

SRA BOARD

3 March 2020

CLASSIFICATION – PUBLIC



This paper will be published

Assuring advocacy standards: consultation responses

Purpose

- 1 This paper asks board to agree to publish our analysis of the responses we received to our recent consultation on assuring advocacy standards.

Recommendations

- 2 The Board is asked to:
 - (a) agree to publish our consultation responses document (annex 1).

If you have any questions about this paper, please contact: Juliet Oliver, General Counsel, juliet.oliver@sra.org.uk

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
We have carried out an initial impact assessment. We have assessed our proposals against protected characteristics groups where we are able to do so given the available data. The consultation exercise has not identified any additional issues. We will publish a final impact assessment alongside our post consultation response.	21

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**Assuring advocacy standards: consultation responses****Background**

- 3 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. However, persistent concerns have been raised about the standard of solicitors' advocacy, for example, in the Jeffrey Review in 2014¹ and in research we conducted jointly with the Bar Standards Board in 2019 into judicial perceptions of the quality of advocacy.²
- 4 We issued a consultation and initial impact assessment in July 2019 in response to these concerns. The consultation proposed measures to improve how we regulate advocacy, and our approach to the Higher Rights of Audience (HRA) assessment required by solicitors before they can practise advocacy in the higher civil and criminal courts. Our proposals included:
- a. Considering whether we should restrict solicitor's rights of audience in the lower courts until they have been assessed in witness handling.
 - b. Revising our arrangements for higher court advocacy including:
 - i. Revising our Higher Rights of Audience (HRA) standards
 - ii. Introducing a single assessment provider
 - iii. Requiring that HRA is taken post admission.
 - c. Providing resources to help solicitors meet our advocacy standards.
 - d. Encouraging reporting to help us act on concerns about a solicitor's competence to conduct advocacy.

Our consultation approach

- 5 The consultation was launched on 21 August 2019 and closed on 13 November 2019. We received 61 responses from a range of stakeholders including individual solicitors, regulated firms, education and training providers, the Law Society, local law societies and the Solicitors Association of Higher Court Advocates.
- 6 In addition to the consultation, we discussed our proposals with a wide range of stakeholders. These included our advocacy reference group³, the judiciary, the Crown Prosecution Service, the Solicitors Association of Higher Court Advocates, Public Defender Service, Just for Kids Law, local law societies and the Law Society.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310712/jeffrey-review-criminal-advocacy.pdf

² SRA and Bar Standards Board "advocacy in the profession research" August 2019. The research included qualitative interviews with 46 circuit judges and four high court judges.

³ A cross sector group set up to help us explore and develop our thinking around assuring the standards of advocacy.

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Key themes

- 7 Our analysis of consultation responses is attached at annex 1. This identifies key themes in the responses received to each consultation question and includes a statistical analysis of responses.
- 8 Our analysis suggests a high level of support for most of our proposals including developing additional resources for advocates; not restricting solicitors' rights of audience in the lower courts where they have not been assessed in witness handling; implementing revised HRA standards; and requiring that the HRA assessment is taken post admission.
- 9 There were mixed views on our proposals to require solicitors advocating serious cases in the youth court to have a higher rights qualification; to introduce a single assessment provider for HRA; and to improve the reporting of concerns to us.
- 10 There was strong opposition from the profession to the proposal to restrict practice rights in the youth court, particularly because they felt that the requirements of the higher rights qualification were not well aligned with the specialist skills needed for practice in the youth court.
- 11 Respondents were broadly split on the proposal to introduce a single assessment provider for the HRA qualification. While some respondents could see how this could produce a fair and consistent assessment, others were worried that having a single provider could increase the cost and limit the availability of the assessment.
- 12 Few respondents provided additional details to inform our impact assessment. Those that did, suggested further analysis was required on the impact of our proposal on Black Asian and Minority Ethnic firms. We will assess the impact of our final proposals and publish a final impact assessment in June 2020.
- 13 We are grateful to all those who took the time to respond to our consultation. Their views will help us develop our final position.

Recommendation: the Board is asked to:

- (a) agree to publish our consultation summary document (annex 1).

Next steps

- 14 Subject to the board's decision, we will publish annex one on our website. We will be clear in our communications that the response document analyses feedback from our consultation, but we have work to do in light of the responses to develop our final policy position.
- 15 We will continue to develop our thinking in relation to each proposal, and will where necessary undertake further stakeholder engagement. We will present

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our final positions to Board in June 2020 for approval. Should Board agree, we will publish our post-consultation response document in July 2020 alongside our final impact assessment.

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Supporting information

Links to the Corporate Strategy and/or Business Plan

- 16 Our proposed programme of work will contribute towards the following strategic business objectives:
- a. We will set and apply consistently high professional standards for the individuals and firms we regulate and make sure they are appropriate to meet the challenges of today and the future.
 - b. We will make sure our regulatory requirements are proportionate, providing solicitors and firms with the flexibility to innovate and better meet the needs of members of the public and businesses, while maintaining appropriate levels of public protection.

How the issues support the regulatory objectives and best regulatory practice

- 17 By ensuring that solicitors meet our standards at qualification and post qualification, we are protecting the interests of consumers.

Public/Consumer impact

- 18 We will use the responses to our consultation to consider how best to take forward our proposals so that we can be sure that solicitors have met the standards we and the public expect.
- 19 We will also use the consultation feedback to help us develop support for consumers in understanding what standards they can expect and to identify and challenge poor standards.

What engagement approach has been used to inform the work and what further communication and engagement is needed

- 20 In addition to the consultation, we have engaged with a wide range of stakeholders to discuss our proposals, for example, our advocacy reference group, the judiciary, the CPS, the Solicitors Association of Higher Court Advocates and the Law Society.

What equality and diversity considerations relate to this issue?

- 21 We have carried out an initial impact assessment. We have assessed our proposals against protected characteristics groups where we are able to do so given the available data. At this stage, we have not identified any disproportionate impacts on age, gender, ethnicity, sexual orientation or disability. We have engaged with BAME firms as we know that these firms are more likely to be involved in criminal advocacy.

How the work will be evaluated

- 22 In considering how best to take forward our proposals:
- a. We will evaluate each proposal in the light of consultation responses;

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- b. We will use a range of metrics to look at how to encourage awareness and use of our support material.
- c. We will involve stakeholders in developing resources for advocates, and in making any changes to our reporting processes.

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Date **20 February 2020**

Annex 1 [Consultation response document](#)