



THE CRIMINAL BAR ASSOCIATION
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RESPONSE TO THE ANALYSIS OF RESPONSES BY THE JOINT ADVOCACY GROUP CONSULTATION PAPER ON PROPOSALS FOR A QUALITY ASSURANCE SCHEME FOR CRIMINAL ADVOCATES

1. The CBA has noted a suggestion contained in the JAG analysis of responses to its recent consultation paper on QAA that “...*it would be helpful, if not practicable at this stage, to obtain the views of lay clients*”. As the CBA made plain in its response, it is strongly opposed to this **in principle**, regardless of the practical difficulties which the JAG mentions (but does not otherwise detail).
2. The essence of the QAA scheme is that it is designed to ensure that the *technical* standards of advocacy are maintained throughout an advocate’s career, after the initial vocational training. This scheme is not designed to test or monitor whatever other aspects there are to being a successful advocate. In these circumstances, it is impossible to see how the JAG could conclude that the views of a *lay* client should be part of this *technical* process.
3. Thus the paper says that the proposed QAA scheme “.... *creates formal measures to ensure that advocates meet **agreed advocacy standards** at entry into each level and that every five years all advocates will be subject to formal re-accreditation. It does not however pick up incompetence or poor performance outside of these processes* (paragraph 74) and that the traffic light system with judicial input is to cope with “.... *the risk of **underperformance in court**The advocate who appears not to be meeting the required advocacy standard will be the subject of a formal report from the trial judge.*” (paragraph 75). Again at paragraph 85: “*One of the functions of the new system is to set a framework which enables judges to have the ability to ensure that **proper advocacy standards** are maintained...*” [emphasis added].

4. Since what is being tested and monitored is the advocate's *technical expertise* in court, judging that expertise itself requires expertise. That indeed is the essence of the scheme as the JAG paper recognised, not only in the framing of a scheme that requires the oversight of and control by the judiciary but further requires the judges themselves to be trained in carrying out assessments. Thus the JAG said judicial involvement would require "...a substantive training programme to be added to the current Judicial Studies Board" (paragraph 87) and its view was that judicial involvement "...should be limited to Circuit Judges and above where the relevant rights are exercised." (paragraph 88).
5. It is impossible to reconcile this view, that the scheme requires the professional assessors to be properly trained to assess, with a proposal that allows input from untrained lay members of the public.
6. It is important for any profession to encourage and to listen to the views of clients. That sort of feedback should not however play a part in a scheme to measure technical competence in court. In another profession, patients would not be asked for a professional judgement on how competently a doctor performed a procedure. There are complaints procedures to address concerns as to poor service and the market knows how to respond to individuals who do not meet client expectations. It is impossible to know what expertise the lay client brings and of course because there is no repeatability, there is no consistency. Is barrister A to be failed because client X thought he was poor but barrister B passed because client Y thought she was good? There is simply no valid comparison and the input becomes capricious. Moreover, there will be a pressure on the barrister to grandstand in order to please the client and the real prospect that the client will be unduly influenced by extraneous factors such as the ultimate outcome of the case.
7. Finally, if the purpose of the consultation was to canvass the informed views of the profession it is hard to see how the JAG could ignore the overwhelming rejection of such involvement by almost all consultees. The analysis says" *at least one respondent saw the absence of client feedback in particular as a key weakness in the scheme.*" but JAG has not published the data so it is impossible to know why this view should have outweighed the considered views of representative bodies such as the CBA , Bar Council and YBC.
8. We should add that we have seen the YBC's note on this point and we agree with and endorse the additional points made by them, particularly in relation to the need for newly qualified barristers to feel able to give robust and possibly unwelcome advice as appropriate without feeling under pressure as a result of lay client assessment in the QAA process.

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