

## Criminal Advocacy Training after Jeffrey

“Effective advocacy is at the heart of our adversarial system of criminal justice. If prosecution and defence cases are not clearly made and skilfully challenged, injustice can and does result. Effective advocates simplify rather than complicate; can see the wood from the trees and enable others to do so; and thereby can contribute to just outcomes, and save court time and public money. “

Introduction to the Jeffrey Review pg 3

# Background to Jeffrey Review

- Announced by the justice secretary, Chris Grayling on 5<sup>th</sup> September 2013
- Brief included examining the;  
arrangements for training, having regard to the recommendations of the Legal Education and Training Review,  
standards needed to maintain and improve the quality of advocacy.
- Spoke to judiciary, legal profession, academics and other stakeholders.
- Published 7<sup>th</sup> May 2014

“One proposition on which respondents to my Review could agree was that advocacy is a specialist skill, and that good advocates require both training and regular exposure to advocacy practice in court. The general view was well captured by the Council of the Inns of Court ('COIC') in their submission to me, which observed that in order to be effective, an advocate needs to be articulate, persuasive and concise, well organised and efficient. They need to be able to undertake cogent legal and factual analysis, using skeleton arguments, oral examinations, examination-in-chief and cross examination in order to develop reasoned arguments. The importance of preparation to the quality of advocacy in court was also heavily underlined by practitioners, the judiciary and those involved in advocacy training.”

Jeffrey Review para 3.1

“There was a strong and consistent view that, although the best was still very good indeed, among both barristers and solicitor advocates, standards had in general declined; that it was not uncommon to have advocates (for both the prosecution and defence) to be operating beyond their level of competence; and that judges frequently felt concern about “inequality of arms” between prosecution and defence if one side was inadequately represented.”

Jeffrey Review para 2.7

I am also struck, as others have been, by the disparity between the mandatory training expected of solicitors and barristers. To practise as an advocate in any criminal court, a barrister will need to have undertaken around 120 days of specific advocacy training pre-qualification, plus pupillage. A qualified solicitor can practise in the magistrates' courts, and (subject to obtaining higher court rights accreditation) in the Crown Court with as few as 22 hours such training. The CPD requirements also expect more of barristers.

Jeffrey Review para 4.3

My main recommendation in this area is therefore that there should, over time, be developed a common training expectation of all those practising as advocates in the Crown Court, which need not be as demanding as the Bar's, but should substantially exceed the current requirement on solicitors seeking higher court rights. Ultimately, these are matters for the profession and its regulators to address in following up the LETR, but I offer below a possible approach for their consideration.

Jeffrey Review para 4.6

- 4.7 First, in following up the LETR's recommendation about the development of specialist pathways, the opportunity should be taken to take the limited advocacy element out of the Legal Practice Course and instead develop a more substantial elective advocacy course for trainee (or indeed qualified) solicitors minded to pursue a career in advocacy, completion of which could in future be mandatory for those seeking higher court accreditation.
- 4.8 Second, the SRA and the Law Society should consider proportionate ways of replicating for higher court solicitor advocates the supervised experience which pupillage provides for barristers, including early exposure and practice.
- 4.9 Third, the profession should work together, with the regulators, to develop common minimum expectations for CPD for advocates in the Crown Court.

## But

It is not uncommon for aspirant barristers to emerge from the BPTC seeking pupillage with debts of around £50,000. Student debt is not, of course, an issue confined to the law, and even within the legal profession young solicitors frequently face similar challenges. But the higher cost of the BPTC, and the fact that so few of those completing it can expect to obtain pupillage, gives an added twist, and has obvious implications for diversity.

Jeffrey Review para 6.12

The problem of over-supply from the BPTC appears to be as serious as ever and is among the issues which any radical review of the structure of the profession should address.

Jeffrey Review para 6.16

# Time for a change?

- Enhanced advocacy training for solicitors?
- More flexible and cheaper equivalent to BPTC?
- Covering the same competencies?

# What are the problems?

Little research

Jeffrey drew on;

Legal Services Commission – Quality Assurance for Advocates – Moorhead and Cape  
Cardiff University Nov 2009

HMCPSI – Follow up report of the thematic review of the quality of prosecution  
advocacy and case presentation March 2012

Perceptions of Criminal Advocacy March 2012- BSB and ORC International

# Some indications of the problems that need curing

“advocacy tended to be less persuasive, lacking elements of presence and confidence in both presentation and argument”

“advocates were not especially adept at identifying what information a court was likely to require at the hearing or anticipating what questions [an advocate] might reasonably be expected to answer”

“A number of advocates still have an over reliance on case notes . This can have a negative impact on the conduct of a trial and the advocacy can become pedestrian when it need not be . The reliance on notes can result in a tendency to read to the court rather than engage with it during narrative advocacy, and when questioning witnesses it can lead to a disjointed account with details overlooked .”

“The importance of preparation as the foundation of good advocacy has not been acted upon by advocates universally and remains a weakness.”

“The performance of crown advocates needs significant improvement in relation to some of the more ‘technical’ elements of case preparation: legal submissions are not always timely or supported by reasoned oral argument; and the advocates do not regularly make appropriate use of formal admissions.”

# What are the common themes?

- Lack of preparation
- Lack of case theory
- Inability to appreciate technical points
- Lead to unengaging presentation

# What do we assess?

BPTC:

Knowledge;

Criminal/Civil Lit and Evidence

Ethics

Resolution of Disputes out of Court

Skills;

Cross Examination

Examination in Chief

Legal Submissions and Skeleton Arguments

Drafting (pleadings)

Opinion Writing

Conference

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# Advocacy assessments

- Students asked to perform exercise
- Within a fixed time frame
- Against set criteria

# Are we at risk of?



- 1) Foundation stage – Knowledge.
- 2) Consolidation – Application to case. Preparation, case analysis and presentation.
- 3) Refinement – Enhancement of skills in a way appropriate to practice.

# Advantages of this approach

- Provides a more cohesive approach.
- Ensures progression dependant on completion of stages
- Spreads financial burden on students
- Ensures consistency of approach
- Allows advocacy training to specialise on needs of advocate

# Steps forwards

- Research
- Dialogue