



**The Response of the Criminal Bar Association to the
Solicitors Regulation Authority's Consultation Paper
on re-accreditation of Solicitor Higher Court Advocates**

INTRODUCTION

1. The Criminal Bar Association ["CBA"], a body which has some 3,500 members, welcomes the opportunity to respond to this consultation.
2. This consultation follows on from the consultation last year which proposed voluntary accreditation for all Solicitor Advocates.
3. As the Solicitors Regulation Authority ["SRA"] will recall the CBA were not in favour of such a relaxation and we feel that it is to the SRA's credit that they were willing to review their position and accept the argument that we (and others) put forward that the move to voluntary accreditation would not be in the public interest.

Executive Summary

4. This current consultation relates to issues arising from whether all solicitors with higher rights should be re-accredited periodically.
5. At present the higher court qualification is valid for professional life. In our view that is not sufficient. Re-accreditation would improve standards. We feel that such re-accreditation could be part and parcel of the CPD requirement for solicitors.
6. We understand that the SRA Board favours mandatory re-accreditation of all holders of the qualification every five years. We agree.
7. However, we would go further. After being initially accredited the Solicitor Advocate should have to undergo compulsory advocacy training analogous with the 'New Practitioner Programme' which young barristers have to undertake. We would ask the SRA to consider whether the disparity between advocacy training for aspiring barristers and aspiring solicitors is so marked (as we set out in our last response) that solicitor advocates who become accredited would need to undertake more than 9 hours of advocacy training in the first three years after accreditation.
8. We would also wish to repeat the point we made in our response to the last consultation that we are not persuaded that Rule 2.01(1)(b) of the Solicitors Code of Conduct 2007, which relates to competence to deal with a matter, is sufficient self-regulation. We ask the SRA to consider reviewing this part of the Code of Conduct.

Question 1

Do you think that clients who are represented by an accredited advocate would reasonably expect the regulator to assess their skills on a periodic basis?

Yes. Clients are entitled to expect high quality advocacy. Where the advocacy is being provided by a solicitor from the firm which the client instructs then ordinarily the client will be given little choice. In those circumstances the client is entitled to expect that the regulator will assess their skills thoroughly and critically on a regular basis.

Question 2

In paragraph 2 we suggested that the SRA's key objectives in the development of the higher courts qualification scheme are to:

- provide the public and clients with confidence in the standard of solicitor higher court advocates
- provide assurances that appropriate standards are being met and maintained
- ensure that any regulatory requirements are open, fair, transparent and proportionate

(a) which of the options presented do you think most effectively meets all of these objectives? Option 1 – Re-accreditation for all, Option 2 – Targeted re-accreditation or Option 3 – No re-accreditation?

For the reasons given above we are firmly of the view that Option 1 most effectively meets all the objectives

- (b) do you think there are any equality and diversity implications with any or all of these options? If you answer 'yes', please outline what you believe the equality and diversity implications to be

We cannot see that there will be any equality and diversity implications by what is being proposed.

Question 3

If you believe that re-accreditation should be mandatory for all holders of the higher courts qualification, should passported members still be required to undertake an advocacy assessment within a specified period before they are due for re-accreditation?

It is our experience that many of those who have been passported through to the qualification based on experience rather than an actual assessment would not pass such an assessment. On that basis we are of the opinion that those who have been passported should be required to undertake an advocacy assessment within a specified period before re-accreditation. In our view requiring such an assessment would instil public confidence and would allow the solicitors' profession to argue against what the consultation calls the *"perception that the quality of advocacy undertaken by solicitor higher court advocates is not as good as that of their barrister counterparts"*. In our view this perception,

while expressed as a generality that makes no attempt to acknowledge the exceptions that undoubtedly exist, arises from the daily experience of those professionally involved with the courts including the judiciary.

Question 4

- (a) If you believe that re-accreditation should be targeted, do you think that the SRA should require only those advocates who have not regularly practiced and applied their skills to be re-accredited?

We do not think that re-accreditation should be targeted we think that it should be mandatory.

- (b) Should this approach be accompanied by a mandatory and targeted advocacy CPD requirement?

Advocacy focused CPD should be mandatory for all solicitors with higher rights.

- (c) Do you have any suggestions for overcoming the practical difficulties with a targeted approach detailed in paragraph 14?

We agree that there would be practical difficulties with a targeted approach which is another reason why we favour a mandatory requirement.

- (d) If a targeted approach to re-accreditation is adopted, should all passported members who have not previously

undertaken an advocacy assessment be required to do so within a specified period?

Yes

Question 5

If you do not believe that re-accreditation is necessary at all, should passported members who have not previously undertaken an advocacy assessment still be required to do so within a specified period?

We consider re-accreditation is necessary for all. Should it not be adopted then we would consider that an advocacy assessment would be vital to instil public confidence.

**Tom Little
Sarah Buckingham
CRIMINAL BAR ASSOCIATION
2nd April 2009**