



**The Law
Society**

Assuring advocacy standards

The Junior Lawyers Division
response to the SRA consultation

November 2019

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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.