RESPONSE OF THE BIRMINGHAM LAW SOCIETY TO THE SOLICITORS REGULATION AUTHORITY CONSULTATION ON ITS PROPOSAL FOR MANDATORY RE-ACCREDITATION

1. The Birmingham Law Society supports the large number of respondents to the first consultation, in early 2007, favouring the removal of restrictions and providing for full rights of audience for all solicitors, automatically from the point of admission. It is our view that those who qualify as solicitors should not be in a detrimental position compared to those who qualify as barristers. Neither should those who qualify as solicitors intending to practice criminal law be in any worse position than those who practice any other area of law which requires them to appear in any other tribunal (such as the County Court or the Employment Tribunal) which requires neither accreditation nor re-accreditation).

2. It is our view that Practice Rule 11 and its notes for guidance, coupled with the Code for Conduct for the Bar of England and Wales safeguards solicitors' clients and the proper administration of justice.

3. It follows that we are not in favour of any form of accreditation or re-accreditation and we favour those already accredited being passported in to the new scheme, without any requirement of re-accreditation or further assessment.

4. It is also our view that the skills learned in becoming a competent advocate are transferable, in many circumstances, to allow advocates to be sufficiently competent in more than one area of law. It is ludicrous to require a competent advocate in one area of law to be accredited or re-accredited in another area. We do not feel that the analogy to surgical skills, provided in the consultation document, is particularly helpful or apt. The skills in preparing for advocacy are transferable to different areas of law.

5. For example, a competent (or accredited) criminal law advocate is perfectly capable in advocating in the Administrative Court (which is clearly a civil jurisdiction, even though it may be hearing appeals from criminal courts).

6. Given the safeguards which currently exist (and to which we have referred to above), it seems to us that the proposals for both accreditation and re-accreditation merely add unnecessary extra layers of bureaucracy and cost. The cost would no-doubt have to be borne by the advocates and those costs would provide profits for organisations 'assisting' applicants to be accredited or re-accredited.

7. That is not to say we are against a requirement of continuing professional development ('CPD'). We are not. However, we see no reason why suitable CPD should not be sufficient for any re-accreditation requirement. This would be a proportionate response.

8. There are no accreditation or re-accreditation requirements for those advocating before the Magistrates' Courts, or in the Crown Court on appeals from the Magistrates' Courts, or on Crown Court bail applications, or anywhere in the County Court jurisdiction, very frequently in complex matters. There is no evidence that Practice Rule 11 and its notes for guidance, coupled with the Code for Conduct for the Bar of England and Wales do not safeguard solicitors' clients and the proper administration of justice there.

9. In our view the position is no different in those areas where solicitors did not have an automatic right of audience immediately prior to 7th December 1987. It seems to us that the Solicitors Regulation Authority ('SRA') is a relatively fledgling authority seeking to expand its area of influence. Having received answers to its 2007 consultation which did not further its aims, it issued another consultation, in 2008, with questions worded to obtain more favourable answers. Armed with those answers, it is proceeding to ignore the clear views of the majority in the first consultation.

10. Whatever the historical perception, we do not accept that there is a present perception that solicitor advocates are not as good as their barrister counterparts. Many a solicitor has been asked by their criminal law clients to advocate for them in the Crown Court. Those clients new to the Crown Court experience do not understand why the solicitor who has advocated for them in the Magistrates' Court cannot advocate for them in the Crown Court. The attitude of clients would not be affected by re-accreditation. Clients are not influenced by paper qualifications. Clients are influenced by their personal experiences and by the recommendations of others.

11. We do not believe that solicitor higher court advocates should be in any worse position, with regard to accreditation, re-accreditation or passporting for current higher court advocates than the position with the bar. We believe that there is merit in working with the bar on a common system, particularly with regard to advocacy/evidence CPD.

12. We do not accept that re-accreditation would achieve any of the objectives claimed in paragraph 13(c) of the consultation document.

13. Of the 3 options, we favour option 3. However, we would not require those who are already accredited, by any route, to be re-accredited or re-assessed. If any form of accreditation is required then, to use an idiom, "if it isn't broken, there is not need to fix it". There is not only no evidence to suggest that already accredited HCAs need re-accrediting, but there is also none to suggest any particular route to accreditation produced accredited HCAs of any lesser abilities that any other. In our experience the Exemption Route required sufficient experience.

14. Turning to the Consultation Questions:

1. No. We would expect clients to expect their advocate to have obtained the necessary qualification when they qualified as a solicitor, or barrister, and, perhaps, to undertake periodic CPD.
2. (a) Option 3 is the proportionate response, for the reasons given above.
   (b) We understand that the SRA's own research indicates that there is a higher proportion of sole practitioner and small partnership criminal lawyer firms who are from black and ethnic minorities ('BME'). In these circumstances any additional cost hurdles will affect them disproportionately.
3. For the reasons given above, we do not believe that accreditation is appropriate nor that re-accreditation should be mandatory, but we do believe that some form of CPD would be proportionate. For the reasons given above we believe that those who are already accredited should not be required to take any further assessment. For the sake of completeness, and for the reasons given above, we believe that if any form of accreditation is deemed necessary, then any form of accreditation should be sufficient for all areas of law.
4. (a) For the reasons given above, we do not believe in re-accreditation. We do not believe that those who have not regularly practised and applied their skills in any area of law should be re-accreditated.
   (b) For the reasons given above, we do not believe in accreditation or re-accreditation, but we do believe that CPD is proportionate. It follows that a proportion of the CPD requirement should relate to advocacy skills or recent developments in evidence law.
   (c) We believe that any of the concerns addressed in paragraph 14 of the consultation document would be addressed by a targeted proportion of the CPD requirement, as referred to above.
   (d) If accreditation were necessary, then a requirement of the CPD being advocacy or evidence related would apply to all those undertaking advocacy but it would be disproportionate to require all those passported in to the new scheme to undertake any additional assessment.
5. Yes, for the reasons given above.