



**BACFI Response to the Joint Advocacy Group
Consultation Paper on proposals for a quality assurance scheme for
criminal advocates**

About BACFI

The Bar Association for Commerce, Finance and Industry was founded in 1965 to promote the interests and professional status of barristers employed in commerce, finance and industry. BACFI is a Specialist Bar Association, affiliated to the Bar Council but operating independently to represent employed and non-practising barristers working outside chambers. It is represented on the Bar Council and its General Management committee and has members on several Bar Council and BSB committees and working groups. Most of its members do little if any court room advocacy.

The Approach of the JAG

In our reply to the initial consultation paper we raised a concern that standards and measures being established for criminal advocacy may be used as a basis for other forms of advocacy. We stated:

“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 inevitable 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.”

The proposed scheme

Whilst we agree that it is important that advocates in the criminal courts should meet and maintain high standards, we are not in a position to comment on the particular scheme proposed in the paper. However, we reserve the right to comment further should the development of the scheme affect our members or if the costs of setting up the scheme be such as to cause further increases in the practising certificate fee.

We also wish to comment on the possible implications for our members participating in the New Practitioner Programme (“NPP”). In para 50 it is proposed that there should be a clear pass/fail. Although one of the Inns has introduced more relevant advocacy exercises for employed barristers, this does not happen currently for some of the NPP courses at the other Inns. BACFI is working with the Inns to ensure more relevant training for employed barristers but progress is slow. In the meantime, an employed barrister who does no court advocacy in his work is put at a significant disadvantage if asked to do the court-room based exercises and may well fail the course. We would be concerned if this happened.

Conclusion

BACFI supports the concept of ensuring high quality advocacy in all courts. We are not in a position to comment on the individual questions but ask that our comments on advocacy generally be noted.

BACFI

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