Solicitors Regulation Authority

Quality of Criminal Advocacy

June 2018

Judicial perception of the quality of criminal advocacy (PDF 63 pages, 1.6MB) [https://media.sra.org.uk/globalassets/documents/sra/research/criminal-advocacy.pdf]
Criminal advocacy thematic review (PDF 81 pages, 1MB) [https://media.sra.org.uk/globalassets/documents/sra/research/criminal-advocacy-thematic-review.pdf]

Background

The delivery of high quality advocacy plays a fundamental role in ensuring the effective and fair delivery of justice within the courts of England and Wales.

Through their professional knowledge, court rooms skills and experience, advocates not only directly support the individuals they represent, but also ensure the continuing effective operation of the legal system and ongoing public confidence in the rule of law and the courts system.

While we receive relatively few complaints about solicitors or firms working in this area, recent reports published by the Government and Bar Standards Board have expressed concerns about standards of criminal advocacy. We also regularly hear anecdotal concern expressed by some stakeholders.

To help us better understand the nature and scale of any problem we jointly commissioned, with the Bar Standards Board, an independent report into the views of the judiciary on current standards. We also conducted a thematic review into law firm practices in this area.

Judicial Perceptions Report – an independent report, jointly commissioned with the Bar Standards Board, which involved interviews with 50 judges.

Criminal Advocacy Thematic Review – based on data and interviews with a representative cross sample of 40 firms offering solicitor advocacy services.

Open all [#]

Key findings

Overall the two reports suggested that the quality of advocacy was generally competent.

Room for improvement was identified across a number of areas, most notably these included core courtroom skills and the ongoing assessment and training of advocates. Further key findings across both reports included:

- While judges deemed advocacy to be generally competent, they felt standards were generally declining, especially in relation to core courtroom skills such as case preparation and dealing with witnesses.
- Advocates' skills in dealing with young and vulnerable witnesses are largely improving, while some firms engage dedicated youth court specialists or intermediaries with specialist training.
- The most commonly cited barrier to high quality advocacy was advocates taking on cases beyond their level of experience.
- Firms used in-house solicitors for 90% of work in magistrates' courts and youth courts, while they instructed solicitor advocates for around a third of Crown Court work.
- There was some uncertainty among judges over when, and how, they should report poor advocacy to regulators.
- Both judges and firms cited a need to improve approaches to assessment and on-going training of advocates.
- Criminal law is increasingly practised by an ageing profession, with the number of firms active in this area also decreasing. In the long term this could lead to some quality and capacity issues.

Next steps

Building upon the findings of the research and thematic review, we will consider how best we can continue to assure standards of criminal and civil advocacy.

To support solicitors practising in the youth courts, we have already developed the youth court advocacy toolkit [https://media.sra.org.uk/solicitors/cpd/youth-court-advocacy] .

Judicial perceptions of the quality of criminal advocacy

The Solicitors Regulation Authority (SRA), together with the Bar Standards Board (BSB), commissioned the Institute for Criminal Policy Research of Birkbeck, University of London to conduct independent research on the perceptions of the judiciary on the quality of advocacy of both solicitor advocates and barristers in the Crown Court.

Why we commissioned the research

Solicitor advocates and barristers play a crucial role in the criminal justice system. The public must have trust and confidence that the prosecution and defence of any criminal case is carried out rigorously and competently.

As regulators the SRA and BSB have a role in making sure solicitors and barristers, respectively, are competent and meet high professional standards.

Despite the undoubtedly important role that advocacy plays in our judicial system, little research has been undertaken to assess its quality.

We wanted to understand the views of the judiciary on the quality of criminal advocacy and to identify any issues of regulatory concern.

Forty-six circuit judges and four High Court judges took part in qualitative (telephone or face to face) interviews.

What did the research find?

- Most of the judges deemed advocacy to be generally competent.
- The judges tended to think that the quality of advocacy had declined over time, with concerns raised about standards of case preparation and advocates' ability to ask focused questions of witnesses and defendants.
- Three main themes emerged in the judges' comments about what it means to be a 'good' advocate:
    - communicators - referring, to specific aspects such as persuasiveness, tailoring the style of address to the audience, and adaptability.
    - focused - encompassing the ability to take a strategic and structured approach and to be succinct in addressing the court.
    - prepared - a willingness and capacity to carry out thorough preparation for a case.
- One area of practice that is recognised to be largely improving is advocates' skills in dealing with young and vulnerable witnesses.
- The most commonly cited barrier to high quality advocacy is advocates taking on cases beyond their level of experience.
- The judges called for more opportunities for junior advocates to be mentored or work alongside their more experienced peers.
- Broader changes in the criminal justice system, such as shifts in the size and make-up of court caseloads, economic and time constraints, and technological reforms, can act as further barriers to good advocacy.
- Regulators should be more robust in responding to poor advocacy when alerted to problems by judges. However, there was also some uncertainty among the judges whether, or how, they should report poor advocacy to the regulators.

Criminal Advocacy Thematic Review

Why we commissioned the review?

Criminal advocacy is a fundamental part of the of the legal system, given its importance in:

- maintaining the public's trust in the legal system
- consumer protection
- upholding the rule of law and the proper administration of justice.

It is an area that has come under increased scrutiny from both a public and political perspective particularly following:

- the BSB's withdrawal of their involvement in the Quality Assurance Scheme for Advocates (QASA)
- The Review of Independent Criminal Advocacy (The Jeffrey Review) - a 2014 government review looking at training, skills and standards in criminal advocacy.

However, this is not an area of law that attracts a high volume of complaints to us from the public, firms or the judiciary. As a result, we commissioned this thematic review to give us an opportunity to improve our understanding of competence in this area, the challenges and the potential risks.

What we did

This thematic review involved data gathering and detailed interviews with a representative sample of 40 solicitors' firms who provide criminal advocacy, employing a total of 399 legal practitioners.

The sample we chose was largely representative of the criminal law population, with the majority being smaller firms and partnerships. All did criminal legal aid work - this made up the majority of the work for all but two of the sample firms.

What did the review find?

Key findings included:

- The majority of firms demonstrated good practice in most areas of their criminal advocacy work, yet there were areas for improvement for some firms such as the quality of training.
- The market is dominated by smaller firms, but in recent years there has been a reduction in both the overall number of firms and new entrants choosing to practise in this area. As criminal law is practised by an ageing profession, this could mean there are quality and capacity issues over the long term.

- Level of complaints regarding advocacy work are relatively low - during a 24 month period there was only 22 recorded complaints across all of the 40 sample firms. Yet this may be because clients do not know what good service looks like, or that clients who are vulnerable may find it difficult to complain.
- Approaches to training were inconsistent, with its delivery often infrequent, limited or not planned. More focus could be placed on formal observation of solicitors in court to monitor advocacy skills. Firms also stated they would welcome more advanced advocacy training geared towards the Crown Court.
- Firms generally tailor their approach to dealing with young and vulnerable clients, with many experienced solicitors active in youth courts. Yet they could do more, for instance by using intermediaries to assist with communication with vulnerable defendants.
- Firms use in-house solicitors to support the vast majority of criminal work in magistrates' courts (90 percent) and youth courts (89 percent), and 29 percent of work in the Crown Court.
- Advocate experience and client choice are the two main factors firms take into account when allocating work.
- We found no evidence of serious misconduct such as inappropriate referral arrangements or directly touting for clients. Yet there were concerns expressed about touting for business via third parties at police stations and youth courts.