

Solicitors
Regulation
Authority

Assuring advocacy standards

Consultation responses

March 2020

Name	Respondent Type
Publish the response with my/our name	
Responses from organisations	
Birmingham Law Society Criminal Law Committee	Law society
Birmingham Law Society Dispute Resolution Law Committee	Law society
British Nigeria Law Forum	Representative group
Centre for Justice Innovation	University or other education/training provider
CILEx Regulation / CILEx (joint response)	Other
City of London Law Society Litigation Committee	Law society
City of Westminster & Holborn Law Society	Law society
CPD Training (UK) Ltd	University or other education/training provider
Criminal Law Solicitors' Association	Representative group
Crown Prosecution Service	Law firm or other legal services provider
District Judge (Magistrates Courts)	Representative group
Elliot Mather LLP	Law firm or other legal services provider
Garden Court Chambers / Howard League for Penal Reform (joint response)	Other
Johnson Astills	Law firm or other legal services provider
Junior Lawyers' Division	Representative group
Legal Aid Practitioners' Group	Representative group
Legal Services Consumer Panel	Other
London Criminal Courts' Solicitors' Association	Representative group
London Solicitors' Litigation Association	Representative group
McGuireWoods London LLP	Law firm or other legal services provider
Phillips Solicitors	Law firm or other legal services provider
Society of Asian Lawyers	Representative group
Solicitors Association of Higher Court Advocates (SAHCA)	Representative group
The Law Society	Law society
Transform Justice	Other
Youth Justice Legal Centre (Just for Kids Law)	Other
Youth Practitioners' Association	Representative group
Youth Team, Hodge Jones & Allen	Law firm or other legal services provider
Responses from individuals	
Arthur Michael Robinson	Solicitor
Craig Rappel	Solicitor
David Sedgwick	Solicitor
Dennis Clarke	Solicitor
Janetta Davies	Solicitor
Lee Emberton	Non-legally qualified, working in legal services
Pamela Martin-Dominguez	Solicitor
Robbie Ross	Solicitor
Robert Cashman	Solicitor

Simon Walton	Solicitor
Thomas Julian Edwards	Solicitor

Publish the response anonymously

Responses from organisations

ID – 056	Law firm or other legal services provider
ID – 070	Law firm or other legal services provider
ID – 109	University or other education/training provider

Responses from individuals

ID – 017	Solicitor
ID – 019	Solicitor
ID – 026	Solicitor
ID – 030	Solicitor
ID – 036	Other
ID – 042	Solicitor
ID – 044	Solicitor
ID – 049	Solicitor
ID – 053	Solicitor
ID – 064	Solicitor
ID – 083	Solicitor
ID – 089	Solicitor
ID – 103	Solicitor
ID – 108	Solicitor
ID – 116	Solicitor

Publish my/our name but not the response

Responses from organisations

Boyce & co criminal and motoring solicitors	Law firm or other legal services provider
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Responses from individuals

Gregory Earnshaw	Solicitor
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BIRMINGHAM LAW SOCIETY
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**Response to the SRA Consultation on
Assuring Advocacy Standards**

October 2019

Response of the Criminal Law Committee of the Birmingham Law Society to the SRA Consultation on Assuring Advocacy Standards

This response has been prepared by the Criminal Law Committee of the Birmingham Law Society. The Society is the largest provincial law society with some 5,000 members. The response represents the collective view of its members who are specialist lawyers practising in all aspects of the criminal law and from all branches of the legal profession.

Overview

The Committee responds only to those parts of the consultation concerning advocacy in the criminal courts.

We recognise that it is of vital importance to defendants and witnesses in criminal cases, who are often highly vulnerable, that advocates appearing in the criminal courts are competent to do so. The criminal courts continue to benefit from the appearance of solicitors and solicitor advocates who have many years' experience in court.

We recognise many of the SRA's proposed reforms as welcome improvements to the current system. However, where new regulatory barriers are proposed in the consultation, the Committee has the following concerns:

These are difficult times for criminal solicitors. Cuts in legal aid fees, coupled with decreasing volumes of work, and a lack of new entrants to criminal practice, have led to an ageing and financially vulnerable profession in the field of criminal law. In a marketplace this fragile, any significant change could have fatal and irreversible consequences. It follows that new regulatory barriers to practice within the sector (and the consequent financial implications to practitioners) should not be introduced lightly: there should be a clear evidence base for doing so. We do not believe that there is such evidence.

In the absence of evidence of a clear and compelling need for improvement in advocacy standards, the obligation on solicitors to act only when they are competent to do so, coupled with robust reporting mechanisms, should be sufficient to assure quality of advocacy by solicitors in the criminal courts.

It appears to be recognised that although generalised concerns have been expressed to the SRA about advocacy quality, there is a lack of specificity or methodological rigour as to how these have been collected. Some of the phrasing used in the consultation document casts some doubt on whether there is, currently, an evidential basis for any significant reform:

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. (para.6)

[From the SRA's own research amongst the judiciary] *Most of the judges thought that most current advocacy is of an adequate standard but viewed good/very good advocacy as relatively infrequent.* (para.7)

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. (para. 9)

We take into account the different routes taken to the profession by Solicitors and the Bar. We note the longer and more rigorous training contracts to which Solicitors are subject. Solicitors are no longer able to obtain the Higher Court Advocacy qualification by way of exemption and all such entrants are therefore subject to examination. Whilst we note the concern of the SRA to establish a single or unified process of assessment it remains the case that those exercising their rights of audience are first required to pass the relevant assessment. We raise our concern that increased regulation in this area may give rise to a disincentive to Solicitors which will not apply to the Bar. This may exacerbate the present position where many young solicitors consider the obtaining of higher rights of audience to be a significant hurdle. The SRA should consider the proposals in the light of the potential to reduce the numbers of Solicitor applications for the Higher Court Advocacy qualification.

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?

Yes. For the reasons given in the Overview above, we see no reason to add to the already existing regulatory obligation on solicitors to only act when competent to do so.

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

This Committee participated in the preparation of these revised HRA standards. Having done so, and having had its views taken into account at the drafting stage, the Committee endorses the proposed revised HRA standards.

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

Yes. Anecdotal evidence from members suggests that the current provision of assessment is inconsistent in quality and outcome as between the different providers. Provided that steps are taken to ensure that, under a single provider, sufficient assessments are available to those wishing to obtain HRA accreditation, the Committee agrees with this proposal.

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

The Committee recognises the rationale underpinning the proposal. It is unlikely that newly qualified solicitors with no advocacy experience would be competent to act in Crown Court trials, notwithstanding that they might (under the current scheme) have the requisite HRA qualification. However, there was anecdotal evidence in committee that the few solicitors qualifying with HRA under the current scheme either do not go on to practice in the higher courts at all, or do so only after gaining sufficient experience in summary cases. Although anecdotal, this suggests that the general obligation on solicitors only to practice when competent to do so was a sufficient safeguard, and that a change to the regulatory framework may not be required.

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?

The Committee strongly disagrees that this is the correct approach to resolving the perceived problem, while recognising the importance of maintaining the highest standards of advocacy in cases involving youths and the vulnerable.

Currently, many highly experienced and competent solicitors, who do not hold and would not want to obtain an HRA qualification, practice regularly in serious cases in the youth courts. In the Committee's experience, most youth court trials are currently undertaken by solicitors who do not have HRA. The proposed change would therefore deprive these competent and experienced solicitors of work which they are perfectly competent to undertake, or force them to the time and expense of obtaining an HRA qualification when they have no desire to practice in the higher courts. There would be a significant impact on the market. In our experience there is scant evidence that those solicitors who appear in the youth court do not have the requisite skills. Indeed, their experience in routinely dealing with vulnerable youths and their families, familiarity with the Magistrates' Courts generally, and the close bond that they are able to form with vulnerable youths, put them in an ideal position to appear in that court.

Notwithstanding the accepted need for high advocacy standards in such cases, the fees paid by the LAA for youth court trials are not reflective of a requirement for a highly experienced or specialist advocate. Indeed, where counsel is instructed to act in serious sexual cases in the youth court, these are generally less experienced barristers, as youth court work is regarded by the Bar as being poorly paid and only suitable for the more junior members of chambers. The proposed change would lead to counsel being instructed in an increasing number of cases, which would lead to the perverse outcome that highly experienced and competent solicitors (albeit not HRA-qualified) would be replaced increasingly by the most junior and inexperienced barristers in youth court trials.

Robberies and some other indictable-only matters retained by the youth court are often factually and legally straightforward, and involve non-vulnerable, adult witnesses. In such

cases, which would be tried in the Crown Court in the case of an adult, we suggest that the HRA qualification would be unnecessary.

In youth court cases such as rape, which involve cross examination about sexual matters, and, often, vulnerable youth witnesses, the Committee recognises that there is a need for high-quality advocates who are appropriately trained to deal with vulnerable witnesses. However, given that the HRA qualification requires no specific criteria dealing with vulnerable witnesses, youths or sexual offences (and we do not suggest that it should), we do not see that a requirement to hold the HRA qualification provides any greater assurance of quality in these cases.

In this narrower category of case, there is already specialist accreditation available in the form of Advocacy and the Vulnerable training, developed jointly by the Law Society and the Bar. It appears to us that, if there is a need to require advocates to hold a particular accreditation to deal with these cases, that would be the more appropriate one. Indeed, no responsible solicitor advocate or barrister would undertake those sorts of cases in the Crown Court, as either defence advocate or prosecutor, without undertaking that course. We do not advocate that it is necessary to make that training compulsory. Our experience is that the judiciary in this region will routinely question whether advocates proposing to represent clients in cases involving young/vulnerable witnesses have completed appropriate training. We are not aware of a body of evidence to suggest the judiciary having cause to intervene in cross examination or indicating that advocates do not possess the relevant knowledge/skills required in this area of work.

We repeat our overarching concerns that there appears to be little evidential basis for introducing such a significant regulatory change in this field. There appears to be no clear evidence that solicitors are failing to comply with their obligation to act only when competent to do so.

Coupled with the issue of low legal aid fees for youth court work, there has been a decrease of over 80% in youth court volumes in the last ten years¹. The Committee was concerned that the introduction of this proposal could lead to ‘advice deserts’ in youth court work in some regions.

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

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774866/youth_justice_statistics_bulletin_2017_2018.pdf

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

The Committee welcomes the provision of resources for use by practitioners. However, we question whether the SRA will be able to provide a training resource which builds on the materials already available to practitioners using the Advocates' Gateway.

8. Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Our overarching view is that any reform of advocacy standards must be based on robust evidence. It follows from that view that there should be clear and transparent reporting of any concerns about advocacy quality to the SRA, from the judiciary, from consumers and from other advocates.

We therefore welcome the proposals to make the online reporting form easier to use and more accessible; to produce clear advocacy standards in terms that can be understood by lay consumers; to produce clear and objective HRA standards against which the judiciary can assess the competence of advocates appearing before them; and to improve judicial awareness of the reporting scheme.

We express some concern that a culture of reporting minor concerns over advocacy may have a chilling effect on younger solicitor advocates making the transition to advocacy in the higher courts.

We also encourage the SRA to ensure that the handling of such concerns is done in a transparent fashion enabling the advocate a right of reply.

9. Do you have any further information to help inform our impact assessment?

No.



BIRMINGHAM LAW SOCIETY

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**Response to the SRA Consultation on
Assuring Advocacy Standards**

November 2019

Response of the Dispute Resolution Committee of the Birmingham Law Society to the SRA Consultation on Assuring Advocacy Standards

This response has been prepared by the Dispute Resolution Committee of the Birmingham Law Society. The Society is the largest provincial law society with some 5,000 members. The response represents the collective view of its members.

Our concerns are that recent media coverage of the issue has been distorted. No figures or data have been provided to support the proposals.

In reality, our view is that there is only likely to be a handful of cases of poor advocacy, and which, in any event, seem to be restricted to a criminal and family context. Therefore, these concerns are not relevant to civil practitioners.

The SRA's proposals are somewhat of a 'sledgehammer to crack a walnut' approach. We do not consider that any changes should be made to the assessment of civil practitioners which are, in the view of the Dispute Resolution Committee for the Birmingham Law Society, adequate.

As a Committee, we cannot express a view as regards the criminal assessment, which is something for the Criminal Law Committee to consider.

Family practitioners are currently assessed under the civil higher rights qualification, therefore there may be a case for introducing a separate family law assessment (particularly where family law even has its own separate court rules).

One change we would like to advocate is for the SRA to make it mandatory for assessment organisations to provide feedback to candidates who undertake the higher rights assessments and fail the assessment. It is currently not a requirement of the SRA for assessment organisations to provide candidates who fail the assessment with feedback. This is unfair, particularly where practical assessments are involved and candidates will struggle to improve without knowing where they went wrong originally. If the SRA were to introduce mandatory feedback to those who request it, that would go a long way to addressing this issue.

Assuring advocacy standards consultation

Response ID:90 Data

2. About you

1.
First name(s)

Seye

2.
Last name

Aina

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

British Nigeria Law Forum

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

Yes. BNLF welcomes SRA's proposal to maintain the status quo in respect of existing practice rights and to rely on obligations on solicitors not to undertake matters outside their competency, as required by the code of conduct.

11.
2) Do you have any comments on our revised HRA standards?

BNLF notes the revised HRA standards and welcomes the further clarifications it provides.

12.

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

BNLF believes a standardised assessment procedure through one single organisation will offer a clearer and simpler pathway to obtaining HRA. It is however important that the SRA ensures there are strict control mechanisms within its contract with a chosen single provider to ensure that there are adequate options for test dates, test centres and that test costs are not inhibitive to future candidates.

13.

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

Yes. BNLF notes that majority of solicitors who presently complete HRA qualification as part of the Training Contract tend to wait on average for over a year in any regard before appearing on cases in the higher courts. BNLF further notes that current candidates who complete it as part of their training contract may have the costs covered by their Firm. The SRA's proposal may have the undesired effect of some Firms no longer funding candidates' training and assessment costs, we hope that this would not be the majority of Firms.

14.

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?

No we do not agree. BNLF notes that the SRA has not conducted an evidence-based assessment of the problem with the status quo.

BNLF further notes that the major difference between the adult and youth court relates to the rules and procedure on venue and sentencing. Whilst solicitors will be expected to deal with greater numbers of vulnerable witnesses in the youth court, BNLF believes that solicitors do also have significant opportunities to deal with vulnerable witnesses in the adult magistrates' court. Therefore, BNLF believes that the proposal will not necessarily improve the level of advocacy in the youth court as HRA solicitors are not given any training on the special rules and procedures on venue and sentence as part of their HRA qualification.

Further, BNLF believes the proposal will be impractical, in that, it is sometimes difficult to know with any certainty which either-way cases would be committed to the Crown Court by the Magistrates' Court as decisions are based on factors placed before the court on the day. In circumstances of uncertainty, firms will either have to play it safe and only instruct HRA solicitors for all either-way cases that could be committed, or they make premature judgements and get it wrong. Where non-HRA solicitors are instructed and a determination of jurisdiction is refused, it raises the potential that solicitors must cease to act and request for an adjournment to allow for a HRA solicitor to be instructed.

Similarly, an adjournment may also be required where the defendant is charged with a less serious offence (for example Theft) and a non-HRA solicitor is instructed. At court if the prosecutor having reviewed the case opts for a more serious charge (for example Robbery) then under the SRA proposal, it means the solicitor must cease to act. The solicitor must then request for an adjournment if another solicitor with a HRA qualification is not available at short notice. At the very least significant delays will be caused to a large number of proceedings.

Finally, BNLF believes that there are a significant number of solicitors with decades of experience, exhibiting excellent advocacy on behalf of their clients, who have opted not to pursue the HRA qualification. They are at times better placed and qualified to advocate their client's case in the youth court better than a HRA solicitor. BNLF submits that the adverse impact of the proposal would also restrict client choice. Many clients are capable of assessing whether their solicitor is capable of effectively advancing their case in court.

4. (untitled)

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

BNLF welcomes the proposal to provide practitioners with resources to develop their advocacy standards.

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

BNLF believes resources provided should offer support across the whole breadth of advocacy areas practiced in the Crown Court.

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Ultimately, we all want a high standard of advocacy by all advocates whether they are HRA Solicitors or Barristers. BNLF believes that it is important that proposals do not disadvantage solicitors in comparison to barristers.

BNLF notes the outcome of the survey carried out with Judges in respect of the advocacy level by HRA solicitors and attitudes towards raising complaints. BNLF believes that whilst it is important to ensure Judges have a clearer pathway to raising concerns, it is also important that the SRA provides a clear guidance to Solicitor-Advocates on what type of concerns Judges are entitled to raise and what process the SRA will take in addressing any concerns raised.

18.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:115 Data

2. About you

1.
First name(s)

Vicki

2.
Last name

Morris

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

University or other education/training provider

8.
Please enter the name of your institution

Centre for Justice Innovation

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

11.
2) Do you have any comments on our revised HRA standards?

12.
3) Do you agree that we should introduce a single assessment organisation for the HRA qualification?

13.

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

14.

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?

We agree that advocates practicing in youth court should hold a specialism, especially when when dealing with serious youth court work. This work requires specific knowledge and skills in relation to the youth justice system as well as with dealing with highly complex and vulnerable clients.

However, the proposal to hold the HRA qualification risks isolating those practitioners, such as highly experienced solicitors, who do not hold this qualification. Whilst the proposal could ensure advocates are skilled in dealing with serious youth court cases, the proposal does not require experience in this area and thus HCAs with limited or no experience of youth court work could be representing complex and vulnerable clients without the skills and experience needed for this work.

Our recommendation is that, for this proposal to be implemented, the HRA qualification must include detailed training on youth court work and working with complex and vulnerable young people and children. We propose developing a specific youth court qualification, combined with a requirement to have a certain level of experience prior to undertaking any serious cases in the youth court.

4. (untitled)

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

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

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

18.9) Do you have any further information to help inform our impact assessment?

Through our extensive research on courts and our current research project on youth court (final report due to be published in April) we are well-placed to advise and support if any specific qualification were to be implemented. We have already been in conversations with a number of practitioners and organisations about developing this and would happily advise/contribute to development. Our extensive research and observations in youth court demonstrate a necessity to have youth court advocates with a professional specialism for representing these clients and we would be happy to share our findings if helpful.



SRA Consultation – ‘Assuring advocacy standards’.

**A joint response from
The Chartered Institute of Legal Executives and
CILEx Regulation**

November 2019



1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. CILEx Regulation Ltd (CRL) is the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities.

2. Background

- 2.1. The SRA is proposing within its wider consultation, to require Youth Court Advocates to obtain Higher Rights of Audience prior to undertaking work where the crime would be tried in the Crown Court if the defendant was an adult.
- 2.2. CILEx and CRL have provided a joint response to the consultation, which makes some general observations to the proposal. We have no view on the specific proposals as to how the SRA treats its advocates and assures their competence, both at the point of qualification and beyond as a practising advocate.

3. Qualifying as a Chartered Legal Executive Advocate (Criminal Proceedings)

- 3.1 CRL, as the regulator of specialist criminal advocates, many of whom undertake Youth Court work, takes a different approach to the authorisation of its advocates from that currently in operation or proposed by the SRA.
 - Firstly, any Chartered Legal Executive who wants to undertake criminal advocacy must demonstrate relevant knowledge, experience and

competence prior to attending an advocacy skills course, which is focused on their own specialist area. For criminal advocates, this includes knowledge and understanding of the procedures operating in the Youth Court (which are different from those in adult courts).

- In addition, criminal advocates are required to undertake CPD specifically focused on their specialism (including advocacy skills) each year and we are currently developing a more tailored risk-based approach to supervision to enable us to require more tailored developmental and ongoing competence training.

3.2 The additional requirements for Youth Court advocates are likely to incorporate:

- Engaging with young people
- Dealing with vulnerable clients and witnesses
- Understanding all of the options open to young defendants (including diversion from the criminal justice system).

4. Restriction of Youth Court work to Higher Rights Advocates

4.1. Whilst we appreciate that, at present, solicitors working in the lower courts receive minimal advocacy training, CILEx and CRL consider this proposal to be disproportionate to the need.

4.2. The work in Youth Courts is unique and gaining Higher Rights of Audience alone is unlikely to furnish advocates with the necessary knowledge and competence required to deal specifically with the youth justice system or its clients. It would not, for example, give a grounding in youth court sentencing or particularly in the youth court environment ie dealing with lay justices or a single District Judge.

4.3. Additionally, the proposals may not be nuanced enough: for example, some crimes that must be tried in the Crown Court in the case of an adult are not necessarily that serious (in the scheme of things); some types of robbery, for

example, may not attract a custodial sentence in the youth court in the absence of specific aggravating features or a long list of pre-convictions. Nor is there reference in the consultation about the grave crime procedure (91(1) Powers of Criminal Courts (Sentencing) Act 2000).

- 4.4. It is important that any proposed changes are founded on evidence rather than assumptions; 'vulnerable' is a broad term and the SRA seem to have assumed that the victims and witnesses in the youth court are somehow more 'vulnerable'. In fact, all young people under 18 are, by definition, vulnerable. Similarly, there is an assumption that holding higher rights confers the ability to deal with vulnerable victims and witnesses; this is not necessarily the case.
- 4.5. There are alternatives to the SRA's HRA proposal: for example, there could be a compromise whereby perhaps in cases which are tried in the youth court before a specially ticketed judge might (e.g. in cases of rape) be expected to have additional training; or if s28 pre-recorded evidence in chief is rolled out in youth court. Another appropriate alternative may be to create specialist youth court training for solicitors seeking to undertake this work, without the need to seek full Higher Rights of Audience, particularly as there is limited evidence available to support this proposal set out within the consultation. CILEx is itself currently reviewing the content of its own professional qualifications with this very requirement in mind.
- 4.6. Further, the structure and funding of the Youth Court is such that the requirement to attain Higher Rights may mean that in the future there are fewer appropriately qualified advocates to serve the needs of consumers.

5. Next Steps

- 5.1. CILEx and CRL would welcome the offer to discuss this proposal with the SRA and the BSB to determine other alternatives which may enable continued alignment of approaches to working in the Youth Court, which we consider would be better served through the introduction of a specialist course, assessment and ongoing competence requirements, without the need

for Higher Rights.

Please contact the individuals below for further contributions that may be required from the answers provided.

For further details

Should you
require any
further
information,
please contact:

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Vicky Purtill
Director of Authorisation &
Supervision

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LITIGATION COMMITTEE response to SOLICITORS REGULATION AUTHORITY consultation on Assuring Advocacy Standards

The City of London Law Society (“CLLS”) represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of Assuring Advocacy Standards has been prepared by the CLLS Litigation Committee.

1. The Committee is primarily concerned with civil litigation in the higher courts. In this regard, the Committee notes from the Consultation Paper that:
 - (a) concerns regarding advocacy have "mainly focused on criminal rather than civil advocacy" (para 5); and
 - (b) even where concerns have been expressed, it is "difficult to establish robust evidence" (para 6), and such evidence that exists is merely "anecdotal" (para 9).
2. In these circumstances, the Committee is unpersuaded of the need to reform the procedure for obtaining higher rights of audience for civil cases. Regulatory reform should be led by evidence. As the SRA accepts, the necessary evidence of a regulatory problem regarding civil advocacy does not currently exist. It may be that the concerns expressed are sufficient to justify the SRA in conducting thorough research in order to establish whether there is in fact a problem that justifies regulatory change and, if so, what that change should be, but the evidence that is currently available does not itself justify immediate change.
3. A related point concerns the proposed change to a single assessment organisation. The Committee assumes that the SRA, as regulator, checks on a regular basis how those it authorises to grant higher rights of audience are performing their role (the SRA will have to continue to do so even for a single provider). Since none is cited in the Consultation Paper, there is presumably no evidence to suggest that the current providers are not applying the same standards or that the potential conflict of interest affects their approach to the assessment. If, contrary to our assumption, the SRA has not in fact been assessing those it authorises to grant higher rights, the appropriate course is for the SRA to conduct this work now and, if it reveals a problem, then to make

regulatory changes. It is not appropriate to make regulatory changes without any evidential justification.

4. Even if there were evidence that some assessment providers are performing their functions inadequately or inappropriately, the Committee would still be concerned about the appointment of a single assessment provider. Despite the attempted reassurance in the Consultation Paper, it seems inevitable that a single provider will increase both the cost and the time-taken to obtain higher rights in civil cases, making it harder for solicitors to obtain this qualification. The current process is streamlined and practical. Separating training from the assessment will add to the complexity and organisational requirements. It is hard to see how a single organisation could realistically make the same number of assessments available as is now the case.
5. With regard to the standards for civil proceedings, the Committee notes that they go beyond what would normally be considered as advocacy. For example, disclosure and inspection (Outcomes, section 2), negotiating settlement (Knowledge, section 1) and a good working knowledge of the CPR (Knowledge, section 2) are all central to the work of a litigation solicitor, not that of an advocate. The Committee also considers that what is expected of solicitor advocates should also not differ to any material degree from what is expected of barristers as advocates, in order to ensure consistency and fairness for all those practising advocacy in the higher courts.

Gavin Foggo
Chair
CLLS Litigation Committee

Date: 12 November 2019

**THE CITY OF LONDON LAW SOCIETY
LITIGATION COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Gavin Foggo	Fox Williams LLP (Chair)
Jan-Jaap Baer	Travers Smith LLP
Duncan Black	Fieldfisher LLP
Patrick Boylan	Simmons & Simmons LLP
Jonathan Cotton	Slaughter and May
Andrew Denny	Allen & Overy LLP
Richard Dickman	Pinsent Masons LLP
Angela Dimsdale Gill	Hogan Lovells International LLP
Geraldine Elliott	Reynolds Porter Chamberlain LLP
Richard Foss	Kingsley Napley LLP
Jonathan Isaacs	DWF Law LLP
Mark Lim	Lewis Silkin LLP
Iain Mackie	Macfarlanes LLP
Michael Madden	Winston & Strawn London LLP
Gary Milner-Moore	Herbert Smith Freehills LLP
Hardeep Nahal	McGuireWoods London LLP
Patrick Swain	Freshfields Bruckhaus Deringer LLP

Assuring advocacy standards consultation

Response ID:113 Data

2. About you

1.
First name(s)

Susanna

2.
Last name

Heley

3.
Please enter your SRA ID (if applicable)

378909

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

City of Westminster & Holborn Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

We agree that there is no evidential basis to support a change to current practising rights. We do consider that it is sensible to provide education and training resources which may help solicitors effectively to examine weaknesses in their own abilities in order to better determine what training they – or their relevant employees - may require.

We do note that the SRA's new Standards and Regulations contain relevant obligations for individuals, their supervisors and their firms which seek to ensure that individuals are fully conversant with their legal, ethical and regulatory obligations and are competent to carry out their work. The impact of this new, 3 tier approach to competence is not discussed at all in the

consultation paper.

We consider that the wholesale replacement of the SRA Handbook should be sufficient change for solicitors to contend with at this juncture and that we should see how these changes will manifest in practice before imposing further change based on very limited evidence.

11.

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

It is odd that the standards have been developed by reference to the SRA Handbook 2011 and not by reference to the new Standards and Regulations which will inevitably be in force by the time of any changes to HRA qualifications and/or practising rights.

That aside, the obligations are generic and do not seem to include particular issues of concern to the SRA. Given the nature of the concerns raised in the SRA's consultation, we would have expected to see some suggestion that solicitors are expected to recognise where specialist skills or knowledge is necessary or desirable – ie in courts with procedures which depart from standard practice such as specialist procedures in the IPEC and the requirements to file documents online in the Business and Property Courts.

It is bizarre that there is a requirement to be familiar with the Queen's Bench Guide but no requirement to be familiar with similar guidance issued by other courts.

We invite the SRA to review the proposed standards by reference to its own expressed concerns and the new codes of conduct coming into force on 25 November 2019. We do not think it appropriate to waste our time or the SRA's by commenting in detail on provisions which would appear to be already out of date.

12.

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

We would have no objection to there being a single standardised form of assessment for the HRA qualification managed by an assessment organisation.

That said, it is unclear from the SRA's consultation whether it is envisaged that the assessment and training would be carried out by the same individual provider and we see no reason to impose a monopoly on the relevant training. Accordingly, whilst we would support assessments being managed by a single provider to ensure consistency, we would not support a proposal where a single provider is the only option for HRA training. We consider that would unnecessarily stifle competition and would be likely to increase costs.

13.

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

We understand the rationale however we can envisage circumstances where a trainee solicitor may well be competent to undertake the HRA assessment, particularly where a trainee is qualifying as a solicitor having undertaken an alternative career.

On balance, we would be against this restriction as unnecessary. If the SRA were to produce evidence that it was necessary for solicitors to have minimum experience in a court or tribunal environment, then that experience should be a necessary part of gaining the HRA qualification. In circumstances where the HRA qualification has evolved away from requiring a verifiable level of exposure to courtroom experience, this would seem to be a bizarrely arbitrary retrograde step. It would mean – for example - that a trainee who has been a paralegal for 10 years and undertaken years of court work in that role is forbidden from undertaking a qualification which is open to a solicitor who has done nothing but conveyancing since qualification. Since the HRA qualification cannot, by definition, be effective until admission to the Roll, the distinction drawn by the SRA seems superfluous and unjustifiable.

14.

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?

Not at this stage. As stated above, we consider that any changes to existing practising rights should be based on stronger evidence than that currently supplied.

Our view would be that it would be appropriate to keep this proposal under review for a period of say 12 months whilst at the same time, taking steps to signpost the effective reporting of concerns relating to advocacy standards. If, following such signposting, evidence emerges of a problem requiring regulatory intervention, that evidence can be evaluated to identify patterns and trends. From the SRA consultation, it seems to us that the issue in the youth courts is not related to a quality of advocacy per se but may rather reflect:

- (i) the likelihood that individuals are not adept at communicating with youths – this may stem from any number of factors which are not directly related to advocacy skills or competence as a solicitor
- (ii) A lack of understanding of procedural requirements in the Youth Courts, which is not an issue which would be resolved through HRA training based on the Standards annexed to the consultation.

We are not persuaded that requiring HRA qualification to undertake this work would address the actual concerns which the limited evidence has identified, especially since the proposed competence structure does not actually deal with any issues specific to work in the youth courts. We consider that raising awareness of issues peculiar to the youth court, and/or introducing a voluntary youth court specific accreditation scheme is far more likely to address the underlying issues identified.

4. (untitled)

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

Yes. We have no objection to the SRA producing resources to assist solicitors in meeting their professional obligations provided that it is clear that these are resources and are not treated as additional rules of conduct introduced via a back door.

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

It seems apparent that dealing with vulnerable witnesses and effectively communicating with young clients are key areas of concern. We would expect to see resources on these issues featuring prominently in any suite produced by the SRA.

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We agree that judges and other relevant individuals, including clients should find it easy to establish how to make a complaint to a relevant regulator. We agree that simpler reporting – including encouraging clients to report by email or phone rather than completing a report form which may appear daunting – is a sound strategy. We agree that the judiciary and solicitors should be aware of what conduct the SRA considers ought to be reported and there should be clear indications from the SRA as to what constitutes a reportably poor standard of advocacy.

We don't think that lay clients are necessarily well placed to judge advocacy standards themselves. Whilst we do not disregard complaints made by lay clients and believe that it should be straightforward for clients to identify how to complain, in our experience, clients do not usually have the technical skill to report – or even recognise incompetence effectively. Where a client's case is successful despite his representative, he is unlikely to complain even if the standard of advocacy was risible. For this reason, if the purpose of reporting is to build a more solid evidence base on which to keep this issue under review, we consider that the most valuable source of intelligence is likely to be the judiciary, court staff and relevant professionals.

18.9) Do you have any further information to help inform our impact assessment?

As a representative organisation, we wholeheartedly support initiatives which seek to ensure that solicitors lead the way in meeting high professional standards. We believe that solicitors should be proud to be members of a profession which serves its clients to the best of its ability. We are however troubled by elements of the consultation which has been produced by the SRA and, in particular, we are concerned that changes are being proposed without a proper examination of all relevant circumstances and on the basis of evidence which the SRA – to its credit – frankly admits is anecdotal and incomplete. In any consultation considering advocacy standards – particularly one making recommendations on criminal advocacy in the

youth courts, we would have expected to see a recognition of the impact which changes to legal aid – both in terms of policy and budget – have had on this area. Legal Aid rates have not increased in line with inflation – or, we understand, at all in some areas - since the 1990s. Availability of and access to legal aid has been eroded and we know that legal aid providers are already struggling to provide services within the limits of the funding available. We are concerned that the SRA's proposals in relation to youth courts could be unaffordable for many legal aid providers and could lead to vulnerable youths being wholly unrepresented. We would have expected to see this issue specifically addressed in the SRA's impact assessment but the issue of resource and the already straitened position of those providing services to the most vulnerable is wholly absent from the SRA's analysis.

We are also concerned that many of the reports mentioned by the SRA reference judicial criticism of findings relating to 'advocates'. Whilst the SRA acknowledges that its evidence is limited, it does not explain whether or not the limited concerns which have been raised in the various reports relate solely to solicitor advocates or whether it also encompasses barristers and advocates qualified via other routes. Our members have experience of extremely poor advocacy by barristers, including incompetence and excessive aggression particularly – but not exclusively - from those directly instructed by lay clients. With this in mind, and recognising the ultimate demise of the QASA, we consider that it remains the preferred option for legal services regulators to reach global agreement on standards of advocacy. We would be reluctant to support any significant change to practising rights based on the current state of evidence and in the absence of similar moves from relevant approved regulators.

We are concerned that the SRA seeks to impose a gold standard on solicitors in answer to perceived and anecdotal criticism which may more properly be laid at the door of inconsistency between regulators rather than a material defect in the training regime. We do not think it is helpful to require more of solicitors than individuals in other regulated professions, not least because it may encourage solicitors to transfer their qualifications to other regulators.

As noted above, we are concerned that the SRA has not considered the drivers of allegedly poor advocacy. We would have expected to see a greater analysis of cases in which poor advocacy has been identified and the extent to which competence in the areas identified in annexes A and B have been a driver.

We would have expected to see some indication that the SRA is aware of the pressures which legal aid cuts have placed on solicitors and resourcing issues. If the real reason for instances of poor advocacy is lack of preparation due to pressures placed on advocates by courts or their firms, we cannot see that any amount of tinkering with the qualification structure is going to alleviate those issues.

Assuring advocacy standards consultation

Response ID:91 Data

2. About you

1.
First name(s)

Peter

2.
Last name

Lyons

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

University or other education/training provider

8.
Please enter the name of your institution

CPD Training (UK) Ltd

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

Yes

11.
2) Do you have any comments on our revised HRA standards?

Not of substance but I think any assessment organisation should be careful not to give little-used skills in civil such as examination-in-chief undue weight.

12.

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

No. But if it is going to be imposed I think the training organisations should have annual meetings with the assessment organisations. It is important that the assessments are conducted fairly, with no trick questions. They should not be open to abuse such as training providers paying for people to attend assessment and memorise the papers.

Advocates appearing in trials know the case they are dealing with in detail and in advance, so at the least, the areas to be assessed should be announced beforehand and case studies for the oral section supplied.

13.

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

Yes

14.

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?

Yes

4. (untitled)

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

Yes

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

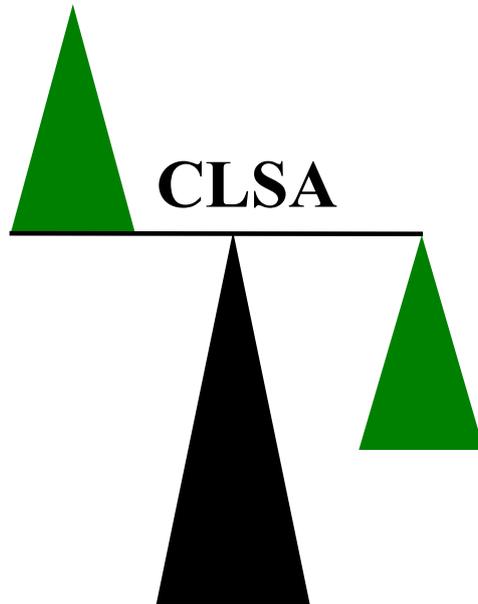
Relevant text books would be helpful. I also think that the Bar Code of Conduct should be adopted or amalgated with the Solicitors Rules and made into a High Court Advocate Code.

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Yes. I think defaulting advocates should be given feedback and sent on a compulsory advocacy training course which deals directly with the mistakes made. They do this in some states of America especially in the area of breaches of professional conduct.

18.9) Do you have any further information to help inform our impact assessment?

Make more use of retired High Court Judges. Set up a small advisory panel of judges.



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CLSA Response to Assuring Advocacy Standards Consultations

Background to the consultation.

The Criminal Law Solicitors Association ('CLSA') is a national association representing Solicitors. Our aims are:

- (1) To encourage and maintain the highest standards of practice in the criminal courts in England and Wales;
- (2) To participate in discussions on developments in the criminal process;
- (3) To represent and further the interests of the members on any matters which may affect those who practise in criminal law and their firms; and
- (4) To improve, develop and maintain the education and knowledge of those actively concerned in the practice of criminal law in those Courts and those who are in the course of their training.

In responding to this consultation, the CLSA has spoken to its members, a number of members of the Bar Council and several members of the Judiciary in an attempt to establish how serious is the problem of poor or inadequate advocacy in the Courts.

It is acknowledged by the CLSA that advocacy and the presentation and preparation of any case are so fundamentally important, that those regulating the profession have the utmost confidence in those who undertake such litigation. How a case is both prepared and presented is often the difference between Justice and Injustice. However, in preparing this response, the CLSA believes that the SRA is misguided in its attempts to move forward, and have approached this subject with a somewhat knee jerk response to a problem which it can neither quantify, nor justify.

Whilst it is a correct observation that poor advocacy is detrimental to the client, it is not for the SRA to take on the role of justice administrator and state "Wrongs may go unpunished". That is both a social and moral observation and has nothing to do with advocacy. The independence of the Judiciary and the Jury system determine whether a "wrong" has been committed and it is not for a regulatory body to highlight such a term.

The Bar Council teaches barristers that "The client is to be represented fearlessly". Why does the SRA therefore presume that Solicitor Advocates should not follow the same path? It appears that the SRA seems to underestimate just how stressful litigation of every type is for the client being represented. Solicitors for many decades have had to evaluate, manage expectations and deal with client vulnerabilities, so what does the SRA say has changed now? There is no direct or even anecdotal evidence in the consultation and accompanying papers that Solicitor Advocates are letting clients down in Court, in fact the evidence on the contents of the SRA's own documents supports an entirely different view. The limited data that is available appears to suggest on average less than one complaint each year is made despite the high volume of advocacy conducted by solicitors in the Youth Court. Perhaps a more realistic starting point would be that every Court attender is vulnerable, that each client will have been properly assessed by those representing that client and that the client will be represented competently.

Dealing with a non-existent problem

Let us deal with the evidence of falling standards. The VRC document is 6 years old. Upon what evidence is the SRA now relying before it micromanages Solicitors further? The proposal to limit Youth Court advocacy to Higher Court Advocates and Barristers only would have a wholesale detrimental effect on the provision of representation and on the access to justice and yet appears to have taken little account of this.

That being the case we would expect the SRA to have provided detailed evidence and statistics setting out precisely why it has concluded there is a problem that needs to be fixed. How many Court sittings and assessments have those preparing this consultation actually witnessed? The evidence for micromanagement is at best anecdotal, but even in the SRA's own report, less than 3% of the 89 cases of complaints against Solicitor Advocates in 3 years was due to advocacy failures. That is an average of one per year! Paragraph 9 of the report. This has the feel of a witch hunt and a sop to the Bar Council instead of promoting the positive aspects of Higher Court Solicitor Advocates, a sad state for our regulatory body to become embroiled in.

There has been historically and there remains a mechanism to ensure that very complex matters requiring counsel or an HCA are dealt with appropriately in the form of a Certificate for Counsel which would provide for counsel or an HCA under a publicly funded case. In a publicly funded case the proposal risks denying a private individual the right to have an advocate of their choosing. It is not uncommon for a Youth to have the same representative from police station through to trial and if need be sentence. It is equally common for the same individual to have the same solicitor for multiple matters. This proposal would terminate that relationship and to all intents and purposes means that another advocate, who paternally neither knows anything about the young person or indeed Youth Court practice would have to be instructed merely due their status as an Advocate trained to appear in Higher Courts.

Irrationality of the proposal

(a) Incorrect Assumptions

The proposal on Youth Court Advocacy is entirely misconceived and irrational. If its aim is to ensure a high quality of advocacy for youths in the Youth Court it fails to achieve those aims. In particular, it makes a number of incorrect and dangerous assumptions:

1. That there is presently a lack of proper representation and advocacy being provided;
2. That the procedure and conduct of Youth Court proceedings for serious matters are identical or not dissimilar from those in the Crown Court
3. That counsel or HCAs by virtue of their training in higher Courts are better placed to provide that quality advocacy; and
4. That counsel or HCAs, by virtue of their training higher Courts, have a better understanding of practice and procedure in the Youth Court than experienced Youth Court solicitor practitioners.
5. That the seriousness of the charge is the only measure of seriousness or complexity of the case

In each case, these assumptions are wholly incorrect for the reasons set out below.

Assumption 1:

We have set out above that the data does not reflect the assumption at (1) above.

Assumption 2:

In relation to (2) it appears trite, but nonetheless must be said, that Youth Court trials take place in the Youth Court. The Youth Court is a Magistrates Court (a creature of statute) with specific jurisdiction. The practices and procedures in the Youth Court are therefore the same or largely the same as the Magistrates Court, where 97% of all cases are heard, the vast majority of which are conducted by solicitors. The fact that the underlying allegation is more serious does not change the procedure so that the rules of the Crown Court apply. There is no jury. The trier of fact and law remains the Magistrates. It is one of the most basic of skills taught to advocates that advocates should 'know their audience'. Jury advocacy is not the same as Magistrates Advocacy. Many of our practitioners report experiences of highly experienced, no doubt capable and respected learned counsel appearing in the Magistrate court and being so unfamiliar with practice and procedure so as to offer very poor representation.

Assumption 3:

As to assumption (3) we agree that serious youth court work requires specific skills and sensitivity, as well as experience in dealing with very vulnerable clients. Solicitors routinely deal with vulnerable clients whether that vulnerability be due to age, illness or disability, but in our view this proposal will exclude many solicitors who have significant experience and skill in this area, but who are not High Court Advocates. As we set out elsewhere, we often receive reports of experiences of highly experienced, no doubt capable and respected learned counsel appearing in the Magistrate court and being so unfamiliar with practice and procedure so as to offer very poor representation.

In the workshops held by the SRA in 2018 on the HRA assessment suggestions were made including a module on vulnerable defendants. These suggestions were rejected on the grounds that the skills needed for youth court work were completely different to those needed for Crown Court advocacy. The current proposal is completely inconsistent with that assertion made by the SRA just 12 months ago.

Indeed it would appear that HRA training and that for counsel in fact teaches the opposite skills to those required for youth court work. They teach, as one might expect, '*Higher Court*' Advocacy. The Youth Court is not such court, regardless of the seriousness of the charge.

Assumption 4:

Whilst many HCAs may have the skills and experience to deal with serious youth court cases, the proposal does not actually require any experience whatsoever in this area. It could thus allow HCAs and counsel who have no – or limited - experience of youth court work to undertake very serious cases at the expense of more familiar, capable and experienced solicitors.

The requirement to hold the HCA qualification or being counsel will therefore not ensure that these cases are being dealt with to a high standard. There is limited training for either in their qualifications at present. Apart from a reference to the inclusion of 'young or vulnerable witnesses' in the syllabus, there is no detailed training on youth court work or vulnerable defendants mentioned in the HCA assessment. There is a similar absence in training for counsel. Pupil barristers are further highly unlikely to witness their pupil masters conducting advocacy during their training.

Assumption 5:

Whilst the seriousness of the charge is a major factor in the seriousness and complexity of the case, that is in itself is not the only factor. A case may be more complex for a variety of reasons:

1. Complex facts
2. Complex legal arguments

3. Impact of the charges on the particular offender (e.g. might it stop them working in a chosen field, travelling, registering on the Sex Offenders Register etc)
4. Vulnerable witnesses
5. Vulnerable defendant
6. Nature of evidence including expert evidence

(b) Irrational as to its aims:

If the aim of the proposal in relation to Youth Court advocacy is to improve the standard of quality or representation, it should also be borne in mind that continuity of representation is extremely important when dealing with highly vulnerable young people. The fact that solicitors are able to advise and represent clients all the way from the police station to trial creates a level of trust on the part of the young person that is crucial in the smooth and effective running of the case.

The proposals are poorly defined and potentially unworkable in any event. The proposals themselves are unclear regarding which cases this would apply to and how that would be decided. The impact assessment refers to 'serious triable either way offences', but it is not clear what is meant by 'serious' in this context. It does not set out how an either way offence that could still have been dealt with the Magistrates Court would be dealt with, nor does it deal with cases where a defendant elects but where a Magistrates Court would have been a suitable venue. More information is needed before we can respond to this element of the proposal.

Impact on Public Expenditure

The proposals have a potentially wide-ranging impact on Legal Aid. Under current fee schemes, should this proposal go ahead, changes to the legal aid contract will be necessary. Existing provisions would discriminate against solicitor advocates employed by their own firms. As the contract is presently drafted an in-house solicitor advocate cannot claim the same rate as self-employed counsel or a solicitor advocate from another firm.

If higher court advocates are required to undertake this work then clearly they should automatically be granted certificates for counsel (assigned counsel).

Impact on Access to Justice

The impact assessment does not include any research, statistics or in-depth assessment of these potential impacts on the supply of legal advice across England and Wales. It includes no proper analysis of the impact of these proposals on the solicitor market beyond simply asserting 'we do not consider' that the proposal presents a 'significant risk to the supply of solicitors'. No evidence, cost benefit analysis or statistics are provided to support this assertion.

Recently the Law Society carried out an extensive piece of research on the supplier base. The 'duty solicitor heat map' reveals the looming crisis in the supply of criminal solicitors. The average age of a criminal duty solicitor across the whole of England and Wales was 47 and indeed the data showed that in 5 to 10 years' time there could be insufficient criminal duty solicitors in many regions, leaving many individuals in need of legal advice unable to access justice.

Under the current scheme there is a mechanism to ensure that very complex matters that require counsel or an HCA are dealt with appropriately in the form of a Certificate for Counsel which would provide for counsel or an HCA under a publicly funded case. However, under these proposals firms would be faced with a choice : (1) Deploy HCAs to Youth matters at the expense of Crown Court cases; (2) require further staff to undertake training at great expense; (3) pay counsel from the fixed-fee legal aid fees received in the Youth Court. All of these add a financial burden on the firm

and given the vulnerable state of the market, any steps that increase the cost for solicitors to conduct court advocacy will have a negative impact on this already fragile market. It is likely firms will either collapse or make the decision to cease to carry out Youth Court work at all as it would be unremunerative. This would have the effect of denying access to legal advice and hence justice for young people and would be intolerable in a civilised society.

Breach of SRA Mandate

The proposal would be inconsistent with the statutory objectives which include improving access to justice. The consultation paper and impact assessment acknowledge that there will be a disproportionate impact on BAME solicitor advocates, given that they are 'over-represented' in the criminal solicitors' profession. This seems to be in direct opposition to the SRA objective of 'encouraging an independent, strong, diverse and effective legal profession'. The Consultation appears to seek to over-reach insofar as it goes beyond regulating solicitors and appears to impact upon Counsel as well.

Responses to questions

The Youth Courts are special. A different level of expertise is required in the Youth Court and also in dealing with vulnerable witnesses. It is right that appropriate training should be undertaken by all who appear in these Courts. However, again, the anecdotal evidence to which the consultation document refers is at least 4 years old. That is not to say that the CLSA underestimates the need for proper training in order to effectively represent. On the contrary. The author of this document spent some time discussing youth courts with a number of Judges, Youth workers, Social Services and lay magistrates. It is clear that vulnerable witnesses need to be accorded appropriate treatment, however, where is the evidence that Solicitors regularly fail to adequately represent youth clients? It is often raised that Counsel who step into the Youth Court have no idea as to procedure and protocol, has this been considered by the SRA?

It seems to be accepted by the SRA that they are unable to establish any evidence, let alone robust evidence to identify how widespread advocacy problems are. The reality appears to be that there is no evidence to substantiate further interference.

Solicitors have specified duties, one of which is not to take on a case beyond their level of experience. The SRA, if they are of the view this happens should be dealing with this as an ethics issue. The CLSA would like to see any evidence of this, if it exists.

The CLSA note with some concern in paragraph 10 of the document, "failure rate" What is meant by failure rate? Has the SRA considered a comparative of figures between Solicitor Advocates and the Bar? If not, why not? If so, could they kindly disclose those figures?

Q.1 Do you agree with our proposal not to change existing practise rights, and to rely on the obligation of Solicitors not to undertake witness handling where they are not competent to do so?

Solicitors have several professional duties in dealing with all clients. They should never undertake work that they are not competent to do. This is a basic requirement, it should never be changed, the response is of course, Yes!

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

Yes. The assessment of standards is at best speculative. There is a danger of creating a monopoly of one provider. If their standards fail, how does the SRA intend to remedy the lacuna in the market. The SRA seems to be unaware that it is possible to become an HCA by being assessed and

recommended by 3 independent Crown Court Judges. Would this assessment not be a far better measure of competence?

Q.3 Do you agree that we should introduce a single assessment organisation for the H.R.A. qualification.

No. The reasons are outlined in the answer to Q.2

Q.4 Do you agree with our proposal that the HRA assessment can only be attempted by admitted Solicitors?

Yes. Advocacy experience and managing expectations are not learned in college, they are learned in real life.

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

This suggestion makes little sense I am afraid. Once Jurisdiction is declined, why should it make a difference who represents the youth in the Youth Court? No.

Q.6 The C.L.S.A. find this question to be at odds with where the SRA wishes to regulate the profession. Either there is competence, or there is not, the Bar Council do not have resources to ensure high standards are met. Adequate training and assessment added to ability should suffice.

Q. 7 The CLSA have nothing to add.

Q. 8. As there is less than 1 case per year of poor HCA advocacy, why is the SRA setting itself up to enable all reporting of HCAs ?

There seems to be so much proposed without having regard to the actuality of the situation. 4000 plus HCAs, one case of incompetence per year! Has the SRA requested or undertaken an FOI enquiry as regards the same problems within the Bar? If so, please provide the comparative figures, if not, why not?

Assuring advocacy standards consultation

Response ID:100 Data

2. About you

1.
First name(s)

2.
Last name

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

Crown Prosecution Service

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

The CPS agrees with the proposal.

CPS considers that the Codes of Conduct are sufficient and already regulate such obligations. As identified, however, there continues to be a distinct need for renewed emphasis, guidance and recognition that specialised skills are required for victim and witness handling in particular cases (e.g. vulnerable victims and witnesses).

12.

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

The CPS agrees with the revised standards and, in particular, comments that the standards should continue to be current, relevant, and considered on a regular basis to accommodate legislative and procedural change to maintain alignment with the requirements of modern practice.

In addition, it is suggested that also identifying the specific importance of digital competence, which forms a crucial component of modern advocacy and case presentation, would be improved by further training, guidance and clearly identifiable standards.

In particular, defined standards and competence in relation to the use of the Digital Case System (DCS) in the Crown Court, Egress and the formulation of future standards which anticipate progress in technology in the Crown Court (e.g. the Common Platform) would be especially helpful to ensure the highest standards of advocacy.

13.

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

The CPS agrees that a single provider could benefit consistency, accuracy and fairness.

Additionally, there needs to be robust qualitative assurance of the course by the SRA, whilst also representing best value for money for delegates.

14.

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

Yes.

This proposal would not adversely impact upon CPS in-house advocates because of the current internal training requirements and HRA progression structures.

15.

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?

The CPS has bespoke youth training for all Advocates who conduct Youth Court proceedings and therefore fully recognises the need for specialist skills in the Youth Court.

The CPS considers that the current definition of 'any case which would go to the Crown Court if it involved an adult' is too broad and needs to be more refined to certain case types before accepting the proposal. As currently drafted, it could, potentially, encompass a very wide range of cases.

The CPS considers that there is a strong case for this provision in particular case types, for example, RASSO, grave and some complex crimes which might be retained in the Youth Court. These would need to be clearly defined.

The issue of whether this proposal might apply to all case hearings would also need clarity to determine whether this provision would relate only to the trial or to all such proceedings – including pre-trial reviews, legal arguments/ground rules hearings, Newton hearings and sentencing hearings. This would impact upon the deployment and the necessary qualification of advocates for all stakeholders in both prosecution and defence.

4. (untitled)

16.6) Would you find it helpful to have access to a suite of resources aimed at

supporting practitioners meet high advocacy standards?

Yes

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

Yes, the CPS suggests the following topics:

1. How to consider and respond to challenges from the judiciary;
 2. Hints and Tips – Digital Working techniques and advice on best practice for case presentation;
 3. How to ensure best practice to accommodate accessibility and reasonable adjustment for those attending Court.
-

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

The CPS already has a robust complaints policy (that includes an Independent Assessor), together with defined line management, individual quality assurance assessments, supervisory responsibilities and effective liaison with the Judiciary and the Courts.

The CPS suggests the SRA proposal would benefit from more defined structure, and suggests that proposals interlink with those applied by the Bar Standards Board, the Chartered Institute of Legal Executives along with CPS, to further consider their reporting proposals and ensure that there is a consistent and effective approach in respect of all advocates.

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:110 Data

2. About you

1.
First name(s)

Naomi

2.
Last name

Redhouse

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

District Judge (Magistrates Courts)

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

Yes

11.
2) Do you have any comments on our revised HRA standards?

The HRA standards need to reflect current practice in relation to the needs of vulnerable witnesses and defendants. If, which we do not accept (see below) the requirement of an HRA qualification were imposed for those who appear in the youth court,

the training would need to include the different law and practice of the youth court.

12.

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

Yes, to ensure consistent standards for all that hold the qualification.

13.

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

Yes, for all the reasons articulated in the consultation.

14.

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?

No. Firstly, offences such as Handling Stolen Goods can go to the crown court if an adult were charged the issue for the court might simply be knowledge or believe that the item was stolen, such cases are straightforward.

Secondly, how do you define 'would go to the Crown Court if an adult were charged'? Does this mean 'could' be sent for trial?

Thirdly, the skills required by a competent advocate in the youth court are very different to those required by those exercising Higher Rights in the Crown Court. The youth court is a place where language must always be clear, where the defendant (and young witnesses) are often vulnerable and may have difficulties in communication. We cannot see any evidence that the HRA qualification would make the lawyers in the youth court any more competent than those who now appear. There is areal risk that they would in fact have less specialist knowledge as the law relating to allocation, bail and sentencing is entirely different to that in place in the adult court. There is a good argument for specialist training but we do not see that this would be provided byt the HRA qualification.

Further, is it intended that the HRA requiremtn would alos apply to CPS representatives? At present those appearing for the prosecution in the youth court are not always lawyers.

Solicitors choose NOT to obtain the qualification for very many reasons, not always connected to their competence, such as lack of support from the firm, time restraints and personal choice plus many more. It is also the case that young, enthusiastic lawyers make very good youth court advocates, not least due to their ability to communicate with young people. They are unlikely to have HRA qualifications.

However, we do see an argument that cases set out in the Criminal Practice Direction Part XIII Annex 2"Sexual offences in the Youth Court" should require a specialist lawyer to prepare the case and conduct the trial. These cases are very sensitive and the judges who deal with them are required to have authorisation to hear such cases which is obtained following specialist training.Whether the HRA qualification is the appropriate specialist training is not clear on the information provided.

Certificates for Counsel are often applied for in such cases

4. (untitled)

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

This is not within the remit of the judiciary

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

Vulnerable witnesses and defendants

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We agree with the proposals, perhaps the final version should make specific references to the Judiciary in the lower courts

18.9) Do you have any further information to help inform our impact assessment?

No

Not a response ANNEX TO ONLINE RESPONSE Naomi Redhouse Consultation on Advocacy Standards

Redhouse, DJ(MC) Naomi DJMC.Naomi.Redhouse@eJudiciary.net

Dear Sir/Madam,

I submitted a response to the above consultation online yesterday. I could not add all the information that I wished to give you in the format of the online answers.

Please note that the submission was from the legal committee of HM Council of District Judges (Magistrates' Courts) on behalf of the 118 District Judges (Magistrates' Courts) of England and Wales. District Judge (Magistrates' Courts) are full time professional judges who have extensive experience of dealing with cases involving youths. We undergo specialist training in order to be authorised to sit in the youth court and many of our number are specifically further authorised to deal with serious sex cases in the youth court under Criminal Practice Direction XIII Annex 2. As a result we deal with the most serious of allegations which are tried in the youth court.

We are content that the response be published but I would be grateful if the details of my email address could be excluded from that publication. There was no option for this choice in your online responses.

Kindly acknowledge safe receipt.

Yours sincerely,

Naomi Redhouse

Naomi Redhouse
District Judge (Magistrates' Court)
Sheffield Magistrates' Court

Assuring advocacy standards consultation

Response ID:94 Data

2. About you

1.
First name(s)

Simon

2.
Last name

King

3.
Please enter your SRA ID (if applicable)

141928

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

Elliot Mather LLP

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

Yes.

Solicitors are well aware of their professional duties to only undertake cases that fall within their competence and to utilise

expert advocates where appropriate.

12.

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

There is simply no basis whatsoever for this proposed change. Insofar as Youth Courts are concerned there is no evidence whatsoever of poor advocacy ! The vast majority of Youth Court advocacy is carried out by a cadre of qualified solicitors who have many years training and huge experience. They know the client, have dealt with them in the police station and are very familiar with the workings of the Youth Court.

If the trial is beyond their competence which will be a very rare occurrence then trust their professional judgement to brief a suitable advocate.

HRA training does not make a Youth Court advocate. Toolkits like the Advocates Gateway and the Law Society training course for advocacy for vulnerable witnesses are hugely valuable and it is that training that should form the basis of Youth Court training for advocates not the HRA status. By all means have compulsory training for Youth Court advocates but tailor it properly to what is needed and don't throw away advocates of many years experience to hand it over the role to ill equipped advocates who happen to be HRAs.

13.

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

No.

I think that if YC advocacy is to be reformed it should be done properly by introducing a specialist training and qualification open to Solicitors HRAs and the Bar.

14.

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

Yes.

15.

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?

No.

For a start how are you going to evaluate which either way matters would have gone to the Crown Court if it had involved an adult ? This is a judicial decision.

The HRA qualification does not indicate a specialism of dealing with Youth Court cases.

There is no evidence whatsoever anywhere of poor quality advocacy in the Youth Courts. Much of the evidence that you quote in your consultation is actually about alleged poor advocacy by HRAs. However there is very little evidence of a significant level of complaints (the figure seems to be about 1 a year ?)

Please also see comments in Q.2 above.

4. (untitled)

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

Yes

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

Nothing to add.

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

I think that you are trying to solve a problem that doesn't really exist.

How many complaints are there about advocacy a year ?

perhaps there is no reporting of these concerns because they do not exist not because people are not aware of how to report them.

19.9) Do you have any further information to help inform our impact assessment?

No



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C H A M B E R S

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Solicitors Regulation Authority,
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advocacy@sra.org.uk

13 November 2019

Dear Sir/Madam

Joint submission by Howard League for Penal Reform and Garden Court Chambers to Question 5 of the Solicitors Regulation Authority (SRA) Consultation on Advocacy Standards November 2019

We write in respect of question 5 of your consultation: *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?*

We welcome the SRA's decision to impose quality standards on solicitors representing children in the criminal courts.

However, we do not agree with the current proposal to require youth court solicitors to pass the SRA's 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. In our view, this could cause more problems than it solves.

As the consultation paper noted, the *Youth Proceedings Advocacy Review*, published in 2015 by the Bar Standards Board and the Chartered Institute of Legal Executives stated that advocates were lacking in training in specialist procedures and sentencing powers in the youth courts. The review found that advocates had difficulty in communicating and engaging with child defendants and were not always adequately prepared. The UK

Government's recent *Review of the youth justice system* (2016) included a recommendation that the SRA should introduce mandatory training for *all [our emphasis]* lawyers appearing in the youth court (recommendation 22). These recommendations align with international standards which require *all* advocates representing children to undertake on-going specialist training to ensure their competence. The United Nations Standard Rules for the Administration of the Juvenile Justice 1985 ('The Beijing Rules'), para 22; The Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Adopted by EU Ministers 17/11/2010, para 39.

The skill set required to qualify as a higher rights advocate would not ensure solicitors understood the law and procedure in the youth court and were able to effectively engage and communicate with children. Therefore this regulatory change would not provide the quality assurance that an advocate was competent to represent children in the youth court. The requirement would also exclude a significant number of experienced and specialist solicitors who currently practise in the youth court without improving the quality of advocacy.

Representing children in trouble with the law is important and skilled work, requiring a range of specialist legal knowledge, expertise and practical skills, that should be recognised and properly remunerated. Too many children are unnecessarily criminalised and/or punished too harshly because they have not had the expert representation they need and deserve. We refer the SRA to our recently published guide on representing looked-after children in police custody (<https://howardleague.org/publications/representing-looked-after-children-at-the-police-station/>) which demonstrates the complexity of this work.

We therefore propose that the SRA adopt a similar approach to that taken by the Bar Standards Board, requiring *all* solicitors who practise in the youth court to demonstrate that they have the competency to do so, and work towards developing a specialist qualification. This should go hand in hand with obtaining proper remuneration for specially skilled, expert children's criminal lawyers in respect of legally aided youth court cases and discussions with the Legal Aid Agency to recognise expertise in this area.

We would be happy to meet with you to discuss this further

Yours



Dr Laura Janes
Legal Director
The Howard League for Penal Reform



Kate Aubrey-Johnson
Barrister, Garden Court Chambers
Chair, MoJ Sector-Led Working Group on
Quality of Youth Advocacy

Assuring advocacy standards consultation

Response ID:114 Data

2. About you

1.
First name(s)

Helen

2.
Last name

Johnson

3.
Please enter your SRA ID (if applicable)

148136

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

191381

9.
Please enter your organisation's name

Johnson Astills

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

We agree that there is no necessity to change this as the principle works well and ensures clients are represented by a

solicitor of the correct level of competence

12.

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

No we are not clear why the standards should be revised. Even if HRA qualifications are obtained during training the rule above ensures that they are not exercised until the solicitor is competent to do so. Also, solicitors often qualify after many years working in the legal sector during which they have gained significant skills. We have a trainee who took the Bar exams 10 years ago but was unable to secure pupillage and so is now qualifying as a solicitors having worked in criminal justice for many years. She will be in strong position to undertake HRA work from an early stage
Junior Barristers appear at the crown court whilst still in pupillage - there appears to be no parity between what is acceptable for the Bar and what is acceptable for Solicitors

13.

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

No. Any concerns over standards and consistency can be managed by a single set of materials and standards and auditing of assessment centres.
Reducing competition is likely to reduce availability geographically, increase cost and drive down standards - this was our experience with interpreting services being limited

14.

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

No see above 2)
There should be a single set of advocacy standards across the Bar and Solicitors to prevent an unfair advantage to the junior bar

15.

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?

No in our experience very skilled youth court advocates are not always HRA
this could lead to youths being unrepresented if no HRA is available in a particular locality
it also means that very junior barristers could represent a youth whilst a solicitor of 20 years call could not
youths require special handling and continuity of representation and this step would interfere with this

4. (untitled)

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

Yes toolkits are a useful resource and anything that can build on that would be welcomed

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

there are already considerable resources available - is this a suitable area for the regulator or is it more appropriate for training bodies to offer this?

18.8) Do you agree with our proposals to support reporting? Do you have other

suggestions about how we might improve our reporting processes?

we are not convinced that there is a problem with current reporting processes? is there actual evidence of that rather than anecdotal evidence which may not be based on fact?

if the current processes are not properly signposted it would be better to resolve this rather than create a new system on top of the existing one

19.9) Do you have any further information to help inform our impact assessment?

we are not persuaded that the current proposals have been considered properly in context. Duty solicitors are declining, there are some areas of the country where there is very little provision, it is very difficult to recruit new criminal defence solicitors and those trained by us often get poached by other firms, local authorities and CPS. There are few new entrants in this area. We do not believe the impact assessment has taken account of these factors.



The Law
Society

Assuring advocacy standards

The Junior Lawyers Division
response to the SRA consultation

November 2019

Assuring advocacy standards

The Junior Lawyers Division response to the SRA consultation
November 2019

Introduction

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales with an independent representative voice. The JLD is one of the largest communities within the Law Society with over 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors, solicitor apprentices and solicitors up to five years qualified.

The JLD has considered the response prepared on behalf of the Law Society and supports its response to the consultation. However, the JLD wishes to further highlight the points that are of particular concern to its members.

Absence of Evidence

The JLD supports high professional standards and improving standards wherever there is a clear need. However, any proposals for change need to be supported by evidence that improvement is needed in the first place (and we welcome the SRA's acknowledgment of that on page two of the consultation document, where it is stated that the approach should be based 'on clear evidence of risk').

However, the consultation paper states that *"there is a lack of robust evidence on the scale and nature of concerns about the standard of advocacy provided by solicitors."* and that *"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."* Further, we understand that the SRA has accepted that the anecdotal comments by judges about the quality of advocacy also apply to barristers and not just solicitor advocates.

As such, it is unclear to the JLD what the regulatory justifications for these current proposals are, and we strongly suggest that a robust data-gathering exercise takes place before any changes are considered further. It is also unclear why the SRA is approaching this issue individually, rather than in conjunction with the Bar Standards Board, especially as the Jeffrey Review (cited by the consultation document) advocated a common approach between the two regulators.

Cost implications as relevant to diversity and SRA objectives

Any measures that increase the cost for solicitors to conduct high court, crown court or youth court advocacy are likely to have a negative impact on the availability of advocates, given that solicitor advocates also normally provide all the other solicitor services, in addition to advocacy, including police station and magistrates court advice and representation. It is also

likely to disproportionately impact junior lawyers who have limited means to funds courses in any event.

This would also impact negatively on the SRA's achievement of their statutory objectives which include improving access to justice. The consultation paper and impact assessment acknowledge that there will be a disproportionate impact on BAME solicitor advocates, given that they are 'over-represented' in the criminal solicitors' profession. This seems to be in direct opposition to the SRA objective of 'encouraging an independent, strong, diverse and effective legal profession'.

Questions

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?*

It is not yet known how advocacy skills will be tested on the SQE. It is also unclear at this stage what impact the SQE will have on solicitor standards. As such, until the impact of the SQE is fully understood, the JLD is not able to agree or disagree with the proposal.

However, at the present time, the JLD notes that the SRA's current and forthcoming handbooks already place obligations on solicitors not to undertake work beyond their competency and act in the best interest of clients and believes this is a sufficient check.

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

This is not within the JLD's expertise and we do not have the resources to undertake research in this area. The JLD has however considered the Law Society's response and is broadly in agreement.

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

The JLD understands the benefits of a centralised assessment to ensure consistent standards. However, the SRA needs to provide further information in relation to the SRA's proposals for where assessments will be taken, how many centres there will be and the costs of the proposed centralised assessment. The JLD is concerned that a single assessment provider is likely to reduce the number of assessment centres which will disproportionately affect those with disabilities, caring responsibilities and those of limited means. A single assessment organisation will also need to ensure accessibility for those sitting exams in Wales including the capability to provide training and assessments in Welsh. The JLD has raised similar concerns in relation to the SRA's proposals on the SQE.

The SRA should carry out a full impact assessment of its proposal to have a centralised assessment, publish the results and consult on them fully before implementing any changes. The impact assessment annexed to the consultation papers appears to be wholly inadequate with no actual assessment or analysis.

The JLD does not agree with the proposal in its current form. We support the suggestion of the Law Society that concerns surrounding consistency of training and assessment could be addressed by having one agreed set of materials and standards that all suppliers are required to use. This would address some of the concerns we have raised above in relation to potentially disproportionately affecting those with disabilities or caring responsibilities.

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

Trainee solicitors can currently undertake the HRA assessment as part of their Professional Skills Course (PSC). The JLD is not aware of any other circumstances in which an individual can take the assessment prior to being admitted. If the SQE is introduced, there will be no PSC and therefore it is not understood when it is proposed that the HRA qualification could be undertaken prior to qualification for people following the traditional route in the transitional period of the SQE's implementation

For people continuing to follow the traditional route (LPC/PSC route (while available)) the JLD does not consider that admission in itself is a suitable criterion for an individual's ability to take the assessment. For example, there would be no difference in practice between an individual taking the assessment two months before admission and taking the assessment the day after admission. If access to the profession is to be limited by level of experience, then the SRA needs to put forward detailed proposals on this and consult on it. The consultation in its current form does not provide sufficient detail for the JLD to comment on the proposal.

The JLD is also concerned that removing the ability to undertake the HRA assessment as part of the PSC would place a cost barrier for junior lawyers. Currently, if taken as part of the PSC, the training and assessment is funded by the individual's training organisation.

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?*

This is not within the JLD's expertise and we do not have the resources to undertake research in this area

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

The JLD agrees that any resources aimed at supporting practitioners is likely to be helpful.

However, Paragraphs 46 and 47 in this section set out proposals to develop 'resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors. It is not understood how the SRA can provide lay members of public with resources which can help them determine whether advocacy has been carried out to a high standard. Advocacy standards can only be objectively

assessed by those who are similarly trained and the JLD does not consider that any amount of resources will allow members of the public to determine if advocacy has been carried out to a high standard. The JLD considers resources of this nature could be counterproductive.

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

The SRA should provide additional resources for junior solicitors who are regularly carrying out advocacy in the courts, including toolkits on witness handling and in particular on handling vulnerable witnesses.

8. *Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?*

The consultation paper does not provide sufficient information about the proposed nature of the reporting process. Any reports could have very serious consequences for solicitors, and in particular junior solicitors. As such it is extremely important that the SRA provides detailed information on their proposals, including information about how reports will be made, how reports will be assessed to verify if they are genuine and what steps will be taken by the SRA to fully investigate reports, before the JLD can comment further.

9. *Do you have any further information to help inform our impact assessment?*

The JLD has considered the Law Society's response to this question and is in agreement. In addition, the JLD is concerned about the impact that the proposals would specifically have on its members. The cost increase in particular is likely to have a greater impact on junior lawyers.

The views expressed in this consultation response are those of the Junior Lawyers Division and do not necessarily reflect the view of the Law Society of England and Wales unless stated.

NS08 LAPG response to SRA consultation on 'Assuring Advocacy Standards'

Helen Johnson hlj@johnsonastills.com

I write on behalf of the Legal Aid Practitioners Group (LAPG) to confirm that we support and adopt that response submitted by the Law Society.

Regards

Helen Johnson

Solicitor Advocate/Managing Partner

Johnson Astills

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Sent by email only to consultation@sra.org.uk

12 November 2019



Dear Sir/Madam

Consultation: Assuring advocacy standards

The Legal Services Consumer Panel (the Panel) welcomes proposals for improving how the Solicitors Regulation Authority (SRA) regulates advocacy standards in civil and criminal work. The benefits of improvements for consumers include bolstering confidence in the quality of advocacy services and empowering consumers with the knowledge of what they can expect from their advocate.

We are pleased to see the SRA emphasise the importance of client care in standards. However, we expected to see more focus on clients' experience in the research that informed this set of proposals. This might include conducting surveys of users.

The SRA starts by outlining why it is concerned about standards of advocacy, then goes on to note five research reports which highlighted and raised concerns about the quality of advocacy. The SRA also referred to its own qualitative research which found that two thirds of the judges interviewed said that it was common practice for advocates to take cases beyond their levels of expertise. However, in other sections of the consultation document, the SRA states that most of the evidence available is anecdotal and that it has struggled to obtain evidence. To bolster this point, the SRA said it has not received many reports of poor advocacy from judges and the courts. But the consultation also goes on to highlight significant lack of awareness and confidence in reporting poor advocacy. The reader is left with no clear stance on whether the SRA believes that there is a problem to address. And perhaps as a consequence, the proposals are not appropriately targeted.

The Panel considers the problems in this area to be:

- There is not enough research, including with consumers, and it does not seem to be applied adequately to standards development.
- Consumers lack clear standards to know what quality advocacy is and what they should expect from an advocate in terms of service quality, technical knowledge and advocacy skills.
- Without clear standards, providers do not know what they should be delivering in terms of customer service, legal knowledge and advocacy skills. They do not understand clearly enough that they can be called to account for falling short of standards, for example by taking on cases they lack the legal knowledge to do effectively
- Judges have no clear guidance on what to do when they see poor advocacy that needs to be addressed and are probably not clear what their responsibility is to ensure standards are being met.

In light of the problems described above, careful consideration must be given to setting standards at an appropriate level to ensure all advocates know they must deliver a minimum standard of service for consumers, but not so high as to become a barrier to talented advocates building their experience. Moreover, standards must be monitor-able and pragmatic ways must be found to monitor them that do not rely solely on self-assessment. And as well as entry requirements, ways to ensure ongoing competence must feature in the standards, including monitoring. On balance, we do not think the SRA has addressed the current failings robustly enough.

As noted above, we are concerned by assertions in the consultation paper that there are advocates who appear in cases that are beyond their competence. The SRA notes that it forbids advocates from practising outside their competence, but it does not outline how it monitors or measures this. Equally concerning, the SRA states that it will continue to rely on solicitors making self-assessment on their competence, with no external oversight.

For a long while, a striking feature of the existing quality assurance arrangements for advocates is the emphasis on entry requirements to safeguard quality, with little emphasis on assessing ongoing competence. The current proposal remains limited in this regard. There is also a missed opportunity around measuring quality. It will be vital to ensure this process is informed by client feedback, for example by learning from complaints and thinking creatively about ways to survey users.

Reflections on the consultation questions.

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?

The Panel disagrees with the SRA's position. We start from the premise that there is a problem with advocacy that must be addressed. While we accept that there may not be significant numbers of advocates who are inadequate, we consider the potential detriment of even a minority of poor advocates to be so significant and life changing as to require robust regulatory intervention. Therefore, we consider it completely appropriate for the SRA to stipulate that any advocate who wishes to work in the Magistrates Court and upwards should be assessed in witness handling. We do not agree that a solicitor should be able to self-assess their competence in this regard. While we agree that witness handling assessment at the Solicitors Qualifying Exam (SQE) stage may be disproportionate, as not all would choose to practice criminal law, we believe that those who choose to practice criminal law, after the SQE, should be assessed as qualifying in witness handling. What is likely to be at stake is too significant, particularly when one considers the vulnerability of those who may find themselves in the Magistrates Court.

Do you have any comments on our revised HRA standards?

No.

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

Yes. We are convinced by the SRA's analysis and we agree that a company offering the training should not also be the assessor.

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

Yes, we agree with the SRA's rationale and analysis.

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?

The Panel is of the strong opinion that the SRA should impose a new requirement that solicitors practising in the youth courts must hold the criminal HRA qualification where they are acting as an advocate, even where similar cases for adults would not go to the crown court. We believe that the vulnerability of young people requires this specification.

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

N/A

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

N/A

Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We agree with the SRA's proposals. It would be useful if the SRA set a timeframe for when it would review whether its proposals to support reporting have been effective.

Do you have any further information to help inform our impact assessment?

No.

I hope you find these comments helpful. Please contact Lola Bello, Consumer Panel Manager, with any enquiries.

Yours sincerely,



Sarah Chambers

Chair

Legal Services Consumer Panel

Assuring advocacy standards consultation

Response ID:104 Data

2. About you

1.
First name(s)

Edward

2.
Last name

Jones

3.
Please enter your SRA ID (if applicable)

360207

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

London Criminal Courts' Solicitors' Association

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

High-quality advocacy is the lifeblood of any successful criminal defence practice. A good performance in court which results in a favourable outcome ensures a happy client, and thereafter a repeat customer. In short, good advocacy is good for business. It is not in any firm's financial interests to send poor advocates - either in-house or instructed external counsel – to court if their performance is unlikely to ensure that the client feels as if they have been properly represented by having their case advanced effectively. There is therefore a solid business case to be made for employing and instructing good advocates, and this acts to some degree as its own in-built quality control mechanism.

The LCCSA committee were therefore surprised to learn that the Solicitor's Regulation Authority were sufficiently concerned about the standard of advocacy among defence solicitors to feel the need to introduce changes, some quite radical, to the way that defence solicitors' advocacy is regulated. The LCCSA were not aware of any particular clamour amongst the general public, stakeholders within the criminal justice system or elected politicians for the improvement of solicitors' advocacy standards. We are therefore somewhat curious as to where the sudden impetus for the improvement of standards in this area has originated from.

Be that as it may, the LCCSA will always be supportive of initiatives that it feels will enhance the standing of the solicitors' profession with the general public and we therefore welcome the opportunity to engage with this consultation.

As a general point to be made at the outset, we take the view that a serious flaw in the consultation is that it does not contain any working definition of what is meant by "poor" advocacy.

There are obvious fundamental errors in the way that a case is conducted by an advocate in court that every competent defence advocate should know not to commit. For instance questioning a complainant about their previous sexual history without the leave of the court, introducing evidence of a non-defendant's "bad character" without the leave of the court, introducing evidence of their client's bad character without express instructions to do so from the client and so on. These errors however go beyond "poor" advocacy and can better be described as negligent. There is no evidence that the standard of solicitors' advocacy in the criminal courts is so poor that fundamental errors of this nature are being committed routinely, therefore the perception that criminal defence solicitors' advocacy is poor must stem from other, less egregious, ways in which defence solicitors are believed to conduct criminal cases in court.

The concept of "advocacy" as it is generally understood in the context of criminal defence means the manner in which the advocate addresses the bench in order to persuade the bench to decide the point in the way the advocate wants. At the very least, a competent advocate will present the court with information that is correct, in the sense that it accurately reflects their instructions from the client and in the sense that it accurately reflects the law, and will present that information in a way that is intelligible to the bench. If the advocate conducts the case in this way, even if the point is decided against them, they have done their job. In our experience, most solicitors appearing in the criminal courts conduct their cases in court in a way that adheres to these basic tenets.

We note that the consultation itself concedes that it not been possible to establish a "robust" evidential basis that "accurately identifies how widespread the problem is" and that there is "little evidence about whether poor advocacy is a widespread problem". With respect, we think it fair to say that this is hardly a strong position from which insist that the "problem" is so bad that changes are needed in order to ameliorate it.

We also note that the evidential basis, such as it is, for the SRA's proposals is "qualitative interviews" with 46 Circuit Judges and four High Court Judges. With the greatest respect, we take the view that this is a rather narrow evidential base from which to draw the wholesale conclusion that the standard of defence solicitors' advocacy is in some way falling short. It takes no account of the fact that most Circuit Judges and High Court Judges are drawn from the ranks of the independent bar and they might harbour a bias, be it conscious or unconscious, against solicitors appearing before them when, traditionally, that role will have been the exclusive preserve of their former colleagues at the bar.

Different solicitors do of course have different styles, and some styles may not be to the taste of some benches. This does not make those solicitors poor advocates. Some cases present poorly because they are hopeless cases, run at the insistence of the client and contrary to advice. That is not the fault of the advocate, who must ultimately act upon the client's instructions. We also make the point that if a Circuit or High Court judge is overseeing a Crown Court trial and they have concerns that the standard of the defence lawyer's advocacy is so poor that it is having an adverse effect on the fairness of the proceedings then it is their duty to stop the trial. We have never heard of this happening, either in London or anywhere else.

With these observations in mind, our responses to the questions posed in the consultation are as follows:

Question 1

No

11.

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

No

12.

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

We are neutral on this point

13.

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

Yes

14.

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?

No. We are very much opposed to this requirement.

If a problem has been identified, rightly or wrongly, with the standard of defence advocacy in the youth court we think it unfair to lay that charge squarely upon defence solicitors. Pupil barristers often appear in the youth court and they are, by definition, inexperienced advocates who may lack the skills to properly handle vulnerable witnesses. It may be that it is the proliferation of pupil barristers appearing in the youth court that accounts for the perception that the quality of the advocacy there is poor. Given that the SRA do not seem to have investigated the position with regard to drawing a distinction between solicitors and pupil barristers who appear in the youth court it is not possible to say whether this is correct or not. In any event, it is in our view unfair – and potentially a breach of competition law – to impose an additional regulatory burden on solicitors while the bar is left unaffected.

We foresee a potential exodus of solicitors from youth court practice, leaving the junior bar to fill the vacuum. The proposal might therefore have the reverse effect to that which was intended i.e. less experienced and well-qualified advocates conducting youth court trials, rather than more. We therefore oppose this requirement because we take the view that by changing rights of audience in either-way and indictable only offences there will be a significant impact on the provision of advocacy services by defence solicitors in the youth court. The consultation at paragraph 39 states that "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". Leaving aside that this is a rather sweeping generalisation seemingly unsupported by any evidence, we disagree that the 50% of solicitors with HRA will be unaffected by this change. Not every solicitor who has obtained the HRA qualification uses it regularly (or indeed at all) and the 50% of solicitors with HRA who practice in the youth court may not do so very often. Some will simply aim to comply with minimum standards for CLAS membership and some will not wish to conduct youth court trial advocacy for the low rate of pay on offer on legal aid. Of the solicitors with HRA who do conduct trials in the youth court, it is possible that few will conduct trials on a regular basis.

The consultation seems to be proceeding upon the assumption that every solicitor with HRA who practices in the youth court will (a) have the necessary skills to conduct trials that require witness handling and (b) be minded to conduct trials on a regular basis in the youth court, even if it means taking on more of this kind of work and thereby changing their established practice. We take the view that the assumption is incorrect, or at the very least not supported by any evidence. Given the low rates of legal aid remuneration in the youth court and the infrequency with which the courts grant certificates of assigned counsel in youth cases, we take the view that there is little incentive for solicitors with HRA to develop their practice into youth court work to fill whatever vacuum is left by the departure (and we take the view that there will inevitably be a departure) of non-HRA solicitors from the youth court.

And what of the remaining 50% of defence solicitors without HRA of practice in the youth court? We take the view that there is a danger that some of these solicitors might cease acting in the youth court altogether because they are not minded to obtain the HRA qualification. Some solicitors have adopted youth advocacy as a particular specialism and practice almost exclusively in the youth court. Given the fact that the youth court is a lower court there would have been no need for these solicitors to have obtained the HRA qualification in order to develop their careers in this field. There are therefore hugely experienced specialist youth court solicitors practicing at the moment who do not have the HRA qualification and it does not seem as if the consultation has paid any regard to how this hugely important resource, which is dedicated to protecting some of the most vulnerable people in the criminal justice system, will react to the news that if they want to continue practicing in the youth court they will have to obtain the HRA qualification. Some might decide not to continue to practice in the youth court. We take the view that even if one such highly qualified solicitor were to cease practicing in the youth court because of the requirements to obtain the HRA qualification this would be a serious loss to the system (and undermine the intended effect of the proposal i.e. to have better standards of advocacy in the youth court).

If the proposal is implemented, a commitment from the SRA towards funding the costs of doing the new HRA qualification for defence solicitors would in our view greatly assist (although we still object to the proposal in principle). If it could be guaranteed that certificates of counsel would be more readily granted, perhaps in every serious either-way or indictable only case tried in the youth court, then this would also go some way towards making this proposal more palatable and attracting more of the kind of advocate that the youth court is apparently in need of, but this is not within the SRA's gift.

We take the view that given that, as with any profession, reasonable rates of pay are one of the most reliable guarantors of a high-quality service, if the SRA is minded to expend energy upon improving the standard of solicitor advocacy in the youth court those energies will be better spent lobbying the government for increased legal aid rates and legislation that obliges the courts to grant certificates of counsel more readily in serious youth cases. Any consideration of this proposal should therefore be delayed until after the Criminal Legal Aid Review has been completed in 2020, following which we would expect there to be an additional payment or enhancement for youth court work at the very least to ensure parity with the prosecution (who have recently enjoyed a 100% increase in trial fees).

We take the view that the SRA is ultimately not the institution to regulate the youth court – if it is to be done, it must be done at a higher level. If not, as we can see in these proposals, there may be unfair competition arguments. For instance, the bar will be able to send a "second six" pupil to take the work when a 20 years PQE solicitor without HRA cannot. This surely cannot be right.

We do not share the SRA's touching faith in the ability of the HRA qualification to act as a panacea for the poor standard of advocacy that is apparently found in the youth court and make the point that there are less extreme options available than the foisting of this qualification defence solicitors. For instance:

- Compulsory vulnerable witness and client training (we are not referring to the Law Society course on this topic because the feeling amongst our youth specialists is that this course is not well suited to the youth court – we therefore take the view that a bespoke youth court course is needed)
- A short course to ensure effective communication and advocacy skills
- A requirement that duty solicitors perform at least 1 hours' CPD covering youth court practice per annum

4. (untitled)

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

Yes

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

- Bail in youth cases

- Mode of trial in youth cases
- Sentencing in youth cases
- Vulnerable witness handling
- Applying for and using intermediaries in the youth court

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We have no objection to these proposals in principle and have no observations upon how the processes might be improved. We do however take the view that whatever proposals for the reporting of poor advocacy are implemented it be made clear that they should apply to both defence and prosecution advocates. We also take the view that before any such proposals are implemented the concept of "poor" advocacy should be defined with specificity.

18.9) Do you have any further information to help inform our impact assessment?

No

**SOLICITORS REGULATION AUTHORITY CONSULTATION PAPER: ASSURING
ADVOCACY STANDARDS (AUGUST 2019)**

RESPONSE OF THE LONDON SOLICITORS LITIGATION ASSOCIATION

The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has approximately 3,000 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Civil Justice Council, the Civil Rule Committee, The Law Society Civil Litigation Committee, the Commercial Court Users Committee and the Supreme Court Costs Group, to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change.

Introduction

The Association and its members are primarily involved in conducting civil litigation in the higher courts, rather than criminal litigation or the youth courts. We therefore confine our comments to areas of the Consultation Paper that affect solicitor advocates in civil litigation.

As an overall comment, we do not agree that concerns about the standard of advocacy in the criminal courts, and particularly the youth courts, should be used as a justification to alter standards for higher rights advocates in the civil courts. It would appear from paragraph 5 of the consultation paper that all the reports relate to the criminal courts, youth courts and coroners' court, rather than the civil courts.

It would also appear from paragraphs 6 to 9 of the consultation paper that much of the evidence is anecdotal, and not robust. We suggest that caution should be exercised in attempting to draw conclusions from such evidence.

We respond to the consultation questions as follows.

- 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?**

Yes.

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

For the reasons set out above, we do not consider that it is necessary to reform the standards for higher rights advocates in the civil courts. Moreover, some of the proposed revised standards for civil proceedings go beyond pure advocacy, and relate to what we regard as the competencies of a civil litigator, such as disclosure and inspection, negotiating settlement, and a good working knowledge of the CPR.

Paragraph 29 of the Consultation Paper states that the SRA will explore with the BSB and CILEx how to ensure that the HRA standards are aligned with those applying to

barristers and chartered legal executives. We agree with this principle of alignment, to ensure fairness and consistency of standards for all those who engage in advocacy in the civil courts.

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

It is not clear to us why a single assessment organisation is being proposed. The Consultation Paper does not provide any evidence of problems with the current providers. It is not apparent to us why several approved providers would be unable to achieve a consistent high standard.

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

Yes.

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?

No comment, for the reasons stated above.

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

No comment, for the reasons stated above.

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

No comment, for the reasons stated above.

8. Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No comment, for the reasons stated above.

9. Do you have any further information to help inform our impact assessment?

No.

Assuring advocacy standards consultation

Response ID:112 Data

2. About you

1.
First name(s)

Chloe

2.
Last name

Steele

3.
Please enter your SRA ID (if applicable)

530951

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

401158

9.
Please enter your organisation's name

McGuireWoods London LLP

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

We are not averse to the SRA's proposal in this respect and, based on the information provided in the consultation paper,

agree that attempts should first be made to develop the existing measures and training, with the matter being kept under review.

12.

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

We agree that it is important to ensure that candidates are being assessed to an equivalent standard across providers. However, in circumstances where a form of standards already exists, it is not clear how revising the same will ensure equivalent application across providers. Nonetheless, we agree that it is sensible to modernise the standards.

The consultation paper explains the rationale for the changes by reference to general evidence of "standards falling short" but contains limited information about the causes of the same, or what has been done to tackle specific instances. While we note the reference to the SRA's "new enforcement strategy", we consider it important that no aspect of the SRA's proposals is – or is seen to be – in place of proactive and regulatory action against particular firms/individuals.

The consultation paper states that "Judges felt regulators should be more robust in responding to poor advocacy when alerted to problems". We agree that responding to poor advocacy is an important part of the SRA's role and the SRA's proposals could address that more fully.

The consultation paper and initial impact assessment indicate a strong desire not to make it harder for lawyers to gain the HRA qualification and not to reduce the number of lawyers with the qualification. We do not necessarily disagree with that aim but query whether sufficient consideration has been given to how that marries up with the need to improve standards: it seems to us that a reduction in such figures may be justified if those who are excluded would have conducted substandard advocacy.

Considering the draft new "Standards for solicitor higher court advocates in civil proceedings" and "Standards for solicitor higher court advocates in criminal proceedings" as against the existing "Statement of standards for solicitor higher court advocates", why has the concept of "improperly obtained evidence" been omitted from the draft new Standards? Similarly, why are items such as bundles and appeals now included in much less detail?

(We note that the introductory row in the "Standards for solicitor higher court advocates in criminal proceedings" appears to be incorrect – it relates to civil rather than criminal proceedings.)

13.

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

We do not agree that a single assessment organisation should be introduced for the HRA qualification.

We note that, at present, the responsibility for assessing competence is delegated to a range of providers. If change is needed, perhaps the SRA could implement a more stringent syllabus – this could build on the "[i]ndicative syllabus content" in the draft new Standards. Alternatively, (although we do not consider it necessary based on the information provided) a single, standardised test for the HRA qualification could be implemented, still using multiple providers. Introducing a single assessment provider is not the only way to achieve a consistent standard and perhaps is a little extreme (particularly based on the reasoning and evidence provided in the consultation paper).

(Taking into consideration the similar model proposed for the Solicitors Qualifying Examination as well) there is a risk that a trend towards appointing single assessment organisations will snowball: currently, the organisations offering the HRA qualification offer other qualifications too – such as the Graduate Diploma in Law, Legal Practice Course and Professional Skills Course. For the avoidance of doubt, (absent clear explanations in support) we do not consider that a single assessment organisation should be introduced for any such qualifications and, as the consultation paper does not explain why HRA should be singled out in such a way, we query whether sufficient consideration has been given to the same.

Introducing a single assessment organisation may be perceived as anti competitive and elitist, contradicting social mobility objectives.

We note that the SRA intends to select the single assessment organisation through an open procurement process but no detail has been provided as to how the organisation would be selected. The rejection of the other assessment organisations may have negative effects on how those organisations, and other qualifications from those organisations, are viewed.

The consultation paper highlights the quality of teaching as an issue to be dealt with. To the extent that there are specific areas in which some organisations' HRA qualifications are substandard, those certainly should be addressed. However, as the single assessment organisation would be introduced with respect to the assessments only (rather than any training), we do not see how the SRA's proposal remedies this perceived problem. Moreover, a disconnect between the training and assessment/qualification aspects of HRA may be problematic. The initial impact assessment refers to this potential issue briefly but does not appear to acknowledge that the SRA's proposal may adversely affect the training offered to and skills gained by lawyers.

It seems to us that (if there is indeed a problem to be addressed) the SRA should give further thought to developing and improving the HRA offerings by all assessment organisations in the first instance.

14.

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

We agree with the proposal that the HRA assessment can only be attempted by admitted solicitors.

As noted in the consultation paper, solicitors gain lower rights of audience at the point of admission, having gained relevant skills through passing the Legal Practice Course and the Professional Skills Course. In line with the SRA's proposal in this respect, we consider that the appropriate time for a lawyer to attempt the HRA assessment is after admission.

The consultation paper does not indicate whether the SRA has undertaken any review of the current position of there being no mandatory training or experience requirement. We would be interested to hear the SRA's thoughts on the same.

15.

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?

We have no specific views on this but, based on the information provided in the consultation paper, are not averse to the proposal. We note that the consultation paper indicates that the SRA has conducted an initial impact assessment and we consider that a more thorough impact assessment may be justified. We agree that stakeholder views on the potential impact should also be sought.

We agree that young people in the criminal justice system need to be protected, including by receiving proper representation. However, we note that the initial impact assessment asserts that implementing the proposal "may have some impact on the numbers of solicitors able to advocate serious cases" and states that the SRA is "unable to assess the exact extent of any impact but believe it to be low". We have some concern as to how full a consideration has been given to the potential impact of related costs (including travel costs and costs relating to the lack of availability of training/assessment dates/times) on firms in different regions and of different types. The supply of solicitor advocates to particular clients should not be reduced inadvertently.

4. (untitled)

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

We think that a suite of resources aimed at supporting practitioners to meet high advocacy standards would be useful for many advocates, and would promote consistency and high standards across the profession.

We agree that clients may benefit from access to resources that explain the criminal and civil advocacy standards expected of solicitors, including by being able to use the same to recognise when a solicitor does not meet them. However, we think it is important to ensure that such a proposal is not – or is not in any way seen to be – a lack of our profession policing itself and holding itself to the highest standards.

The consultation paper provides limited information as to how the proposed publishing of aggregated and anonymised data on advocacy reports the SRA receives is expected to help solicitors and firms, and/or how it will provide information that can be used to improve service delivery and maintain standards. We are not clear on how those outcomes will be achieved by the publishing of such data but are not averse to the same – provided that the related costs are not prohibitive (or at the expense of more worthwhile endeavours) and that, again, this is not in place of proactive and regulatory action.

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

It might be useful to include interactive resources, enabling solicitor advocates to put their knowledge and skills into practice.

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We agree with the SRA's proposals but think it would be beneficial to see them in more detail – particularly with respect to wider stakeholders, consumers and consumer groups. We note that the SRA proposes to engage with stakeholders, consumers and consumer groups but the consultation paper does not provide a detailed explanation of how.

While the Code of Conduct already requires clients to be informed in writing about their right to complain to the Legal Ombudsman and so on, perhaps the obligation on firms could (i) be more prescriptive, (ii) require them to provide certain SRA/Legal Ombudsman literature to their clients and/or (iii) require them to inform their clients in writing about making a report to the SRA in addition.

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:95 Data

2. About you

1.
First name(s)

Mark Marriott

2.
Last name

Marriott

3.
Please enter your SRA ID (if applicable)

26094

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

63359

9.
Please enter your organisation's name

Phillips Solicitors

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

I agree that practice rights should not be changed but it is insulting to suggest/imply that solicitors undertake work where they

are not competent. It is a fundamental tenet of our practice that every client should be represented appropriately including consideration of their vulnerabilities and those of witnesses.

12.

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

They are not evidence based. The quality of youth court advocacy no doubt varies and we would agree that training is essential but HRA training is by no means the only route bearing in mind other options available including for example the Law Society training on vulnerable witnesses. My experience of the youth court (as youth social worker and solicitor over 35 years) suggests that solicitors are no less competent than barristers and very often much more attuned to their client's needs and characteristics. I know of no research which says otherwise and I question the basis on which this proposal is made

13.

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

No opinion

14.

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

Yes

15.

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?

This is a false premise. There are of course some indictable only offences but you cannot pre judge which either way offences would end up in the crown court in the case of an adult. In any event HRA training is not the only suitable training. Where is the evidence that it is non HRA qualified solicitors who are failing clients in the youth court? This is not my experience

4. (untitled)

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

Yes of course

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

Nothing to add

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

I don't have an issue with the principle of improving the reporting process across the board but to focus on advocacy in the youth court is unjustified and not evidence based. Practitioners will all have horror stories but will all say that poor advocacy is the least of our problems as the standards are generally high

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:46 Data

2. About you

1.
First name(s)

Attiq

2.
Last name

Malik

3.
Please enter your SRA ID (if applicable)

348037

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Society of Asian Lawyers

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

Yes

11.
2) Do you have any comments on our revised HRA standards?

Some of the required standards are unexpected from any newly qualified advocate, be it a solicitor or barrister, there should

be equality in this regard across the profession. Further, there is already a real issue in access to justice as well as well as supply in terms of legal professionals operating in criminal law, such standards are likely to negatively impact on the number of solicitors able to do the required work and thus further impacting on 'supply'.

12.

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

No, we have seen issues arise previously from single providers of service and it is contrary to the principles of competition law in terms of pricing, quality and location of services.

13.

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

This restriction will have an impact on feasibility and accessibility for solicitors. Most solicitors currently do the assessment as part of their PSC which is paid for by the employer, to move to only allowing admitted solicitors from doing the assessment will further reduce the number of solicitors doing the assessment and thus would be unfair, unnecessary and disproportionate in the circumstances.

14.

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?

No, there are many advocates that are already competent to do this work, it is not clear what concerns have arisen or how these are objectively measured, such a requirement would have a significant adverse impact on not just the number of qualified advocates to do the work but also on the feasibility of law firms being able to sustain the financial impact that this could have on them. It is also of note that the HRA qualification does not include a module for vulnerable witnesses in any event.

4. (untitled)

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

Yes

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

Advocacy and handling of vulnerable witnesses

17. 8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No, sufficient processes in this regard already exist and there is a complete absence of evidence of demand for such. If there is an issue with your website and social media in this regard then this is a matter for yourselves to address, not to pass the buck onto and encourage complaints against practitioners. Unless factually the necessity for encouraging complaints can be illustrated then we suggest that such a course of action is not pursued. With regard to BAME clients, there should be an encouragement and support of BAME professionals to enter and stay in the profession, professionals who are from the same background and can relate to clients, can understand clients and their needs effectively as well as communicate the intricacies of a case and its outcome to them, thereby reducing complaints from this group. The proposals made to introduce HRA assessment requirements to operate in the magistrates courts will have a huge affect on BAME firms and thus BAME solicitors as they would not be able to financially survive such a requirement, this will in turn increase issues for BAME clients

who will have reduced access to BAME legal representatives.

18.9) Do you have any further information to help inform our impact assessment?

Actual fact based statistics and any other evidence to justify the proposed implementation of the requirement of HRA qualification for youth court work, the demand for such as well as an equality impact assessment of how such a requirement can adversely affect small firms, in particular, as the majority of BAME owned firms fall into the small firm category.

Assuring advocacy standards consultation

Response ID:96 Data

2. About you

1.
First name(s)

Adam

2.
Last name

Tear

3.
Please enter your SRA ID (if applicable)

398890

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

Solicitors Association of Higher Court Advocates (SAHCA)

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

Yes - There is no evidence to suggest that this is not currently satisfactory.

11.
2) Do you have any comments on our revised HRA standards?

Civil Standards - These appear to be fairly generic and specifically things that solicitors are already tested on 1 - 5. Standard

six of the civil refers to criminal process of referring to previous convictions. It appears and is unclear if solicitor advocates will continue to be required to demonstrate that they will confront discrimination whenever it is presented in what every form. This appear to be a key client protection issue.

Criminal standards - As above in respect to discrimination.

12.

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

No - this is clear a retrogressive step, and will clearly only increase the costs of assessments very significantly.

13.

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

Yes- This was the status prior to an amendment by the SRA, but in practical terms makes little difference. As instead of qualifying on the day of admission, they can sit the exam on that day and obtain accreditation. SAHCA would propose that there be a longer period post admission with some review of learning from advocacy in lower courts, prior to attempting higher court qualification. The standard should require a period of extended learning and reflection, in line with SAHCA training.

14.

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?

This seems counterintuitive. There are very many solicitors who have many years of experience in the Youth Courts. Is the SRA proposal really that they either obtain HRA qualifications, or instruct a junior advocate to sit in front of them as a mouthpiece. This is an issue for the Courts, and for them to regulate who is allowed rights of audience before them not for the SRA.

4. (untitled)

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

Yes of course, but these are available through SAHCA, and the <https://www.theadvocatesgateway.org/toolkits> we are unclear as to what further resources are required. We would prefer that the SRA support current schemes rather than try to build additional schemes that will need to be kept updated.

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

Committal before the Courts

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Judges have generally be more than capable of reporting individuals who are not of a sufficient standard in matters. We fail to see how this will improve access to justice or protect vulnerable individuals. It will place additional pressure on an advocate not to pursue issues that are unpopular with judges, but are in the clients interests.

18.9) Do you have any further information to help inform our impact assessment?

The evidence for justification in these matters was poor, out of date and in some cases clearly not understood by the SRA.

This area is well regulated, and we would like to the SRA support training of advocates, an issue often subject to criticism, via SAHCA. Additionally we would wish to the SRA commit to selecting advocates in a non-discriminatory manner. Currently the SRA do not appear to instruct any solicitor advocates in work they do, and only members of the Bar. There are clear issues with this, and this needs to be resolved.



Law Society response to SRA consultation on 'Assuring Advocacy Standards'

November 2019



Law Society response to SRA consultation on ‘Assuring Advocacy Standards’

Introduction

1. We support high professional standards in advocacy. However, any review aimed at improving advocacy standards must be supported by evidence that clearly demonstrates specific areas where improvements are needed, and takes account of regulatory costs for practitioners.
2. The consultation paper makes a number of assumptions and assertions that are not supported by any such evidence. Under the heading ‘Evidence of standards falling short’ reference is made to *‘persistent concerns’* about the quality of advocacy. The paper goes on to admit in the same section however that *‘all this evidence is anecdotal. There is little evidence about whether poor advocacy is a widespread problem’*.¹
3. The term ‘advocacy’ is used repeatedly in this section in relation to ‘poor practice’ and to comments by judges on the quality of criminal advocacy. Most of these comments are not linked specifically to solicitor advocates, and yet the paper goes on to conclude that it is in relation to solicitor advocates that action on quality is required.
4. Advocacy is conducted by both solicitors and barristers, and in discussion the SRA accepted that the anecdotal comments by judges about the quality of advocacy also apply to barristers.
5. Paragraph 9 goes on to state that *‘only 89 complaints were received between 1 January 2015 and 28 February 2018, and that ‘only three percent related specifically to the solicitor’s competence’*.
6. We note that the SRA concedes that the quality of advocacy in general is not a cause for concern, and the 89 complaints registered in three years is extremely low. In roughly the same period – financial years 2015 to 2018 – 312,339 Advocates’ Graduated Fee (AGFS) claims were submitted, which makes the 89 complaints only around 0.028% of the total claims submitted.
7. We recognise that advocacy can be a high risk area; however we are concerned that some of the proposals could have a potentially negative impact on the supplier base, which is currently extremely fragile. These potential impacts need to be taken into account in any proposals the SRA develops following this consultation.
8. The impact assessment does not include any research; statistics or in-depth assessment of these potential impacts on the supply of legal advice across England and Wales. Our duty solicitor heat map² clearly indicates a looming crisis in the supply of criminal solicitors (duty solicitors also generally provide advice across the range of criminal work). The mean average age of a criminal duty solicitor across the whole of England and Wales was 47 over a year ago, and there is no evidence to suggest that the situation has improved since then. Our data highlights that in 5 to 10 years’ time

¹ Paragraph 9, page 7

² <https://www.lawsociety.org.uk/policy-campaigns/campaigns/criminal-lawyers/>

there could be insufficient criminal duty solicitors in many regions, leaving many individuals in need of legal advice unable to access justice.

9. Any measures that increase the cost for solicitors to conduct high court advocacy is likely to have a negative impact on this already fragile market, given that solicitor advocates also normally provide all the other solicitor services in addition to advocacy, including police station and magistrates court advice and representation.
10. This would also impact negatively on the SRA's achievement of their statutory objectives which include improving access to justice. The consultation paper and impact assessment acknowledge that there will be a disproportionate impact on BAME solicitor advocates, given that they are 'over-represented' in the criminal solicitors' profession. This seems to be in direct opposition to the SRA objective of 'encouraging an independent, strong, **diverse** and effective legal profession'.

Questions

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?

11. Yes. The SRA's handbook places obligations on solicitors not to undertake work beyond their competency and to act in the best interest of their clients. This principle works well in practice, ensures solicitors' competency, and acts as an effective deterrent not to undertake work without sufficient expertise and experience. In addition, solicitors' firms rely heavily on reputation in order to maintain and grow their client base. This acts as an effective check on solicitors not undertaking work beyond their competence. It would be damaging to a firm's reputation and therefore their income were they to send inexperienced solicitors to undertake serious and complex cases or hearings, and the consultation paper does not cite any evidence of this being an issue.
12. We therefore agree with the proposal not to change existing practice rights.

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

13. It is unclear from the consultation what impact the proposals may have on those individuals who are part of the Law Society's Children Law Accreditation Scheme, where solicitors are expected to conduct their own advocacy. It would be helpful to have more information on this.
14. The consultation also does not make clear whether the skills outlined in the proposed standards are intended to be aspirational – i.e. a goal that solicitors should be expected to work towards over a period of time, and before conducting advocacy in the Crown Court.
15. The paper proposes that the HRA assessment be undertaken after qualification, however it is not clear how soon after qualification it is intended it should be taken. The standards should however reflect the type of experience an advocate can expect to have gained during this required time period.

16. There are a number of requirements included that neither solicitors nor barristers would have experience of immediately after qualifying. If the revised standards are not intended to be applicable to newly-qualified solicitors, the ambit of the proposed revisions needs to be made clear.

17. The following are examples of skills that an experienced advocate should be expected to have, but not someone who has recently qualified:

- Knowledge – Para 5 – Arriving at a logical case theory, analysing good and bad facts
- Knowledge – para 6 – write a persuasive skeleton argument – the words, concise, accurate and persuasive.
- Knowledge – Para 7 – ‘Effective’ legal submissions in the Higher Courts – Managing ‘housekeeping’ (undefined), persuasively apply the evidence to the law,
- Knowledge Para 8 – Preparing and delivering effective and persuasive closing speeches in the higher Court, the structure of a persuasive speech.
- Knowledge Para 9 – Conducting an effective cross examination, controlling the evidence during cross examination (etc).

18. *Other comments on the revised standards:*

- Evidence Unit - 2(c) should include "negligent disclosure", which should be repeated under Indicative Syllabus Content.
- Evidence Unit - 6(c) should be pervasive to Sections 3, 4 and 5:
 - Evidence can be either admissible or not admissible.
 - If it is admissible, it can be admitted; e.g. by putting a statement into a case management form (not all admissible evidence *is* necessarily admitted).
 - Once admissible evidence has been admitted, it can be excluded. This last point can be critical, but does not seem to be reflected in the standards.
 - It should be made clearer that the possibility of evidence being excluded should apply to *all categories* of evidence.
 - Parts 3, 4 and 5 refer respectively to: (3) evidence generally, (4) witness (to fact) evidence and (5) expert evidence. All of those types of evidence can be excluded. But there is no reference in those sections to excluding evidence.
 - Part 6 is the only section that *does* refer to excluding evidence, but it appears to refer exclusively to ‘other’ categories of evidence.
- Advocacy Unit Introduction – it is unclear why the term "egregious error" is used, and then examples are cited of breaches of the Code of Conduct. The term "Gross Professional Error" has always been used in the past and we think that this term might be more appropriate.

- Knowledge - Part 1 – ‘Credit for Guilty Plea’ should be replaced by ‘Relevant Sentencing Guidelines, where they exist’.
- Knowledge Part 2 - contains no reference to the client, client's instructions, or, client's best interests. This is crucial and should be included.
- Knowledge 2(b) – Clarification is needed as to whether this requires the advocate to comply notwithstanding: (i) any instructions from the client and/or (ii) the client's best interests (also see point 7 below).
- Ethics and Professional Conduct Unit: Assessment outcome 2(c) should include at the end: ‘...*insofar as your client's instructions permit*’.
- Our comment at (6) above applies equally to Knowledge Part 3. It is unclear why consideration of the client is absent from any part of this process, yet it is supposed to be for the client's benefit.
- Knowledge Part 5 – The terminology ‘Good Fact/Bad Fact’ is clumsy and inappropriate for describing skilled advocacy, which is rarely as ‘black and white’ as this. ‘Finding an Angle on the Case’ is similarly simplistic. We suggest that these expressions be removed from the standards and replaced with the alternative suggestions in brackets, which are probably more appropriate.
- Knowledge 7(a) needs defining more clearly.
- All of Part 7 of Knowledge needs to make specific reference to the client. We would like to see it extended slightly to read: ‘*Make an effective legal submission in the Higher Courts that is consistent with an advocate's obligations to **both the client and the court.***’ It is somewhat surprising that there is no mention of the client's instructions anywhere in these standards.
- 7(g) can be difficult for trial advocates where they find themselves unable to effectively represent a client within a time limit that has been imposed (pre-trial) by the court, possibly for the convenience of court administration. The advocate should not be penalised if the timetable imposed is not realistic.
- Part 9: much of this section is vague and the requirements would be quite difficult to assess, particularly where there are time constraints in court which may prevent the advocate from demonstrating all of these skills. E.g: using ‘patience and persistence’ may be difficult if the advocate is time constrained. How is it proposed that ‘Thinking on your feet’ will be assessed?
- Knowledge 10(b) should say ‘language that your client is able to understand’.

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

19. We understand the concerns about consistency of training and assessment, however this could be addressed by having one agreed set of materials and standards that all suppliers are required to use.

20. If there is to be only one provider, it will be essential that the assessment centre is fully accessible to solicitors all over England and Wales, including those who may not be in a position to access an assessment centre situated a long way from their own location.
21. Ensuring the accessibility of the training will avoid any knock-on implications for access to justice, particularly in rural areas where there are already serious shortages and an ageing population of solicitors. Please see the above reference to our heat map in this regard.
22. The centralisation of assessments is also likely to bring its own administrative challenges (as occurred with the Bar Standards Board centralised examinations in Civil and Criminal Litigation and Ethics on the Bar Professional Training Course). The proposals for the SQE suggest a clear preference on the part of the SRA for centralised assessments. There does not however appear to be any evidence for a need for a single HRA assessment body other than alignment with the SQE proposals. There are arguments in favour of having more than one assessor, including a degree of robustness that flows from limited competition.
23. Furthermore, it would be essential for detailed plans to be made as to what alternative arrangements could be made for those who require these under the Equality Act 2010. There are a range of Equality, Diversity and Inclusion issues to be taken into account when developing an assessment and in order for The Law Society to support this, we believe an independent, detailed EDI risk assessment would be necessary before implementation.
24. A single assessment organisation would need the capability to provide the training and assessment in the Welsh language.

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

25. We agree that Crown Court advocacy should only be undertaken by those who are competent to undertake it. There are however already professional restrictions in place which limit solicitors from undertaking work beyond their competence.
26. The consultation paper is not clear as to when it is proposed that the HRA qualification should be undertaken. In practice there is no difference between someone obtaining higher rights on the last day of being a trainee or obtaining it within the first three months of qualifying.
27. If access to the course is to be restricted based on experience, then this should be made clear through some detailed proposals – without this it is a little hard for us to comment on the potential impact. For example the SRA could propose a minimum of 6 months of magistrates court work including a specific number of trials. We would probably not object to such an approach in principle if the requirements proposed were reasonable. To simply delay the course to the first day of qualifying however will not only be prohibitive from a cost point of view – as we explain below - but will make no real practical difference.
28. We understand that some course providers do not currently accept trainees or newly qualified solicitors anyway, due to their lack of experience of Crown Court work and

consequent difficulty in passing the assessment. This would seem to suggest that the HRA should probably be a stand-alone qualification, attainable after a certain period of post-qualification experience.

29. The main concern we have however about the proposal to separate out the HRA qualification is the cost impact on solicitors and firms. Currently most solicitors' firms pay for their trainees to undertake the Professional Skills Course (PSC). If this part of the course were to be removed, and solicitors required to undertake it at a later date, employers may be less willing to pay for it. This proposal could therefore place a cost barrier on junior solicitors who may not be able to afford to pay for the course themselves – particularly when taken together with the proposal to limit geographical access to the assessment centre.
30. One possible way to address this could be to pass on any cost-saving by reducing the cost of the PSC course, so that firms may be more willing and able to fund the HRA course separately.

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?

31. We agree that serious youth court work requires specific skills and sensitivity, as well as experience in dealing with very vulnerable clients.
32. This proposal may risk excluding many solicitors who have significant experience and skill in this area, but who are not however HCAs. Whilst many HCAs may very well have the skills and experience to deal with serious youth court cases, the proposal does not actually require any experience whatsoever in this area. It could thus allow HCAs who have no – or limited - experience of youth court work to undertake very serious cases, with all of the risks to these vulnerable clients that this would bring.
33. The requirement to hold the HCA qualification will therefore not ensure that these cases are being done by the right people. Apart from a reference in Module 4 of the revised standards to the inclusion of 'young or vulnerable witnesses' in the syllabus, there is no detailed training on youth court work or vulnerable defendants mentioned in the HCA assessment.
34. It should also be borne in mind that continuity of representation is extremely important when dealing with highly vulnerable young people, and the fact that solicitors are able to advise and represent clients all the way from the police station to trial creates a level of trust on the part of the young person that is crucial in the smooth and effective running of the case. This trust will be broken if a solicitor has to pass the case on to someone the client is unfamiliar with.
35. During the workshops held by the SRA in 2018 on the HRA assessment, the Law Society suggested including a module on vulnerable defendants in the assessment, however this was rejected on the grounds that the skills needed for youth court work were completely different to those needed for Crown Court advocacy. The point was made that the HRA training in fact teaches the opposite skills to those required for youth court work.

36. Because of the inherent challenges of youth court work, we believe that a solution might be for the SRA and BSB to work together to develop a specific youth court qualification for both barristers and HRAs. This could be combined with a requirement to have a certain level of experience prior to undertaking any serious cases in the youth court.
37. The impact assessment includes no proper analysis of the impact of these proposals on the solicitor market; it simply says 'we do not consider' that the proposal presents a 'significant risk to the supply of solicitors'. However no evidence, cost benefit analysis or statistics are provided to support this assertion.
38. The proposals themselves are also somewhat unclear regarding which cases this would apply to. The impact assessment refers to 'serious triable either way offences', but it is not clear what is meant by 'serious' in this context. More clarity is required as to the scope of the proposal.
39. It should be noted that in the event that this proposal does go ahead, changes to the legal aid contract will be necessary, otherwise the current provisions as they stand will discriminate against solicitor advocates employed by their own firms. If higher court advocates are required to undertake this work then clearly they should automatically be granted certificates for counsel (assigned counsel). As the contract is presently drafted an in-house solicitor advocate cannot claim the same rate as self-employed counsel or a solicitor advocate from another firm³. This must clearly be amended and we would expect the SRA to call for this if this proposal is adopted.

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

40. Solicitors would naturally always be pleased to be offered more assistance and resources – the Advocates' Gateway Toolkit is often cited as a very useful resource. The section of the paper under which this question appears is however somewhat vague and unclear, and contains no actual proposals for new resources so we cannot comment further.
41. We would of course be happy to consider any specific proposals for resources aimed at solicitor advocates. Following on from our suggestion above, a training tool for assisting solicitor advocates in developing the skills needed for youth court work would be particularly helpful .
42. We would like to add however that we are not clear that this is an appropriate area for the SRA. Given the SRA's principle role as regulator, responsibility for training courses would appear to lie more with the Law Society, as representative body.
43. Paragraphs 46 and 47 in this section set out proposals to develop 'resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors'. These seem out of place in a section purporting to be about assisting solicitors. Solicitors are already required to provide each client with a client care letter which sets out the client's right to complain about the service they receive, and how they can take the complaint further if they are not happy with the firm's

³ Paragraph 5.53; 2017 Standard Crime Contract Specification

response. We therefore think clients are well informed at an early stage about the service and relevant consumer protections, including complaint procedures.

44. Even if the SRA explains carefully the standards expected of solicitors, these will not always be understood by everyone, and could result in frivolous or misguided complaints, which the SRA – and solicitors - will then have to expend resources investigating.
45. This is particularly likely where the case has not gone the way the client expected or wished. If a criminal case results in a conviction the client is far more likely to criticise the solicitor or advocate in the case, regardless of whether the advocacy was conducted to a high standard or not. Similarly in a civil case where the judgement was not made in their favour, a client who does not fully understand the intricacies of the legal process could feel that their advocate is to blame.
46. Paragraph 47 refers to the dissatisfaction with the outcome of cases on the part of BAME clients. However according to the Lammy Review⁴, this seems to be at least in part related to the general bias – perceived or otherwise – of the entire criminal justice system against these clients, rather than issues around individual advocates. We have not found any mention in the Review of concerns having been raised by BAME clients specifically about the advocacy in their case, but if the SRA has other evidence of this we would be interested in seeing it.
47. We also do not agree that it is helpful to encourage judges to submit reports on individual solicitors. There is already a proper complaint system in place to enable judges to report complaints about advocates, and judges should be encouraged to use it rather than create duplicate alternatives. It was acknowledged during the development of QASA that the judge in a case will not be aware of what the client's instructions are, and that this can impact on the way the judge will perceive the advocacy in the case. Similarly it may be necessary in some cases for an advocate doing his/her job properly to challenge a judge. Some judges may not be happy about this but it should not give rise to a report about that particular advocate.

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

48. In the context of question 5 relating to youth court work, one resource that would perhaps be helpful is a further toolkit or training on dealing with serious youth court cases.
49. As already noted, there are already resources available through the Advocates Gateway toolkits which may be of use in the Youth Court or when dealing with vulnerable witnesses more generally. Additionally, the SRA may wish to have regard to the outcomes of the Civil Justice Council's recent consultation on vulnerability in the civil courts.

⁴ <https://www.gov.uk/government/organisations/lammy-review>

50. Other suggestions might include vulnerable witnesses as a stand-alone course, and advanced advocacy, including legal submissions and appellate work.

8. Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

51. In order to comment in any depth on this proposal we need to understand what makes the current reporting facility unfit for the purpose. In addition, given that any such report may have a serious impact on a solicitor's livelihood, there needs to be far more clarity as to the precise nature of any such reporting process and how it would function. We suggest including the following in any detailed proposal:

- complaint management;
- report content, including what file data is to be made available;
- confidentiality and legal privilege;
- how the solicitor will be able to submit a response;
- any reply to that response;
- time limits for any further responses; hearing; adjudication etc;
- sanctions (included in the SRA Enforcement Strategy); appeals; etc.
- Any consideration of such a report should where possible be accompanied by an audio recording from the court session.

52. Some of the criticisms set out in the table at page 18 relate to the accessibility of the information about the existing process and are not criticisms of the process itself. For example the second point, which can be addressed simply by making improvements to the SRA website:

- a. ***“Consumers want information on our website about what to do when there is a problem with a solicitor to be easier to find”*** (our emphasis).

53. Perhaps a solution is to make the existing complaints process easier to locate, rather than setting up a new process which may duplicate what already exists, and as a result could confuse people?

54. Judges generally already know what to do if they have serious concerns about a particular advocate; there is an existing complaints process of which they should all be aware.

55. In less serious cases, most judges will simply pick up the phone and call the relevant chambers if they have a concern about a barrister that doesn't merit filing an official complaint. There is no reason why they cannot also do this with solicitors' firms.

9. Do you have any further information to help inform our impact assessment?

56. In terms of the likely impact of several of the proposals on the solicitor market, we refer the SRA to our duty solicitor heat map⁵ referenced elsewhere in this response. There is already a serious crisis in the supply of crime solicitors, with very few young lawyers entering the market to replace those who will retire in 5-10 years' time.
57. It must be borne in mind that most solicitors undertake the full range of criminal work, from the police station to magistrates' court advocacy, and Crown Court advocacy for those holding the HRA qualification. Any proposal to limit access to one part of this work – i.e. Higher Court Advocacy – as some of these proposals do, will inevitably have an impact on the ability of solicitors to continue to provide a service in the other areas.
58. There may be equality and diversity impacts which have not been taken into account in this assessment. Please see our response to question 3 above, and below in relation to the proposal for a single assessment organisation.

The Impact Assessment

59. The impact assessment accompanying the paper is striking in the total absence of any robust analysis of the actual impact that these proposals are likely to have on solicitor advocates; the sustainability of solicitor firms; the quality of advice provided and on access to justice for clients.
60. The assessment makes a number of unsupported assumptions about the possible impacts of the proposals, which are absent any analysis or robust data and are little more than conjecture.
61. We consider the impact assessment to be wholly inadequate, given the problems we have noted above.

Summary of potential impacts

62. The third bullet point in section eight refers to '*clear regulatory justifications*' for the proposals. What are these justifications? We cannot find any detail as to the rationale behind any of the proposals, apart from the assertions in the introduction to the paper, which the SRA acknowledges are purely anecdotal.
63. The fifth bullet point in section eight asserts that the SRA is '*unable to assess the exact extent of any impact but believe it to be low*', and '*We believe any impact is justified by the need to protect young people in the criminal justice system*'. It would be helpful to understand precisely in what way this proposal will 'protect' young people in the criminal justice system, as this is not clearly explained in the consultation proposal.
64. As we have pointed out in our response to question 5, this proposal could effectively remove or severely restrict access by vulnerable young people to the very solicitors who have the skills and experience to help them effectively.
65. Please see our comments below under the specific youth court proposal heading for our assessment of the real impact of this proposal.

⁵ <https://www.lawsociety.org.uk/policy-campaigns/campaigns/criminal-lawyers/>

Revised Higher Rights of Audience standards

66. We agree that it is important to ensure that the standards are up to date.
67. As we have stated in our response to question 2 however, there are a number of requirements included that no lawyer could be expected to have experience of immediately after qualifying. The SRA has proposed that the qualification is taken post-admission, however it will need to be made clear how soon after qualification this is intended to be.

Appointment of a single assessment provider

68. Paragraph 15 asserts that *'the new assessment should not materially limit the numbers of individuals qualifying as solicitor advocates'*. This is by no means clear, and will depend on how accessible the assessment is – both in terms of cost and geographical accessibility.
69. Paragraph 18 rightly expresses the concern that a single provider may increase the cost of the assessment, however the SRA does not appear to know whether or not this will be the case. Clearly this is essential information that is needed in order to properly understand the potential impact of this proposal. We cannot therefore comment in any detail without this additional information. If however the appointment of a single provider increases the cost of the assessment for solicitors, this will inevitably have an impact on the supply of HCAs. Legal aid firms in particular are struggling to survive, having had no fee increases and several cuts over the past 20 years, and many firms may simply be unable to pay for their solicitors to undertake the qualification.
70. As we point out in our response to question 3, there are a range of Equality, Diversity and Inclusion issues to be taken into account under the Equality Act 2010 which do not appear to have been considered. It is essential that an independent, detailed EDI risk assessment is undertaken before this proposal could be implemented.

Requiring that the HRA assessment is taken post admission

71. Whilst we agree that solicitors should not undertake advocacy in the Crown Court until they are sufficiently experienced, for the reasons we cite above, there is a danger that if the qualification is to be undertaken post-admission this could impact on the numbers of solicitors who are able to complete the training.
72. As we have explained in our response to question 4, many firms may be unable or unwilling to pay for the assessment – particularly if the price increases. This is not addressed in the impact assessment. As we have suggested above, decreasing the cost of the training would serve in some part to mitigate this potentially negative impact.
73. Detailed research or data collection needs to be undertaken into how this would impact on the supply of solicitor advocates before it can be asserted that the proposal will not *'significantly affect the supply of solicitor advocates'*.

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

74. We disagree with the impact assessment of this proposal. As we have explained in our response to question 5, the HRA assessment contains no module relating to youth court work, it is therefore not correct to assert that *'this proposal will positively benefit client in the youth courts'*.
75. On the contrary, this proposal could have an extremely damaging impact on clients in the youth court by removing some of the expert solicitors who currently undertake these cases.
76. Not all solicitors holding the HRA qualification are willing or appropriately experienced to undertake this work, and as we have pointed out, the HRA assessment does not include a module on youth court work. Asserting that the proposal will ensure that *'solicitors representing clients in more serious cases have demonstrated higher level advocacy skills'* is not helpful or relevant here, as the SRA has acknowledged themselves that the advocacy skills tested on the HRA assessment are not the appropriate skills for the youth court.
77. Preventing those who currently conduct this work from continuing to do it risks creating a serious shortage of solicitors with the appropriate skills and experience to represent young people in serious cases.
78. In order to properly assess the impact of these proposals the SRA needs to understand:
- how many solicitors currently undertake serious cases in the youth court on a regular basis but do not hold the HRA qualification;
 - Where the above solicitors are based;
 - How many solicitors holding the HRA qualification also regularly undertake serious cases in the youth court;
 - How many of the above have undertaken the vulnerable client training.
79. This will provide an indication of how many fewer solicitors there will be who are able to undertake this work, by geographical location. It would also show how many HCAs still able to undertake this work have undertaken specialist training in this area and may have the appropriate experience.
80. There is also no acknowledgement that the lack of any corresponding restriction on barristers could lead to inexperienced juniors being deployed on serious youth court matters, with potentially very serious consequences for the clients involved.

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

81. In order to fully assess the impact of this proposal, there needs to be much clearer detail on the reporting proposal itself, and how each report will be assessed:
- Is it the intention that *all* complaints will be aggregated and published, regardless of whether they have been upheld or not?
 - What process is proposed for assessing the validity of each report?

82. As currently drafted, the proposal appears to be that clients; the general public; judges and anyone who wishes would be able to submit a complaint about a solicitor or firm, regardless of whether they have received a service from that firm, and that these reports will then be published, regardless of merit or substance.
83. If this is indeed the case, the proposal is likely to have a highly detrimental impact on the reputation of the solicitors' profession, particularly as there does not appear to be a parallel provision for the barristers' profession. This could give a misleading impression that solicitors provide a service of lesser quality than barristers.
84. It would be helpful if proposals could be developed to assist firms who are the subject of numerous reports to improve the quality of the service they provide. We would be happy to engage in further discussions as to how exactly this proposal might work. We would also be supportive of the SRA publishing more guidance and toolkits on the sort of areas that give rise to complaints.

Impact of our proposals on solicitors with protected characteristics

85. Paragraph 34 correctly points out that the proposals '*may affect more*' BAME solicitors '*who are seeking the HRA qualification*', given the SRA's assertion of the '*over-representation*' of BAME solicitors amongst criminal advocates.
86. It goes on to say that any such impacts will be mitigated by the '*resources*' the SRA intends to provide. In the absence of any clear information or detail about these resources, and how precisely they may help in diminishing the potentially negative impacts of the proposals – on BAME or indeed any solicitors - it is very hard for us to comment. We agree however with the initial statement that these proposals are likely to have an adverse impact on BAME solicitors.
87. Paragraph 35 also acknowledges quite correctly 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.'

88. Given the current crisis in the supply of criminal legal aid solicitors, and the very real probability that in 5-10 years there will be significant criminal advice deserts in many parts of the country, these are extremely worrying impacts.
89. The impact assessment offers no mitigation for these potentially serious impacts however, simply stating in paragraph 36 that '*we believe that there is a clear regulatory justification for the new restrictions.*' It is unclear what this justification is, given the absence of any hard evidence that any of the proposals on the paper are in fact necessary or even helpful.
90. Paragraph 37 states that:

'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'.

91. This does not take into account the potentially negative impact on the solicitors who do not hold the HRA qualification but who currently provide expert advice and representation in serious cases in the youth courts. Many of these solicitors have built up a relationship of trust with their clients over many years.
92. This is likely to have a damaging impact on vulnerable clients who may struggle to find representation, or who may find themselves represented by an advocate with no experience of youth court work if the proposals go ahead as drafted.

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

Assessment of our proposals against our Regulatory Objectives

93. For reasons already elaborated in this response, we are concerned that the proposals in the consultation paper do not achieve the following regulatory objectives listed in the table that starts on page 11:

Protecting and promoting the public interest	The proposals to restrict advice in serious youth court cases will not achieve this objective, as it will prevent highly vulnerable clients from accessing advice from some of the most experienced solicitors in this area.
Improving access to justice	Proposals that are likely to restrict the number of solicitor advocates able to practise will not improve access to justice; it will restrict it. As above; the proposal to restrict who can conduct serious youth court cases will limit access to justice.
Protecting and promoting the interests of public (sic)	This appears to be the same objective as the first one, and our comments are the same. Whilst it is a laudable aim to seek to improve the quality of advocacy in the criminal and civil courts, we do not agree that these proposals will be effective in achieving this aim. The absence of any restrictions on barristers undertaking serious cases in the youth court could result in cases being undertaken by inexperienced juniors, with consequent adverse impacts on clients.

<p>Encouraging an independent, strong, diverse and effective legal profession</p>	<p>For all of the reasons set out in this response, we do not believe the proposals support this aim. On the contrary, they place unnecessary barriers in the way of solicitors conducting work that they may be perfectly fit and sufficiently experienced to do.</p> <p>The impact assessment itself admits that the proposals will have a disproportionate impact on BAME solicitors, as they are 'over-represented' in the criminal solicitors' profession. We therefore struggle to see in what way this will encourage a diverse profession.</p>
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Assessment of our proposals against our Better Regulation Principles

<p>Proportionate</p>	<p>Given the absence of any clear data to show that there is a serious problem that needs addressing, the proposals to restrict the work undertaken by solicitor advocates, and to potentially make it harder for solicitors to obtain the HRA qualification seem to be disproportionate.</p> <p>The apparent absence of any similar proposals to limit the work of barristers in the youth court and to encourage reporting of barristers is also disproportionate, given the 'reports' cited at the beginning of the paper refer only to 'advocacy' and not specifically to solicitor advocates.</p>
<p>Accountable</p>	<p>The paper contains no information as to the lines of accountability arising from these proposals. For example there is insufficient detail as to how any reports made about solicitors will be dealt with and assessed to verify whether they are genuine or justified.</p>
<p>Transparent</p>	<p>Related to the absence of accountability in the paper is an absence of transparency. It is unclear what has led to these proposals, nor whether similar restrictions and reporting will be</p>

	imposed on barristers as well as solicitors.
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**The Law Society
November 2019**

Assuring advocacy standards consultation

Response ID:86 Data

2. About you

1.
First name(s)

Fionnuala

2.
Last name

Ratcliffe

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Transform Justice

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

Transform Justice is grateful for the opportunity to respond to the SRA's consultation on advocacy standards.

We note your proposal not to change existing practice rights for the lower courts. Given the dearth of information on the quality of advocacy in magistrates' court, we do not think it is possible to say whether changing existing practice rights for the magistrates' court is necessary. Further research is needed before an informed decision can be made. The SRA's only recent research on the quality of magistrates' court advocacy involved asking solicitor firms to comment on their own advocacy standards. This method provides some useful insight but isn't a replacement for independent assessment. Such research

should involve both interviews with district judges and magistrates and court observations, similar to the research done by the Bar Standards Board and CILEx on advocacy in the youth court.

We urge the SRA not to interpret the fact that relatively fewer concerns have been raised about magistrates' court advocacy as meaning that problems with quality do not exist in the lower courts. Our report published earlier this year – Criminal defence in an age of austerity; zealous advocate or cog in the machine? – raises concerns about the quality of criminal defence advocacy in the magistrates' court, particularly for legally aided cases. In our view, a combination of fixed low fees, court pressures, and an over-reliance on client choice and competition has led to variable quality of defence advice and advocacy in the magistrates' court.

We also challenge the assumption that changing practice rights in the lower courts would "discourage solicitors from practicing advocacy, and therefore restrict competition and restrict access to justice". Delivering access to justice means providing defendants with good quality criminal defence lawyers. We are sceptical that competition between firms is a sufficient mechanism to maintain good quality in the magistrates' court, where many defendants are not in a position to judge the quality of firms or individual lawyers. Changing practice rights for the magistrates' court may well be an effective route to avoiding defendants receiving poor quality representation. Without further research to understand quality of advocacy in the magistrates' court, and barriers to providing good quality, we are not convinced changing practice rights should be ruled out.

11.

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

We recommend that the standards include more explicit references to how the advocate should relate to and engage with the client. Our report, which draws on focus groups with defendants in criminal courts, highlights that clients want to feel listened to, to be communicated with clearly, and to understand what is happening in court and the rationale for the defence strategy. This is key to defendants feeling they have been fairly represented in court, and to their trust in the system overall. From our research with defendants, this is not always happening; defendants sometimes leave court unclear about their lawyer's strategy and feeling misrepresented.

While there are some references to client engagement in the draft standards (e.g. assessment outcome 3 on page 15 states advocates must disclose all material information to the client) we think the standards could better reflect the importance of effective client communication and other skills, drawing on existing evidence and if necessary additional research into defendants' experience of criminal court proceedings.

12.

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

No comment

13.

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

No comment

14.

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?

We agree that effectively representing under 18 year olds is very challenging since they are vulnerable, often find it hard to communicate, and are unfamiliar with the criminal justice process.

ICPR research found that youth court advocacy was highly variable. There was a lack of understanding of the legal framework for dealing with child defendants, a mixed ability amongst some advocates to communicate appropriately with children, a lack of specialist training, and a lack of professionalism and passion.

In light of this we consider any steps which require advocates to have specialist training in working with child defendants in the criminal justice system as positive. As we understand it, the HRA qualification does not include youth-specific elements. While we support steps which raise the quality of general advocacy for youth court clients (including this one), this should be accompanied by a requirement for all advocates working in the youth court to have youth court specialist accreditation. In our view, the proposed approach to divide cases in the youth court into serious and not serious cases, and allocate appropriately experienced advocates accordingly, will be difficult to implement on a practical level, meaning courts will continue to allocate cases based only on lawyer availability. We believe the only solution is instead to have accreditation for all lawyers advocating in the youth court.

4. (untitled)

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

Resources and training aids can play a useful role in supporting practitioners to meet high advocacy standards, and we are supportive of the SRA taking steps to provide these. We do caution that even good resources are only helpful if solicitors use them and take them on board. To encourage lawyers to do meaningful and effective CPD, we recommend that lawyers are encouraged to adopt interventions used in other sectors to improve performance such as reflexive and action learning, coaching, seeking informal feedback, 360 degree appraisal. One way to do this is by providing guidance on how to keep a reflective practice log.

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

In addition to resources to support lawyers to engage in reflective practice and regular feedback processes (mentioned above), advocacy resources could also usefully include guidance on defendants' experience of the courts and defence lawyers. This could summarise existing research on defendants' perspectives, reminding advocates of the significant impact they have on a defendants' experience of the justice process and their trust in the system overall.

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We support the SRA's intention to improve reporting. Complaints and reporting of concerns provide a valuable source of feedback from clients and court actors, shedding light on the quality of advocacy, and we welcome the SRA's attempts to make the process simpler and more accessible.

However, reporting will always have barriers, many of which you outline in your consultation document, and we advise against relying too heavily on such reports to monitor and assess standards of advocacy. Other mechanisms are needed to provide sufficient evidence to gauge overall standards.

Improving solicitor reporting will be particularly challenging. The competitive nature of the criminal defence market means it is rarely in a solicitor's interest to report bad practice at other firms. In our research we came across lawyers who were aware of bad practice at other firms but took no steps to report them.

The proposal to work with stakeholder groups to explain how to make a report is welcomed. We add that it would also be useful to engage in dialogue with user groups and other stakeholders to understand how to make the reporting process easier to access and navigate, and to implement recommendations arising from this.

18.9) Do you have any further information to help inform our impact assessment?

The SRA has a key role to play in ensuring users of criminal defence services receive a fair trial with true access to justice. But

in our view, the SRA's approach to ensuring quality is relatively light touch when compared to other professions.

We consider its current approach to be overly focussed on identifying individual poor practice rather than understanding the overall level of competence and the particular areas for concern. For example, the consultation document proposes developing public resources which outline criminal advocacy standards to 'help clients, including vulnerable clients, to recognise when a solicitor does not meet them'. We advise against a strategy for ensuring quality which relies too heavily on clients to identify bad practice and act on it, something which vulnerable clients may not be able to do.

The consultation document highlights the life-changing impact of poor quality advocacy for defendants. Such high stakes warrant a robust approach to monitoring and assuring standards. While many of the proposals outlined in this consultation are welcomed, in our view more could justifiably be done by the SRA to ensure defendants are given a fair trial. We encourage the SRA to consider more actively monitoring the quality of criminal advocacy so poor practice can be identified and individuals who struggle be given the support to improve. This could take the form of more regular assessment of firms on an ongoing basis, for example through a reaccreditation system similar to that applied to doctors who work in the NHS, and annual appraisals at which CPD is reviewed.



Youth Justice Legal Centre
Just for Kids Law
180 North Gower Street
London, NW1 2NB
DX: 2101 Euston

FAO: Solicitors Regulation Authority
By email

Dear Madam/Sir

RE: Solicitors Regulation Authority Assuring Advocacy Standards consultation

In relation to your consultation on Assuring Advocacy Standards, we write in relation to question 5. We wholeheartedly support the recognition that those representing children in the youth court require specialist knowledge, expertise and skills.

We are very concerned, however, that the proposed solution, requiring solicitors practising in the youth courts to 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, does not remedy the inherent problem of the inadequate representation of children in the youth court. There is nothing in the HRA qualification which provides the knowledge and skills necessary to be an effective youth justice lawyer in the criminal courts.

As acknowledged in the Youth Courts Advocacy Proceedings review, published in 2015 by the Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEx) and The Taylor Review of the youth courts system published in 2016, children coming into contact with the criminal justice system are some of the most vulnerable in our society. They have often suffered neglect and abuse, have care experience and high levels of mental health issues or learning disabilities. Our annual State of Children's Rights Report on Policing and Criminal Justice 2017 highlighted some of the

particular characteristics of children entering custody.¹ Lawyers need to learn how to represent children with these complex needs.

The UN Convention on the Rights of the Child (UNCRC), which the UK ratified in 1991, states that wherever possible children should be dealt with outside the criminal justice system. This has been stressed in the new General Comment by the UN Committee on the Rights of the Child (UN Committee) on children's rights in the child justice system.² However, despite some progress in reducing the number of children criminalised, statistics show that particular groups of children, including those who are BAME and in care, are overrepresented in the criminal justice system.

A key skill for a lawyer representing children will be to get them diverted out of the criminal justice system wherever possible. This is very difficult to achieve without youth justice expertise gained through training. In General Comment no. 24 the UN Committee emphasises that the *“systematic training of professionals in the child justice system is crucial to uphold those guarantees. Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.”*³

In July 2017, the Lord Chief Justice [observed](#) that *‘it would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training’*.⁴ We believe that all children deserve to interact with lawyers who have specialist skills and knowledge.

We have had incredibly positive feedback from the training we deliver providing an overview of the youth justice system outlining the different rights, protections, laws and sentences for children compared to adults. We also provide a national free advice line for solicitors, barristers, YOS, other professionals, children and their families. Through our work we are able to see the importance of specialist knowledge for children to achieve the best outcomes.

We propose that all those representing children in both the youth court and crown court undertake specialist training and accreditation. We believe that all solicitors should demonstrate that they are competent to represent children and we don't believe the HRA qualification provides that level of competency.

We are very concerned that the proposal sends a message that having the HRA qualification makes you competent to represent children. If introduced, the proposal would mean that, in some cases,

¹ Children's Rights Alliance for England, part of Just for Kids Law (2017) *State of Children's Rights in England: 2017 Policing and Criminal Justice* (original source: Ministry of Justice/Youth Justice Board (January 2017) *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016 England and Wales*)

² UN Committee on the Rights of the Child (2019) *General Comment No.24 Children's Rights in the Child Justice System*

³ UN Committee on the Rights of the Child (2019) *General Comment No.24 Children's Rights in the Child Justice System*, paragraph 39

⁴ R v Grant-Murray and Henry; R v McGill, Hewitt and Hewitt [2017] EWCA 1228

really competent solicitors would be prevented from representing children and some very incompetent HRA qualified would be encouraged to do so.

We would welcome a meeting to discuss this in more detail and look forward to hearing from you.

Yours sincerely,

Handwritten signatures of Laura Cooper and Katya Moran. The signature on the left is a cursive 'L' followed by a horizontal line. The signature on the right is a stylized 'K' followed by a vertical line and a horizontal line.

Laura Cooper and Katya Moran

Co-heads of the Youth Justice Legal Centre, part of Just for Kids Law

Assuring advocacy standards consultation

Response ID:106 Data

2. About you

1.
First name(s)

Mel

2.
Last name

Stooks

3.
Please enter your SRA ID (if applicable)

38

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

Youth Practitioners' Association

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

The Youth Practitioners' Association is committed to ensuring the proper representation of young people within the criminal justice system. Its aims are to encourage and maintain the highest standards of advocacy and practice in the criminal justice system; to be a voice for youth practitioners in developments within youth justice and to support, assist and educate those who represent young people from the police station to the Court of Appeal.

It is not clear from the consultation paper what has driven the need to introduce changes in the regulation of defence solicitors'

advocacy. Neither has a definition of "poor advocacy" been provided. The consultation paper itself acknowledges "there is little evidence about whether poor advocacy is a widespread problem". The "qualitative interviews" are conducted within a relatively limited judicial pool to merit wholesale changes to criminal defence practice at a time when court closures, limited fees and the impact of RUI has already rendered the market extremely fragile. From this starting point we answer the questions as follows:

We do agree with the proposal not to change existing practice rights.

11.

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

We have no comment to make

12.

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

We agree that consistency of training and assessment is important but do not agree that a single organisation is the only solution. Our experience of police station accreditation assessment organisations, currently limited to two, is that one is vastly superior to the other. This could easily be resolved by a universal set of standards and ensuring that assessors are properly trained.

13.

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

Yes

14.

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?

We are in favour of any measure that would improve standards of representation in the youth court however do not agree that requiring solicitors to hold the criminal HRA qualification before defending a child charged with an indictable offence is the correct means of achieving this objective.

Youth court work requires an entirely different set of skills than those needed to defend an adult at the Crown Court. Young defendants are uniquely vulnerable; research has readily demonstrated that children who attend the Youth Court are likely to be experiencing at least one, if not more, of the following:

exclusion from mainstream education, poverty, unidentified speech and language difficulties, mental health issues, instability at home, lack of support

It is a type of work that many solicitors shy away from, and those who do undertake it regularly do so because they are committed to it and have acquired both the legal knowledge and communication skills to be effective advocates for their young clients. Unfortunately, the same cannot be said of the Bar, whose most junior members are sent to the Youth Court without the opportunity to have honed that particular skill set during their pupillage. The requirement proposed by the SRA does not resolve this problem.

The majority of our solicitor members do not hold the HRA qualification and practise almost exclusively in the Youth Court. Some have many years of experience of conducting serious trials successfully in the Youth Court and, the imposition of the HRA requirement on them, would either cause unnecessary cost to the firms in which they work, or end their practice prematurely thus depriving the most vulnerable defendants of skilled and experienced representation.

Instead, we would propose a system of voluntary accreditation for advocates intending to represent young defendants in serious youth trials. This would allow those who are committed to working in this field to demonstrate their competence against an appropriate set of standards and to apply for enhanced remuneration for this. It is a real concern how poorly paid legal aid youth court defence work is at a time when prosecutors have recently enjoyed an increase in pay. This leads to the very real danger that young vulnerable defendants will be ably prosecuted by lawyers far more qualified and better

remunerated than those who defend them.

We recognise that The Law Society provides Vulnerable Witness and Advocacy Training, within which is contained reference to young defendants. However, this too does not provide Youth Court specific training. We envisage a voluntary assessment scheme comprising of a combination of CPD and portfolio that could be completed by any advocate wishing to specialise in this area.

We do question why the SRA is focussing solely on the category of the offence charged, rather than the vulnerability of the defendant. The proposal implies that a young person charged with a summary only or either way offence is less deserving of competent representation than those charged with more serious offences. Many issues arise in non-indictable cases in the youth court that still require specialist knowledge and expertise such as applications for diversion, applications for bail that necessitate consideration of the provisions of LASPO and the issue of effective participation.

4. (untitled)

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

Any extra support for practitioners is welcomed.

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

The Advocates' Gateway Toolkit is a very useful resource and covers several issues that arise within the Youth Court. However a specific toolkit designed for trials of serious offences in the Youth Court would assist. A young person properly represented at the Crown Court has the benefit of pre-trial issues including disclosure and effective participation being dealt with far more rigorously than in the Youth Court where there can sometimes be greater emphasis on speed than fairness.

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We have no objection to these proposals in principle and have no suggestions on how to improve the processes. However we would seek an assurance that they apply equally to both defence and prosecution advocates and that "poor advocacy" will be properly defined before the proposals are implemented.

18.9) Do you have any further information to help inform our impact assessment?

No.

Assuring advocacy standards consultation

Response ID:117 Data

2. About you

1.
First name(s)

Laura

2.
Last name

O'Brien

3.
Please enter your SRA ID (if applicable)

544107

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

Youth Team, Hodge Jones & Allen

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

Advocacy is often undervalued as a core skill for solicitors, especially those acting within criminal law. Witness handling is a skill that benefits litigation as well as advocacy. Cross-examination should attract greater focus in the professional skills and

ongoing training as it remains a challenge even to those with decades of experience.

Witness handling requires expertise whichever Court it is practiced in. Without doubt, advocacy involving youths as defendants or witnesses has distinct challenges. We agree with the proposal not to change existing practice rights and to rely on solicitors not undertaking witness handling where they are not competent to do so. This should be supported by the provision of accessible practical post-qualification training.

12.

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

No.

13.

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

We support standardisation of the assessment but this must be balanced with flexible training that suits the range of different practices within the industry.

14.

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

Yes, this is a positive proposal. We believe that much more can be gained from the training and accreditation process once solicitors have some experience of advocacy from their practice.

15.

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?

No. We agree that representing youths is a specialist area. This applies wherever proceedings are being heard. Youths are vulnerable by virtue of their age before any individual needs or characteristics come into play.

We agree that there is a need for measures to ensure that youths get the specialist representation required. We acknowledge that standards of representation all too often fall short in the youth Court.

Youth court advocacy engages a unique statutory framework and requires a distinct skill set. Youth Court proceedings are different in nature to Crown Court proceedings and Magistrates Court proceedings. Higher rights of audience by no means guarantee the required knowledge or skill set.

This proposal risks excluding skilled solicitors with valuable youth Court experience in favour of those with higher rights of audience who may have no experience of youth Court advocacy. We have solicitors with decades of experience in representing youths charged with the most serious offences who would be excluded by the proposal.

Determining the need for a specialist youth advocate on the basis of the nature of the offence ignores the aims of the youth justice system. Vulnerable defendants and witnesses will be involved with all nature of offences. If the objective is to protect vulnerable defendants and witnesses they should be the focus of any proposal.

Often the most important contact with the youth justice system is the first contact. How it is dealt with can determine whether it is the last contact or the first of many. Even summary only or cases involving less serious either way offences must be dealt with skill and expertise. Communication difficulties will arise regardless of the level of the offence. Sentencing exercises can be complex even for low-level offences. With lower-level offences it will be especially relevant to have up to date knowledge of the considerations in relation to out of a Court disposals and the decision to prosecute.

The proposed change would be arbitrary and would not address the problem.

We would welcome the extension of the Certificate for Assigned Counsel to all classification of offences, in the Magistrates Court and the Youth Court, with a focus on cases with vulnerable defendants and witnesses and cases that are particularly complex or grave.

We would also welcome a review of the guidance to Courts in dealing with applications. There is often push back from the Courts in a relation to such applications. We are seeing applications having to be made repeatedly before they are granted even where defendants have significant communication difficulties and they are charged with indictable only offences.

That is a symptom of the apathy of many Courts when faced with vulnerable clients and communication difficulties. This aggravates the lack of expertise that can arise among youth Court advocates. It is right that lawyers, Court staff and other professionals should know who to report poor standards of advocacy but the interests of vulnerable defendants and witnesses are best served if they are also equipped to provide support. Young people living without stability may not engage the same representatives each time they end up before the Court with the result that legal advisors, Magistrates, Judges or Youth Offending Service representatives have a better insight into the circumstances of the young person than their legal representative. Legal advisors, Magistrates, Judges and YOS should be better trained to identify cases that may warrant input from an intermediary or other expert.

We would also welcome a requirement that litigators be required to demonstrate that they have considered whether clients have any communication difficulties and whether this warrants an assessment by an expert.

4. (untitled)

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

Yes. Accessible, practical resources would always be a positive thing. They must be grounded in the realities of practice.

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

One of the biggest factors undermining the quality of advocacy is funding. Advocates are underfunded and often as a result over worked. Practical resources that assist in accessing funding where it is available and helpful templates would encourage better standards.

The use of experts is key when dealing with vulnerable defendants and witnesses, especially where they have communication difficulties. We would encourage tools that help get the most out of experts, including which experts are appropriate in which situation and what experts should be asked to address.

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

As outlined above, the focus should not only be on reporting but supporting. The idea should not be to exclude advocates but to help them build their knowledge and expertise.

19.9) Do you have any further information to help inform our impact assessment?

There is without doubt the need for specialist advocacy. Youth courts engage a different set of laws and guidance. We are failing our clients if we are not sufficiently equipped to represent them.

The danger with focusing solely on youth Court proceedings and the classification of the offence is that it suggests expert witness handling is not a skill required in the Magistrates Court or when dealing with less serious offences in the youth Court.

Young adults may be as vulnerable as many youths. Their protections should not be pulled from them as soon as they turn 18.

The loss of liberty is not the only consequence we should be concerning ourselves with. The simple fact of a conviction can be like changing.

The way to ensure adequate representation for youths is by placing them at the heart of any proposal.

Assuring advocacy standards consultation

Response ID:16 Data

2. About you

1.
First name(s)

Arthur Michael

2.
Last name

Robinson

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Emmersons Solicitors Limited

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

Yes

12.
2) Do you have any comments on our revised HRA standards?

There should be no difference at all between Solicitors, Barristers and FCILEx

13.

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

There should be no assessment

14.

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

No

15.

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?

No

4. (untitled)

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

No

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

No

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:98 Data

2. About you

1.
First name(s)

Craig

2.
Last name

Rappel

3.
Please enter your SRA ID (if applicable)

492691

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Rappel Health Law Group, PL

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

Yes

12.

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

Yes, I submit that lawyers from US, Canada and Australia should be permitted HRA without standardised oral assessment. A written assessment with a peer review/credential review should suffice given that many lawyers outside the UK have higher rights of audience in the court system so an HRA course is a barrier rather than a gateway for consumer choice and protection.

13.

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

Yes.

14.

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

Yes

15.

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?

Yes

4. (untitled)

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

Yes

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

Updates to any procedural rule changes and professionalism topics.

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Yes. No other suggestions.

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:99 Data

2. About you

1.
First name(s)

David

2.
Last name

Sedgwick

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

David Sedgwick Solicitors Limited

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

I think your consultation is facile and pointless. It is seeking to further increase a level of oversight that is entirely pointless. As a qualified solicitor you should be competent to deal with these matters.

12.

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

Absolute nonsense, because certain baseless complaints have been made you seek to cravenly suck up to the Judiciary

13.

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

No. If you are qualified as a solicitor you should automatically be able to go before any court

14.

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

Yes

15.

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?

No. Watching a barrister in the magistrates court is highly entertaining. You should be lobbying for a standard to allow the bar in to the magistrates court

4. (untitled)

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

No

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

No

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

no

19.9) Do you have any further information to help inform our impact assessment?

I have been a Higher Rights Advocate for over a decade. There are some within the bar and judiciary who complain but do not mention the incompetent barristers appearing on a daily basis. They make this complain to further the old boys club that we have to deal with on a daily basis. You are simply pandering to that baseless prejudice

Assuring advocacy standards consultation

Response ID:80 Data

2. About you

1.
First name(s)

Dennis

2.
Last name

clarke

3.
Please enter your SRA ID (if applicable)

109566

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

clarke kiernan llp

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

yes

12.

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

it appears that there are greater expectations placed on the HCA than on the Bar? There is no magic formula when attending a training session that might have little if any relevance to the real world of dealing with people including young people. Knowledge of your local community and of the Bench is often the best tool at your disposal.

13.

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

I have no interest in HRA and therefore no interest in determining the optimum process.

14.

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

That would make sense although it is a bit random as different advocates will have different views on representation. sometimes those views are miles apart and yet neither would be wrong.

15.

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?

No. It makes no sense and adds a level of bureaucracy and possible delay. I understand that the SRA would not propose such a thing unless it is proportionate, targeted and based on clear evidence of risk. My experiences in the Youth Court do not convince me that the SRA has clear evidence of risk although there might be some misinformed comment by some.

4. (untitled)

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

It is always useful to have access to tools designed to assist us to perform to the correct level

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

the main difference between adult and youth courts will be sentencing. updates on sentencing would be best considered.

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

there is a problem with the proposal as in some areas the competition for work is great and as a consequence reporting should not be relied upon. in any event proceedings are in private and the opportunity to report is limited. Just because in a multi-handed case your opponent does not agree with the route you have taken does not mean that the other advocate is wrong.

19.9) Do you have any further information to help inform our impact assessment?

Sorry, none

Assuring advocacy standards consultation

Response ID:77 Data

2. About you

1.
First name(s)

Janetta

2.
Last name

Davies

3.
Please enter your SRA ID (if applicable)

128151

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

freelance advocate

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

There are two questions here, not one.

Yes, do not change existing practice rights. Competence in "witness handling" is a more difficult question and requires thought.

12.

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

NO

13.

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

No. There is nothing wrong with different routes to qualification being available.

14.

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

Yes.

15.

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?

No. This is quite simply an absurd proposal and the main reason why I am responding to this questionnaire. Appearing in the crown court and in the youth court are very different skills, and linking the two is just stupid! Such a requirement would put out of practice many very competent people. I wonder if this wheeze has just been thought up by someone trying to make work for regulators. If you take the view that advocates in the youth court should be able to continue with a case as advocate in the crown court for a youth, then you are suggesting that solicitors are incapable of taking care to instruct appropriate counsel. I hope this idea will hit a waste paper basket soon!!!

4. (untitled)

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

There are already resources available online, in particular Crimeline. Advocacy involves not just knowing when and how to speak, but more importantly sound legal knowledge of evidence, procedure and sentencing. My book, The Criminal Advocate's Survival Guide, available on kindle from Amazon says that advocacy is like lion taming - you have to get in among the lions! There is no substitute for experience.

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

See above. I do not think the expense on resources specifically for advocacy can be justified, but free online case reports, articles etc. would be welcome.

18. 8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No suggestions.

19. 9) Do you have any further information to help inform our impact assessment?

The best safeguard of quality is maintaining the right of defendants to choose their own solicitors. It is always possible to dress up a file so that it looks respectable, or to make sure that every box is ticked when making a closing speech, but what we all know from experience is that paying attention to clients' instructions ensures repeat business, not keeping regulators satisfied.

Assuring advocacy standards consultation

Response ID:71 Data

2. About you

1.
First name(s)

Lee

2.
Last name

Emberton

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Non-legally qualified, working in legal services

8.
Please specify

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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?

11.
2) Do you have any comments on our revised HRA standards?

12.
3) Do you agree that we should introduce a single assessment organisation for the HRA qualification?

13.

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

14.

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?

4. (untitled)

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

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

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

18.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:107 Data

2. About you

1.

First name(s)

Pamela

2.

Last name

Martin-Dominguez

3.

Please enter your SRA ID (if applicable)

154104

6.

I am responding..

in a personal capacity

7.

In what personal capacity?

Solicitor

8.

Please enter the name of your firm/employer

VICKERS & CO

9.

Please specify if you are

an in-house solicitor

10.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.

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?

YES

12.

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

YES. Experienced solicitors have enjoyed a wealth of opportunity & knowledge of local youth court practise, dynamics & participants, not requiring HCA rights but honed with immediate & regular rapport with both youth client & family. To simply remove them without funding Certificates for Counsel for IO offences with substitution by either "baby" Bar counsel or newer qualified solicitors for whom HCA has been mandatory is ill-advised.

13.

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

If I had determined to be an HRA advocate I would have gone to the Bar but my circa 30yr chosen Youth Court practise experience is to be ignored by whichever assessment organisation introduced.

14.

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

I do not believe HRA should be required for good Youth Court practise.

15.

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?

No! If the case is IO & or complex, an experienced solicitor has sufficient integrity not to act beyond their reach. Similarly, advocacy should be funded equally with adults by routinely allowing certificate for counsel where appropriate, thus ensuring continued benefit of experienced solicitors in the most serious youth court cases even if that be as litigant, ensuring the youth court does not become "teeth cutting" practise for the newly admitted Bar only. Youth Court practise does not mirror the Crown Court-if it did, then almost "grave" crimes should be given Crown Court election.

4. (untitled)

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

yes

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

FUNDING

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

NO COMMENT

19.9) Do you have any further information to help inform our impact assessment?

FRUSTRATION OF EXPERIENCED ABLE CRIMINAL SOLICITORS BEING BURDENED WITH EXCESSIVE REGULATION WHERE BOTH ENCROACHING CRIMINAL BAR SEEKS TO MONOPOLISE & MOJ SEEKS TO UNDERFUND RESULTING IN THE A DEARTH OF CRIMINAL SOLICITORS.

Assuring advocacy standards consultation

Response ID:97 Data

2. About you

1.
First name(s)

robbie

2.
Last name

ross

3.
Please enter your SRA ID (if applicable)

133063

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

ross solicitor ltd

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

yes

12.

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

the revised standards are common sense - over 35 years in the profession i have seen standards slipping, probably a consequence of the fall in remuneration . The fact that we are being paid 1997 rates is irrelevant when one is in front of a court - if one wishes to be an advocate then aim to be as good as you can be . Please do not aim at adequate or worse - and that is what i see happening

There are a number of firms sending HCA's into the Crown Court to undertake work that is beyond their current level of expertise - Advocacy is a learnt skill , honed over years - doing a course and taking a test does not make one a Crown Court advocate . Anything that improves standards should be applauded.

13.

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

yes - aim at consistency

14.

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

yes - see my earlier response . Advocacy is learnt and frankly [because the pre admission training does not major on advocacy as Bar training does] i would suggest 3 years post qualification with the applicant showing a level of lower court advocacy that would entitle them to move on to the next stage

15.

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?

Absolutely - and i know this comment will annoy/upset/anger a number of Magistrates Court practitioners - especially those who have been trundling in and out of Mags Courts for 20 years plus without feeling the need to develop any extra expertise . As soon as the massively extended sentencing powers of the Youth Court were introduced following the CJA 2003 there should have been a move to increase the level of expertise for those practising in the Youth Court . That is especially the case now following years of C of A decisions , a myriad of SGC guidelines and most especially the SGC guidelines tailored to sentencing youths. The presumption is that wherever possible Youths are dealt with in the Youth court - s91 sentencing should be an exception . I am not sure many practitioners actually know what s91 is . I am sure , as someone who has spent 20 years doing predominantly Crown Court advocacy , that many unnecessary sendings of Youths to the CC take place because all those at court when the sending took place lacked sufficient expertise to see their way through - and i mean all parties - defence , prosecution , court clerks , magistrates . consequently we end up often with advocates like me asking for youths to be sent back for sentencing in the YC . The whole Youth Court system is far more nuanced than it was when i started back in the mid eighties , but the requirement or need for different and better skills only now seems to have come to the fore . Not before time . Many youths in the courts have magnified mental and social problems over and above that of adult offenders and empirical evidence exists to show that early intervention can help . In order to do that advocates who profess to work in the YC [and indeed to an extent in the adult MC] need to be aware of the specific needs and be aware of how to recognise them . I would insist not only on an HRA requirement but also a requirement to have undertaken the Vulnerable Witness/Defendant course . I am acutely aware of the frighteningly high number of advocates in all courts who are not aware of the Advocates Toolkits, nor have an intimate knowledge of the Overarching Principles for Sentencing Youths - so let's show we care for Gods sake and drive standards UP!! Then at least we will be worth the increased remuneration we ask for .

4. (untitled)

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

Absolutely - just so long as advocates read them!

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

There is a massive misunderstanding in the profession generally in relation to mentally disordered offenders - ie the level of psychiatric disturbance amongst our clients generally , how to spot a client with difficulties , how to help such a client , how to instruct/liaise with experts , the difference between psychiatric illness and psychological disturbance , the process for dealing with unfitness in either court etc etc etc All these need specific targetting

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

yes

19.9) Do you have any further information to help inform our impact assessment?

feel free to contact me - i am keeping the remarks so far mild but balanced!

Assuring advocacy standards consultation

Response ID:22 Data

2. About you

1.
First name(s)

Robert

2.
Last name

Cashman

3.
Please enter your SRA ID (if applicable)

190383

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Tuckers

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

yes

12.

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

13.

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

Yes

14.

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

Yes

15.

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?

No

4. (untitled)

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

Yes

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

Training

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:82 Data

2. About you

1.
First name(s)

Simon

2.
Last name

Walton

3.
Please enter your SRA ID (if applicable)

148568

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Charles Strachan Solicitors

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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?

Yes

12.

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

No

13.

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

Yes

14.

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

Yes

15.

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?

No

From looking at the BSB the Bar have to register and self assess to undertake Youth Court work, no more, no less.

My background is that I am a solicitor and have been for 28 years. For all of that time I have represented clients in the magistrates Court, Juvenile Court [as it was]and more recently the Youth Court. I have done trials with youths in both the adult [as co-accused with adults] and the youth court setting.

I have represented youth clients as advocate in trials for kidnap, robbery, s.18 wounding and serious sexual assaults amongst other things.

I am not a Higher Court Advocate. I never saw the need to obtain the qualification in my earlier years and I now have no real desire to become an HCA now.

I feel your proposals are flawed on both the theoretical and practical sense.

Theoretically, under your proposals, I can represent the client who approaches another youth and steals his money, who when arrested has a knife in his pocket, but i cannot represent that youth if in the course of stealing he brandishes the knife or tells the complainant that he has the knife in his pocket. One of course is Robbery, indictable only, whilst the other is theft and possession of an offensive weapon.

Further, if a 17 year old drives her car after passing her test and kills someone having driven carelessly I would be able to do the trial in the youth court, as long as her breath alcohol reading was 34. However if it's 36 in breath then a [pupil] barrister or HCA has to step in as causing death by careless driving whilst under the influence of alcohol is indictable only whilst causing death by careless driving is not .

Again I would be able to represent a youth who broke someone's leg in a football match with a reckless challenge but not if the youth is alleged to have said that he was going to break his leg beforehand. [s.18 and s.20 wounding]

There are numerous examples of this. Are your rules to apply at the start of the case, at the plea or at trial? Why can a pupil barrister of 26 or 27 years of age who has properly told their governing body that they are competent to do the work be better placed than me to do that trial?

I may have dealt with the youth over a period of time, who has been involved in a series of offences , but when it comes to a

"serious offence" in the youth court I have to hand them over to another professional who has to build the rapport and trust again, something that the reports referred to in your prelude refers to, the need to build trust with venerable youths, yet your suggestion could take away the confidence the youth has in the system by removing someone they might see as their only ally in the system.

Practically it would almost inevitably, lead to an increase in cost both for the Government and the individual solicitor firms, perhaps forcing some out of an already fragile market.

As a duty solicitor I regularly deal with youths.

What happens if I have a youth for a robbery offence in court on a first appearance? Not an unusual occurrence despite the declining numbers. By the proposals contained in your consultation I cannot represent. I have to call for an HCA or a barrister to attend the court. What happens if the barrister of HCA is not "duty" qualified? Who meets the costs?

What would you say to a high value theft, where if involved with an adult the youth would go to the Crown Court, but as a youth he does not. Can I, as a non HCA represent?

My suggestion would be that you obtain a certification from the COLP that the advocacy services offered are appropriate for the court and individual saying that they are competent to deal with youth court matters.

Offer improved training with emphasis on advocacy within the youth system.

With the self certification and the certification by the firm an individual may be attached to then the encouragement on reporting and the lowering in threshold standards for "conviction" before the SDT this should suffice should someone not meet the required "standard".

4. (untitled)

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

yes

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

See above

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Yes

19.9) Do you have any further information to help inform our impact assessment?

no

Assuring advocacy standards consultation

Response ID:29 Data

2. About you

1.

First name(s)

Thomas Julian Edwards

2.

Last name

Edwards

3.

Please enter your SRA ID (if applicable)

626744

6.

I am responding..

in a personal capacity

7.

In what personal capacity?

Solicitor

8.

Please enter the name of your firm/employer

Enoch Evans LLP

9.

Please specify if you are

an in-house solicitor

10.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.

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?

Yes

As Solicitors of the Courts of England and Wales a level of trust ought to be placed in the professional judgment of those undertaking advocacy

12.

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

No

13.

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

Yes

This would maintain a set standard for all whom conduct higher advocacy which is an appropriate safeguard

14.

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

Yes

A breadth of experience ought to be obtained upon qualification before such assessment should be attempted

15.

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?

No comment as I do not practice criminal law

4. (untitled)

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

Yes

This would be especially helpful as a 2 year PQE advocate

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

Approach to vulnerable witnesses

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:56 Data

3. Consultation questions

11.

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?

Yes

12.

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

13.

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

No

14.

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

No

15.

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?

No

4. (untitled)

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

Yes

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

No

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:70 Data

3. Consultation questions

11.

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?

Yes

12.

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

No

13.

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

Yes

14.

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

Yes

15.

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?

Yes

4. (untitled)

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

Yes

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

Guides as well as pro-forma or template skeletons, submissions, case plans etc
Combine/unify CPS and Defence resources

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Yes

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:109 Data

3. Consultation questions

10.

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?

The overriding concern, in relation to standards of advocacy and the awarding of practice rights, must be the protection of the public and their perception, expectation and experience of the profession in this regard.

Based upon this premise we therefore do not agree with the proposal as a plan to reduce the amount of advocacy training/assessment that is required under the new SQE scheme will result in solicitors being less equipped upon qualification to deal with straightforward cases, let alone anything more complex involving vulnerable witnesses or youth court work. This new scheme is less robust than the existing scheme in this regard and the existing scheme is also insufficient as it does not deal with vulnerable witnesses and provides a cursory, albeit valuable, insight into conducting a trial.

Simply to rely upon someone's judgement to assess their competency in this area without any formal training is misguided. It is only through experience and training that you become aware of your inadequacies and it is not in the public interest that this experience is gained through live cases. It would be much more robust and secure for the public if more extensive training and assessment was carried out prior to qualification. In addition we believe that there should be additional training for those undertaking youth court work.

In respect of the impact of this proposal upon the profession we believe that this new approach could result in less diversity among solicitor advocates as restricting advocacy training at the SQE stage could limit potential career paths further down the line or force people into making a decision about an advocacy/non advocacy role upon qualification.

Public perception of lawyers is that they already possess advocacy skills and so can represent and or advise them throughout their case. Not ensuring that solicitors have a sufficient amount of training and assessment upon qualification to meet the public's expectations, could cause detriment to the public's opinion of the profession as well as potentially putting the public at risk.

It would also be short-sighted to consider advocacy training as only being relevant to court work. There are other instances when solicitors deal with vulnerable individuals and/or require advocacy communication skills in other practice areas. The provision of training in this area can only enhance solicitors skills in all areas of practice.

11.

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

Yes, we think these standards are much improved as they are more relevant to current practice, are wider ranging than the current HRA standards and provide for a more rigorous assessment which focuses upon practical advocacy as well as written.

However, it should be noted that in order to make the assessment of these standards a rigorous process, consideration needs to be given to the proposed assessment format and also the regulations around the passing standard for these assessments. e.g. removing the ability to pass the assessment via compensating poor practical advocacy performance with strong written advocacy competence. These regulations are of vital importance to ensuring that the competence threshold for these standards is consistent and robust.

We also agree that these standards should be aligned to those which apply to barristers and chartered legal executives

12.

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

In principle, we do not see a problem with an organisation being able to put in place sufficiently robust procedures to enable them to both train and assess towards the HRA standards. That said we recognise the approach currently being taken in other legal regulatory qualifications and understand the desire to apply a consistent approach towards assessment methodology across the range of SRA regulated qualifications.

We do feel that the option of having multiple assessment organisations, whether allowed to train as well as assess, or not, has not been fully explored and should be a consideration for further investigation. We understand the problem of monitoring large numbers of providers, as is the case with current LPC provision and hence the move towards a single assessment provider for SQE, but with clearer HRA standards, a standardised blueprint for the assessment format set by the SRA and the introduction of more robust and standardised quality assurance processes adopted by the SRA and applied across all assessment providers, there is the possibility of enabling a number of providers to offer assessments rather than just limiting it to one. This approach could assist with any potential resourcing issues that may exist by having only one assessment provider and would avoid any restrictions to the supply of assessments and therefore the number of advocates being able to qualify. Given the small number of existing HRA providers it is unlikely that there would be a large number of providers for this new scheme. Potential inconsistencies across SRA external moderators for example could be more easily managed by the SRA as fewer will be required and the SRA resource requirements will therefore be reduced. Robust training of a small team of external moderators and monitoring of a small group of assessment providers should be achievable without being as resource intensive as the SRA proposes.

13.

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

No, we disagree because it is not for the regulator to determine when learning can take place and be assessed but it is for the regulator to determine when these rights can be exercised. We therefore think that trainees should be allowed to undertake HRA training and assessments prior to qualification but only have the authority to exercise these rights upon qualification in order to manage public expectations.

14.

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?

Yes, we agree that those working in the youth courts need additional training. We however disagree that this additional training should be in the form of HRA training/assessment as the procedures in the youth court are significantly different to those in the crown court and therefore a HRA qualification does not equip an advocate to deal with youth court procedures. It would be better for those working in the youth courts to acquire a youth court advocacy qualification via a separate assessment. The HRA and youth court qualifications may both contain equivalent competencies, as required by the HRA assessment, to deal with complex cases but the assessment scheme for those involved in youth court work needs to ensure that the standards are appropriate to the youth courts and appropriate to their ethos which is aimed at diversion from the justice system.

4. (untitled)

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

Yes, additional resources would be helpful.

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

See response to q5

17.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We agree with simplifying existing processes and ensuring that everyone knows how to report is a positive approach.

18.9) Do you have any further information to help inform our impact assessment?

The evidence provided in the consultation and which supports the impact assessments appears to put the focus upon poor criminal advocacy with little reference to any specific concerns regarding civil advocacy. Therefore we question if changes are required to the current civil HRA procedures given that the data provided in the consultation suggests that a smaller proportion of civil HRA advocates actually use such rights in the higher courts and of those that are using them, there appears to be very little evidence of complaints?

Assuring advocacy standards consultation

Response ID:17 Data

3. Consultation questions

11.

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?

Yes

12.

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

They look very thorough and all encompassing

13.

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

Yes

14.

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

Yes

15.

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?

No

4. (untitled)

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

Yes

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

No

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Yes

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:19 Data

3. Consultation questions

11.

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?

Not entirely. Whilst I accept that currently the minute you are admitted you are entitled to appear in the Magistrates Court, I wonder whether you should look at this in more depth. I am not sure at all that new entrants to the profession are receiving sufficient advocacy training to allow this to continue.

12.

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

Broadly in favour

13.

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

Yes but that organisation should not be the same organisation that provides the courses and training.

14.

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

Absolutely

15.

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?

100%. In addition, the profession needs to remember that if the advocate would not conduct say a rape trial at the Crown Court, then that advocate should not be conducting a rape trial in the Youth Court. I'd suggest that a requirement similar to that for prosecutors, that only an advocate who has completed the vulnerable witness training should be conducting these sort of cases. I have higher rights and have had them for almost 15 years. But, when I had a rape case in the Youth Court I obtained a certificate for Counsel and instructed a senior member of the Bar. I'd happily instruct an HRA who has experience of such cases as well.

4. (untitled)

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

Yes

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

18.8) Do you agree with our proposals to support reporting? Do you have other

suggestions about how we might improve our reporting processes?

Yes. I admit that I have days when I think that I could do better. I obviously try not to have too many of those days but I wouldn't have a problem with this being raised with me and none of us should. We are there to protect the vulnerable and if we aren't up to the mark this needs to be dealt with.

19.9) Do you have any further information to help inform our impact assessment?

I'm more concerned with the impact on the vulnerable defendants to be honest.

Assuring advocacy standards consultation

Response ID:26 Data

3. Consultation questions

11.

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?

Yes

12.

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

No

13.

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

Yes

14.

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

Yes

15.

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?

No. Solicitors are always free to instruct counsel/pass the matter on to an HCA if they feel as though the matter is beyond their level of expertise but this should not be an absolute requirement. Under the current proposals, it appears as though any solicitor without the HRA qualification would be unable to act as duty solicitor in the youth court, in case a serious matter should appear on the list for an early hearing. Similarly, many solicitors without the HRA qualification are in fact more than capable of handling serious matters that would be heard in the Crown Court if an adult, but many HCA's/counsel are unfamiliar with youth courts, which could in turn put the defendants at a disadvantage over those charged with slightly less serious matters who are represented by advocates who are not HCAs but are more familiar with youth court law and practices.

4. (untitled)

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

yes

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

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:30 Data

3. Consultation questions

10.

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?

Yes

11.

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

It would be extremely beneficial for Solicitors who wish to become HRA to be have access to similar mentoring and observational elements which Barristers have as part of their training.

12.

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

No

13.

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

Yes

14.

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?

Yes

4. (untitled)

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

Yes

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

No

17. 8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

Yes

18. 9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:36 Data

3. Consultation questions

11.

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?

Yes

12.

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

No

13.

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

No view

14.

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

Yes

15.

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?

No. Many solicitors without HRA practice in the youth court on a daily basis and are specialist in the field. In particular dealing with young people, identifying issues and concerns specific to young people such as Modern Day Slavery, procedure on bail and sentence and other issues specific to the youth courts. Those of us in this situation are well aware when matters listed for trial are outside our competency and routinely apply for certificate for counsel and/or instruct HRA to conduct trials. The daily practice in the youth court allows for particular knowledge and expertise in the working of the youth justice system beyond the courts such as the YOS, social services and CAMHS. This routine knowledge can only be acquired through daily practice which HRA do not generally have experience of.

4. (untitled)

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

Yes

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

No

18.8) Do you agree with our proposals to support reporting? Do you have other

suggestions about how we might improve our reporting processes?

No view

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:42 Data

3. Consultation questions

11.

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?

yes

12.

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

no

13.

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

Yes

14.

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

Yes

15.

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?

No. Solicitors have been practising in the Youth Court for many years and are familiar with the rules and guidance as they apply in the Youth Court. There is no need to limit representation to HCA where the Youth faces an allegation that would go to the crown court if it involved an adult.

4. (untitled)

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

yes

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

no

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:44 Data

3. Consultation questions

11.

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?

Yes

12.

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

I do not hold HRA and have no intention to apply, although I believe I am a good Magistrates' Court and a Youth Court advocate

13.

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

I do not believe that a change is needed

14.

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

No

15.

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?

No, absolutely not. There are very good and knowledgeable solicitors without HRA who provide excellent service. Clients in the Youth Court will likely to end up with a pupil barrister with less experience. I trust the SRA have not consulted the LAA on increasing funding before making these proposals?

4. (untitled)

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

Without significant additional funding from the LAA training is not going to help.

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

Significant additional funding

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No

19.9) Do you have any further information to help inform our impact assessment?

Assuring advocacy standards consultation

Response ID:49 Data

3. Consultation questions

11.

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?

Yes

12.

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

No

13.

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

Yes

14.

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

Yes

15.

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?

Yes

4. (untitled)

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

Yes very , finding a course that is suitable after several years experience in the Crown Court is difficult. Most courses are aimed at Solicitors seeking to obtain Higher Rights. Barristers have access to much better continuing training for Crown Court advocacy.

The Law Society course on vulnerable witnesses was an exception ,it was excellent.

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

Evidence and procedure in Crown Court trials. These need to be small groups where everyone must have experience of Crown Court advocacy up to and including trials.

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

The reporting of inadequate representation in the Crown Court should be sent to a joint Bar and Solicitors body set up for that

purpose ,so that proper comparisons can be made. It should not be accepted as a default position that Solicitors with Higher Rights are less competent at advocacy in the Crown Court than Barristers.

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:53 Data

3. Consultation questions

11.

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?

Yes. Existing practice rights are appropriate for the level of solicitors upon admission. All solicitors have a general duty not to undertake work beyond their competence; this of course includes witness handling.

12.

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

I disagree that the existing standards fall short from delivering consistent quality advocates. There is simply no evidence provided of a variance in quality between candidates approved by different providers. The assessments I undertook were extensive and rigorous and prepared me well for Higher Court advocacy.

13.

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

No; see answer to question 2.

I have concerns regarding costs in an effective monopoly as well as the capacity to provide training and assessments to the same numbers as present.

14.

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

No. There is no evidence whatsoever that undertaking the HCA assessments as a trainee is linked with inappropriate or unsatisfactory advocacy. During the course that I took, there were solicitors of many years experience who had failed the assessment on more than one previous occasion, and there were trainees who ultimately attained the required standard at their first attempt.

A restriction in the ability to qualify with higher rights of audience will have two immediate effects:

- 1) It will disadvantage NQ solicitors vs the Bar
- 2) More aspiring lawyers will be put off from joining the solicitors profession and may choose instead to join the Bar, given that they enjoy Higher Rights of Audience from a much more junior level via that route.

15.

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?

No. There is simply no justification for this. An artificial line is being drawn here. A case could well be 'serious' but simple, e.g. a single punch GBH, or 'not serious' but complex, for example a common assault with a very young complainant with mental health needs. This is the same in the Magistrates Court. As a solicitor in the Magistrates Court I have had to cross examine complainants and witnesses as young as 8 years old in common assault cases. That required a far higher standard of advocacy than, for example, the cross examination of a cell site expert in a multi handed armed robbery trial in the Crown Court.

The existing requirement that a solicitor should not undertake work beyond their competence is sufficiently protective of the

public.

4. (untitled)

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

Yes - but additionally if mandatory standards are introduced the SRA should bear the cost of training and assessment for any candidate who wishes to undertake such work. The current climate in Criminal litigation is simply that no further cost burdens can be borne, especially if those costs are required simply to continue with work already undertaken by a particular solicitor.

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

N/a

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

In my experience, if Judges (who are without question best placed to comment on advocacy standards) feel that an advocate appearing before them has acted improperly, they are already perfectly well empowered to make reports.

Clients and their families are often very badly placed to judge whether their advocate has provided a good service, simply because they are partial to the process. For example, a competent advocate may well refuse to undertake a particular line of questioning of a witness because it is prohibited (sexual history), not tactically appropriate (in cases of bad character) or irrelevant. The service user may feel that they have been poorly represented, when in fact a less experienced advocate who simply put their instructions into practice may have put themselves and their client into a considerably worse position and exposed themselves to judicial criticism.

19.9) Do you have any further information to help inform our impact assessment?

No impact assessment can be considered complete without a financial impact assessment upon the business models of criminal legal aid firms.

Assuring advocacy standards consultation

Response ID:64 Data

3. Consultation questions

11.

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?

yes

12.

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

no

13.

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

yes

14.

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

yes

15.

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?

no

4. (untitled)

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

yes

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

links to BSB training resources

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

no

19.9) Do you have any further information to help inform our impact assessment?

no

Assuring advocacy standards consultation

Response ID:83 Data

3. Consultation questions

11.

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?

YES

12.

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

No

13.

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

I have no view.

14.

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

Yes

15.

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?

The idea that a solicitor of many years experience of magistrates' court advocacy, including youth court needs Higher Rights merely because the case in point would go to the Crown Court if the defendant is an adult, is both ridiculous and insulting. There seems to be no conception of what is actually entailed. Merely because advocates are barristers or HRAs does not qualify them to undertake youth court work; they have to have actual experience of that work. I have had experience of doing such cases - with learned counsel (not baby juniors) for the prosecution - however I merely have been admitted 43 years as a solicitor, mainly undertaking criminal advocacy in the magistrates and youth courts, but I am not, out of my own choosing, an HRA. Why I should suddenly not be able to undertake the cases you envisage, merely because of lack of some paper'qualification'?

4. (untitled)

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

I have no comment

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

No comment

18.8) Do you agree with our proposals to support reporting? Do you have other

suggestions about how we might improve our reporting processes?

No comment

19.9) Do you have any further information to help inform our impact assessment?

No

Assuring advocacy standards consultation

Response ID:89 Data

3. Consultation questions

11.

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?

YES

12.

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

The standards should allow for exemptions for those solicitor advocates who have undergone the necessary training and assessment .

13.

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

No. I worked very hard to obtain my Rights of Audience in the Higher Courts. My advocacy skills were rigorously tested in 2010 when I successfully completed the training and assessment in Advocacy Skills (Criminal). The organisation that assessed my advocacy skills was Kaplan Altoir who is a recognised body. I therefore submit that it would be unfair for me to have to undergo any further assessments.

14.

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

Yes

15.

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?

No. If the advocate dealing with a case in the youth court feels incompetent then he should withdraw.

4. (untitled)

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

YES.

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

BEST PRACTICE IN HANDLING VULNERABLE WITNESSES.

18. 8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

YES

19.9) Do you have any further information to help inform our impact assessment?

NO

Assuring advocacy standards consultation

Response ID:103 Data

3. Consultation questions

11.

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?

Can't comment as I did not qualify under this system and learnt advocacy in bail apps and chambers in articles. It strikes me though that although you will assess the plea skills etc your real problem is with trial advocacy. I don't know what training is in place but perhaps qualifying exams should look at witness handling as a skillset although I don't think it should be assessed as a pass/fail test (if it is to be assessed) until the solicitor has had trial experience.

12.

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

Got my HR under the partial exemption scheme.
Can't disagree with improving the testing of HRA applicants.

13.

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

Yes - level playing field for standards

14.

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

Definitely and I would say not until have at least a year in practice

15.

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?

Not under any circumstances. You fall into the trap of believing that only barristers or HRA are really good advocates. It's not true. I have colleagues with experience who would outstrip an HRA or barrister simply because they are youth court experienced. How can you say a pupil barrister is as good as an experienced trial lawyer. You can't. And the evidence that you are proposing all this change on is just from Judges and the Bar?

4. (untitled)

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

Definitely be helpful to have all the stuff in one place tbh practice and Archbold and a supportive firm are the best resources.

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

No

18.8) Do you agree with our proposals to support reporting? Do you have other

suggestions about how we might improve our reporting processes?

Reporting - can you show that complaints are actually about the advocacy or the outcome where clients are concerned. It may well be a matter of perception.

The Judiciary may not be unbiased.

If a report comes in how will you test it fairly? Go and see the advocate in action? It's unworkable. We have a complaints procedure. This is just adding another layer of bureaucracy.

19.9) Do you have any further information to help inform our impact assessment?

I have given up criminal work due to a number of factors but they include the increasing inability for the SRA (and LAA) to trust solicitors to do their job. Also I am an assistant solicitor not in-house in the technical sense

Assuring advocacy standards consultation

Response ID:108 Data

3. Consultation questions

11.

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?

Yes

12.

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

AS USUAL THEY ARE A SLEDGE HAMMER TO CRACK A NUT

13.

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

NO

14.

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

YES

15.

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?

NO

SOLICITORS WITH YEARS OF EXPERIENCE REPRESENTING ADULTS AND YOUTHS IN MAGISTRATES COURTS AND YOUTH COURTS CAN BE FAR MORE ABLE AND APPROPRIATE THAN A MORE RECENTLY QUALIFIED BARRISTER OR SOLICITOR WITH THE APPROVED TRAINING.

RATHER THAN WASTING MONEY SETTING UP A BURDENSOME QUALIFICATION SCHEME THE MONEY WOULD BE BETTER INVESTED PROVIDING, YES FOR FREE, A SIMPLE TRAINING COURSE ENHANCING SKILLS SPECIFIC TO THE YOUTH COURT (LEGAL AND PERSONAL) GIVING MORE SOLICITORS THE CONFIDENCE AND COMPETENCE TO APPEAR THERE.

WORK LOAD IN THE YOUTH COURT IS NOW SO LOW THAT MANY PERFECTLY ABLE SOLICITORS LACK THE CONFIDENCE TO APPEAR.

YOUR POLICIES SHOULD BE ABOUT SUPPORTING AND ENHANCING THE SKILLS OF THE SOLICITORS PROFESSION NOT PUTTING UP OBSTACLES AND EXCLUDING THEM TO THE BENEFIT OF THE BAR AND LEAVING YOUTHS REPRESENTED BY YOUNG BARRISTERS WHO MAY HAVE THE REQUISITE LEGAL QUALIFICATIONS BUT BE SORELY LACKING IN APPROPRIATE LIFE EXPERIENCE OR PERSONAL SKILLS.

4. (untitled)

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

YES

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

YOUTH WORK
MENTAL HEALTH
HEARSAY
BAD CHARACTER
CPR
SENTENCING
IT SKILLS
FORENSIC EVIDENCE

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

NO
DO THE EMPIRICAL RESEARCH AND IF THE EVIDENCE ISN'T THERE DON'T TRY AND SOLVE A PROBLEM THAT DOESN'T EXIST
LEAD THE WAY IN ENHANCING SKILLS RATHER THAN ADDING FURTHER LAYERS OF REGULATION BUREAUCRACY AND EXPENSE
SPEND THE MONEY SUPPORTING THE PROFESSION AND THOSE DOING THE ACTUAL WORK RATHER THAN THOSE REGULATING IT AND PROFITEERING OUT OF TRAINING
HAVE SOME RESPECT FOR SOLICITORS OWN JUDGEMENT AND PROFESSIONALISM TO DO WORK WITHIN THEIR OWN ABILITY
WORK WITH THEM TO IMPROVE THAT

19.9) Do you have any further information to help inform our impact assessment?

WORK WITH US NOT AGAINST US!

Assuring advocacy standards consultation

Response ID:116 Data

3. Consultation questions

11.

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?

Yes

12.

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

It should be left as it currently is

13.

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

No

14.

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

Yes

15.

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?

No

4. (untitled)

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

Yes

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

18.8) Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

No

19.9) Do you have any further information to help inform our impact assessment?
