solicitors practising criminal advocacy tend to be older solicitors, male solicitors and BAME solicitors. We have a clear regulatory need for introducing these requirements, and we believe any potential impact is justified by the need to protect young people and others in the criminal justice system.
48. We will continue to explore any potential impacts through the consultation.

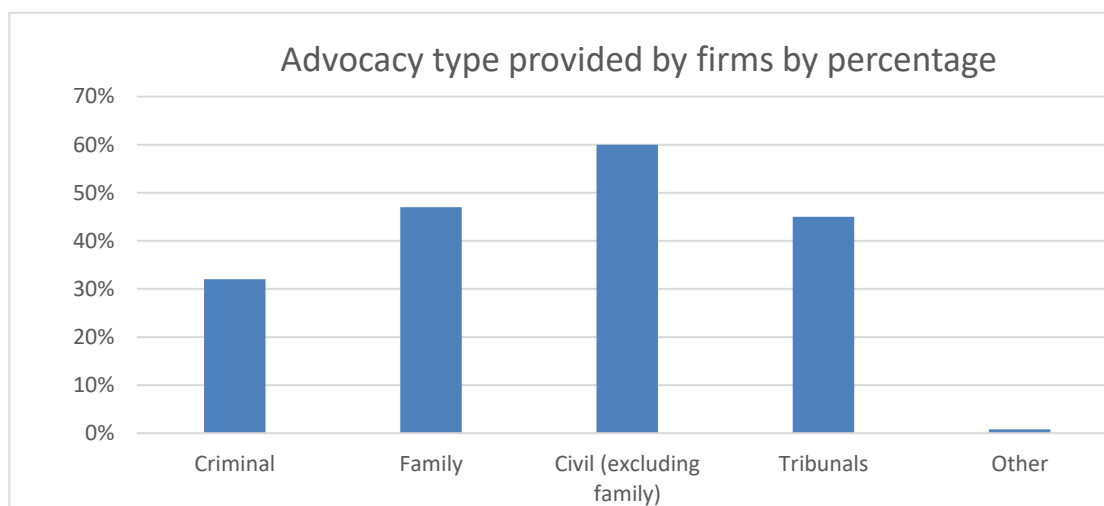
Annex 1: The criminal advocacy market

49. We do not hold accurate data on the number of solicitors practising criminal or civil advocacy in the magistrates' courts. Solicitors can tell us that they practise criminal and civil work through their mySRA account. This is not a mandatory requirement and many do not complete or provide this information. As part of developing the Quality Assurance Scheme for Advocates (QASA) in 2012, we surveyed the profession and around 5,500 solicitors told us they worked in the magistrates' courts.
50. We hold information on the number of solicitors with an HRA qualification, but we do not know who is providing advocacy in the lower courts without an HRA qualification.
51. To help our understanding, inform our proposals and help us understand impacts, we carried out a survey of solicitors providing advocacy in the criminal, family, civil and administrative courts. This explored the types of cases they are working on, the types of advocacy they are providing and the use of their HRA qualification.
52. The study used online questionnaires to survey:
- firms providing advocacy
 - individual solicitors working in private practice
 - individual solicitors working in-house
 - individual solicitors working for the Crown Prosecution Services (CPS).
53. The survey received a total of 2,830 responses from individual solicitors and 851 responses from firms.

Survey findings: firms and solicitors

54. Firms providing advocacy services tended to be relatively small with two to four partners. Sole practices also account for over one third of all the advocacy across the five areas we surveyed. It is less likely that large firms carry out advocacy. 32 percent of firms employ solicitors who have an HRA qualification.
55. The table below shows that almost two thirds of firms (60 percent) provide civil advocacy, 32 percent provide criminal advocacy, 47 percent work in the area of family law and 45 percent provide advocacy at tribunals. Other niche areas of advocacy (eight percent) provided by firms included arbitration, prison law and inquests.

Advocacy type provided by firms



56. Most individual respondents worked in private practice (81 percent), ten percent worked in central or local government, four percent worked at the CPS, and one percent worked in the third sector.

57. For individual solicitors providing advocacy within private practice, 44 percent focused on civil advocacy excluding family, 34 percent provided advocacy in family law, and 27 percent in criminal advocacy. Other niche areas of advocacy (12 percent) included arbitration, court of protection cases and inquests.

58. Firms are likely to provide advocacy to clients on low incomes (47 percent), with low literacy (36 percent), with health problems (28 percent), with English as a second language (28 percent) and with mental health issues (27 percent). Private practice solicitors are more likely to provide advocacy to clients on low income (48 percent), with low literacy (35 percent) and with mental health issues (32 percent).

Survey findings: criminal advocacy

59. The findings show that criminal advocacy is carried out mainly by small practices or by sole practitioners. Most advocacy is carried out in the magistrates' courts and youth courts.

60. Most firms provide criminal advocacy in the magistrates' courts (76 percent), followed by the Crown Court (51 percent) and the youth courts (51 percent).

61. The most frequent types of hearings are sentencing and guilty pleas. A minority of solicitors do full trials on a regular basis and appeals from the magistrates'

courts are rarely conducted. Procedural hearings (including bail applications or pleas and case management hearings) are conducted frequently.

62. For those providing criminal advocacy, the top five types of offences are:

- assault (63 percent)
- drug offences (51 percent)
- dishonesty and fraud (48 percent)
- theft (43 percent)
- bail applications (42 percent).

63. More serious offences such as murder accounted for only two percent.

Survey findings: civil advocacy

64. Our survey shows that civil is the largest area of law where the most advocacy is provided.

65. For those firms providing advocacy in family, civil and other types of advocacy, most of the advocacy took place in the county court (58 percent), followed by the family courts (39 percent), the High Court (22 percent) and the magistrates' courts (22 percent).

66. For individual private practice solicitors, the majority (56 percent) provided advocacy in the family courts followed by the County Court (25 percent). For in-house solicitors who provide types of civil advocacy, 41 percent did so in the County Court, followed by the magistrates' court (28 percent).

67. For those providing civil advocacy services, the most common cases are:

- divorce (26 percent)
- children (19 percent)
- personal injury (16 percent)
- immigration (13 percent)
- employment (13 percent).

Higher Rights of Audience

68. Our data (April 2019) shows that 6836 solicitors have an HRA qualification. Of this total 2309 have civil HRA, 3116 have criminal HRA and 1411 have both.

69. Around a third of solicitor advocates who hold the criminal HRA qualification obtained it at least ten years after admission as a solicitor. For those that hold civil HRA, two thirds obtained it at least three years after admission as a solicitor. So, many of those providing advocacy in complex cases are likely to be more experienced solicitors.
70. For those that hold an HRA qualification within private practice, almost half (49 percent) started to provide advocacy in the higher courts within one year of obtaining their HRA.
71. Few solicitors seem to be using their HRA qualification for the advocacy services they provide. 26 percent have never used their HRA qualification in the higher courts. A quarter of private practice respondents stated that the advocacy they provided did not require HRA, 37 percent of respondents stated that between 1-20 percent of their advocacy work required HRA. Only 14 percent of respondents required their HRA for over 70 percent of the advocacy services they provide.

Annex 2 Data on solicitors in groups with protected characteristics

Age representation of solicitors providing criminal work

Responses	Profession	Solicitors practising criminal advocacy
16 – 24	1%	1 %
25 - 34	46%	28 %
35 - 44	29%	31 %
45 - 54	14%	22 %
55 - 64	7%	12 %
65+	3%	5 %

Data on solicitors providing criminal work by gender

Responses	Profession	Solicitors practising criminal advocacy
Female	59 %	50 %
Male	41 %	50 %

Data on solicitors providing criminal work by ethnicity

Responses	Profession	Solicitors practising criminal advocacy
Asian / Asian British	14 %	20 %
Black / Black British	3 %	7 %
Mixed / multiple ethnic groups	3 %	5 %
White	78 %	67 %
Other ethnic group	1	1 %

Data on ethnicity of solicitors providing criminal work by firm size

Responses	Profession	0 - 1 partners	2 to 5 partners	6 to 9 partners	10 to 50 partners	50+ partners

Asian / Asian British	14 %	30 %	17 %	8 %	9 %	8 %
Black / Black British	3 %	9 %	4 %	2 %	2 %	1%
Mixed / multiple ethnic groups	3 %	4 %	2 %	2 %	3 %	3 %
White	78 %	56 %	75 %	86 %	85 %	87 %
Other ethnic group	1 %	1 %	1 %	2 %	1 %	1 %

Solicitors with HRA criminal and civil by gender

HRA				
Gender	Civil Only	Crim Only	Both	Grand Total
Female	36%	44%	20%	2,546
Male	32%	47%	21%	4,303
Unknown	79%	17%	4%	70
Grand Total	34%	45%	21%	6,919

Solicitors with HRA criminal and civil by ethnicity as a percentage of all solicitors who hold HRA

HRA				
Ethnicity	Civil Only	Crim Only	Both	Grand Total
BAME	4%	7%	3%	1,001
Asian	2%	4%	2%	591
Black	1%	1%	1%	195
Chinese	0%	0%	0%	29
Mixed	1%	1%	0%	93
Other	0%	1%	0%	93
White	23%	33%	14%	4816
Unknown	6%	5%	4%	1019
Prefer Not to Say	0%	0%	0%	42
Unknown	6%	5%	3%	977
Total	43%	57%	27%	6836

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
<p>General note: These evidence standards cover civil advocacy generically. They apply to all civil proceedings but do not extend to specialist areas of law, for instance family courts. Advocates should ensure they are familiar with the particular rules of evidence, practice and procedure for the courts in which they practise.</p> <p>Advocates must be able to apply the rules of evidence to a set of facts, determine what evidence is relevant and understand its admissibility in the context of case and cost management.</p>			
<p>1. Apply the burden and standard of proof to the factual analysis of a dispute.</p>	<p>1 a. Apply the burden of proof in civil proceedings including the incidence of the reverse burden.</p> <p>1 b. Distinguish the evidential from the persuasive burden of proof.</p> <p>1 c. Apply the standard of proof in civil proceedings and show how that standard applies to allegations of criminal or dishonest behaviour.</p>	<ul style="list-style-type: none"> • The burden of proof. • The incidence of the reverse burden. • The evidential and the persuasive burden • The standard of proof and the balance of probabilities. • Admissions of fact and notices to admit. • Admissions, denials and requirement of proof in statements of case. • Withdrawing admissions. • Presumptions of fact and law including the doctrine of <i>res ipsa loquitur</i>. • Adverse inferences. 	

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
2.	Apply the rules of disclosure and inspection of documents (or a suite of documents) in civil proceedings.	2 a. Differentiate between disclosure and inspection. 2 b. Apply the rules governing disclosure and inspection. 2 c. Recognise and explain the different ways of claiming (and waiving) privilege from inspection and how privilege may be waived. 2 d. Apply the rules governing inadvertent inspection. 2 e. Apply the rules governing pre-action and non-party disclosure.	CPR 31 and especially the provisions governing: <ul style="list-style-type: none"> • The procedure for disclosure and inspection and the meaning of ‘document’ and ‘control’ of documents. • The continuing duty and scope of disclosure and the search for documents. • Specific disclosure. • Documents which are privileged from inspection and the grounds for claiming privilege. • Waiver of privilege, express and implied. • Pre-action disclosure. • Non-party disclosure. • The SRA Code of Conduct and inadvertent inspection. • Electronic disclosure.
3.	Distinguish between the different categories of evidence in civil proceedings.	3 a. Identify what evidence is and is not admissible and for what purpose. 3 b. Recognise hearsay evidence and explain how it can be adduced in civil proceedings. 3 c. Demonstrate an understanding of how the court evaluates the weight of hearsay evidence.	<ul style="list-style-type: none"> • The difference between witnesses of fact and expert witnesses. • CPR 32 (Evidence generally). • In the Civil Evidence Act 1995 the provisions dealing with: <ul style="list-style-type: none"> ○ The definition of hearsay evidence. ○ The weight to be attached to hearsay evidence. ○ The credibility of hearsay evidence. ○ Previous statements. ○ Hearsay notices.

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
4.	Adduce admissible evidence from witnesses of fact.	<p>4 a. Differentiate between factual and opinion evidence.</p> <p>4 b. Apply the different rules governing factual evidence (i) in preliminary proceedings and (ii) at trial.</p> <p>4 c. Prepare and evaluate the advocate's own witness statements.</p> <p>4 d. Analyse and evaluate the opponent's witness statements.</p>	<ul style="list-style-type: none"> • The competence and compellability of witnesses. • The use of witness summonses. • The formal requirements for the content and service of witness statements. • Witness statements in case management proceedings. • The rules governing evidence in chief, cross examination and re-examination and the role of each. • Live evidence given remotely, eg by video link.
5.	Adduce admissible expert evidence.	<p>5 a. Apply the rules governing expert witnesses, the preparation of their evidence and their duty to the court.</p> <p>5 b. Make or resist an application for permission to adduce expert evidence.</p> <p>5 c. Obtain and submit expert evidence in the proper form.</p> <p>5 d. Analyse and evaluate the opponent's expert evidence.</p>	<ul style="list-style-type: none"> • The role of expert evidence in civil procedure. • Obtaining permission to rely on expert evidence and the factors the court will consider when giving or refusing permission. • The protocol for the instruction of experts in civil proceedings. • CPR 35 and PD 35: the form and content of an expert report. • Joint experts and meetings of experts. • Opinion evidence given by witnesses of fact. • Cost implications of expert witnesses

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
6.	Utilise other categories of evidence.	6 a. Make appropriate use of 'real' evidence and exhibits. 6 b. Recognise and manage similar fact evidence. 6 c. Recognise and manage bad character evidence. 6 d. Adduce other forms of evidence. 6 e. Apply the rules governing late evidence and relief from sanctions.	<ul style="list-style-type: none"> • The definition of 'real' evidence. • The use of photographs, models, visual aids, and site visits. • The relevance and importance of photographs, models, visual aids, and site visits. • The two-stage test for similar fact evidence. • 'PD 16.8.1: Using the defendant's previous convictions. • Cross examining a witness on their bad character. • In the Civil Evidence Act 1995 provisions dealing with public records, works of reference, business and public authority records. • Late evidence, sanctions and relief from sanctions.

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Solicitors Regulation Authority
Standards for solicitor higher court advocates in civil proceedings
Advocacy Unit

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
	<p>Introduction: Advocacy in the higher courts requires demanding standards of skill and knowledge. To meet those standards a solicitor must demonstrate that they are competent to undertake both trial and interim advocacy at a level commensurate with the reasonable expectations of the client, the judge and other court users.</p>	<p>Introduction: As with any examination or assessment, it is not anticipated that every candidate will be tested on every criterion. A flexible assessment will test a representative selection of knowledge and skills.</p> <p>However, a candidate will fail the assessment if he commits an egregious error meaning an error which, had it been replicated in practice would have justified disciplinary or regulatory proceedings or a wasted costs order or would inevitably have caused serious and irreparable harm to the client’s case.</p> <p>By way of example only, a candidate may commit an egregious error if they attempts to mislead the court by inventing helpful, or suppressing unhelpful, evidence, if they significantly misrepresents the law, if their advocacy, taken as a whole, demonstrably harms their client’s case or if they are grossly discourteous to the court or a witness.</p>	<p>Introduction: The syllabus will, as a matter of course, be adapted to include any significant future changes in the law, procedure or practice.</p>
	<p>Knowledge: to be assessed primarily in a written assessment</p>		
	<p>Successful candidates will be able to:</p>	<p>The successful candidate can:</p>	<p>The syllabus will include:</p>
1.	<p>Advise on the alternatives to litigation and the essential preliminaries for litigation in the higher courts.</p>	<p>1 a. Advise on a negotiated settlement and the various types of alternative dispute resolution and offers to compromise.</p>	<ul style="list-style-type: none"> • An overview of the various types of alternative dispute resolution eg arbitration, mediation and judicial evaluation.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
1.	<i>(continued)</i>	<p>1 b. Advise on and comply with the pre-action protocols.</p> <p>1 c. Advise on the law and practice relating to offers to compromise.</p>	<ul style="list-style-type: none"> • An overview of the pre-action protocols, eg the personal injury and professional negligence protocols. • The requirements of the pre-action Practice Direction when no protocol is prescribed. • Sanctions for non-compliance. • Costs implications. • Limitation deadlines. • Part 36 offers and their costs consequences. • Calderbank letters and their costs implications.
2.	Advise on and conduct the interim and preparatory stages of litigation in the higher courts.	2 a. Demonstrate a good working knowledge of the Civil Procedure Rules generally and a detailed knowledge of the more important Rules and Practice Directions as specified in the syllabus.	<ul style="list-style-type: none"> • The Civil Procedure Rules and Practice Directions and specifically those dealing with: <ul style="list-style-type: none"> ○ Time limits and service of documents ○ Statements of case. ○ Default and summary judgments and striking out. ○ Interim remedies and injunctions. ○ Costs, including costs budgeting, security for costs and interim costs orders. ○ Disclosure, inspection of documents and privilege. ○ Preparation for trial and trial procedures. ○ Appeals. ○ Pre-action disclosure. ○ Non-party disclosure.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
		2 b. Demonstrate familiarity with the Queen's Bench Guide.	<ul style="list-style-type: none"> • An overview of the Queen's Bench Guide. • Rules of allocation and venue. • Case management.
2. (continued)		2 c. Revise, correct and improve a defective or incomplete draft of a statement of case, court order, or witness statement: alternatively draft the entire document.	<ul style="list-style-type: none"> • The function and importance of statements of case, including requests for further information, and the rules which govern them. • The rules applicable in certain types of case eg contract and personal injury claims. • Pleading the appropriate remedy. • The form and content of a witness statement. • The distinction between evidence and statements of case. • The use of precedents and conventional wording. • Consent and Tomlin orders.
		2 d. Demonstrate an understanding of how to prepare for and/or conduct an effective cost and case management conference.	<ul style="list-style-type: none"> • The rules governing case management conferences. including telephone hearings.
		2 e. Advise on case management directions and the sanctions and costs consequences of non-compliance.	<ul style="list-style-type: none"> • Case summaries. • Standard and special directions. • Time limits. • Sanctions, and the consequences of non-compliance, including orders for costs: relief from sanctions.
Skills: to be assessed primarily in a practical assessment			
Successful candidates will be able to:	The successful candidate can:	The syllabus will include:	

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
3.	Conduct an effective examination in chief (and re-examination) in the higher courts.	<p>3 a. Conduct an effective examination in chief in compliance with the rules</p> <p>3 b. Demonstrate an understanding of the practice in relation to additional or supplementary questions to a witness who has verified their written statement;</p> <p>3 c. Demonstrate an understanding of the practice in relation to the examination of a hostile witness;</p> <p>3 d. Demonstrate an understanding of the practice in relation to the examination of expert witnesses</p> <p>3 e. Understand when re-examination is required.</p>	<ul style="list-style-type: none"> • The rules governing examination in chief. • The verification of witness statements. • Additional and supplementary questions. • Relevance and objectives. • Young or vulnerable witnesses • Hostile witnesses. • Opinion evidence and expert witnesses • Re-examination.
4.	Write a concise and accurate case theory setting out the most plausible explanation, consistent with the evidence, as to why their client(s) should succeed.	<p>4 a. Identify and analyse disputed and undisputed facts and, as to disputed facts, how the evidence stands and what further evidence might be obtained.</p> <p>4 b. Identify and analyse 'good' (favourable) and 'bad' (unfavourable) facts.</p> <p>4 c. Analyse and advise on any relevant issues of law.</p> <p>4 d. Explain how, in the light of those analyses, the court might best be persuaded to give a favourable judgment.</p>	<ul style="list-style-type: none"> • The definition of a case theory. • Its importance in preparing for trial. • Identifying the issues of fact and law. • Identifying gaps and weaknesses in the evidence. • Addressing the opponent's evidence. • Good fact / bad fact analysis. • Finding an 'angle' on the case.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
5.	Write a persuasive skeleton argument and use it to support a legal submission in the higher courts.	<p>5 a. Write a concise, accurate and persuasive skeleton argument.</p> <p>5 b. Support a persuasive skeleton argument with accurate and up-to-date legal research.</p> <p>5 c. Comply with the Civil Procedure Rules and the relevant Practice Directions and Practice Notes when producing a skeleton argument.</p> <p>5 d. Explain, within the skeleton argument, the issues and what findings and/or order(s) the court is asked to make.</p> <p>5 e. Use the skeleton argument effectively in the course of a legal submission</p> <p>5 f. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> • The role and importance of written advocacy. • The conventional form of a skeleton argument. • The content of a skeleton argument. • Introductions. • Chronologies. • Cross-references to the evidence. • Citation of authorities and legislation. • Conclusions. • Using a written skeleton to support an oral submission.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
6.	Make an effective legal submission in the higher courts.	<p>6 a. Manage preliminary matters ('housekeeping').</p> <p>6 b. Outline the background of the case.</p> <p>6 c. Set out the issue(s) for the court's decision and the order(s) sought.</p> <p>6 d. Persuasively apply the evidence to the law.</p> <p>6 e. Address unfavourable and missing evidence.</p> <p>6 f. Cite relevant and helpful authority and address unhelpful authority</p> <p>6 g. Manage time effectively complying with any time limits imposed by the court.</p> <p>6 h. Assist the court generally.</p> <p>6 i. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> • The conventional format of a legal submission. • The papers before the court. • The correct use of evidence. • The research and citation of authority whether binding or persuasive. • Proportionate use of authorities in submissions. • The significance of time limits. • The overriding objective and the powers of the court.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
7.	Prepare and deliver effective opening and closing speeches in the higher courts.	<p>7 a. Prepare and deliver an effective opening speech.</p> <p>7 b. Prepare and deliver an effective and persuasive closing speech.</p> <p>7 c. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> • The purpose of an opening speech and how it differs from a legal submission and a closing speech. • Opening the statements of case and outlining the evidence. • The use of the trial bundle. • The purpose of a closing speech: how it differs from a legal submission and an opening speech. • The structure of a persuasive speech. • The importance of an accurate note. • Reviewing and evaluating the evidence on both sides, and how it was given. • Using the evidence and the law to persuade the court. • Inviting specific findings of fact and specific conclusions on disputed points of law, and • Specifying precisely what orders the court is invited to make.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
8.	Conduct a cross examination in which skilful questioning effectively advances the client's case in the higher courts.	<p>8 a. Conduct an effective cross examination in compliance with the rules.</p> <p>8 b. Select appropriate topics and adopt a logical structure.</p> <p>8 c. Lay the foundation for the questions in sufficient detail.</p> <p>8 d. Elicit useful information.</p> <p>8 e. Introduce and use exhibits correctly.</p> <p>8 f. Put the client's case, directly challenging adverse evidence.</p> <p>8 g. Undermine the opponent's case, when appropriate by impeaching or attacking the credibility of the witness.</p> <p>8 h. Control the evidence by using short, closed and leading questions, one at a time, in clear, precise and professional English,</p> <p>8 i. Listen to answers and formulate and/or adapt questions appropriately</p> <p>8 j. Focus on essentials, using patience and persistence when necessary</p> <p>8 k. Control the direction and pace of the examination, without quarrelling with the witness</p> <p>8 l. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> • The rules governing cross examination. • The requirement to put the client's case. • Other essential challenges. • Previous inconsistent statements. • Questions going only to credit. • Opinion evidence and expert witnesses. <ul style="list-style-type: none"> • The techniques of cross examination. • The use and importance of leading questions. • Brevity, style and pace. • Thinking on your feet. • Listening and responding appropriately to a change in direction. • Avoiding discussion and digression. • Dealing with quarrelsome, prolix, un-cooperative, young or vulnerable witnesses.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
9.	Use presentational skills in the higher courts both when addressing the court and examining a witness.	<p>9 a. Adopt a persuasive and professional manner dressing appropriately and speaking clearly and audibly at an appropriate pace and with appropriate emphasis.</p> <p>9 b. Use correct, plain and professional English.</p> <p>9 c. Avoid distracting language or behaviour.</p> <p>9 d. Maintaining suitable posture and body language.</p> <p>9 e. Convey authority by displaying a command of the documents and evidence.</p> <p>9 f. Always be accurate</p> <p>9 g. Deal appropriately with judicial intervention.</p>	<ul style="list-style-type: none"> • Presentational skills. • The importance of preparation. • Precision and brevity. • The management of documents • The techniques of persuasion. • Engaging the court. • Stress management. • Addressing the court • Court dress • Etiquette

Solicitors Regulation Authority
Standards for solicitor higher court advocates in civil proceedings
Ethics and Professional Conduct Unit

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
	<p>General note: The standards of professional conduct and ethical behaviour set out below are applicable to all solicitor advocates at whatever level but will be specifically assessed for the Higher Rights qualification.</p>		<p>Introduction: The syllabus will, as a matter of course, be adapted to include any significant changes in the law, procedure or practice.</p>
1.	<p>Comply with the professional duties and responsibilities of a solicitor advocate.</p>	<p>1 a. Comply with the statutory and other rules of professional conduct. 1 b. Comply with the Civil Procedure Rules applicable to professional conduct. 1 c. Comply with the SRA Code of Conduct.</p>	<ul style="list-style-type: none"> • The Civil Procedure Rules and especially: <ul style="list-style-type: none"> ○ Part 1. The overriding objective. ○ Part 3. The court's case management powers. ○ Part 16. Statements of case. ○ Part 22. Statements of truth. ○ Part 31. Disclosure ○ Part 32. Witness statements ○ Part 35. Expert evidence • The SRA Code of Conduct and especially: <ul style="list-style-type: none"> ○ The Principles ○ Chapter 1 Client care. ○ Chapter 2 Equality and Diversity. ○ Chapter 3 Conflicts of interest. ○ Chapter 4 Confidentiality and disclosure. ○ Chapter 5 Your client and the court.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
2.	Comply with the duties of a solicitor advocate towards the court.	<p>2 a. Act in accordance with the advocate's overriding duty to the court.</p> <p>2 b. Act with honesty and integrity in the presentation of a case before the court.</p> <p>2 c. Assist the court in the effective management of litigation and pursuance of the overriding objective.</p>	<ul style="list-style-type: none"> • CPR Part 1.8 • The SRA Code of Conduct and especially: <ul style="list-style-type: none"> ○ Your client and the court. ○ Dealing with wasted costs orders and indemnity costs orders. ○ Never construct facts to support the client's case ○ Never knowingly, recklessly, directly or indirectly mislead the court ○ Correct any errors at the first opportunity • Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case. • Avoid advancing any contention which the advocate does not consider to be properly arguable.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
3.	Comply with the duties of a solicitor advocate towards the client.	3 a. Assert the advocate's independence in fearlessly advancing the client's case. 3 b. Keep the client's information and documents confidential, except when disclosure is permitted or required. 3 c. Maintain any legitimate claim to confidentiality or legal professional privilege. 3 d. Disclose all material information to the client except where disclosure is forbidden. 3 e. Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder.	The SRA Code of Conduct and especially: <ul style="list-style-type: none"> • Client care. • Equality and diversity. • Conflicts of interest. • Confidentiality and disclosure.
4.	Act with honesty and integrity in the preparation and presentation of evidence.	4 a. Avoid attempting to influence a witness after taking a statement from him as to the contents of that statement. 4 b. Avoid seeking to persuade a witness to change their evidence. 4 c. Avoid encouraging a witness to give misleading or untruthful evidence. 4 d. Avoid rehearsing or coaching a witness in respect of their evidence. 4 e. Avoid attempting to suppress or conceal unhelpful evidence.	The SRA Code of Conduct and especially: <ul style="list-style-type: none"> • Chapter 5: Your client and the court. • Expert witness. • Lay witness.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
5.	Exercise professional discipline in advancing the client's case and questioning witnesses.	<p>5 a. Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the face of it, a case of fraud).</p> <p>5 b. Avoid making statements or asking questions merely to insult, humiliate or annoy a witness or any other person.</p> <p>5 c. Avoid making any serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness.</p> <p>5 d. Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds).</p> <p>5 e. Avoid putting questions, making statements or advancing arguments which are misleading or vexatious.</p>	<p>The SRA Code of Conduct and especially:</p> <ul style="list-style-type: none"> • Chapter 5: Your client and the court.
6.	Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice.	<p>6 a. Identify any actual or potential conflict of interest.</p> <p>6 b. Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information.</p> <p>6 c. Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case.</p>	<p>The SRA Code of Conduct and especially:</p> <ul style="list-style-type: none"> • Conflicts of interest. • Confidentiality and disclosure.

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
<p>General note: These evidence standards cover civil advocacy generically. They apply to all civil proceedings but do not extend to specialist areas of law, for instance family courts. Advocates should ensure they are familiar with the particular rules of evidence, practice and procedure for the courts in which they practise.</p> <p>Advocates must be able to apply the rules of evidence to a set of facts, determine what evidence is relevant and understand its admissibility in the context of case and cost management.</p>			
<p>1. Apply the burden and standard of proof to the factual analysis of a dispute.</p>	<p>1 a. Apply the burden of proof in criminal proceedings including the incidence of the reverse burden. 1 b. Distinguish the evidential burdens from the legal burdens of proof. 1 c. Apply the standard of proof correctly in criminal proceedings.</p>	<ul style="list-style-type: none"> • The burden of proof. • The incidence of the reverse burden. • The evidential and legal burden. • The standard of proof. • Admissions of fact. • Presumptions of fact and adverse inferences. 	

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
2.	Apply the rules of disclosure of documents in criminal proceedings.	2 a. Apply the rules governing disclosure. 2 b. Recognise and explain the different ways of claiming (and waiving) privilege. 2 c. Apply the rules governing inadvertent disclosure. 2 d. Apply the rules governing third party disclosure.	<ul style="list-style-type: none"> • CPR Part 8 and 15 and especially the provisions governing: <ul style="list-style-type: none"> ○ The procedure for disclosure ○ The continuing duty of disclosure ○ PII (Public Interest Immunity) ○ Specific disclosure. • Documents which are privileged and the grounds for claiming privilege. • Part 8 Compliance. • Waiver of privilege. • Third party disclosure. • The SRA Code of Conduct and inadvertent disclosure. • Electronic disclosure and disclosure of management documents.
3.	Distinguish between the different categories of evidence in criminal proceedings.	3 a. Identify what evidence is and is not admissible and for what purpose. 3 b. Recognise hearsay evidence and explain how it can be adduced in criminal proceedings. 3 c. Demonstrate an understanding of how the court evaluates hearsay evidence. 3 d. Recognise bad character and explain how it can be adduced. 3 e. Demonstrate an understanding of expert evidence.	<ul style="list-style-type: none"> • The difference between witnesses of fact and expert witnesses. • CPR 20 hearsay evidence. • Bad character. • Expert. • In the Criminal Justice Act 2003 the provisions dealing with: <ul style="list-style-type: none"> ○ The definition of hearsay evidence. ○ Previous statements. ○ Hearsay notices. • Criminal Justice Act 2003, chapter 2, sections 114 to 126. • Criminal Justice Act 2003, chapter 1, sections 98 to 112. • Definition of expert evidence, CPR Part 19, compliance and Part 21, bad character.

No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
4.	Adduce admissible evidence from witnesses of fact.	4 a. Differentiate between factual and opinion evidence. 4 b. Prepare and evaluate the advocate's own witness statements. 4 c. Analyse and evaluate the opponent's witness statements.	<ul style="list-style-type: none"> • The competence and compellability of witnesses. • The use of witness summonses. • The formal requirements for the content and service of witness statements. • The rules governing evidence in chief, cross examination and re-examination and the role of each. • Special measures under the Youth Justice and Criminal Evidence Act 1999 Section 16 to 28.
5.	Adduce admissible expert evidence.	5 a. Apply the rules governing expert witnesses, the preparation of their evidence and their duty to the court. 5 b. Obtain and submit expert evidence in the proper form. 5 c. Analyse and evaluate the opponent's expert evidence.	<ul style="list-style-type: none"> • The role of expert evidence in criminal procedure. • CPR 19: the form and content of an expert report. • Joint experts and meetings of experts. • Opinion evidence given by witnesses of fact.
6.	Utilise other categories of evidence.	6 a. Make appropriate use of 'real' evidence and exhibits. 6 b. Adduce other forms of evidence. 6 c. Demonstrate an understanding and use of exclusionary discretions.	<ul style="list-style-type: none"> • The definition of 'real' evidence. • The relevance, importance and use of photographs, models, visual aids, and site visits. • Provisions dealing with public records, works of reference, business and public authority records. • Section 78 PACE 1984 exclusionary discretions. • Section 76 PACE Confessions. • Section 41 Youth Justice and criminal evidence act 1999 – cross examination of sexual history.

**Solicitors Regulation Authority
Standards for solicitor higher court advocates in criminal proceedings
Advocacy Unit**

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
	<p>Introduction: Advocacy in the higher courts requires demanding standards of skill and knowledge. To meet those standards a solicitor must demonstrate that he is competent to undertake both trial and interim advocacy at a level commensurate with the reasonable expectations of the client, the judge and other court users.</p>	<p>Introduction: As with any examination or assessment, it is not anticipated that every candidate will be tested on every criterion. A flexible assessment will test a representative selection of knowledge and skills.</p> <p>However, a candidate will fail the assessment if he commits an egregious error meaning an error which, had it been replicated in practice would have justified disciplinary or regulatory proceedings or a wasted costs order or would inevitably have caused serious and irreparable harm to their client's case.</p> <p>By way of example only, a candidate may commit an egregious error if he attempts to mislead the court by inventing helpful, or suppressing unhelpful, evidence, if he significantly misrepresents the law, if their advocacy, taken as a whole, demonstrably harms their client's case or if he is grossly discourteous to the court or a witness.</p>	<p>Introduction: The syllabus will, as a matter of course, be adapted to include any significant future changes in the law, procedure or practice.</p>

Knowledge: to be assessed primarily in a written assessment

Successful candidates will be able to:	The successful candidate can:	The syllabus will include:
1. Advise on plea.	1 a. Advise client on pleading guilty or not guilty. 1 b. Demonstrate an awareness of out of court disposal.	<ul style="list-style-type: none">• Credit for guilty plea.• Understanding of attorney general guidelines regarding guilty pleas.• Basis of plea/Newton hearings.• Alternative counts on Indictment.• Indication of sentence.• Caution, bindover.
2. Advise on essential preliminaries for trial in the higher courts.	2 a. Demonstrate knowledge and importance of preparation for trial and case management. 2 b. Advise on and comply with PTPH directions. 2 c. Demonstrate an understanding of preliminary issues.	<ul style="list-style-type: none">• PTPH form completion.• Formulation of appropriate directions. • Sanctions for non-compliance.• Compliance with PTPH directions and practice directions. • Joinder/severance.• Abuse of process/dismissal.

3. Advise on and conduct the interim and preparatory stages of criminal litigation in the higher courts.

3 a. Demonstrate a good working knowledge of the Criminal Procedure Rules generally and a detailed knowledge of the Rules and Practice Directions as specified in the syllabus.

3 b. Revise, correct and improve a defective or incomplete draft of a defence statement, indictment, hearsay/bad character notice: alternatively draft the entire document.

3 c. Understand an advocate's responsibilities with regard to a defective indictment and rules of amendment.

3 d. Demonstrate an understanding of how to prepare for and/or conduct an effective PTPH process.

3 e. Advise on case management directions and the sanctions and costs consequences of non-compliance.

• The Criminal Procedure Rules and Practice Directions and specifically those dealing with:

- Time limits and service of documents.
- Disclosure and privilege.
- Preparation for trial and trial procedures.

- Part 15, criminal procedure rules.
- Part 6, reporting restrictions.
- Part 9, Allocation and sending.
- Part 17, witness summonses.
- Part 14, Bail and custody time limits.
- Part 18, special measures.

• The function and importance of a defence statement, indictment, hearsay/bad character notice.

• The form and content of a witness statement.

• The use of precedents and conventional wording.

• Amending indictments.

• The rules governing PTPHs, including telephone hearings and video hearings.

• Case summaries.

• Time limits.

• Sanctions, and the consequences of non-compliance, including orders for costs.

Skills: to be assessed primarily in a practical assessment

Successful candidates will be able to:

The successful candidate can:

The syllabus will include:

4. Conduct an effective examination in chief (and re-examination) in the higher courts.

- 4 a. Conduct an effective examination in chief in compliance with the rules.
- 4 b. Demonstrate an understanding of the practice in relation to the examination of a hostile witness.
- 4 c. Demonstrate an understanding of the practice in relation to the examination of expert witnesses.
- 4 d. Understand when re-examination is required.

- The rules governing examination in chief.
- Relevance and objectives.
- Young or vulnerable witnesses.
- Hostile witnesses.
- Opinion evidence and expert witnesses
- Re-examination – rules of/ protecting your witness.

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| 5. Arrive at a logical theory of the case by the most plausible explanation, consistent with the evidence, as to why their client(s) should succeed. | 5 a. Identify and analyse disputed and undisputed facts and, as to disputed facts, how the evidence stands and what further evidence might be obtained.
5 b. Identify and analyse 'good' (favourable) and 'bad' (unfavourable) facts. (<i>alternatively</i> , strengths and weaknesses).
5 c. Analyse and advise on any relevant issues of law.
5 d. Identify any admissibility arguments or submissions to be made or resisted and advise on tactical considerations.
5 e. Explain how, in the light of those analyses, the court might best be persuaded to give a favourable verdict.
5 f. Identify lines of investigation and preparation to be "trial ready". | • The definition of a case theory.
• Its importance in preparing for trial.
• The drafting of a trial strategy plan, articulating the case theory and: <ul style="list-style-type: none">○ Identifying the issues of fact and law.○ Identifying gaps and weaknesses in the evidence.○ Addressing the opponent's evidence to identify supportive facts and challenges to be made.○ Good fact / bad fact analysis. (<i>alternatively</i>, strengths and weaknesses).○ Finding an 'angle' on the case. (<i>alternatively</i>, a plausible theory to persuade a jury). |
| 6. Write a persuasive skeleton argument and use it to support a legal submission in the higher courts. | 6 a. Write a concise, accurate and persuasive skeleton argument.
6 b. Support a persuasive skeleton argument with accurate and up-to-date legal research.
6 c. Comply with the Criminal Procedure Rules and the relevant Practice Directions and Practice Notes when producing a skeleton argument.
6 d. Explain, within the skeleton argument, the issues and what findings and/or order(s) the court is asked to make.
6 e. Use the skeleton argument effectively in the course of a legal submission.
6 f. Maintain professional standards throughout. | • The role and importance of written advocacy.
• The conventional form of a skeleton argument.
• The content of a skeleton argument (eg heading, declare the application, jurisdiction/power, relevant law, identifying the legal text).
• Introductions.
• Chronologies.
• Cross-references to the evidence.
• Citation of authorities and legislation.
• Level of detail of the argument in support
• Conclusions.
• Using a written skeleton to support an oral submission. |
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7. Make an effective legal submission in the higher courts.

- 7 a. Manage preliminary matters ('housekeeping').
- 7 b. Outline the background of the case.
- 7 c. Set out and expand upon the issue(s) for the court's decision and the order(s) sought.
- 7 d. Persuasively apply the evidence to the law.
- 7 e. Address unfavourable and missing evidence.
- 7 f. Cite relevant and helpful authority and address unhelpful authority.
- 7 g. Manage time effectively complying with any time limits imposed by the court.
- 7 h. Assist the court generally and respond appropriately to judicial intervention.
- 7 i. Maintain professional standards throughout.

- The conventional format of a legal submission.
- The correct use of evidence.
- The research and citation of authority whether binding or persuasive.
- Proportionate use of authorities in submissions.
- The significance of time limits.
- The overriding objective and the powers of the court.

8. Prepare and deliver effective opening and closing speeches in the higher courts.

8 a. Prepare and deliver an effective opening speech.

- The purpose of an opening speech and how it differs from a legal submission and a closing speech.
- Requirements of a defence opening speech and the implications of a defence 'opening statement'.
- How to challenge the content of a prosecution opening speech.

8 b. Prepare and deliver an effective and persuasive closing speech.

- The purpose of a closing speech: how it differs from a legal submission and an opening speech, commenting on the evidence.

8 c. Maintain professional standards throughout.

- The structure of a persuasive speech.
 - The importance of an accurate note.
 - Reviewing and evaluating the evidence on both sides, and how it was given.
 - Using the evidence and the law to persuade the court.
 - Inviting specific findings of fact and specific conclusions on disputed points of law.
 - Use of the jury bundle.
 - Whether and when to pre-empt the Judge.
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9. Conduct a cross examination in which skilful questioning effectively advances the client's case in the higher courts.
- 9 a. Conduct an effective cross examination in compliance with the rules.
- 9 b. Select appropriate topics and adopt a logical structure.
- 9 c. Lay the foundation for the questions in sufficient detail.
- 9 d. Elicit useful information.
- 9 e. Introduce and use exhibits correctly.
- 9 f. Put the client's case, directly challenging adverse evidence.
- 9 g. Undermine the opponent's case, when appropriate by impeaching or attacking the credibility of the witness.
- 9 h. Control the evidence by using short, closed and leading questions, one at a time, in clear, precise and professional English.
- 9 i. Listen to answers and formulate and/or adapt questions appropriately.
- 9 j. Focus on essentials, using patience and persistence when necessary.
- 9 k. Control the direction and pace of the examination, without quarrelling with the witness.
- 9 l. Maintain professional standards throughout.
- The rules governing cross examination.
 - The requirement to put the client's case.
 - Other essential challenges.
 - Previous inconsistent statements.
 - Questions going only to credit.
 - Opinion evidence and expert witnesses.
- The techniques of cross examination.
 - The use and importance of leading questions.
 - Brevity, style and pace.
 - Thinking on your feet.
 - Listening and responding appropriately to a change in direction.
 - Avoiding discussion and digression.
 - Dealing with quarrelsome, prolix, un-cooperative, young or vulnerable witnesses.
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10. Use presentational skills in the higher courts both when addressing the court and examining a witness.
- 10 a. Adopt a persuasive and professional manner dressing appropriately and speaking clearly and audibly at an appropriate pace and with appropriate emphasis.
 - 10 b. Use correct, plain and professional English.
 - 10 c. Avoid distracting language or behaviour.
 - 10 d. Maintaining suitable posture and body language.
 - 10 e. Convey authority by displaying a command of the documents and evidence.
 - 10 f. Always be accurate.
 - 10 g. Deal appropriately with judicial intervention.
- Presentational skills.
 - The importance of preparation.
 - Precision and brevity.
 - The management of documents.
 - The techniques of persuasion.
 - Engaging the court.
 - Stress management.
 - Addressing the court.
 - Court dress.
 - Etiquette.
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Solicitors Regulation Authority
Draft Standards for solicitor higher court advocates in criminal proceedings
Ethics and Professional Conduct Unit

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
<p>General note: The standards of professional conduct and ethical behaviour set out below are applicable to all solicitor advocates at whatever level but will be specifically assessed for the Higher Rights qualification.</p>			<p>Introduction: The syllabus will, as a matter of course, be adapted to include any significant changes in the law, procedure or practice.</p>
1.	<p>Comply with the professional duties and responsibilities of a solicitor advocate.</p>	<p>1 a. Comply with the statutory and other rules of professional conduct. 1 b. Comply with the Criminal Procedure Rules applicable to professional conduct. 1 c. Comply with the SRA Code of Conduct.</p>	<ul style="list-style-type: none"> • The Criminal Procedure Rules and especially: <ul style="list-style-type: none"> ○ Part 1. The overriding objective. ○ Part 3. The court's case management powers. ○ Part 22. Statements of truth. ○ Part 15. Disclosure. ○ Part 16. Witness statements. ○ Part 19. Expert evidence. • The SRA Code of Conduct and especially: <ul style="list-style-type: none"> ○ The Principles ○ Chapter 1 Client care. ○ Chapter 2 Equality and Diversity. ○ Chapter 3 Conflicts of interest. ○ Chapter 4 Confidentiality and disclosure. ○ Chapter 5 Your client and the court.

2. Comply with the duties of a solicitor advocate towards the court.

- 2 a. Act in accordance with the advocate's overriding duty to the court.
- 2 b. Act with honesty and integrity in the presentation of a case before the court.
- 2 c. Assist the court in the effective case management and application of the overriding objective.

- CPR Part 3.1 to 3.27.
- The SRA Code of Conduct and especially:
 - Your client and the court.
- Dealing with wasted costs orders.
- Never construct facts to support the client's case.
- Never knowingly, recklessly, directly or indirectly mislead the court.
- Correct any errors at the first opportunity (For example, if your *client* tells you that they have previous *convictions* of which the prosecution is not aware, you may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous *convictions* will result in the *court* failing to pass the sentence that is required by law. In that situation, you must advise your *client* that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your *client* does not agree to disclose the previous *convictions*, you can continue to represent your *client* but in doing so must not say anything that misleads the *court*. This will constrain what you can say in mitigation. For example, you could not advance a positive case of previous good character knowing that there are undisclosed prior *convictions*. Moreover, if the *court* asks you a direct question you must not give an untruthful answer and therefore you would have to withdraw if, on your being asked such a question, your *client* still refuses to allow you to answer the question truthfully. You should explain this to your *client*.)

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
			<ul style="list-style-type: none"> • Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case. • Avoid taking any legal point which the advocate does not consider to be properly arguable.
3.	Comply with the duties of a solicitor advocate towards the client.	<ul style="list-style-type: none"> 3 a. Assert the advocate's independence in fearlessly advancing the client's case. 3 b. Keep the client's information and documents confidential, except when disclosure is permitted or required. 3 c. Maintain any legitimate claim to confidentiality or legal professional privilege. 3 d. Disclose all material information to the client except where, in very rare circumstances, disclosure is forbidden. 3 e. Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder. 	<p>The SRA Code of Conduct and especially:</p> <ul style="list-style-type: none"> ○ Client care. ○ Equality and diversity. ○ Conflicts of interest. ○ Confidentiality and disclosure, eg money laundering tipping off and where disclosure may endanger the life of a third party.
4.	Act with honesty and integrity in the preparation and presentation of evidence.	<ul style="list-style-type: none"> 4 a. Avoid attempting to influence a witness after taking a statement from them as to the contents of that statement. 4 b. Avoid seeking to persuade a witness to change their evidence. 4 c. Avoid encouraging a witness to give misleading or untruthful evidence. 4 d. Avoid rehearsing or coaching a witness in respect of their evidence. 4 e. Avoid attempting to suppress or conceal unhelpful evidence. 	<ul style="list-style-type: none"> • The SRA Code of Conduct and especially: <ul style="list-style-type: none"> ○ Chapter 4 and 5: Your client and the court. • Expert witness. • Lay witness.

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
5.	Exercise professional discipline in advancing the client's case and questioning witnesses.	<p>5 a. Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the face of it, a case of fraud).</p> <p>5 b. Avoid making statements or asking questions merely to insult, humiliate or annoy a witness or any other person.</p> <p>5 c. Avoid making any serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness.</p> <p>5 d. Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds).</p> <p>5 e. Avoid putting questions, making statements or advancing arguments which are misleading or vexatious.</p>	<ul style="list-style-type: none"> • The SRA Code of Conduct and especially: <ul style="list-style-type: none"> ○ Chapter 5: Your client and the court.
6.	Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice.	<p>6 a. Identify any actual or potential conflict of interest.</p> <p>6 b. Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information.</p> <p>6 c. Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case.</p>	<ul style="list-style-type: none"> • The SRA Code of Conduct and especially: <ul style="list-style-type: none"> ○ Conflicts of interest. ○ Confidentiality and disclosure. • Representing at trial a client who confidentially admits guilt and the considerations that arise.