



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

Purpose of notice
The LSB's decision to grant the application in full from the Bar Standards Board for the removal of the Quality Assurance Scheme for Advocates (Criminal) Rules from the BSB Handbook.
Alterations that are being approved by this decision
Removal of the Quality Assurance Scheme for Advocates (QASA) Rules from the BSB Handbook. The LSB approved new rules in July 2013 bringing into effect the QASA Rules. In November 2017 the BSB took the decision not to implement the scheme and to focus on alternative ways to provide assurance on the competency of all advocates.

Decision notice

The Bar Standards Board (BSB) application for the approval of amendments to the BSB Handbook to remove the Quality Assurance Scheme for Advocates (Criminal) (“QASA”) Rules.

The Legal Services Board (“**LSB**”) has granted an application from the Bar Standards Board (“**BSB**”) for approval of amendments to its regulatory arrangements (set out in the BSB Handbook) to remove the QASA Rules from the Handbook.

1. This decision notice sets out the decision taken, including a brief description of the changes.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“**the Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions. The notes at page 5 of this notice explain the statutory basis for the decision.
3. This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB’s handling of this application is also set out at the end of this decision notice.

Background

4. QASA was developed in response to recommendations arising from a review into the procurement of legal aid by Lord Carter in 2006. That report highlighted concerns about standards of criminal advocacy and suggested that arrangements for assuring quality of criminal advocates should be introduced. In 2009, the three primary regulators of criminal advocacy – the BSB, Solicitors Regulation Authority (SRA) and CILEx Regulation¹, established the Joint Advocacy Group (JAG) to take on responsibility for developing a quality assurance scheme for criminal advocates.
5. QASA and the associated regulatory arrangements were the output of proposals jointly developed by JAG. QASA was designed to ensure that, through comprehensive assurance of criminal advocacy standards, the public would have access to competent representation in the criminal courts. The QASA regulatory arrangements of all the JAG approved regulators were approved by the LSB in July 2013.

Proposed changes

6. In November 2017 the BSB decided that it would not proceed with the introduction of QASA. The BSB seeks approval from the LSB to remove the QASA rules from the BSB Handbook. Although the rules were added to the Handbook, they have not been implemented.

¹ Formerly ILEX Professional Standards (IPS) in 2009

Scope of decision

7. The LSB issued a decision notice in July 2013 in response to a joint application from the BSB, the SRA and CILEx Regulation for the introduction of the QASA scheme. The LSB decision notice approved the QASA scheme and consequential amendments to each of the applicant's arrangements separately. This decision relates solely to the BSB request for removal of QASA from the BSB Handbook. It does not remove the QASA regulatory arrangements of the SRA and CILEx Regulation.

Key issues

Ensuring adequate alternative arrangements and policies in place

8. As a general principle, the LSB considers it best practice to remove regulatory arrangements that are dormant. However, we also want to be confident that the approved regulator has ensured that adequate arrangements or policies are in place to deal with the issue the dormant regulations were intended to address.
9. We note that the BSB has cited findings from recent research into judicial perceptions of criminal advocacy, which indicate that standards were generally adequate but there were pockets of poor quality practice. This research was jointly commissioned with the SRA. We see from the application that the BSB has also acknowledged that regulatory intervention remains therefore necessary. However, the BSB has changed its approach so that intervention fits more with the regulatory methodology and regulatory good practice generally which it now adopts.
10. In its application the BSB set out key approaches that it will progress in place of QASA, in order to respond to the risks that it has identified. It will put in place a strategy that is more consistent with its risk and evidenced based approach to regulation and which will provide the public with assurance that it has access to competent representation, not only in criminal cases but across all areas of practice. The BSB confirmed it will adopt a multi-faceted approach to assuring advocacy competence and standards across all areas of practice. In its application the BSB states that this will encompass regulatory controls, external controls, and information gathering elements.
11. The LSB will hold the BSB to account through its regulatory performance framework to ensure that it does implement measures that provide a robust and proportionate response to the quality risks in advocacy that it has identified.

Other approved regulators

12. In light of the fact that the original application to insert these rules was from the three JAG members, we sought further information from the BSB regarding whether it had taken into account the views of the other regulators. The reason for this request is that one of the refusal criteria under Schedule 4 of the Act is that granting an application would be contrary to any provision in the Act. Sections 52-54 of the Act (which are also expressed as designation requirements) set out that the regulatory arrangements of an approved regulator must make reasonable provision to prevent regulatory conflict.

13. The BSB advised the LSB that it had sought views from both CILEx Regulation and the SRA prior to submitting its application. The additional information submitted by the BSB provided reassurance that the proposals to revoke were not inconsistent with the Act, and therefore no concerns were identified regarding regulatory conflict.

Decision

14. The LSB has considered the BSB application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse the application and accordingly the application is granted.
15. **Annex A** to this decision notice sets out the amendments to the regulatory arrangements approved by the LSB. A copy of the removed text is attached at **Annex 1**.

Chronology

- The LSB confirmed receipt of an application from the BSB on 4 July 2018.
- The 28 day initial decision period for considering the application ended on 31 July 2018.
- An extension was issued on 27 July which extended the decision period to 14 August 2018.
- This decision notice is effective from 14 August 2018.
- The decision notice will be published on our website by 16 August 2018.

Neil Buckley, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

14 August 2018

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to

² Rules for Rule Change Applications – Version 2 (November 2010)

the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.

5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

The proposed amendments are explained below:

The following elements of the BSB handbook, noted as Part 2: The Code of Conduct; Section C: the Conduct Rules; C3: You and your Client, will be removed:

- Quality Assurance Scheme for Advocates Rules: rC31 to rC63.

The removed text is attached at Annex 1.

Annex 1

~~Quality Assurance Scheme for Advocates Rules~~

~~Scope of QASA~~

~~rC31 Subject to Rule rC32, you must not undertake *criminal advocacy* unless you have *provisional accreditation* or *full accreditation* in accordance with these QASA Rules and with the QASA Handbook. rC31-rC63 removed from 1 October 2018.~~

~~rC32 Barristers who do not have *provisional accreditation* or *full accreditation* under the QASA are permitted to undertake *criminal advocacy*:~~

- ~~.1 in hearings which primarily involve advocacy which is outside of the definition of *criminal advocacy*; or~~
- ~~.2 if they have been instructed specifically as a result of their specialism in work outside of the definition of *criminal advocacy*.~~

~~rC33 You shall only undertake *criminal advocacy* in hearings which you are satisfied fall within the QASA level at which you are accredited, or any QASA level below the same, unless you are satisfied that you are competent to accept instructions for a case at a higher QASA level strictly in accordance with the criteria prescribed in the QASA Handbook.~~

~~Provisional accreditation~~

~~rC34 If you are granted *provisional accreditation*, you must apply to convert this to *full accreditation* within 12 or 24 months of the date on which your *provisional accreditation* was granted.~~

~~Full accreditation~~

~~rC35 If you are granted *full accreditation*, it will be valid for 5 years from the date on which it was granted.~~

~~General provisions relating to applications for registration, progression or re-accreditation~~

rC36 ~~You may apply for registration, progression or re-accreditation under these QASA Rules. In support of an application you shall submit such information as may be prescribed by the QASA. This will include:~~

- ~~.1 completing the relevant application form supplied by the Bar Standards Board and submitting it to the Bar Standards Board;~~
- ~~.2 submitting such information in support of the application as may be prescribed by the QASA. This will include all of the criminal advocacy evaluation forms that you have obtained; and~~
- ~~.3 paying the appropriate fee in the amount determined in accordance with the Bar Standards Board's published fees policy.~~

rC37 ~~An application will only have been made once the Bar Standards Board has received the application form completed in full, together with all information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.~~

rC38 ~~You are personally responsible for the contents of your application and any information submitted to the Bar Standards Board by you or on your behalf, and you must not submit (or cause or permit to be submitted on your behalf) information to the Bar Standards Board which you do not believe is full and accurate.~~

rC39 ~~On receipt of an application, the Bar Standards Board shall decide whether to grant or refuse the application, and shall notify you accordingly, giving reasons for any decision to refuse the application. This decision will take effect when it has been communicated to the barrister concerned.~~

rC40 ~~Before reaching a decision on the application, the Bar Standards Board may appoint an independent assessor to conduct an assessment of your competence to conduct criminal advocacy at the relevant QASA level.~~

Registration for QASA

rC41 ~~In order to be accredited under QASA barristers must first apply for registration. In support of an application you shall submit such information as may be prescribed by the QASA.~~

~~QASA Level 1~~

~~.1 If you apply for registration at QASA level 1 and your application is successful, you will be awarded full accreditation at QASA level 1.~~

~~QASA Levels 2 to 4~~

~~.2 If you apply for registration at QASA levels 2, 3 or 4 and your application is successful, you will be awarded Provisional accreditation which will be valid for 24 months.~~

~~.3 You must apply to convert your provisional accreditation to full accreditation within 24 months.~~

~~.4 You must be assessed in your first effective criminal trials at your QASA level and submit the prescribed number of completed criminal advocacy evaluation forms confirming that you are competent in accordance with the competence framework detailed in the QASA Handbook.~~

~~.5 Your application must include all completed criminal advocacy evaluation forms obtained by you in effective trials.~~

~~.6 If your application is successful you will be awarded full accreditation.~~

~~.7 Subject to Rule rC41.8, if your application for full accreditation is unsuccessful, you shall be granted provisional accreditation at the QASA level below and shall be required to apply to convert this to full accreditation at that lower QASA level in accordance with Rules rC41.3 to rC41.5.~~

~~.8 If your application for full accreditation at QASA level 2 is unsuccessful, you shall be granted accreditation at QASA level 1.~~

Barristers not undertaking trials

- ~~.9 If you do not intend to undertake criminal trials you may apply for *registration* at *QASA level 2*. If your application is successful, you will be awarded *provisional accreditation*. You must be assessed via an *approved assessment organisation* within 24 months.~~
- ~~.10 If your application for *full accreditation* is successful you shall be awarded *full accreditation* and will be permitted to undertake non-trial hearings up to *QASA level 3* and trials at *QASA level 1*.~~
- ~~.11 Once you have *full accreditation*, if you wish to undertake trials at *QASA level 2* you must inform the BSB of your intention and comply with Rules rC42.2 to Rules rC42.5.~~

~~Barristers who took silk between 2010 and 2013~~

- ~~.12 If you took silk between 2010 and 2013 inclusive you can register through the modified entry arrangements set out in paragraph 2.38 of the *QASA Handbook*~~

Progression

~~rC42 If you have *full accreditation*, you may apply for *accreditation* at the next higher *QASA level* to your current *QASA level*.~~

- ~~.1 *Progression to QASA level 2*~~
- ~~.2 If you wish to progress to *QASA level 2* you must first obtain *provisional accreditation* at *QASA level 2* by notifying the *Bar Standards Board* of your intention to progress.~~
- ~~.3 Your *provisional accreditation* will be valid for 24 months. In order to convert this to *full accreditation* you must be assessed in your first effective criminal trials at *QASA level 2* and submit the prescribed number of completed *criminal advocacy evaluation forms* confirming that you are competent in *QASA level 2* trials in accordance with the competence framework detailed in the *QASA Handbook*.~~
- ~~.4 Your application must include all completed *criminal advocacy evaluation forms* obtained by you in *effective trials*.~~

- ~~.5 Where your application is successful, you shall be granted *full accreditation* at *QASA level 2*, which is valid for 5 years from the date of issue.~~

~~*Progression to QASA level 3 and 4*~~

~~Stage 1~~

- ~~.6 You must first apply for *provisional accreditation* at the next higher *QASA level* to your current *QASA level*. In order to apply for *provisional accreditation*, you must submit the prescribed number of *criminal advocacy evaluation forms* confirming that you are very competent at your current *QASA level* in accordance with the competence framework detailed in the *QASA Handbook*.~~
- ~~.7 Your application must include all completed *criminal advocacy evaluation forms* obtained by you in *effective trials*. These should be obtained within a 12 month period.~~
- ~~.8 If your application is successful you will be awarded *provisional accreditation*.~~

~~Stage 2~~

- ~~.9 Your *provisional accreditation* will be valid for 12 months. You must apply to convert your *provisional accreditation* to *full accreditation* before your *provisional accreditation* expires.~~
- ~~.10 You must be assessed in your first effective criminal trials at your new *QASA level* and submit the prescribed number of completed *criminal advocacy evaluation forms* confirming that you are competent in accordance with the competence framework detailed in the *QASA Handbook*.~~
- ~~.11 Your application must include all completed *criminal advocacy evaluation forms* obtained by you in *effective trials*.~~
- ~~.12 If your application is successful you will be awarded *full accreditation*.~~
- ~~.13 If your application for *full accreditation* is unsuccessful, you may continue to conduct *criminal advocacy* at your current *QASA level* until the expiry of your current accreditation.~~

Re-accreditation

~~rC43 You must apply for *re-accreditation* at the *QASA level* at which you are accredited within five years from the date on which your *full accreditation* was granted.~~

~~rC44 You shall submit, in support of an application for *re-accreditation*, evidence to demonstrate your competence to conduct *criminal advocacy* at the *QASA level* at which you are accredited, comprising:~~

- ~~.1 if you are accredited at *QASA level 1*, evidence of the assessed continuing professional development undertaken by you in the field of advocacy in the period since you were accredited at *QASA level 1* or, if you have previously been *re-accredited* at that *QASA level*, since your most recent *re-accreditation*;~~
- ~~.2 if you are accredited at *QASA level 2, 3 or 4*, the number of *criminal advocacy evaluation forms prescribed by the QASA*. Your application must include all completed *criminal advocacy evaluation forms* obtained by you in consecutive *effective trials* in the 24 months preceding the application.~~

~~rC45 If your application is successful you will be awarded *full accreditation* for a period of 5 years.~~

~~rC46 Subject to Rules rC47, if your application for *re-accreditation* is unsuccessful, you shall be granted *provisional accreditation* at the *QASA level* below and shall be required to apply to convert this to *full accreditation* at that lower *QASA level* in accordance with Rules rC41.3 to rC41.5.~~

~~rC47 If your application for *re-accreditation* at *QASA level 2* is unsuccessful, you shall be granted accreditation at *QASA level 1*.~~

Lapse of accreditation

~~rC48 Subject to Rule rC50, your *provisional accreditation* will lapse if you do not apply for *full accreditation* before it expires.~~

~~rC49 Subject to Rule rC50, your *full accreditation* will lapse if you do not apply for *re-accreditation* within 5 years of the date on which you were awarded *full accreditation*.~~

~~rC50 If the BSB has received an application within the period of accreditation, the accreditation will not lapse whilst a decision is pending.~~

~~rC51 If your accreditation lapses, you may not undertake criminal advocacy in accordance with rC31.~~

~~Applications for variation~~

~~rC52 Where your individual circumstances result in you encountering difficulties in obtaining completed criminal advocacy evaluation forms within the specified period, then you may apply to the Bar Standards Board for an extension of time to comply with the requirements; or~~

~~rC53 Where your individual circumstances result in you encountering difficulties in obtaining completed criminal advocacy evaluation forms, then you may apply to the Bar Standards Board for your competence to conduct criminal advocacy to be assessed by an independent assessor, and you may submit the results of the assessment in support of your application for registration, re-accreditation or progression in the place of one criminal advocacy evaluation form.~~

~~Managing underperformance~~

~~rC54 The Bar Standards Board may receive criminal advocacy evaluation forms raising concerns regarding your competence to conduct criminal advocacy at any time.~~

~~rC55 Where concerns regarding your competence to conduct criminal advocacy are brought to the attention of the Bar Standards Board, either during the course of its consideration of an application brought by you under these Rules, or as a result of concerns raised under Rule rC54, it may decide to do one or more of the following:~~

- ~~.1 appoint an independent assessor to conduct an assessment of your criminal advocacy;~~
- ~~.2 recommend that you undertake, at your own cost, such training for such period as it may specify;~~
- ~~.3 revoke your accreditation at your current QASA level; and/or~~

~~.4 refer you for consideration of your health or conduct under the Fitness to Practise Rules or the Complaints Rules, as it considers appropriate,~~

~~and shall notify you accordingly, giving reasons for its decision.~~

~~rC56 Where your accreditation has been revoked, you shall be granted provisional accreditation at the QASA level below and shall be required to apply to convert this to full accreditation in accordance with Rules rC41.3 to rC41.5.~~

~~rC57 Where you have applied for registration or re-accreditation at QASA level 1, and your application has been refused, you will not be entitled to accept any instructions to conduct criminal advocacy, and the Bar Standards Board may recommend that you undertake training in accordance with Rule rC55.2 before you re-apply for registration or re-accreditation as appropriate.~~

~~rC58 Where you have undertaken training under Rule rC55.2, the Bar Standards Board shall, at the end of the specified period, assess whether you have satisfactorily completed the training before reaching a decision in relation to any further steps that it may consider appropriate to take in accordance with Rule rC55.~~

Appeals

~~rC59 You may appeal to the Bar Standards Board against any decision reached by it under these rules. Appeals must be made in accordance with the published Bar Standards Board QASA Appeals Policy.~~

Commencement and transitional arrangements

~~rC60 Subject to Rule rC63, the QASA Rules commence on 30 September 2013.~~

Registration of barristers currently undertaking criminal advocacy

~~rC61 Barristers currently undertaking criminal advocacy are required to apply for registration under the QASA Scheme in accordance with the phased implementation programme as set out at paragraphs 2.11 to 2.13 of the QASA Handbook.~~

~~rC62 The dates for registration will depend upon the primary circuit in which you practise. This will be the circuit in which you undertake criminal advocacy more frequently than in any other circuit.~~

- ~~.1 If you primarily practise in the Midland or Western Circuit, you must register for QASA from 30 September 2013 and before the first occasion on which you undertake *criminal advocacy* after 7 March 2014.~~
- ~~.2 If you primarily practise in the South Eastern Circuit, you must register for QASA from 10 March 2014 and before the first occasion on which you undertake *criminal advocacy* after 13 June 2014.~~
- ~~.3 If you primarily practise in the Northern, North Eastern or Wales and Chester Circuit, you must register for QASA from 30 June 2014 and before the first occasion on which you undertake *criminal advocacy* after 3 October 2014.~~

~~rC63 Subject to Rules rC63.1, rC63.2 and Rule rC31 commences for all advocates from 4 October 2014.~~

- ~~.1 Rule rC31 will commence for those advocates who primarily practise in the Midland or Western Circuit from 10 March 2014. Any advocate who undertakes *criminal advocacy* in these circuits without *accreditation* must be able to prove to the *Bar Standards Board* that they practise primarily in another circuit.~~
- ~~.2 Rule rC31 will commence for those advocates who primarily practise in the South Eastern Circuit from 14 June 2014. Any advocate who undertakes *criminal advocacy* in this circuit without *accreditation* must be able to prove to the *Bar Standards Board* that they practise primarily in the Northern, North Eastern or Wales and Chester Circuit.~~