


<b>To:</b>	Board
<b>Date of Meeting:</b>	28 March 2011
<b>Item:</b>	Paper (11) 16

<b>Title:</b>	Quality Assurance for Advocates and Review of education and training – update on developments
<b>Workstream(s):</b>	Workstream 2F: Developing a Workforce for a Changing Market
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<b>Status:</b>	Protect

<b>Summary:</b>
This paper provides an update on progress with two aspects of the Workforce Development workstream: <ul style="list-style-type: none"> <li>the Joint Advocacy Group's proposal for a quality assurance scheme for criminal advocates</li> <li>the Education Review being conducted by the Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards.</li> </ul>

<b>Risks and mitigations</b>	
<b>Financial:</b>	None.
<b>FoIA:</b>	Preliminary assessment: Paragraphs 8-11, 14-15 and 21 – s36(2)(b) Paragraphs 17-20 – ss. 43(2) & 44
<b>Legal:</b>	None.
<b>Reputational:</b>	LSB is publicly committed to ensuring the delivery of a QAA (Crime) scheme by July 2011; significant reputational risk if this is not achieved.
<b>Resource:</b>	Resource currently considered sufficient.

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		✓	Update only
<b>Consumer Panel:</b>		✓	Update only
<b>Others:</b>	N/A.		

<b>Recommendation(s):</b>
The Board is invited to: <ol style="list-style-type: none"> <li>to note and to comment on the update</li> <li></li> </ol>

## LEGAL SERVICES BOARD


<b>To:</b> Board	
<b>Date of Meeting:</b> 28 March 2011	<b>Item:</b> Paper (11) 16

### Quality Assurance for Advocates and Review of education and training – update on developments

#### Executive Summary

1. The LSB is overseeing the delivery of a quality assurance for advocates (**QAA**) scheme being developed jointly by the Solicitors Regulation Authority (**SRA**), Bar Standards Board (**BSB**) and ILEX Professional Standards (**IPS**) through the Joint Advocacy Group (**JAG**). Significant progress has been made by JAG since the Board discussion in November 2010, and we now have greater confidence in its ability to deliver a credible QAA scheme for criminal advocates. The research report we commissioned is now complete and has yielded some helpful practical suggestions for JAG in ensuring that the scheme is credible.
2. We are also overseeing the joint review of Education and Training being run by the same group of Approved Regulators (**AR**). Work has focused on commissioning the research to support the review and establishing the reference group. It is expected that the researchers will be appointed before Easter, and work on the review will then begin in earnest. We have separately identified the work LSB will need to do in 2011/12 to support the review and develop our own capability in relation to education and training.

#### Recommendations

3. The Board is invited:
  - (1) to note and to comment on the update
  - (2) 

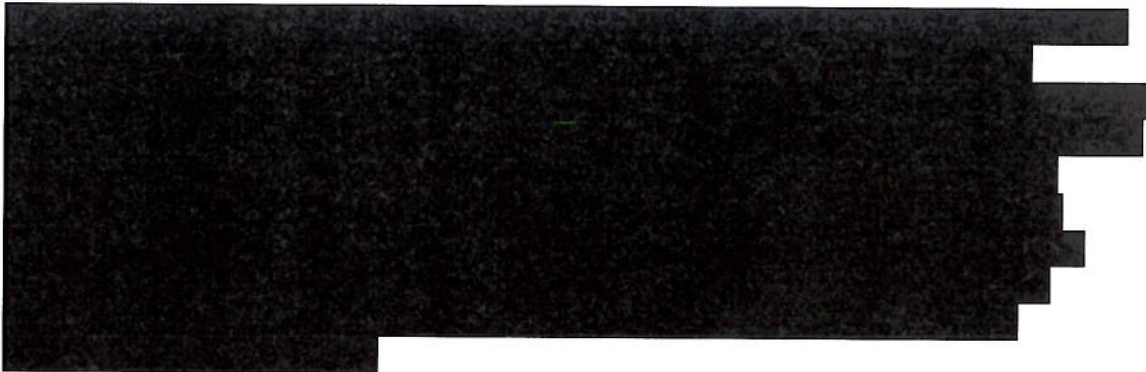
#### Background

4. In relation to QAA, the Board agreed in November 2010 that we should:
  - commission independent research into best practice in assessment methods and the design of a model scheme (fulfilling our duty to assist ARs under Section 4 of Legal Services Act 2007 (**the Act**))
  - write to ARs making clear that the Board is satisfied that the test has been met for us to consider the use of our powers of direction under Section 32 of the Act, and that we are seeking to resolve the matter informally so as to avoid the need for formal enforcement action.
5. In relation to Education and Training, in September 2010 the Board endorsed the principle of an independent review of the framework for the education and training of the legal workforce; and agreed that the Executive should develop a substantive proposal, in consultation with ARs and other stakeholders. It was agreed subsequently that the review would be led jointly by SRA, BSB and IPS

and the Board's expectations of the review were set out in the Chairman's Lord Upjohn Lecture to the Association of Law Teachers on 19 November 2010.

### **Current position with Quality Assurance for Advocates**

6. We hosted a stakeholder roundtable meeting on 2 March at which JAG presented its revised proposals for the QAA scheme for criminal advocates following the consultation exercise that ran from August to November 2010.
7. Significant progress has been made on the detailed design of the scheme, including the definition of a detailed statement of standards, an assessment framework, a structured advocacy evaluation form and a scheme for assigning cases to appropriate advocacy levels. An advisory group has also been established, chaired by Lord Justice Thomas and consisting of practising advocates and lay representatives.
8. Essentially the proposed scheme is still based on judicial evaluation of live cases, although advocates will have the option of being assessed by alternative means (for example assessment centre or observation in court by an external assessor) and thought has been given to benchmarking and the transition between levels. It appears that the alternative methods of assessment will only be available in some circumstances (for example where judicial evaluation is impracticable or where advocates are returning to practise after a break).
9. There was broad acceptance of JAG's proposed approach at the stakeholder roundtable meeting, although additional clarification was required in a number of areas, indicating that there is still considerable work to be done. In particular:
  - arrangements for initial accreditation and re-accreditation of advocates at level 1
  - the circumstances in which different assessment methods would be available and the extent to which advocates would have a genuine choice between assessment methods (which will depend on the cost to the advocate)
  - the approach to assessing competency standards not observable through judicial evaluation.

10. 

11. 

[s36(2)(b)]

12. We have now received and published the research report on best practice assessment methods that we commissioned from Human Assets (business psychology consultancy). Extracts from the Executive Summary of the report are reproduced at **Annex A** and the full report is available on request. We think it is a balanced and fair analysis of the 'pros and cons' of the various assessment methods, and it also offers some helpful practical recommendations for JAG about how its proposals need to develop to be credible. The report acknowledges that no one assessment method offers the perfect solution by being straightforward, low-cost, reliable, valid, credible and fair. It discusses the various options, and highlights a number of limitations associated with judicial evaluation and other alternative methods. It emphasises the importance of thorough training to ensure assessments are consistent and reliable, and highlights the importance of basing assessment decisions on several independent pieces of evidence, including different methods of assessment to achieve 'triangulation'. It also suggests that regulators may want to use different approaches for entry to a level and subsequent re-accreditation at that level – there is a case for using a more robust method for the entry to a level.
13. The Chief Executive's letter to JAG in December sparked negative comment and was regarded as unhelpful and inappropriate by ARs. However, there has since been a greater willingness to engage and we have established a closer and more constructive working level relationship. In view of the progress made by JAG and the advice received from Human Assets, we now have greater confidence that JAG is on course to deliver a scheme that is consistent with the regulatory objectives and our key principles and capable of approval as a change to regulatory arrangements. The risk that the Board will need to consider the use of its formal enforcement powers in this context has therefore receded.

14.

15.

[s36(2)(b)]

#### **Current position with the Education and Training Review**

16. Since the announcement of the review, the ARs' work has been focused on two key areas:

- commissioning research to support the review
- establishing a Reference Group to advise the ARs on the review

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

[s43(2) & 44]

21. [REDACTED]

[s36(2)(b)]

**Our work on Education and Training in 2011/12**

22. We have also been developing our thinking about LSB's role in education and training over the 2011/12 business plan period. The Senior Management Team has agreed that our role should be to:

- support and influence the Education and Training review

- develop our own capability in relation to education and training (to ensure informed and effective decision-making about rule changes).

23. Our role in relation to the Education and Training review will be to:

- give the Board's view on what is required to meet the regulatory objectives in the context of education and training
- specify the outcomes that we would like ARs to achieve from the review
- define principles that proposed changes should meet
- provide constructive challenge where appropriate.

24. We will develop our own capability through:

- research (both commissioned and in-house) on specific issues such as legal education and training in other jurisdictions, aptitude tests and other research to be determined once the scope of the research to support the ARs education review is more definite
- stakeholder engagement with specific constituencies / on specific issues – but with care taken not to duplicate or compete with the ARs' Review Reference group, and only with a clear purpose.

25. This work will help inform the definition of a set of key principles / criteria that we will consider when approving regulatory arrangements related to education and training.

### **Stakeholder handling**

26. We have continued to engage with key stakeholders in relation to QAA, and Human Assets has interviewed all of them as part of its research project. The Chairman has updated Lord Justice Thomas on the Human Assets work and we have also had meetings with Charles Haddon-Cave QC (Chair of the Advocacy Training Council), The Law Society, The Crown Prosecution Service and Legal Services Commission.

27. There has been some coverage of the education and training review in the trade press, most of which has been broadly positive.

### **Conclusion**

28. 

08.03.11

**HUMAN ASSETS****QUALITY ASSURANCE FOR ADVOCATES: RESEARCH REPORT****Executive Summary**

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

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

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

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

Regulators might wish to introduce schemes initially at different levels of rigour for different levels of advocacy and/or objectives and later move to more rigorous methods more comprehensively. They may also wish to consider introducing a mild/medium scheme that upon identification of below standard performance triggers a more rigorous method of assessment.

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

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

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

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

**Key Messages**

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

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

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

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