

Research Specification: Quality Assurance for Advocates: best practice assessment methods and scheme design

Purpose

1. To advise the Legal Services Board on best practice in assessment methods and how this best practice might be applied to the challenges identified in delivering a robust and proportionate quality assurance scheme for criminal advocacy.

Background

2. The Legal Services Board (LSB) has been set up to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing our regulatory objectives¹ and providing regulatory oversight for the eight approved frontline regulators².
3. Following Lord Carter's review of legal aid procurement in 2006, the Legal Services Commission (LSC) tried to develop and implement a QAA scheme for legal aid advocates that would be implemented as part of its contracting with criminal advocates. It was heavily supported by the Ministry of Justice (MoJ) and a pilot was run by Cardiff Law School, but agreement could not be reached on the implementation of a scheme. Further background details can be found in a discussion paper published by the LSC.³ There is also an evaluation of the Cardiff pilot.⁴
4. The Crown Prosecution Service (CPS) has also developed its own quality assurance scheme, the Advocacy Quality Management Strategy⁵. It is committed to working with the JAG to ensure a common industry-wide scheme is developed and implemented.
5. Lord Carter made clear that it should be the role of regulators (and not CPS, LSC or the MoJ) to ensure appropriate quality standards, and the government accepts and agrees with this. The LSB stepped in last year and committed to drive forward a QAA scheme covering not just publicly funded criminal advocacy, but all criminal advocacy and family advocacy and potentially other areas of advocacy in the civil courts.
6. Last autumn we took on an oversight role of the Joint Advocacy Group (JAG), made up of the Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards – a mechanism promoted by the Approved Regulators (AR) as a suitable vehicle for delivery. We agreed a deadline of July 2011 with JAG for the delivery of a criminal QAA scheme that is independent, robust and focused on protecting consumers.
7. The delivery of a QAA scheme for criminal advocates is a pressing need and the requirement for a scheme is agreed by the three relevant regulators. There is significant evidence of quality

¹ See section 1 of the Legal Services Act 2007 <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

² The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties.

³ http://www.legalservices.gov.uk/docs/cds_main/QAADiscussionPaper_Feb2010.pdf

⁴ http://www.legalservices.gov.uk/docs/cds_main/Annex_Ci_QAAFinalReportNovember2009.pdf

⁵ http://www.cps.gov.uk/news/press_releases/139_09/

concerns in the criminal advocacy market. This evidence includes feedback from the judiciary and evidence from the LSC pilot scheme run by Cardiff Law School, in which a significant number of advocates failed at least one module. It is also a view supported by independent analysis from Charles River Associates' report for the LSB on referral fees⁶. This is a market where consumers are likely to be particularly vulnerable and at risk of losing their liberty.

8. It is likely that there will be increased price competition in the publicly funded criminal advocacy market as a result of the next LSC tender round expected during 2011. This increased price competition increases the risk that the quality of advocacy will be compromised, and makes it all the more important that the regulatory requirements in relation to minimum quality standards are strengthened.
9. The JAG has developed common advocacy standards which were the subject of a full public consultation⁷ and have now been agreed (the final version is attached at Annex 3 to the most recent consultation paper⁸). The recent discussions with JAG have therefore focused not on whether a scheme is needed, but on how the scheme should be delivered and specifically what assessment methods should be used.
10. In May 2010, we published seven key principles that a robust and credible scheme would need to meet: independence, consistency, differentiation, tailored assessment, compulsory participation, limited exceptions and periodic reaccreditation (see full description on our website⁹).
11. The JAG issued a consultation on its proposals for a QAA scheme for criminal advocates in August 2010.¹⁰ The LSB has a number of concerns about the current proposals and the proposed assessment methods. We consider that the proposals forming the basis of the consultation exercise fail to comply with the principles in a number of material respects.
12. We have a specific duty under s.4 of Legal Services Act 2007 (**'the Act'**) to assist in the maintenance and development of standards in relation to both the regulation of Authorised Persons (i.e. qualified lawyers in England and Wales) and the education and training of Authorised Persons. We therefore propose to commission research into best practice assessment methods and the design of a model scheme for assessing the competence of advocates against the agreed advocacy standards.

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[http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/cra_impact_of_referral_arrangements_final_14may2010\(STC\).pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/cra_impact_of_referral_arrangements_final_14may2010(STC).pdf)

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<http://www.barstandardsboard.org.uk/assets/documents/Advocacy%20Standards%20joint%20consultation.doc>

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http://www.barstandardsboard.org.uk/assets/documents/QAA_Consultation_Paper%20final%20version%2010-08-10.pdf

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http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20100505_qaa_letter_final.pdf

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http://www.barstandardsboard.org.uk/assets/documents/QAA_Consultation_Paper%20final%20version%2010-08-10.pdf

13. The design of the scheme needs to strike the right balance between, on the one hand, sufficiently robust (and evidence based) assessment methods to ensure the regulatory objectives are met and the scheme carries the confidence of the key stakeholders; and on the other hand, a proportionate and cost-effective approach that does not impose unnecessary regulatory burdens.
14. We anticipate that the advice provided by the successful bidder, based on best practice assessment methods in other contexts, may be used by one or more of the Approved Regulators to inform the design of a scheme, and will act as a benchmark against which we judge the proposals they put forward. We would like the successful researcher to complete their analysis and produce a draft report by the end of February 2011; and produce a final report by the end of March 2011. This timescale will enable approved regulators to benefit from the advice as they finalise the detailed design of a scheme for delivery by July 2011.

Aims and Objectives

15. We would like independent, expert advice on addressing the key challenges associated with delivering the first phase of a robust Quality Assurance for Advocates scheme, designed to assess the performance of criminal advocates. The advice on the scheme design and delivery plan should be in a form that could be used by the legal market regulators to inform the design of the scheme. . In particular the research report should cover three distinct areas:
 - A discussion (based on existing literature and discussion with relevant parties) of best practice in methods of assessing minimum competence standards in a professional services context (legal and other sectors);
 - Drawing on the available evidence, including the work to date on QAA, provide advice on the best approach to the detailed design for a robust and proportionate scheme to assess the advocacy standards agreed by the Joint Advocacy Group in the context of criminal advocacy. This should include advice on how the key issues and challenges identified with the delivery of the scheme (see para 16 below) could be addressed in a way that meets the regulatory objectives under the Legal Services Act and the key principles and requirements set out by the Legal Services Board;
 - To advise on the best approach to implementation, including a delivery plan outlining the key tasks required to complete the detailed design and implementation of a scheme (with indicative costings) by July 2011.

Issues and scope

16. There are a number of issues that need to be considered, including:
 - The extent to which the requirements of the scheme could be integrated with the existing education and training framework

- The appropriate balance between different assessment methods required to ensure a robust, evidence-based assessment – including the role of judicial evaluation of live cases, the role of simulated role-play exercises and the role of written assessments or self-assessment portfolios
- Potential weaknesses of the various assessment methods, for example:
 - i. whether assessors are likely to be proactive in highlighting poor performance;
 - ii. whether different assessment methods could lead to bias, or the perception of bias, for advocates from different professional or social backgrounds or in different geographical locations;
 - iii. The extent to which the assessment reflects the reality of practice for advocates who specialise in different area of criminal advocacy – for example complex fraud, sexual offences or regulatory crime.
- How the scheme can best be delivered – including designing assessments, geographical coverage, appointing assessors and logistical/administrative arrangements
- How the effectiveness of the scheme might be evaluated to ensure it is achieving its objective of ensuring minimum quality standards at each of the four levels of criminal advocacy Quality Assurance of the assessment approach – moderation, benchmarking etc
- The need to ensure a cost-effective approach that minimises the regulatory burdens imposed on the legal sector

17. In providing the advice, the researchers should not make assumptions about the quality of advocates currently operating in the criminal advocacy market unless these can be justified with evidence. The focus should be on best practice approaches to assessment against competency standards and how this can be implemented in the most proportionate way.

Tender Evaluation Criteria

18. All projects commissioned by the LSB are subject to our standard terms of contract.

19. We are not requesting written tenders in advance of interview but would like to receive at interview:

- i. Overall cost. Please include appropriate breakdowns
- ii. A presentation outlining proposed methodology, potential problems, and proposing suitable solutions
- iii. A clear timetable for the project
- iv. A breakdown of the proposed team composition, expertise and management and the organisation's diversity policy
- v. How diversity issues would be addressed in the research.

20. Interviewees will be judged on the extent to which they meet LSB needs across these five areas of presentation

Deliverables

Output

21. The output for this research should be an executive summary together with a report. The report should be suitable for publication, although any decision to publish will remain with the LSB. It is essential that the report and underlying research is sufficiently robust so that the proposed Quality Assurance Assessment Approach could be used to inform the development of a scheme that could be rolled out and used in the legal services market.
22. The LSB will retain ownership of the report.

Project plan

23. Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task.

Duration

24. The research should commence in December 2010. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. A draft final report should be completed and submitted to the LSB by the end of February 2011. A final agreed report should be completed by end of March 2011.

Legal Services Board Contact Details

25. Tenders with any queries about the research specification should contact:
- Policy team: Michael Stacey 020 7271 0089
- Research: Alex Roy 020 7271 0060