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“Specialisation and Accreditation of Lawyers in England & Wales”

**Philip Moser, of the Inner Temple, Barrister.
FBE Representative,
General Council of the Bar of England & Wales .**

A. Introduction and Background

1. There is currently no general scheme of specialisation in the legal professions in England & Wales. In the solicitors' profession the image of the "high street practitioner" remains established in the minds of the public: the generalist, based in the local high street, who will be the first port of call. If necessary, that solicitor can instruct a specialist barrister. Notwithstanding the Bar's specialist role in our split profession, the image of the barrister as general common lawyer also persists: each barrister is theoretically equally qualified to prosecute a murder or to deal with a complex carriage of goods by sea case. Both the generalist barrister and (especially) the generalist solicitor still exist of course, and form a vital part of the legal system. However, to survive into the 21st Century both professions have embraced the need for specialisation. The difference to some continental jurisdictions is that, with some exceptions (more particularly in the solicitors' profession), there is no perceived need for specialist *accreditation*. Even more, there is no perceived need for *mandatory* accreditation.

2. In practice, specialisation is already a reality. Specialist sets of criminal barristers are the rule rather than the exception; as are e.g. specialist sets of tax barristers and of family law barristers. The large City firms of solicitors in London for the most part specialise in commercial law, with subgroups of e.g. shipping law or insurance law specialists. There is an identifiable group of specialist firms of divorce solicitors. These specialists will generally command higher fees than general practitioners.

3. What there is not at present is a general requirement for an **accreditation scheme**, that is a formal procedure which results in the lawyer receiving recognition of expertise or experience in a given area of work. In 2000 the Bar conducted a wide-ranging survey on accreditation. The clear outcome was: *specialisation yes; accreditation no*. The reality for both professions in England & Wales is that the market will largely dictate who is considered best qualified in a particular area. One effect is that the client has a relatively free choice of legal representative.

4. That is not to say that that market is entirely unregulated or that consumer choice is entirely unguided. I will set out in this paper an outline of the situation in England & Wales. The situation is complex and changing, so that this cannot be a comprehensive summary. I hope however that it gives an adequate idea of the situation in my jurisdiction. I have based this document largely on the materials compiled for the Bar Council's consultation exercise, and I am grateful to our Education & Training Department (and particularly Mark Stobbs) for their kind assistance. I will try to deal with both professions, but concentrate mainly on the situation at the Bar (with which I am more familiar). The views I express in this paper are my own and not necessarily those of the Bar Council. Any errors are also entirely my own.

Background

5. As a referral profession, the Bar has traditionally not considered it necessary to provide specialist accreditation, save in one limited area, immigration, where a voluntary scheme has been introduced for special reasons. The theory has been that the market, consisting of solicitors and other informed purchasers, should reliably select appropriate barristers for any given work. A barrister who was not competent to undertake work in a given area would be unlikely to receive sufficient work to continue in practice.

6. Many clients of the Bar have no difficulty in selecting a suitable barrister. There is extensive information to assist them in doing so. Regular users of the Bar's services operate more or less formal mechanisms for selecting counsel (and other legal advisers). In criminal cases, the Crown Prosecution Service (CPS) has lists of barristers who are thought to be suitable to undertake particular levels of work. As regards solicitors, the Legal Services Commission is limiting publicly funded work to franchised solicitors and others, including barristers, who meet the standards of its Quality Mark. Many large private sector purchasers of legal services, such as banks and insurance companies, devise panels of lawyers, including barristers, selected to meet the standards they demand. Larger public bodies do likewise.

7. The UK Government, which provides funding for legal services, has placed accreditation on the agenda as a method of securing better value for money. The Legal Services Commission has expressed an interest in there being ready means by which barristers with expertise in a given field can be identified by solicitors and advice agencies, with a view to ensuring that services purchased with Government funding are of a high standard. The Commission has identified as particular areas for consideration in this respect mental health, immigration, community care and public law generally.

8. In addition, accreditation schemes for particular specialist fields have become increasingly common among solicitors. The Law Society operates accreditation schemes in a number of areas including: Children Act cases, Mental Health Review Tribunals, personal injury, clinical negligence and planning.

The benefits and drawbacks of accreditation schemes

9. Accreditation schemes have a number of benefits. They have the potential to set, maintain (and possibly raise) professional standards in particular areas of practice. They can assist in providing the Bar's clients, lay and professional, with a benchmark against which they can select a barrister for a given case. Accreditation can also provide transparent standards to which practitioners new to a given area can aspire.

10. There are significant disadvantages as well. Developing and implementing a scheme can be an administrative burden, particularly in areas in which there are many practitioners. A given scheme may not be efficient at identifying the genuinely specialised from those who are not. Ensuring that any given scheme is fair to all involved can also be problematic, particularly in the context of a diverse profession in which many able individuals have wide-ranging practices. Additionally, it is questionable whether accreditation schemes can address the issue of practitioners who attempt work beyond their competence or those who deliver a less than adequate service.

11. Consultation amongst the Bar revealed that many were opposed, both in principle and for reasons of practicality. Concerns were expressed about who would assess expertise and what criteria would be employed. Others saw such schemes as inconsistent with the concept of an independent referral Bar and there were concerns that a move towards specialist accreditation could disadvantage the competent generalist and his or her clients.

12. There exist already certain specialist bar associations and groups of specialist solicitors (the Bar European Group and its counterpart the Law Society European Group for example). Such groups have in the past considered advocating specialist accreditation.

B. The existing framework for securing professional standards

13. The existing rules and practices fall into five main categories: (1) the education, training and selection of barristers and solicitors; (2) professional development and education while in practice; (3) professional standards set out in the Codes of Conduct, and (4) the requirements of the general law, in particular the law of negligence. Finally, (5) the informal mechanisms which also serve to maintain standards.

(1) Education, training and selection

14. The vocational courses at Law Schools and Bar Schools have been substantially reformed in recent years better to deliver the skills needed by a lawyer entering practice.

15. As to training, most, if not all, chambers and firms apply high standards in selecting trainees, which is a notoriously competitive process. Selection at that stage should, in theory, go a long way towards ensuring that the most able individuals ultimately enter practice. Selection for employment as a solicitor or for tenancy in chambers is, if anything, even more competitive.

(2) Practice

16. Continuing Professional Development (CPD) is obligatory for barristers and solicitors. A significant amount of this CPD must be in the individual's area of practice.

(3) Professional regulation of standards of barristers' work

17. All barristers and solicitors are subject to obligations not to undertake work which they know or ought to know they are not competent to handle. Paragraph 701 of the Code of Conduct for the Bar, which regulates the standards of professional conduct expected of barristers, provides:

“701 A practising barrister:

- (a) must in all his professional activities be courteous and act promptly conscientiously and diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the Court's time and to ensure that professional engagements are fulfilled;*
- (b) must not undertake any task which:*
 - (i) he knows or ought to know he is not competent to handle;*
 - (ii) he does not have adequate time and opportunity to prepare for or perform; or*
 - (iii) he cannot discharge within a reasonable time having regard to the pressure of other work”*

The Written Standards for the Conduct of Professional Work are in similar terms.

(4) Potential negligence liability

18. Although the potential liability of barristers in negligence may not in reality make a great contribution to the maintenance of professional standards, it is worth noting that Sir Thomas Bingham MR, in the Court of Appeal in *X (minors) v. Bedfordshire County Council* [1995] 2 AC 633 did not accept the general proposition that the imposition of a duty of care made no contribution to the maintenance of high standards.

(5) Other informal mechanisms

19. To these formal means must be added at least three further matters, which contribute to maintaining professional standards. First, the fact that, unlike some other professions, many of services provided by advocates are delivered publicly before a critical audience of a tribunal, clients (lay and professional) as well as other advocates. Professional pride gives incentives to perform well, to anyone with a modicum of self-respect. Secondly, at least at the Bar, if a lawyer does not deliver a high quality service, the prospects of his or her obtaining further work substantially diminish. Thirdly, (and probably the prime reason why most lawyers deliver a high quality service) - they are committed to doing the best possible job for their clients.

C. Selecting a suitable lawyer

The Bar

20. The Bar operates in a uniquely well-informed and specialist market in which there is already extensive information available as to the ability of individual barristers and the support available from his or her chambers. Solicitors and other users of the Bar's services play a vital role in regulating the quality standards of the Bar.

21. Major public and private users of the Bar have developed sophisticated approaches to selecting Counsel. The Crown Prosecution Service employs a system of "preferred sets" of chambers and uses Advocates' Selection Committees. Other Government work is undertaken by counsel on one of the panels (Treasury Counsel). Membership of such a panel (of which there are several grades) is subject to published selection criteria and, in general, an application process. Many firms of solicitors and other large users (such as local authorities, insurance companies and banks) have their own informal panels of individual barristers and chambers.

22. The Bar's clients have never had more information available about the skills and abilities of individual barristers: Many chambers publish a detailed brochure describing chambers' and individual members' practice. The number of chambers with web-sites which give details of the work undertaken by members of chambers, is increasing. Those web-sites are accessible to everyone.

23. There are comprehensive legal directories, which list barristers' and chambers' specialist areas of practice. Some directories comment on individual barristers and chambers, giving "rankings". There are legal journals, which regularly include features on barristers practising in particular areas of law. These directories (such as *Chambers & Partners* or *Legal 500*) will include independent research and commentary not wholly dissimilar to restaurant reviews in guides such as the *Gault Millau*.

24. In major cases, particularly in commercial law, it has become common for barristers to undertake "beauty parades", in which their suitability for the case is scrutinised by clients, lay and professional, in advance.

Solicitors

25. Much the same (particularly in relation to directories and websites) applies to the solicitors' profession. The big institutional or commercial clients will be very well informed about the most suitable services for their needs (and the cost thereof). The same may be said about some of the more regular criminal clients. As far as the general population is concerned, it is less clear how well informed they will be. Not being a referral profession like the Bar, the solicitors' profession is potentially open to anyone, no matter how well or ill informed. I presume that that explains the relatively greater moves towards accreditation of specialisation for solicitors.

26. Many lay clients will be unaware of or will disregard the information that exists in the market place. Of course, it must be open for question whether a person who does not have regard to the existing information will be likely to pay greater regard to an

accreditation scheme. The Legal Services Commission (a Government body) has developed its Quality Mark scheme, to provide greater information for the consumer.

D. Existing accreditation schemes

27. Hitherto, the Bar has introduced only one practice area accreditation scheme, for immigration practitioners. This was developed for special reasons. More recently, BarMark has begun to be used to certify standards of chambers management.

BarMark/Quality Mark

28. BarMark is a voluntary accreditation scheme for chambers, developed by the Bar Council. Under this scheme, chambers which comply with the standards set out in the Practice Management Standards and Guidelines are audited by the British Standards Institute and, if those standards are satisfied, they are awarded the “BarMark”.

29. At present, the standards deal only with chambers administration – e.g. health and safety, office procedures, employment and recruitment, marketing, finance etc. They are not concerned with the standard of advice or work of individual barristers - though there is probably a significant link between good administrative procedures and a high quality overall service. The Legal Services Commission’ voluntary scheme, Quality Mark, on the other hand also involves an assessment of the *quality of the services* performed by the lawyer. After consultation, the Legal Services Commission has also produced a specially adapted “Quality Mark for the Bar” (QMB). The Commission maintains an online directory of firms and chambers within the QM/QMB schemes. Details of the scheme can be found at: <http://www.legalservices.gov.uk/aboutus/qm/index.asp>.

Barristers: Immigration

30. In 1999 the Bar Council instituted an accreditation scheme for immigration practitioners. This scheme was introduced in the light of public concern about poorly

qualified immigration practitioners and followed a recommendation from the Lord Chancellor's Advisory Committee of Legal Education and Conduct in 1998.

31. Applicants submit a written application to the Immigration Practitioners Accreditation Board, with extensive information about themselves and their practice. The application is considered by the Board and a decision is made, ordinarily on paper. The Board can invite the applicant to meet with three experienced practitioners for oral assessment.

32. The scheme is purely voluntary and there are no restrictions on counsel not so accredited acting in an immigration case. There exists a proposal for a similar scheme in family law. For more information, one can visit the Bar Council website at: <http://www.barcouncil.org.uk>.

Solicitors' accreditation schemes

33. The Law Society currently has fourteen practice areas in which it maintains specialist panels. Solicitors' and their practices are assessed by means of a written procedure: an application form is scrutinised and approved by an assessor. Solicitors' firms are then accredited to practise in the respective areas of law. The current panels are as follows:

- Children Panel
- Civil and Commercial Mediation Panel
- Clinical Negligence Panel
- Criminal Litigation Accreditation Scheme
- Family Law Panel
- Family Law Panel – Advanced
- Family Mediation Panel
- Higher Courts Rights of Audience
- Immigration Panel

- Insolvency Practitioners
- Mental Health Review Tribunal Panel
- Personal Injury Panel
- Planning Panel
- Police Station Representatives Accreditation Scheme

34. Members of panels are entitled to use the brand “Law Society Accredited” and a professionally designed logo. The Law Society says it believes that this assures clients as to the skills of their solicitors and assists their choice of lawyer. Further details of the Law Society’s approaches to accreditation may be found at the Law Society’s web-site: www.lawsociety.org.

Philip Moser
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Hailsham Chambers
4 Paper Buildings
Temple
London EC4Y 7EX
Tel.: 020 7643 5000
philip.moser@hailshamchambers.com