

Research into the Operation of the Qualified Persons Rule

Why we undertook this research

The Bar Standards Board (BSB) Handbook requires that barristers of under three years' standing should have a more experienced barrister (or other authorised individual such as a solicitor-advocate) available to provide guidance if they exercise rights of audience; supply legal services to the public; conduct litigation; or undertake Public Access work. That more experienced practitioner is known as a "Qualified Person" (QP).

The publication of the BSB Handbook in 2014 introduced new rules around the QP requirement for newly qualified barristers to improve flexibility in the way the arrangement was operating. The BSB wanted evidence as to how effective the new requirements were, focusing on the typical relationship between barristers and QPs, including the level of contact, the level or type of support QPs provide, and how useful the profession found the requirement. Research was carried out to gather evidence from barristers and QPs who had been involved in a QP arrangement within the past year. The objectives of the research were to:

- Develop an evidence base to better understand how current arrangements between QPs and barristers work and the roles QPs have; and
- To gather evidence as to how the current QP rules are viewed by the profession, in particular, whether they are seen as proportionate and performing a useful function.

Key Findings

The research used an online survey open from July to September 2017 to gather views on the QP requirement from both newly qualified barristers and barristers who were currently acting as a QP. The survey was completed by 232 respondents (110 QPs and 122 new practitioners) and focused on the level and type of support received and provided as part of the QP arrangement, the frequency of contact between barristers and QPs, and views on the usefulness and proportionality of the QP requirement.

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- The most common form of contact between QPs and new practitioners is face to face meetings, with this answer given by 60 per cent of QP respondents and 59 per cent of new practitioners. QPs were considerably more likely to answer that the arrangement had involved meetings of over 30 minutes (54.5%) than new practitioners (40.2%). Where these meetings did take place, 55.2 per cent of QPs and 56.3 per cent of new practitioners stated that they occurred more than six times a year. Less than a third of QP and new practitioner respondents who had these meetings stated they occurred fewer than four times a year.

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- When asked what kind of guidance had been provided as part of the QP arrangement, the most common guidance given was advice or guidance on the law, given by a large majority of both QP and New Practitioner respondents.

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- The majority of QP respondents (66.4%) stated that they had provided advice or guidance on advocacy – however, among new practitioner respondents, less than half (41.8%) stated they had received advice in this area. A minority of both groups of respondents (30% of QPs and 23.8% of new practitioners) stated that a review of the new practitioner's performance had been part of the QP arrangement.

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- The majority of QPs (83.9%) felt that the requirement was helpful for new practitioners. In contrast, a majority of new practitioners (51.7%) stated that the requirement was not helpful. Those who had received advice on their performance as part of their QP arrangement were most likely to see the QP requirement as helpful (82.8%). Those who had face to face meetings over six times a year also had a large majority who felt the requirement was helpful (77.8%). In contrast, a large majority (69.1%) of those who had not had lengthy face to face meetings with their QP felt the requirement was not helpful. Those who had not had advice covering any of the specific areas covered in the survey overwhelmingly felt the QP requirement was not helpful (87.5%).

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- The majority of respondents felt that the Alternative Qualified Person (AQP) requirement, which specifies a level of support and contact for the new practitioner considerably beyond that required from QPs, was both helpful and proportionate. However, close to half of current QPs stated the additional stipulations of the AQP arrangement would deter them from acting as an AQP.

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- A number of respondents felt that for some new practitioners (such as those in chambers for whom a number of more senior barristers were available to offer help and support), the formal QP requirement itself was unnecessary. Others felt that while the requirement should be maintained in some form, the requirements should be made either more or less prescriptive, or that clearer guidance should be issued by the BSB as to what should be involved in the role.

The responses to the survey suggest that the level of contact, level of support, and types of advice provided as part of the QP arrangement vary considerably. This clearly impacts upon the view new practitioners have of the QP requirement – those who had more frequent, face to face contact, and who received advice on a wider range of issues, were much more likely to feel the arrangement was valuable. However, responses to the survey suggest that current QPs could well be put off acting as a QP should a more prescriptive approach (such as is taken for the AQP arrangement) be introduced.

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How will the BSB use these findings?

We are currently reviewing the scope of practice arrangements for barristers from first principles. The findings from this report will feed into this review. Broadly, the objectives of the review are to:

- Define and better understand the problem(s) in relation to scope of practice
- Identify the relevant risks in relation to any new outcomes for scope of practice
- Ensure the scope of practice rules align with the Legal Services Act 2007 (LSA 2007) and do not act as an unnecessary barrier to the supply of legal services.

Since the introduction of the QP rules there have been other significant changes in regulation, for example the introduction of the professional statement. Any decision to modify the QP requirements will therefore be taken as part of the wider scope of practice review, with reference to the findings in this report.

What do these findings mean for key stakeholders?

Newly qualified practitioners and practitioners acting as qualified persons may find the findings from this report particularly interesting and may wish to use the findings to reflect on their own QP arrangements. A policy consultation will be launched towards the end of the year and any specific recommendations in relation to arrangements for newly qualified practitioners will be based on the evidence gathered as part of this survey.