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## **BSB QASA Appeals Policy**

1. You may appeal to the Bar Standards Board against any decision reached by it to:
  - 1.1 refuse your application for accreditation, re-accreditation or progression; or
  - 1.2 revoke your accreditation at your current level,
2. You may not appeal against the content of an individual assessment conducted by a judge and recorded through a criminal advocacy evaluation form.
3. You may bring an appeal to the Bar Standards Board by serving notice in writing on the Board within 21 days from the date of the notice of the relevant decision.
4. A notice of appeal shall confirm:
  - 4.1 the decision appealed against;
  - 4.2 the grounds of appeal; andand shall be accompanied by a fee of £200.
5. An appeal may only be brought on the grounds that:
  - 5.1 the decision reached was unreasonable; and/or
  - 5.2 there was a procedural error in the assessment or decision-making process and that you suffered disadvantage as a result which was sufficient to have materially affected the decision.

### **Procedure for considering appeals**

6. An adjudicator will be appointed to consider an appeal. The adjudicator will be drawn from a Panel appointed by the Bar Standards Board.
7. An appeal shall be considered on the papers at a meeting, in private, unless the adjudicator, at their discretion, decides that a hearing in person is required.
8. Where a hearing in person is required, the adjudicator shall, no less than 28 days before the date of the meeting or hearing at which the appeal is to be determined, serve notice on you, specifying the date, time and venue of the meeting or hearing. Notice shall be served on you in accordance with Rule 32(1)(a)-(c) of the Disciplinary Tribunal Regulations 2009.

9. The adjudicator may admit any evidence which they considers fair and relevant to the appeal, whether or not such evidence would be admissible in a court of law, save that no person is to give oral evidence at a hearing unless the adjudicator considers such evidence is desirable to enable them to discharge their functions.
10. The appeal shall be by way of a re-hearing.
11. The adjudicator may at any time, whether of their own motion or upon the application of a party, adjourn the proceedings until such time and date as they think fit.
12. You may be required to attend at an appeal hearing and you can be represented, however, in those circumstances, where you are neither present or represented, the adjudicator may nevertheless proceed to consider and determine the appeal if they are satisfied that all reasonable efforts have been made to serve you with notice of the hearing.
13. The adjudicator may:
  - 13.1 dismiss the appeal;
  - 13.2 allow the appeal in whole or part;
  - 13.3 substitute for the decision appealed against any other decision that it is open to the Bar Standards Board to make under the QASA rules; or
  - 13.4 remit the decision to the Bar Standards Board for reconsideration on such terms as the adjudicator considers to be appropriate in the circumstances.
14. The adjudicator may order, in the event of a successful appeal, a refund of any appeal fee paid to the Bar Standards Board.
15. The adjudicator shall give notice of their decision in writing, together with reasons for the decision. This decision cannot be appealed.

## QASA – BSB Operational Readiness

1. Significant time and resource have been put into ensuring that the BSB is operationally ready for the implementation of the Scheme.

### *Project planning*

2. The development of the operational structures for QASA has been subject to strict project planning methodologies. We have adopted the ISO 9001 approach to quality management of the operational implementation of the Scheme. The benefit of such an approach is the improved management of multiple activities and resources through defined processes. Each defined area of activity of the project has been organised into work streams. Each of the work streams has then been mapped into a timeline in the form of Gantt chart. From this we have been able to identify, understand and manage interrelated processes more effectively and efficiently. We have also been able to identify risks and take the necessary action in order to ensure objectives are met.

### *Budget*

3. The financial modelling for QASA has been scrutinised and approved by both the (then) Performance and Best Value Committee and the Finance Committee. The Scheme will operate on a cost recovery basis with fees charged to advocates covering the cost of the operation of the Scheme.
4. The budget has been updated following the revisions to the Scheme following the fourth consultation. The impact of the timetable shifting forwards nine months from when it was last planned to open has affected the income projections. Income will be deferred. This has impacted upon the cost recovery model with the scheme operating at a loss for a longer period than originally planned. The shift in implementation timetable has not however impacted upon the level of the fees that will be charged to advocates.
5. The fee structure for QASA is:

#### **Provisional accreditation**

Level 1 - £0  
Level 2 - £80  
Level 3 - £100  
Level 4 - £120

#### **Progression**

Level 1-2 - £125  
Level 2-3 - £325  
Level 3-4 - £350

#### **Reaccreditation**

Level 2 - £100  
Level 3 - £150  
Level 4 - £200

6. The fee structure has been determined following a separate consultation on the financial approach to QASA.

### *Resource and operational planning*

7. All activities of the accreditation processes have been process mapped into an Operational Manual, which includes a step by step guide to the administration of the Scheme. Following the analysis of the processes the team have developed a resource plan, based on planned activity and time projections. For example, queries anticipated in each circuit, factoring in number of advocates, type of query, complexity and so forth to generate a resource model. Where gaps have been identified, we have planned for additional resources to meet that demand. In the first year of implementation there is significant and sustained demand which would exceed the current demands of the team. As such a fixed term contract for twelve months for an additional assistant is planned to start in August 2013. The budget also allows for further temporary staff to be deployed at periods of extreme peaks such as the last period before the closing dates within each circuit.

### *IT systems*

8. A bespoke addition to the core database has been developed for the operation of QASA. Much of the IT work is now complete. The team undertook several rounds of system testing in the latter part of 2012. User acceptance testing was carried out in January 2013 with the aid of the QASA internal User Group. The feedback from this session was overwhelmingly positive, with the majority of the group not needing to rely on the guidance documentation given the intuitive nature of the system. Further testing will be done with barristers before the Scheme is implemented.

### *Electronic marking systems*

9. Having agreed and finalised the criminal advocacy evaluation form, the BSB will process the submission of the form via an Optical Character Recognition system. This allows for the scanning of images captured from the original document, which cannot be changed or edited into a searchable text file. The main advantage is improved efficiency as opposed to requiring the information to be manually entered. The solution provider, Speedwell is an established software company that provides solutions to the Education Department of the BSB. The data output from the scanning solution will have two main users to help verify the evaluations when deciding on accreditation decisions. We will also be able to monitor data and run reports on each data field.

### *Monitoring and reporting*

10. Monitoring criteria have been defined which will measure the range of activities within the Scheme during the implementation and operation of the Scheme. This will include high level data that centres around the volume or length of period taken to move from one state of accreditation to another, to more analytical data such as analysing the reasons selected for applications for extensions. The criteria have been presented to the IT team, who have discussed a range of solutions using reporting tools that would link to the core database. Many of the tools are standard features which the team can be easily be trained on. There are a number of bespoke reports that are under development. The team will test the reporting features during the summer of 2013.

### *Transparency of accreditation data*

11. In order to ensure transparency, we aim to publish key accreditation performance data on a quarterly basis. This will include the number and type of accreditations at each of the levels per circuit area.
12. This is in addition to the Barrister's Register which will be updated automatically to reflect the current state of each advocates QASA accreditation. This will hopefully assist consumers of advocacy to have full awareness of the accreditation status of any advocate within the scheme.

#### *Judicial evaluation*

13. A significant element of the operational readiness has involved ensuring that the infrastructure for primary method of assessment, judicial evaluation to be in place prior to launch of the scheme. The BSB has been managing the contract for the implementation of the judicial training on behalf of JAG. 93 out of the 99 judges invited attended a training session in the Midlands and Western Circuit during the autumn of 2012. 93% confirmed that the training had met its objectives. The face to face session was aimed at ensuring consistency of application of the performance criteria when applying to scripted clips of advocacy. City Law School presented a report on the performance of the training in the first phase in January 2013. A formal review session of the training took place at the Judicial College. The session was chaired by HHJ John Philips, Director of Training and representatives from JAG and City Law School. The success of the training was noted and recommendations to further improve the training were discussed and approved. This has resulted in some adaptations to the materials in preparation for when the second phase of training which resumes in November 2013.

#### *Independent Assessors*

14. The BSB are leading on the recruitment of Independent Assessors on behalf of JAG. A recruitment pack has been developed and approved. A recruitment plan has been developed by Human Resources, which identifies the timeline and recruitment methodology. The aim is to recruit up to twenty Independent Assessors which will be available to each of the regulators. Dependent upon the range and quality of applications we aim to successfully recruit and train the majority of independent assessors prior to the launch of the scheme in September.

#### *Internal User Groups*

15. A user group, which includes representatives from teams within the BSB and the Bar Council, has been established. The purpose of the group is to communicate QASA related operational developments across the BSB and Bar Council and help the QASA team understand the impact (direct/indirect) of the Scheme. There have been a number of meetings to date where we have been able to gain feedback on key systems and processes prior to the Scheme going live. Over the coming months we will be implementing the internal communications strategy.

#### *Communications*

16. A series of communication activities are planned during the summer. The activities will involve a range of activities including podcasts, webinars and road shows. The events will focus on providing guidance and support for advocates to register via the online portal. There will be an opportunity to test the online portal and ask specific questions about the application process and how best they can proceed through it.

#### *Compliance Monitoring and Enforcement*

17. A number of compliance monitoring activities have been developed which are designed to ensure advocates are operating within the rules of the scheme. These include; registration spot checks ensure that advocates are registering at the appropriate level, physical spot checks in court and cross checking data from HMCTS will enable us to verify which advocates have appeared in courts. An enforcement strategy has been designed to seek to ensure that barristers who come within the scope of the Scheme register with the BSB.

#### *Review of the Scheme*

18. The overall impact of the scheme will be monitored and JAG has committed to a review of the scheme after 2 years of operation. This will provide an opportunity to assess the success of the scheme as well as identifying any areas that require improvement. The systems set up to operate the Scheme will generate data that will be invaluable to the review but there will also be the need for discrete targeted research to be undertaken into particular aspects of the operation of the Scheme and criminal advocacy generally. Following the approval of the Scheme JAG will begin the process of defining the specification for the recruitment of an external agency that will assist in undertaking this research.

## DRAFT - BSB QASA enforcement strategy

1. This is the enforcement strategy for dealing with non-compliance with QASA (or 'the Scheme'). It is designed to seek to ensure that barristers who come within the scope of the Scheme register with the Bar Standards Board. It will be issued in advance of registration so that barristers are aware of the consequences of failure to comply. Failure to do so and to undertake criminal advocacy (as defined by the QASA Scheme Rules) would be a breach of the Code and render the barrister open to disciplinary action.

### Evidence required to activate enforcement

2. The BSB will gather information from the HMCTS in relation to which barristers are attending at court. In addition, where necessary, staff from the BSB's Quality Team will attend at key court centres to establish who is attending and undertaking criminal advocacy. The evidence gathered through these processes will be cross checked against the list of barristers who have registered under the Scheme.

### Informal notification of non-compliance

3. Where evidence is found of a barrister who is not QASA registered undertaking criminal advocacy they will be contacted by the BSB. The letter will inform them that:
  - i. Undertaking criminal advocacy whilst not QASA registered is a breach of the Scheme Rules;
  - ii. Continuing to undertake criminal advocacy whilst not QASA registered will give rise to an administrative fine
  - iii. They must obtain QASA registration if they intend to continue to undertake criminal advocacy;
  - iv. Barristers who do not believe that they need to be QASA registered, because their primary circuit of practice has yet to come within the phased implementation must, in accordance with their general obligations to provide information about their administration of their practice set out in the Code of Conduct, inform the BSB of that fact within 14 days.

### Fine

4. Where there is evidence that a barrister who has received the informal notification of non-compliance has continued to undertake criminal advocacy whilst not QASA registered they will, within 7 days of receipt of that information, be referred to the Professional Conduct Department (PCD) of the BSB. The PCD will issue an administrative fine within a week of the referral to be paid within 28 days. The barrister will be informed of their right to appeal the fine and also advised that they must obtain QASA registration if they intend to continue to undertake criminal advocacy.

### Discounted fines

5. Barristers will receive a discount to the fine if they register within a defined period of time after being advised that the fine has been issued. The discount amounts to:

Period	Discount
Register within one week	100%

Register within two weeks	50%
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6. Barristers who register after two weeks of the issuing of the fine will be liable for the full amount of the fine.

### **Disciplinary action**

7. Barristers who do not pay the fine or continue to undertake criminal advocacy without being QASA registered will be subject to disciplinary action in accordance with the BSB Complaints Rules.
8. Where a barrister pays the fine but there is evidence of a continued breach of the Scheme Rules through undertaking criminal advocacy when not registered, PCD will take fresh disciplinary action.

## Quality Assurance Scheme for Advocates - Equality Analysis

Date of Assessment	4 April 2013
Assessor Name & Job Title	Salim Nazir – Assessment Manager
Name of Policy/Function to be Assessed	Quality Assurance Scheme for Advocates (QASA)
Aim/Purpose of Policy:	<p>QASA is a quality assurance scheme for criminal advocates which has been developed by the Joint Advocacy Group (JAG), which comprises members of the Bar Standards Board (BSB), Solicitors Regulation Authority (SRA) and ILEX Professional Standards (IPS).</p> <p>The need for a quality assurance scheme for criminal advocates was first suggested in the Carter Report in 2006, which identified concerns about the quality of publicly funded advocacy and included a recommendation that a system of quality monitoring should be established.</p> <p>JAG has already conducted four public consultations on the scheme; the first being in 2009, with the most recent occurring from July to October 2012. It has also conducted significant targeted consultation with specific representative groups and consumer groups.</p> <p>Under QASA, all criminal advocates will need to be assessed and accredited at a level between 1 and 4. Cases will also be assigned a level between 1 and 4, relating to the seriousness and complexity of the case. Criminal advocates will only be permitted to undertake cases at their level or below. Advocates will be able to progress through the levels by demonstrating competence through assessment.</p> <p>The scheme has been developed in the public interest and in order to protect consumers from underperformance. In addition to consumer protection, it is hoped that the scheme will assist in the fair and proper administration of justice.</p> <p>The scheme is scheduled to become operational in September 2013.</p>

# 1. Evidence

What evidence will you use to assess impact on equality?

QASA is a new scheme and therefore there is limited evidence in many areas. For example, it is not even known exactly how many criminal barristers will come within the scheme. This has created a challenge and therefore some of the potential issues identified in this analysis have come from anecdotal information. In circumstances where the evidence is unverified or inconclusive within this Equality Impact Assessment (EIA), the most cautious line has been taken to assume the possibility of a negative impact which might require mitigation.

This EIA has been prepared utilising the following evidence sources:

- Barristers' Working Lives: A Biennial survey of the Bar 2011
- The Bar Barometer: Trends in the profile of the Bar (November 2012)
- Pupillage supplementary survey 2010/11
- Information from the Bar Council Records Department on the numbers of practising barristers

Key findings from these include:

- 34% of barristers spend the majority of their time on criminal work<sup>1</sup>.
- Criminal practice attracts the longest mean working hours of all practice areas (along with Family and Planning)<sup>2</sup>.
- 39% of disabled advocates had taken at least a three month career break, compared to an average of 13% across the whole bar<sup>3</sup>.
- 27% of female employed criminal barristers work part-time<sup>4</sup>.

On the basis of the above information it is estimated that in total approximately 5,000 criminal barristers will register for QASA and will therefore be directly impacted upon by the scheme. The BSB will maintain this Equality Impact Assessment as a living document. Once the scheme becomes operational, systems will be in place to collect all of the evidence that is currently lacking. For example, all criminal advocates to whom the scheme applies will need to register with the BSB. At this point they will be encouraged to complete diversity monitoring information. Therefore by October 2014, when registration has concluded, the BSB should have a reliable evidence base in relation to the numbers of barristers included within each category examined in this EIA.

One of the benefits of the scheme is that it will provide a wealth of equality and diversity monitoring information. This will allow for the true impact to be measured and for any necessary changes to

<sup>1</sup> Dilys Robinson 'Institute for Employment Studies' and Geoff Pike 'Employment Research Limited', *Barrister's Working Lives: A Biennial Survey of the Bar*, p. 24.

<sup>2</sup> *Ibid.*, p.50.

<sup>3</sup> *Ibid.*, p.15.

<sup>4</sup> *Ibid.*, p.34.

the scheme, in order to address negative impacts or enhance positive impacts, to be identified.

## 2. Impact on Equality

What impact will the scheme have on equality and diversity principles?

QASA will impact upon criminal advocates, who will need to adhere to additional requirements in order to continue to undertake criminal advocacy. This EIA focuses on the impact of QASA on criminal barristers. The SRA and IPS have conducted their own equality analysis into the impact of QASA on the criminal advocates that they regulate.

QASA should also have an impact upon consumers of advocacy services. It is hoped that this impact will be largely positive. However, there is a risk that any negative impacts on criminal barristers could result in negative impacts on consumers; for example, if QASA leads to a less representative profession, such impact may also be felt by consumers. As the potential for negative impacts on consumers largely flows from the potential for negative impacts on the profession, the focus of this EIA is on the profession.

Race

9% of criminal barristers are BME<sup>5</sup>. Overall, 10.2% of barristers are BME<sup>6</sup>. Therefore there will not be an inherently disproportionate impact upon BME practitioners. The fees policy was developed with affordability in mind, as the whole criminal bar is under significant financial pressure. The fees have been kept as low as possible, ranging from £80-£120, and therefore should not present a significant burden. However, the following risk has been identified:

- **Assessment bias**

In order to be accredited to undertake trials under QASA, criminal barristers will need to be assessed, live in trial, by the judiciary. As with all assessment there is the risk of subconscious bias from the assessors.

**Action: Judicial training**

The training is designed to objectively assess advocates for the purposes of QASA and how to avoid any subconscious bias. Judges will need to have completed this training in order to undertake assessment as part of the scheme. In addition,

The training includes judges being asked to watch videos of advocacy from which they are asked to provide feedback against the performance indicators which are used to support the competency standards. Each judge is asked to provide their feedback on how the advocate has performed. The judges are instructed to focus their commentary on the performance against the indicators rather than provide feedback that relate to style. Trainers are required to challenge the judge where they have not assessed against the standards. This round robin approach to feedback is used to challenge

<sup>5</sup> Dilys Robinson 'Institute for Employment Studies' and Geoff Pike 'Employment Research Limited', *Barrister's Working Lives: A Biennial Survey of the Bar*, p. 25.

<sup>6</sup> The General Council of the Bar of England and Wales, *The Bar Barometer: Trends in the profile of the Bar*, (November 2012), p. 6.

inconsistencies and reinforce the assessment method which centres on consistent application of assessment criteria.

Following the session the judges are asked to assess two further performances in the case study to evaluate them in the way they did in the face to face training and by using the CAEF. The CAEF for each performance will be sent to City Law School. Each delegate will receive feedback on these.

City Law School will be monitoring how the judges have performed in both the face to face sessions and the consolidation exercise. There will be additional support available for those judges who may require it. Each trainer provides an update following each session to the lead trainer who is tasked with managing any quality issues. From their monitoring procedures we will be able to identify if any assessor is not assessing against the competence standards. In particular we will be able to identify if there is potential bias in their assessment judgements. Ultimately, we will be able to monitor assessment judgements and identify trends which could include how any evaluator has assessed a particular category of advocates broken down by their protected characteristic/s.

Following a review of the training, chaired by HHJ John Philips, Director of Studies, at the Judicial College, the training provider, City Law and representatives from JAG it was decided to include a performance by a black female advocate to test for subconscious bias. The trainers have pre-standardised the performance as a overall competent performance with some developmental areas for improvement. The areas for improvement should teeter out whether the assessor has concerns which are not related to the actual performance but to the protected characteristics of the advocate.

**Action: Subconscious bias brief**

Following the piloting of the training materials in the summer, the BSB have commissioned an expert to develop a briefing for judicial assessors and trainers on the impact of subconscious bias in assessing the competency of advocates under the Scheme and other issues related to equality and diversity. The briefing forms part of the pre-reading materials and is reinforced during the actual face to face session.

**Action: Monitoring assessment**

JAG will monitor evaluations in order to identify any potential trends in assessments which might suggest bias. Each evaluator, be that a judge or an assessor within an assessment centre will be assigned a unique reference number. We are developing an IT solution utilising Optical Character Recognition, which allows us monitor performance down to how each assessor has assessed any specific standard against each advocate. Each assessment is tracked within the advocates record within the database, and part of this involves updating E&D monitoring criteria. We will be able to run reports which enable us to identify how the assessors evaluate and whether there are any trends of bias. The system will allow us to flag such instances and take appropriate action.

If it is clear that a judge is basing their assessment judgements on issues which do not relate to the application of the competence standards, this will be flagged and the judge may be offered further training where appropriate. JAG is working with the Judicial

	<p>College who oversee the training to identify any data which raises concerns around bias. If an assessor is unable to consistently apply the assessment criteria then the regulator reserves the right to discount their evaluation.</p> <p>Ultimately the awarding of accreditation is the decision of the regulator based on an overall body of evidence which incorporates at least two different assessment judgements with the capacity for a third in the form of an independent assessor if required. For avoidance of doubt, one view is not determinative of how an advocate is assessed against the Scheme.</p>
Gender	<p>37% of criminal barristers are women<sup>7</sup>, which is largely similar to 35.1% of all barristers who are women<sup>8</sup>. Therefore there will not be an inherently disproportionate impact upon women practitioners. However, the following risks have been identified:</p> <ul style="list-style-type: none"> <li>• <b><u>Affordability</u></b></li> </ul> <p>Amongst employed barristers, women are more likely than men to work part-time (27% of female employed criminal barristers work part-time<sup>9</sup>). The Biennial Survey further suggests that “the small amount of part time working that does take place in the self-employed Bar is predominantly undertaken by women.”<sup>10</sup> Criminal barristers will be expected to cover the fees for applications under QASA and therefore these will represent a higher proportion of overall income for those who are working fewer hours.</p> <p><b>Action: Fees Policy</b></p> <p>Any process for managing reduced fees would require an application process which would require implementation and management of additional administrative processes. These costs would in turn have to be reflected within the overall costing structure which would then be passed onto all advocates, given the cost recovery model employed within the Scheme.</p> <p>The fees policy was developed with affordability in mind, as the whole criminal bar is under significant financial pressure. The fees are not thought to be high enough to justify specific reductions for part-time workers or those returning to work.</p> <p>It is also worth noting that the QASA fee is tax deductible which reduces the financial burden on the advocate. The fees for each application will be as follows:</p> <p><u>Registration</u></p> <ul style="list-style-type: none"> <li>• No charge for registration at Level 1.</li> <li>• £80 for registration at Level 2.</li> </ul>

<sup>7</sup> Dilys Robinson ‘Institute for Employment Studies’ and Geoff Pike ‘Employment Research Limited’, *Barrister’s Working Lives: A Biennial Survey of the Bar*, p. 25.

<sup>8</sup> The General Council of the Bar of England and Wales, *The Bar Barometer: Trends in the profile of the Bar*, (November 2012), p. 6.

<sup>9</sup> Dilys Robinson ‘Institute for Employment Studies’ and Geoff Pike ‘Employment Research Limited’, *Barrister’s Working Lives: A Biennial Survey of the Bar*, p. 34.

<sup>10</sup> *Ibid.*, p. 50.

- £100 for registration at Level 3.
- £120 for registration at Level 4.

#### Progression

- £125 for applications to progress from Level 1 to Level 2.
- £325 for applications to progress from Level 2 to Level 3.
- £375 for applications to progress from Level 3 to Level 4.

#### Re-accreditation

It is anticipated that costs for re-accreditation (required if you remain at the same level for 5 years) will be between £100-200.

- **Undervaluing skills**

There is research to suggest that women are traditionally more likely to undervalue their skills and might be less likely to volunteer themselves for progression, even if they are ready to progress.

#### **Action: Levels Guidance**

The scheme is intended to encourage advocate's to think carefully about their competence and those who overestimate their ability will be identified. However, in order to minimise the risk of advocate's undervaluing their ability, clear guidance has been produced to assist advocates to understand what level they practise at and what level they should be accredited at. This will be included in the Scheme Handbook. The BSB will also monitor men and women's progression through the scheme in order to assess whether women are progressing at a comparable rate to men.

- **Assessment bias**

#### **Action: See as above for race;**

- *Judicial training;*
- *Subconscious bias brief; and*
- *Monitoring assessment.*

- **Maternity/Paternity and career breaks**

#### **Action: See Career breaks below**

Disability	<ul style="list-style-type: none"> <li>• <b><u>Career breaks</u></b></li> </ul> <p>The proportion of barristers with a disability at the practising Bar is 0.5% (84). However it is imperative to note that this figure may be higher as missing data remains very high as 99.5% (15,497) did not disclose whether or not they had a disability<sup>11</sup>.</p> <p>Furthermore, disabled barristers are more likely to take a career break than those without a disability; the Biennial Survey found that 39% of disabled advocates had taken at least a three month career break, compared to an average of 13% across the whole bar<sup>12</sup>. Therefore any negative impacts of the scheme upon those taking career breaks would have a disproportionate impact on disabled advocates. There is the potential for the scheme to create an additional burden for advocates seeking to return to work after a career break or period of absence. However, the accreditation window has been extended to from 12 months to 24 months. In addition to this there is the capacity to apply for an extension from up to another 12 months. Hopefully the extended period plus any extension where applicable will mitigate the risk of additional burden. The scheme will also review the accreditation window and its impact on different groups.</p> <p><b>Action: Re-integration impact analysis</b></p> <p>Advocates seeking to enter or re-enter the scheme after a career break will be able to do so in a similar fashion to initial registration under the scheme. Therefore they will apply for a provisional licence and will then be able to seek assessment in trials when they are back at work. They will not be required to be assessed in their first trial and will also be able to undertake other non-trial hearings before submitting themselves for assessment. The cost of registering will not be greater than the cost of other assessment, meaning that the financial burden will be equivalent to that borne by other advocates. In some cases, an advocate might have a career break within the currency of their accreditation, in which case they could return to work without re-registering. As long as the risks are appropriately managed, the scheme should provide for a structured return to practice at the appropriate level, which should make returning to practice easier rather than harder.</p> <ul style="list-style-type: none"> <li>• <b><u>Assessment bias</u></b></li> </ul> <p>As set out above in relation to race, there is the inherent risk of assessment bias, which will be mitigated through training and monitored once the scheme is operational. However, in relation to disabled practitioners, there is the additional risk that some of the standards against which advocates will be assessed might be discriminatory. Examples that have been identified include performance indicators such as “maintains eye contact”.</p> <p><b>Action: See as above for race;</b></p> <ul style="list-style-type: none"> <li>○ <i>Judicial training;</i></li> </ul>
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<sup>11</sup> The General Council of the Bar of England and Wales, *The Bar Barometer: Trends in the profile of the Bar*, (November 2012), p. 23.

<sup>12</sup> Dilys Robinson ‘Institute for Employment Studies’ and Geoff Pike ‘Employment Research Limited’, *Barrister’s Working Lives: A Biennial Survey of the Bar*, p. 15.

- *Subconscious bias brief; and*
- *Monitoring assessment.*

**Action: CAEF – Performance indicator review**

All of the performance indicators have been RAG<sup>13</sup> rated to test their ability to provide reliable and valid assessments. During the compulsory training, the judiciary will be trained in how to make reasonable adjustments where necessary in relation to higher risk performance indicators. The BSB will monitor how successful the training has been in this regard.

**Action: CAEF update**

A review session involving expert advocacy trainers, practitioners and education and assessment professionals has taken place to review the standards and performance indicators. The main purpose of this session was to assess the validity, reliability of the performance indicators and whether there were equality and diversity related concerns. A number of recommendations were made which were accepted by JAG. One of the experts was still actively assessing advocacy at Cardiff University and was well versed with the application of good practice in relation to equality and diversity in assessment. Another expert was a trainer for one of the leading legal professional training organisations as well as a former Chief Examiner of an examination board. As such there was sufficient experience of fairness in relation to assessment methods. The outcome was an updated CAEF to reflect the changes.

- **Assessment opportunities**

In order to apply for initial registration, progression or re-accreditation under QASA an advocate will need to provide a range of evaluation forms which will need to have been completed by at least two different judges. Those who practise predominantly in small court centres in front of the same judge will be expected to attempt to seek trials in front of other judges in order to satisfy this requirement. Those with mobility impairments or special provisions at their regular court centre might be impacted by this requirement.

**Action: Independent assessors**

In limited circumstances the BSB will be able to deploy Independent Assessors to assess an advocate in trial, in place of judicial assessment. This will include circumstances where an advocate cannot reasonably be expected to be assessed by more than one judge. Disabled advocates in this position would therefore be able to satisfy the assessment criteria through requested assessment in this manner. There would be no additional charge to the barrister for this service and the barrister concerned would still be assessed in the course of their normal practice. Independent assessors would receive a programme of training, which would include applying reasonable adjustments. We will be monitoring training to ensure that it is effective and offering additional support as required.

- **Reasonable adjustments**

<sup>13</sup> Red, Amber, Green (RAG) Risk Assessment Classification.

	<p>Given that advocates will be assessed against the performance indicators within the CAEF there is the potential for unfair application of criteria for those advocates who are unable to be assessed due to disability. The advocate should be able to request a reasonable adjustment.</p> <p><b>Action: Handbook – Reasonable adjustment guidance</b></p> <p>The advocate will be able to request a reasonable adjustment prior to the assessment. Reasonable adjustment guidance will be incorporated into the training for the judges. The handbook will be updated with guidance on reasonable adjustments including the process of informing the assessor.</p>
Age	<ul style="list-style-type: none"> <li>• <b><u>Costs of scheme</u></b></li> </ul> <p>The costs of the scheme will be borne by criminal barristers. It is widely perceived that junior practitioners earn less on average than older, more senior practitioners; therefore the same costs would have a disproportionate impact on younger barristers. Any such negative impact is also likely to be minimised as a relatively small number of barristers are between the ages of 20-29<sup>14</sup>.</p> <p><b>Action: Fee structure</b></p> <p>The scheme has been developed in consultation with the Young Barristers Committee (YBC). A specific consultation on the fee structure was conducted in summer 2011 and the YBC responded to this. The fee structure provides for a gradation of fees, with higher fees for accreditation at higher levels. This will protect more junior practitioners for disproportionately high costs.</p> <ul style="list-style-type: none"> <li>• <b><u>Technological burdens</u></b></li> </ul> <p>Applications under the scheme will be made through Bar Connect, which is online. There will be some additional technological requirements in that advocates will be expected to scan and send in completed evaluation forms. The technological interface will be designed to require as low a level of IT literacy as possible. However, those with no skills or confidence with computers might find the operational requirements difficult to comply with. Such impact may be felt disproportionately by some older practitioners.</p> <p><b>Action: Contingency Arrangements</b></p> <p>The BSB will operate a similar policy in this regard as it has adopted in relation to Barrister Connect. The majority of barristers will be expected to complete their applications online through Bar Connect, however, those who are not able to do so will be assisted to complete their applications in hard copy.</p>

<sup>14</sup> The General Council of the Bar of England and Wales, *The Bar Barometer: Trends in the profile of the Bar*, (November 2012), p. 24.

<p>Sexual Orientation</p>	<ul style="list-style-type: none"> <li>• <b><u>Assessment bias</u></b></li> </ul> <p>As set out above in relation to race and disability, there is the potential risk of assessment bias, which will be mitigated through training and monitored once the scheme is operational. Whilst the risk is likely to be small, based on the number of advocates in the Biennial Survey stating their sexual orientation as Lesbian, Gay, Bisexual or Other<sup>15</sup>, it is still important to consider.</p> <p><b>Action: See as above for race/disability;</b></p> <ul style="list-style-type: none"> <li>○ <i>Judicial training;</i></li> <li>○ <i>Subconscious bias brief; and</i></li> <li>○ <i>Monitoring assessment.</i></li> </ul>
<p>Religion / Belief</p>	<ul style="list-style-type: none"> <li>• <b><u>Assessment bias</u></b></li> </ul> <p>In a similar manner to sexual orientation above, there is the potential risk of assessment bias in relation to religion and belief.</p> <p><b>Action: See as above for race;</b></p> <ul style="list-style-type: none"> <li>○ <i>Judicial training;</i></li> <li>○ <i>Subconscious bias brief; and</i></li> <li>○ <i>Monitoring assessment.</i></li> </ul> <ul style="list-style-type: none"> <li>• <b><u>Assessment centres</u></b></li> </ul> <p>There is a potential risk of assessment organisations running an assessment event on a religious holiday. However, we would ensure that the organisations avoid organising assessment events on such holidays and where there is a clash there be provisions made for those advocates affected.</p> <p><b>Action:</b></p> <ul style="list-style-type: none"> <li>• Review Assessment Organisation Timetable for QASA Assessment Events</li> </ul>
<p>Gender Re-assignment</p>	<ul style="list-style-type: none"> <li>• <b><u>Assessment bias</u></b></li> </ul> <p>In a similar manner to sexual orientation and religion/belief above, there is the potential risk of assessment bias in relation to gender re-assignment.</p> <p><b>Action: See as above for race;</b></p> <ul style="list-style-type: none"> <li>○ <i>Judicial training;</i></li> <li>○ <i>Subconscious bias brief; and</i></li> <li>○ <i>Monitoring assessment.</i></li> </ul> <ul style="list-style-type: none"> <li>• <b>Charge for change of record</b></li> </ul>

<sup>15</sup> Dilys Robinson 'Institute for Employment Studies' and Geoff Pike 'Employment Research Limited', *Barrister's Working Lives: A Biennial Survey of the Bar*, p. 81.

	<p>We recognise that an advocate may require their details to be updated during the process which would require some additional amendments to their record. We do not intend to pass on any additional cost of administering the changes to the advocates records.</p>
Maternity / Paternity	<ul style="list-style-type: none"> <li>• <b><u>Additional burden for parents returning to work</u></b></li> </ul> <p>33% of women surveyed in the Biennial Survey said they had taken maternity leave which lasted three months or more, as well as a further 2% of men taking paternity leave of the same period<sup>16</sup>. It is therefore important to note that the scheme could provide an additional burden for advocate's seeking to return to work after a period of maternity or paternity.</p> <p><b>Action: Fees policy</b></p> <p>Advocates seeking to enter or re-enter the scheme after a period of maternity or paternity leave will be able to do so in a similar fashion to initial registration under the scheme. Therefore they will apply for a provisional licence and will then be able to seek assessment in trials when they are back at work. They will not be required to be assessed in their first trial and will also be able to undertake other non-trial hearings before submitting themselves for assessment. The cost of registering will not be greater than the cost of other assessment, meaning that the financial burden will be equivalent to that borne by other advocates. In some cases, an advocate might have a period of maternity/paternity within the currency of their accreditation, in which case they could return to work without re-registering. As long as the risks are appropriately managed, the scheme should provide for a structured return to practice at the appropriate level, which should make returning to practice easier rather than harder.</p>
Rurally located advocates	<ul style="list-style-type: none"> <li>• <b><u>Assessment opportunities</u></b></li> </ul> <p>In order to apply for initial registration, progression or re-accreditation under QASA an advocate will need to provide a range of evaluation forms which will need to have been completed by at least 2 different judges. Those who practise predominantly in small court centres in front of the same judge will be expected to attempt to seek trials in front of other judges in order to satisfy this requirement. This is more likely to impact upon those advocates whom practise at quiet court centres such as Knutsford Crown Court and Barnstaple Crown Court, where there were only 28 and 21 effective trials between the period of Oct 2011 – Sep 2012 respectively; this in contrast to busier court centres such as Snaresbrook Crown Court in London which had 799 effective trials over the same period<sup>17</sup>.</p> <p><b>Action: Independent Assessors</b></p> <p>In limited circumstances the BSB will be able to deploy Independent Assessors to assess an advocate in trial, in place of judicial assessment. This will include</p>

<sup>16</sup> *Ibid.*, p. 14.

<sup>17</sup> Ministry of Justice "Quarterly Court Statistics" accessed at <http://www.justice.gov.uk/statistics/courts-and-sentencing/judicial-quarterly>.

	circumstances where an advocate cannot reasonably be expected to arrange to be assessed by more than one judge. There would be no additional charge to the barrister for this service and the barrister concerned would still be assessed in the course of their normal practice.
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How does the policy advance equality of opportunity?

The ongoing equality and diversity monitoring will ensure that due regard is paid to the progression through the levels by different groups. The potential for the collected evidence to help the BSB promote equality in the profession beyond this scheme is considerable. The scheme will provide data on the spread of particular groups throughout the different levels (which can be used as a proxy to seniority) and the relative speed of a group's advancement in their career. We will also be able to see whether there are any gender differences both in terms of the proportion applying for progression and the degree to which they are successful. A recent study based on four UK universities (Doherty and Manfredi 2005) shows that in the opinion of senior academic staff, women are more reluctant to put themselves forward for promotion and more likely to undervalue their achievements<sup>18</sup>. As an indicator of quality assurance, the practising level of an advocate will become a marketable feature. Providing a verifiable indicator of their competence not only gives confidence to consumers but will also provide some self-assurance for the advocate.

A further benefit of a levels based scheme is that it will provide a structured and more transparent method of career progression. Anecdotal evidence suggests that a major reason advocates become employed is a lack of structured progression in the self-employed bar. The scheme also gives advocates, who have been held back in their career, the chance to demonstrate their competence to perform at a higher level.

QASA will also provide a method of identifying advocates who are struggling to perform at their current level. The scheme will offer support and recommend paths of remedial training. This proactive relationship of support would be an extension of the BSB's current activities.

Returners to work will also benefit from a scheme which provides a structured path back to the level they were previously practising at. This will not only assure them of their own competence at a certain level but may also assist in the aim to eliminate discrimination such practitioners may be subject to due to the time away from practice.

How does the policy promote good relations between different groups?

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<sup>18</sup> Doherty L., Manfredi S., "Women's progression to senior positions in English universities", *Employee Relations*, Vol.28 No.6.

Through providing a level playing field and a more structured and transparent route for progression through careers, it is anticipated that different groups will have confidence that they are being treated fairly as compared to other groups.

### 3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking?		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	You will continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	X
c. Adjust the policy and continue	You will take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision: Subject to adherence to the action plan below, the risks identified in this impact assessment can be managed and monitored.		

### 4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.		
Action Required	Person responsible	Timescale
Equality and diversity evidence to be gathered and analysed through operation of scheme.	Salim Nazir (Assessment Manager)	Sept 2013- Oct 2016

EIA to be maintained and updated as scheme policy is finalised	Salim Nazir (Assessment Manager)	As above
Ensure judicial and independent assessor training mitigates the risk of training bias	Salim Nazir	Initial development of material (by October 2012); Monitoring and review thereafter (October 2012 onwards)
Review of performance indicators to ensure objective assessment	Salim Nazir	Initial review during PI workshop Sept 2012 and review thereafter
Review of number of effective trials to ensure sufficient assessment opportunities	Salim Nazir	Sept 2013- Oct 2016

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