

Standards for solicitor higher courts advocates and outline proposals for a new accreditation scheme

Consultation paper

Education and Training Unit

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Foreword

The purpose of the Solicitors Regulation Authority is “to set, promote and secure in the public interest standards of professional performance necessary to ensure that clients receive a good service and that the rule of law is upheld.” Ensuring that solicitors are competent in the work that they do is central to delivering against our purpose.

We regulate in accordance with the Government’s Five Principles of Good Regulation, which require that regulation should be proportionate, accountable, consistent, transparent and targeted.

Periodically, we review all our regulatory requirements to ensure that they remain fit for purpose and continue to be effective. We have reviewed the regulatory framework surrounding the ability of solicitors to exercise their rights of audience in the higher courts. From this review, and following consultation, we concluded that the Standards of Competence required of Higher Courts Advocates needed updating and that the Higher Courts Qualification was unduly restrictive.

This consultation paper sets out our proposed scheme, which, if agreed, will take effect in January 2009. We have set out for consultation expected standards of professional behaviour and performance which aim to secure acceptable standards of safe and competent practice.

We now ask for your views on our proposals and commend this scheme to you.

Executive summary

The Solicitors Regulation Authority (SRA) is developing a new accreditation scheme for solicitors and registered European lawyers (REs) wishing to exercise rights of audience in the higher courts of England and Wales. This consultation paper seeks views on the competence standards for solicitor higher courts advocates and sets out the outline proposals for the operation of the scheme.

The proposed scheme will, subject to approval under the Courts and Legal Services Act 1990 Schedule 4 procedure, replace the current qualification regime under the Higher Courts Qualification Regulations 2000.

The consultation paper sets out the background to the current scheme and the proposals for the new scheme. The objectives, scope and key principles which will form the basis of the new scheme are clearly set out.

In summary, the proposals are:

- to introduce revised competence standards for solicitor advocates in the higher courts of England and Wales. It is intended that these standards will be the benchmark against which the performance of all solicitors appearing before the higher courts can be objectively judged irrespective of whether or not they choose to be accredited under the new scheme. The standards will be set at the level of competent higher courts advocate
- solicitors who wish to demonstrate their competence as higher court advocates may do so by being accredited using the new scheme
- the SRA will no longer prescribe additional training requirements for solicitors seeking qualification to advocate before the higher courts
- the scheme will provide for assessment and registration in all proceedings in the higher courts or alternatively a solicitor may opt to specialise in criminal (including defence and prosecution), or civil (including family proceedings) higher courts proceedings. The scheme will require completion of objective assessments provided by authorised external assessment organisations
- the scheme will aim to be compatible with any quality assurance requirements made by procurers.
- the assessment organisations will be validated and monitored under the SRA's Common framework for the authorisation and monitoring of providers
- a process to enable those solicitors who have already achieved a HCQ under the current scheme to be transferred on to the new register of accredited Solicitor Higher Courts Advocates

Introduction

1. In early 2007, we consulted with the profession and other stakeholders on the future of the Higher Courts Qualification scheme. Following consideration of the responses in April 2007 the SRA Board decided
 - to recommend to the Lord Chancellor that Regulation 6 (accreditation route) and Regulation 7 (exemption route) of the current Higher Courts Qualifications Regulations 2000 should be extended until the end of 2008 (the extension was approved by the Ministry of Justice (MoJ) in December 2007),
 - that a voluntary accreditation scheme should be developed to replace the existing compulsory scheme from 1 January 2009,
 - to recommend to the Lord Chancellor that the current Regulations should be repealed from the end of 2008 and that all solicitors should have and be entitled to exercise rights of audience, in all courts from the date of admission and subject to the provisions of the Solicitors' Code of Conduct 2007.
2. This consultation sets out the outline proposals for the new scheme and the standards against which solicitors who wish to advocate before the higher courts will be assessed. It is also the intention that the standards will in future be used as the benchmark for all solicitors who advocate before the higher courts whether or not they choose to be accredited.
3. We now seek the views of practitioners and stakeholders on
 - the appropriateness of the standards and performance indicators,
 - outline proposals for the operation of the scheme, and
 - proposed changes to the Code of Conduct 2007 guidance on rule 2 and/or rule 11.

Background

4. The Higher Courts Qualification Regulations 2000 (the Regulations) were approved by the Lord Chancellor under the provisions of Section 29 of the Courts and Legal Services Act 1990 and following consultation with the designated judges, the Consultative Panel and the Director of Fair Trading on 18 July 2000. The Regulations superseded previous versions and provided three main routes for solicitors and RELs to obtain the higher courts qualification:
 - the development route based on a compulsory training programme, assessments and the completion of a portfolio of experience in conjunction with a mentor;
 - the accreditation route for individuals with advocacy experience before the lower courts and experience of litigation of proceedings in the

higher courts. Applicants under this route are required to pass an advocacy assessment; and

- the exemption route for individuals with experience of advocacy in the higher courts.

There are three qualifications available under the current Regulations:

- The all proceedings qualification entitles a solicitor or REL to exercise rights of audience in all courts in all proceedings.
 - The criminal proceedings qualification entitles a solicitor or REL to exercise rights of audience in all criminal proceedings in the higher courts and judicial review proceedings in any court arising from a criminal matter.
 - The civil proceedings qualification entitles a solicitor or REL to exercise rights of audience in all civil proceedings in the higher courts and judicial review proceedings in any court arising from a civil matter.
5. The exercise of the rights of audience conferred by such qualifications is subject to the rules and principles of professional conduct applicable to solicitors and RELs. Prior to the implementation of the Solicitors' Code of Conduct in July 2007, the exercise of rights of audience by solicitors and RELs was regulated under the provisions of Chapter 21 of the Guide to the Professional Conduct of Solicitors 1999 and the Law Society's Code for Advocacy. These were superseded by rule 1.01 (justice and the rule of law), rule 11 (litigation and advocacy) and rule 2.01 (1) (b) (not taking on work when not competent to deal with the matter) in the current Code.
 6. The purpose of the accreditation and exemption routes was to provide an opportunity for solicitor advocates and RELs with relevant experience to apply for the higher courts qualification without the need to undertake the full development route involving compulsory training and assessment. The original intention was that individuals would be given a specific time period within which to apply under the accreditation and exemption routes, after which the only route to the higher courts qualification would be the development route (with the exception of the specific routes for former barristers (Regulation 9) and RELs with relevant experience in another jurisdiction (Regulation 8)). The original cessation date for the accreditation and exemption routes was, after discussions between the Consultative Panel and the Law Society, set as 31 October 2005. As the result of various applications by the Law Society and SRA, the accreditation and exemption routes were ultimately extended until 31 December 2008.
 7. In July 2005, the Department for Constitutional Affairs (DCA) (now the Ministry of Justice) commissioned a report into the potential risks of external ownership of legal practices and regulatory responses in the context of the Clementi report. That report suggested that "it is difficult to see why a solicitor with considerable experience in lower courts needs additional training to become a solicitor advocate [in the higher courts]". In the light of this report, the DCA met with Law Society staff to discuss the rights of audience qualification and to encourage a fundamental review of the requirement for

solicitors to gain an additional qualification in order to exercise full rights of audience in all courts.

8. The Regulation Board (now the SRA Board) considered various options for reviewing the rights of audience qualification. It supported the DCA's desire to remove any unnecessarily restrictive aspects of the Regulations and to provide flexibility for solicitors provided it is satisfied that consumer interests are protected.
9. In January 2007, the SRA commenced a three-month consultation to seek views on whether the current restrictions on solicitors exercising rights of audience should be retained and, if not, whether any other form of quality assurance was necessary. Around 56 per cent of respondents did not think that the current restrictions should be retained; however, about half of those felt that there should be another form of quality assurance, although there was no clear consensus on what this should consist of.

Regulatory approach

10. The SRA is seeking the views of stakeholders on the proposed scheme. Set out below are the different regulatory consequences which flow from the current and proposed approaches. Although the list below is not exhaustive, we have initially identified the following: -

Current scheme

- Imposes unwarranted restrictive practices on the profession and employers of solicitors
- Imposes unnecessarily complex and onerous accreditation processes
- Restricts the ability of solicitors and their firms to provide a full suit of legal services to clients
- Does not adequately apply competence and practice standards to all those seeking to exercise higher rights of audience
- Is not based on the objective achievement of competence against prescribed standards

Proposed scheme

- The statement of standards for solicitor higher courts advocates will be attached to the Code of Conduct as a compulsory competence standard for solicitors advocating in the higher courts but independent assessment against the standards will not be compulsory
- Potential risk that incompetent solicitor advocates appear in cases which are beyond their ability
- Does not impose a compulsory additional training requirement on solicitors who wish to become higher courts advocates

11. Consideration is being given to publishing the agreed higher courts advocacy standards as the minimum standard expected of all solicitors and RELs who wish to advocate before the higher courts. If this were the adopted approach, the standards would then be used as a measure of the competence of the advocate in the event of a complaint or allegation of misconduct.
12. Subject to the provisions of the Solicitors' Code of Conduct 2007, solicitors would be able to appear in the higher courts without the need to complete an accreditation process. Those who wish to demonstrate (badge) their competence may do so by way of the voluntary accreditation assessments. The SRA would only publish details of those solicitors and RELs who have successfully completed the accreditation assessments. This approach would require amendments to the guidance to the current rules 2 and/or rule 11 of the Solicitors' Code of Conduct 2007 to draw attention to the standards for solicitor higher courts advocates and the potential implications for solicitors when taking instructions to represent a client in the higher courts.

Question 1

Do you consider the regulatory approach suggested in paragraph 12 above sufficient to protect the public interest and ensure the standard of advocacy in the higher courts? Please explain and highlight any other measures you think the SRA should consider.

Competence standards

13. The standards for solicitor higher courts advocates (see [Annex A](#) below) have been set at what the SRA considers to be the minimum requirements for a competent solicitor higher court advocate in civil and criminal proceedings.
14. A competent solicitor higher courts advocate has been broadly defined as a solicitor who possesses the skills, knowledge and ability to effectively present his or her client's case before the higher courts with confidence, diligence and clarity and will recognise his or her own limitations.
15. The draft standards have been developed by the SRA with the assistance of academic experts and with a view to ensuring compatibility with the aims and outcomes of similar quality assurance work currently being undertaken by the Ministry of Justice Quality Assurance for public funded advocates.
16. The aims of the standards are to provide
 - the users of legal services and the general public with clear guidance on what can reasonably be expected from a competent solicitor higher courts advocate,
 - a clear statement of expected performance for all solicitors advocating in the higher courts as well as clear guidance on the standards expected of applicants seeking accreditation,

- a template which the approved assessment organisations will be required to use to ensure that full and consistent assessments are provided,
- a tool that can be used by the SRA and the Legal Complaints Service to assess the performance of a solicitor higher courts advocate in the event of a complaint or allegation of misconduct.

The standards are set out in full at [Annex A](#), please consider both the statement of standards and the performance indicators appended to it.

Question 2

Do the standards adequately cover the knowledge and skills that should be expected of a solicitor advocating in the higher courts? Please explain with particular reference to any gaps in knowledge and skills and how these can be best addressed.

Question 3

Do you think that the standards are set at the appropriate level of a competent solicitor higher courts advocate? Please outline your reasons.

Question 4

Do the standards as drafted achieve the desired aims set out at paragraph 16? Please outline your reasons.

Question 5

Are the performance indicators appended to the standards sufficient explanation of the required competence? Please outline your reasons with particular reference to any additional indicators you would include or what amendments you would make.

Scope and structure of the new scheme

17. The SRA proposes to introduce a new accreditation scheme that will enable solicitors who choose to demonstrate their competence as higher courts advocates to be accredited by way of assessments to do one of the following:
- Advocate before all courts in all proceedings—this would require assessments covering all parts of the statement of standards to be successfully completed; or
 - Advocate before the Crown Court in all criminal proceedings and in other higher courts in connection with criminal proceedings—this would require assessments covering the standards set out in parts 1 to 3 and Part 5 to be successfully completed; or

- Advocate before the High Court (including the Family Division) in all civil proceedings and in other higher courts in connection with civil proceedings—this would require assessments covering the standards set out in parts 1 to 3 and Part 4 to be successfully completed.

We considered whether the new scheme should only provide solicitors with the option to be accredited to appear before all courts in all proceedings. It was considered that this approach would not allow solicitors or organisations who specialise in specific areas of legal practice eg criminal defence / prosecution or family law sufficient flexibility. It would also involve them in additional expense by requiring solicitors to complete assessments that do not directly support their practice. This option was therefore discounted.

We do not intend to prescribe training requirements but will expect that solicitors seeking to complete the assessments will have taken appropriate action to ensure that they meet the standards to be assessed.

Assessments

Assessments will

- be provided by organisations specifically approved for the purpose by the SRA,
- be based on the *Statement of standards for solicitor higher courts advocates* and associated performance indicators (see [Annex A](#)),
- include practical exercises such as mock trials and client interviews as well as examinations.

Question 6

Is the proposed assessment process adequate to establish the competence of the applicant? Please explain your reasons and make any alternative suggestions.

Period of accreditation

18. The current higher courts qualification is valid for the professional life of the holder. A significant proportion of those who responded to the first consultation on higher rights of audience in January 2007 felt that the qualification should be periodically revalidated.
19. The SRA agrees with this, and we propose that there should be a requirement for accredited solicitors to be re-assessed on a five-year cycle. It is considered that advocacy skills once assessed should, except in exceptional circumstances, remain with the individual and normally need not be re-assessed. Therefore, to ensure that the re-assessment process is “light touch” and proportionate, it should only require an assessment of those areas of procedures and specific knowledge that may change over time. Based on more-detailed responses to the first consultation, the preferred assessment option for revalidation would be based on the advocate’s current knowledge of relevant law and court procedures. There may, however, be other options

for light touch re-assessment, and we would be interested to hear of any views you may have in this regard.

Question 7

Should holders of the higher courts accreditation, be revalidated every five years? Please outline your reasons.

Question 8

If you answered “yes” to Question 7 above, please provide us with any views you may have on the proposed process.

Current holders of the higher courts qualification

20. We propose that solicitors who hold a higher courts qualification awarded under the current Regulations and who wish to demonstrate their continued competence should, subject to the conditions set out below, be transferred onto the new scheme without the initial need to complete further assessments.

There are currently around 4,500 solicitors on the Roll who hold a higher courts qualification awarded under the present or previous versions of the Regulations. The majority of these were awarded the qualification under the provisions of the exemption route, which is based on the applicant's experience of exercising in the higher courts those rights of audience available to solicitors under the existing courts rules and procedures. The exemption route does not require applicants to complete any assessments. It would therefore be the intention that, if they wished to remain higher courts accredited, they would have to be revalidated under arrangements for the new scheme in accordance with a timetable to be set by the SRA.

Question 9

Should solicitors holding a higher courts qualification under the current regulations be passported onto the new scheme?

Question 10

Should passported advocates be required to complete the revalidation process in due course? Please outline your reasons.

Potential equality impact of the proposed scheme

21. The SRA will be carrying out an initial equality impact assessment (IEIA) to identify any equality impacts that the proposals to ease the current restrictions on solicitors exercising rights of audience in the higher courts may have. However, it is not presently clear to us what the potential positive or adverse equality impacts may be. In order to inform the IEIA we seek the views of respondents on what they consider to be the potential equality impacts of the

proposed regulatory approach, competence standards and scope and structure of the new accreditation scheme. The information we receive will help us with our assessment and our decision to proceed to a full equality impact assessment.

Question 11

Do you consider that the proposed regulatory approach, competence standards, and scope and structure of the new accreditation scheme have potential positive or adverse impacts in the following areas?

- **Age**
- **Gender**
- **Race**
- **Disability**
- **Sexual orientation**
- **Religion or belief**

If you answered “yes”, please indicate what you consider the impacts to be and outline your reasons.

Finally

22. To assist us with a meaningful analysis of the responses to this consultation we are keen to be able to identify the current status of individual solicitor respondents. If you are responding as an individual solicitor please help us with the analysis by answering the following questions:

Question 12

Do you hold a higher courts qualification awarded under the current or previous Regulations?

If you answered “yes”, which qualification do you hold? All proceedings, criminal proceedings, or civil proceedings?

Next steps

23. This consultation is intended to seek views on the proposals for the new higher courts qualification accreditation scheme and other measures to ensure the quality of solicitor higher courts advocates. The consultation period will run for 12 weeks until **25 July 2008**, after which the SRA Board and its committees will consider the responses. Taking into account the feedback received through the consultation, the proposals will be reviewed and amended and the final version published on the SRA's website (please

visit www.consultations.sra.org.uk) together with the analysis of consultation responses. The expected date for publication is 1 October 2008.

24. When the proposals for the replacement of the present higher courts qualification process have been finalised, an application will be made to the Ministry of Justice for the repeal of the current Regulations under the Courts and Legal Services Act 1990 as amended.
25. The target date for the repeal of the current Regulations remains at 1 January 2009, but it should be remembered that this date will depend on the completion of the approval process under the Courts and Legal Services Act 1990.
26. If, for any reason, the proposed timetable should slip, the existing accreditation (Regulation 6) and exemption (Regulation 7) routes will cease to be available after 31 December 2008. The current development route (Regulation 5) will continue to be available until any new scheme is approved and implemented. The exemptions under section 31C of the Courts and Legal Services Act 1990 (Regulation 10) will continue to apply.

Summary of consultation questions

Question 1

Do you consider the regulatory approach suggested in paragraph 12 above sufficient to protect the public interest and ensure the standard of advocacy in the higher courts? Please explain and highlight any other measures you think the SRA should consider.

Question 2

Do the standards adequately cover the knowledge and skills that should be expected of a solicitor advocating in the higher courts? Please explain with particular reference to any gaps in knowledge and skills and how these can be best addressed.

Question 3

Do you think that the standards are set at the appropriate level of a competent solicitor higher courts advocate? Please outline your reasons.

Question 4

Do the standards as drafted achieve the desired aims set out at paragraph 16? Please outline your reasons.

Question 5

Are the performance indicators appended to the standards sufficient explanation of the required competence? Please outline your reasons with particular reference to any additional indicators you would include or what amendments you would make.

Question 6

Is the proposed assessment process adequate to establish the competence of the applicant? Please explain your reasons and make any alternative suggestions.

Question 7

Should holders of the higher courts accreditation, be revalidated every five years? Please outline your reasons.

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If you answered “yes” to Question 7 above, please provide us with any views you may have on the proposed process.

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Question 11

Do you consider that the proposed regulatory approach, competence standards, and scope and structure of the new accreditation scheme have potential positive or adverse impacts in the following areas?

- Age
- Gender
- Race
- Disability
- Sexual orientation
- Religion or belief

If you answered “yes”, please indicate what you consider the impacts to be and outline your reasons.

Question 12

Do you hold a higher courts qualification awarded under the current or previous Regulations?

If you answered “yes”, which qualification do you hold? All proceedings, criminal proceedings, or civil proceedings?

How to respond

To find out how to respond, please visit our website.

- Go to www.consultations.sra.org.uk.
- Select **Higher rights of audience**.
- Click **How to respond**.
- Alternatively, go to <http://www.sra.org.uk/consultations/801.article#respond>.

Submission deadline

The deadline for submission of responses is **25 July 2008**.

Annex 1

Statement of standards for solicitor higher courts advocates

Introduction

The primary purpose of these standards is to set out what is expected of a competent solicitor higher court advocate both before and during trial, in terms of case analysis, organisation, preparation and presentation.

The standards identify the generic skills and knowledge for all solicitor higher court advocates. Standards specific to civil and criminal proceedings are also set out in parts 4 and 5 respectively.

Appendix 1 sets out the framework against which the competence and performance of a solicitor higher court advocate can be objectively assessed

In satisfying the standards, advocates need to comply with the relevant legislation in force at the time.

Part 1 – Evidence

The evidence standards cover civil and criminal advocacy, as the main principles of evidence are generic to both, even though the evidential consequences of admissibility may differ in civil and criminal courts.

There has been no attempt to cover other more specialist types of advocacy, such as family or Coroner's Court work, which may have distinctions not referred to in the evidence standards. Advocates engaged in specialist areas of advocacy should ensure that they are familiar with any distinctions or specific requirements as regards evidence.

The evidence standards may, arguably apply as much to Magistrates' and County Court work as to Crown and High Court work. The generic format reflects the fact that the distinctions between the County and High Court have largely disappeared since the implementation of the Civil Procedure Rules (CPR), though there are some remaining differences in the Magistrates' and Crown Courts as far as the law of evidence is concerned, due in the main to the existence of juries.

Advocates must have a sound knowledge of the applicable rules and law of evidence, as evidential points may arise during a hearing unexpectedly without time for research.

Standards for evidence

Advocates must be able to determine when evidence is relevant and therefore potentially admissible and be able to demonstrate their understanding of:

1. Burden and standards of proof and the differing roles of judge and jury.
2. Disclosure, including issues relating to confidentiality, privilege and public interest immunity.

3. Hearsay evidence including being able to identify hearsay evidence, recognise when it may be admissible, how it may be admitted and its evidential value when adduced.
4. Documentary hearsay including laying the evidence for documentary hearsay, any formal requirements and time limits.
5. Confessions and previous inconsistent statements including conditions of admissibility and the court's discretion.
6. Similar fact and character evidence including being able to recognise when similar fact and character evidence is appropriate as evidence.
7. Opinion and expert evidence including when and to what extent opinion and expert evidence is admissible.
8. Improperly obtained evidence including being aware of how evidence has been obtained, the evidential constraints and effects of adducing improperly obtained evidence.

Part 2 – Ethics

Advocates must be familiar with and understand the Solicitors' Code of Conduct 2007 and in particular rule 1 (Core duties), rule 2.01(1) (b) (competence to deal with a matter) and rule 11 (Litigation and advocacy). It is desirable that advocates should also be familiar with the Bar Standards Board's Code of Conduct 2008.

Standards for ethics

Advocates must be able to:

1. Advise the client on suitable representation at court.
2. Resolve issues arising from unintentional or inadvertent disclosure of confidential information.
3. Resolve potential and actual conflicts including conflicts arising between the advocate's duty owed to the client and the advocate's duty to the Court.
4. Advise on potential conflicts between acting as an advocate for a client and becoming a potential witness for that client.
5. Recognise when an advocate may become professionally embarrassed and have to withdraw from a case.
6. Advise the client of the advocate's need to maintain professional independence and the associated need to draw any unfavourable law of which the advocate is aware to the attention of the court.
7. Comply with courtroom etiquette.

Part 3 – Advocacy

A solicitor higher court advocate must be competent in each of the skills areas set out below before they consider starting trial work in the higher courts.

In particular, solicitor higher court advocates must demonstrate sound witness-handling skills, as well as sound skills in legal and factual submissions in a contested, adversarial context.

Advocates must be able to analyse and understand the case, assimilate the facts and apply relevant statute and case law in order to react to unexpected events in court, and should be able to demonstrate that they have a thorough knowledge of evidence.

The principles outlined in these standards are the same as would be expected in “lower” court advocacy, but advocates should be aware that evidential and legal submissions may be more detailed in the higher courts, and that a higher standard of presentation is required. This is particularly true for criminal advocacy, where there is always a professional judge to hear such submissions in the Crown Court, whereas this may not be the case in the Magistrates’ Court.

Standards for evidential and legal submissions/interim applications

1. The advocate must be able to:
 - (a) prepare coherent skeleton arguments and necessary supporting documents and supply the court with copies of the relevant law;
 - (b) present legal argument to the court accurately citing only relevant and material law where necessary;
 - (c) respond to interventions by the court and develop legal argument;
 - (d) respond to the opponent’s legal arguments and develop appropriate legal argument in the light of these.
2. When making an application, the advocate must be prepared to present the case in detail as required by the court and be able to respond to any application as well as interventions by the court.

Standards for trial advocacy

1. The advocate must:
 - (a) understand the importance of and be able to draft and present clear trial strategies and plans.
 - (b) using the trial strategy and plan, be able to outline the facts and evidence, in terminology and detail as appropriate to the type of case.
 - (c) be able to conduct an examination in chief, if required, by:
 - asking relevant non-leading questions which promote the client’s case

- identify and place before the court relevant documentation produced by the witness after establishing the necessary evidential foundation.
- (d) in cross examination:
- be able to control the direction and pace of the evidence
 - appropriately challenge the witness' evidence in accordance with the client's instructions
 - ensure that all relevant disputed matters are put to the witness
 - identify and appropriately cross-examine on any previous inconsistent statements.
- (e) be able to identify situations when re-examination is required to put the client's case and to repair damage done to the witness in cross examination or to clarify or amplify matters raised in cross-examination.
2. Handling special witnesses
- (a) The advocate must be able to:
- identify and use effectively expert evidence
 - challenge expert evidence
 - where necessary confirm or question the expert's qualifications and expertise.
- (b) The advocate must be able to:
- identify vulnerable witnesses
 - use appropriate techniques when questioning vulnerable witnesses
 - comply with judicial directions regarding vulnerable witnesses
3. Closing speeches

During the closing speech the advocate must:

- identify and appropriately present the:
 - key issues in the client's case
 - positive and negative evidence elicited from witnesses
- anticipate and appropriately address arguments likely to be advanced by the opposing advocate
- effectively deal with interventions by the court and respond appropriately to them.

Part 4 – Civil advocacy

Introduction

These standards identify those activities, procedures and practices specific to advocacy in civil proceedings before the High Court and above.

Advocates must:

- be aware that much civil advocacy depends on the quality of written documentation put before the court in addition to the quality of the oral advocacy at trial

- comply with the Civil Procedure Rules throughout the trial process
- recognise the costs implications faced at all stages of preparation and during the trial
- follow pre-action protocols where relevant
- appropriately advise the client on alternative dispute resolution remedies.

Trial preparation

The advocate may not have drafted the Statement of Case and other trial documents but must have the ability to do so and must be able to identify deficiencies in the drafting of such documents.

Preparation for trial must be thorough, and reflect the senior jurisdiction of the High Court, to ensure this advocates must:

- be able to prepare a coherent and effective trial strategy and/or produce a trial plan based on:
 - Statements of Case
 - Witness Statements
 - Other disclosed documents put before the court
- exercise sound judgement in the making of appropriate interim applications
- understand the effect of interim orders
- identify any costs implications resulting from interim orders
- draft coherent skeleton arguments to assist the court

Trial bundle

Advocates must understand what needs to be included in the trial bundle and should be able to ensure that the bundle complies with court requirements.

Alternative dispute resolution

Advocates must understand the importance of alternative dispute resolution and when it is appropriate, and they must advise their client appropriately.

Part 5 – Criminal procedure

Introduction

These standards identify those activities, procedures and practices specific to advocacy in criminal proceedings before the Crown Court and above. In contrast to civil advocacy, criminal advocacy is primarily dependent upon oral advocacy, rather than written documentation. Notwithstanding this, advocates must:

- understand and comply with the Criminal Procedure Rules throughout the trial process

- ensure that documents which may be put before the judge and jury are in the appropriate format, accurate and material to the case
- ensure that copies of any law to be argued are prepared for the benefit of the judge and the opposing advocate.

Trial preparation

Preparation for trial must be thorough and reflect the increased seriousness and complexity of cases heard in the Crown Court. To ensure this, advocates must:

- Be able to prepare a coherent and effective trial strategy and/or produce a trial plan based on:
 - an understanding of the rules relating to indictments
 - an understanding of the rules relating to disclosure.
 - an understanding of the issues that may arise at and/or from a Plea and Directions Hearings (PDH)
- be able to deal promptly and effectively with issues that may arise at and/or from the PDH.

Trial procedure

Advocates must understand:

- the procedure for empanelment of the jury
- the order of speeches and witnesses
- when legal submissions should be made to the judge in the absence of the jury
- matters which the judge should cover in summing up
- how they can assist the judge with any specific points to be addressed in the summing up
- actions and attributes that may adversely affect the client's case in the eyes of a jury

Sentencing

Advocates must understand the issues involved in dealing with sentencing including:

- the judge's sentencing powers and the range of sentencing tariffs
- matters relating to advice on a plea of guilty

Appendix 1

Performance indicators

Introduction

This document supplements the *Statement of standards for solicitor higher courts advocates* by setting out key performance indicators for solicitor higher advocates.

The performance indicators are designed to inform the users of advocacy services provided by a solicitor of the standard of performance that can reasonably be expected of a solicitor higher courts advocate.

The performance indicators also form the basis for assessments for accreditation under the SRA's Solicitor Higher Courts Advocate Accreditation Scheme. Such assessment will be provided by independent organisations specifically approved for the purpose.

Part 1 – Evidence	<ul style="list-style-type: none">• Accurately identifies key legal, factual and evidential issues• Understands opponent's case and assimilates opponent's evidence• Provides appropriate disclosure of evidence• Responds appropriately to new evidence• Makes appropriate objections and/or submissions• Throughout the trial obtains instructions when appropriate
Part 2 – Ethics	<ul style="list-style-type: none">• Advises client in autonomous decision making• Observes duties to the court and duty to act with independence• Advises the court of adverse authorities and, where they arise, procedural irregularities• Assists the court with the proper administration of justice• Observes professional etiquette in court
Part 3 – Advocacy	<ul style="list-style-type: none">• Has a clear strategy for the case supported by questions asked and evidence called• Observes restrictions and judicial rulings on questioning• Questioning strategy is clear and asks questions only

	<p>relevant to issues</p> <ul style="list-style-type: none"> • Demonstrates sound witness handling skills • Uses and challenges expert evidence effectively • Questions to witnesses are clear and understandable • Deals appropriately with vulnerable witnesses • Deals effectively with uncooperative witnesses • Avoids introducing irrelevant matters in cross-examination • Ensures that copies of any law to be argued are prepared for the benefit of the judge and opposing advocate • Locates materials and evidence quickly • Develops arguments in a logical order • Makes appropriate objections and/or submissions • Responds appropriately to interventions by the court
<p>Part 4 – Civil Advocacy</p>	<ul style="list-style-type: none"> • Complies with the Civil Procedure Rules throughout the trial process • Follows pre-action protocols where relevant • Questioning strategy is clear and asks questions only relevant to issues • Deals promptly and effectively with issues arising from case management directions • Makes only appropriate interim applications • Understands the effect of and costs implications arising from interim orders • Has a coherent and effective trial strategy based on statements of case, witness statements and other disclosed documents • Ensures that the trial bundle complies with the court's requirements

Part 5 – Criminal Advocacy

- Complies with the Criminal Procedure Rules throughout the trial process
- Understands the rules relating to indictments
- Gives clear advice to help a defendant to decide how to plead
- Deals promptly and effectively with issues arising from a plea and case management hearing
- Understands the advocates role in the empanelment of a jury
- Drafts clear skeleton arguments
- Understands matters which the judge should cover in summing up and implications for the client's case
- Acts appropriately to assist the judge with any specific points to be addressed during the summing up
- Does not act in a manner which may adversely affect the client's case in the eyes of the jury
- Understands the judge's sentencing powers and the range of sentencing tariffs
- Is able to structure an effective plea in mitigation
- Understands the procedural steps involved in obtaining leave to appeal