



**BACFI Response to the Joint Consultation by
the Solicitors Regulation Authority, ILEX Professional Standards and
the Bar Standards – Advocacy Standards Paper**

The introduction to the consultation paper states that the respective governing bodies are committed to developing and quality assuring overarching standards for advocacy. This is an admirable objective, but the consultation paper then comes to the conclusion that they need to tackle this task incrementally and identify standards in one sector alone - criminal law - as a first step in seeking to achieve these overarching standards.

BACFI's view is that once we have gone down this road to "customising" basic principles or standards of advocacy to one particular sector – which may be understandable in terms of quality assurance – we will not succeed in getting back to establishing one set of standards for all advocates. BACFI therefore recommends that if we are to set standards which are intended to be overarching then that is what we should set out to do today, rather than contemplating and devising standards for one significant sub-set of advocates.

One of the dangers of starting with criminal advocacy is that standards may be established which will inevitably be used as a template for other forms of advocacy but which may not be suitable.

We have already some exceptionally good high-level standards which we find in the Codes of Conduct of the respective regulators. We also have an excellent high-level "overarching" guidance from an earlier working party chaired by Timothy Dutton QC in 2002. Those principles and standards were described by Dutton QC as follows:

“The essential skills for a persuasive modern advocate are, in combination:

- the ability to persuade orally
- the ability to persuade in written argument
- cogently legal and factual analysis
- the ability to develop reasoned arguments
- forensic skills with evidence (both written and oral)
- all of the foregoing undertaken to high ethical standards.”

These criteria can be applied to all forms of advocacy in the widest sense including advocacy practised outside the court room. On the assumption that the standards will be applied to all barristers including those who never practise in the courts, it is important to start from such general principles.

Each one of those Dutton “standards” can be identified in more detail in the proposed standards in the consultation paper and also in those used by Cardiff University in the quality assurance work they have done for the LSC. In these things examples the standards have been fleshed out with more detail. While it is probably essential that greater detail is needed in describing the conduct of advocates in order to be able to apply a quality assurance process, that is going beyond the establishment of an overarching universal set of standards for advocates. From BACFI’s point of view and as the consultation paper acknowledges (paragraph 45) it is likely that different stakeholders may want to assess the quality of advocacy from a different point of view, for example, CPS, as the employer (or contractor) of a large number of advocates who are operating at different levels, i.e., different courts may have different criteria from the quality assurance that LSC might be looking for in terms of value for money.

In BACFI’s view the level of detail in the consultation paper proposed standards is part of the quality assurance process and not the standard setting process. We therefore think that the matter of identifying and agreeing on those overarching standards should be, as a first step,

determined and divorced from thinking about the further steps such as quality assurance. This is not an unusual position to be in and many a set of rules, including our Codes of Conduct, have now been devised by identifying the high-level principles or standards, then, with further degrees of detail, expressing those principles with more substantive rules and guidelines. The latter two steps are clearly necessary to be able to assess the standards and quality assurance, but not to form the overarching standards in the first place.

After establishing the standards of advocacy for the legal profession then we should turn to considering how they should be measured and quality assured.

BACFI

March 2010