

# Review of the training records of solicitors practising in magistrates and higher courts

4 September 2023

Solicitors undertaking criminal advocacy have particular responsibilities to their clients and to the courts. Poor standards can result in consumer harm, miscarriages of justice and threaten the rule of law. Criminal advocacy can also be challenging, because of the vulnerability of some people in the criminal justice system.

Like all solicitors, our [rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) require those practising criminal advocacy to maintain their competence to carry out their role by keeping their knowledge and skills up to date. In most cases, ongoing learning and development is key to achieving this.

Although it is not a regulatory requirement for a solicitor to maintain a training record, most do. It helps record and reflect on their learning and development and provides evidence that they are maintaining their competence by keeping their knowledge and skills up to date.

We have reviewed the training records of a sample of solicitors practising criminal advocacy in the magistrates and higher courts, to assure ourselves that solicitors working in this area are keeping their knowledge and skills up to date. Solicitors were also asked to inform us if they were not practising during our review period.

We have now completed our review and outline our findings, the key messages for solicitors and firms practising criminal advocacy, and what we will do next.

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## **Key findings**

We contacted a random sample of 123 firms who told us they undertook criminal advocacy work, to request the training records for solicitors who practised criminal advocacy in 2021. We reviewed 158 individual training records, including:

- 55 records for solicitors practising in the magistrates' courts
- 94 records for solicitors with higher rights of audience
- five records for solicitors practising in both the magistrates' courts and the higher criminal courts
- four records for solicitors who did not specify if their criminal advocacy practice took place in the magistrates' courts, the higher criminal courts, or both.



## **Most solicitors complete learning and development**

We expect a solicitor practising in magistrates and/or higher court to maintain their competence by keeping their knowledge and skills up to date.

Most of the solicitors in the sample, 87% (n=139), showed that, during the relevant period for our review, they had completed learning and development relating to magistrates and higher court practice.

The training records of 13% (n=21) of solicitors did not provide us with sufficient assurances that steps were taken to keep knowledge and skills up to date, as required by our Code of Conduct, for competent magistrates and higher court practice.

The most common forms of learning and development recorded were:

- accessing online learning materials, webinars and podcasts
- reviewing case law and legal articles
- training provided by their firm, which did not always relate to advocacy or criminal practice
- file reviews, including caseload review meetings and discussions with supervisors or peers
- face to face training
- legal research for specific cases.

## **Less evidence of reflection and why training was needed**

We found that 64% of those solicitors who showed they had completed learning and development (n=87) explained in their training records why they had selected the activities and how these would help them maintain their competence. This equates to 55% of the overall sample. The remaining solicitors who showed that they had completed learning and development simply listed what it was.

Those solicitors who showed they reflected on their practice recorded that they, for example:

- reflected on their practice to identify training needs by using our [Statement of Solicitor Competence](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/]
- identified when they could have done better in their day-to-day work, and what they need to do to meet their professional goals
- obtained formal and/or informal feedback from supervisors and/or peers
- maintained awareness of changes in criminal law, policy and practice, for example, by subscribing to newsletters.



The most common learning and development needs identified by solicitors practising in the magistrates' courts and solicitors with higher rights of audience were:

- maintaining up to date knowledge of legislation and case law
- maintaining up to date knowledge of sentencing guidelines, police station procedures and regulatory requirements
- improving communication skills and the skills needed to deal with vulnerable clients
- researching new areas of law to deal with cases
- improving advocacy skills.

Maintaining up to date knowledge of the legal aid system was another common learning and development need identified by solicitors practising in the magistrates' courts.

Some solicitors with higher rights of audience identified learning and development needs that reflect some of the specific challenges of their roles, for example:

- improving advocacy skills for more complex cases
- instructing expert witnesses.

### **Different approaches to record keeping**

Almost all solicitors recorded their learning and development. Some solicitors used our [learning and development template](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/templates/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/templates/] and similar templates developed by training providers.

These records were more likely to show that the solicitor:

- reflected on their practice to identify their learning and development needs
- completed training to address specific learning and development needs
- evaluated the effectiveness of training, for example, to identify further learning and development needs.

Other solicitors recorded their learning and development in a format set by their employer.

A small number of training records did not list any activity at all or were incomplete.

### **Key messages for solicitors and firms**

If you are a solicitor practising criminal advocacy, you should make sure that:



- You meet your regulatory obligation to maintain competence

Our Code of Conduct requires solicitors to maintain their competence by keeping their knowledge and skills up to date. Given that magistrates and higher courts involve vulnerable clients and complex work, we expect solicitors to undertake learning and development to keep their knowledge and skills up to date.

Our [Continuing competence](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/] and [Advocacy resources](https://higher-rights.sra.org.uk/solicitors/resources-archived/advocacy/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/advocacy/] can help you keep your knowledge and skills up to date, and can support firms to take a more active approach to maintaining competence.

- You identify your learning and development needs by reflecting on your practice

Reflection involves a solicitor evaluating their strengths and weaknesses in relation to the demands of their work. We expect solicitors to reflect and where and address any learning and development, although we do not prescribe how this be done.

Whilst it is not a regulatory requirement to document reflection, doing so however, demonstrates to us that you have taken the necessary steps to keep your knowledge and skills up to date. A failure to demonstrate reflection raises concerns for us that not all learning and development needs are being identified and addressed.

We therefore expect to see evidence of reflection in training records. Our [Continuing competence resources](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/reflect-identify/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/reflect-identify/] outline how you can reflect effectively.

- Your learning and development plan is not just a list of activities

Your plan should show how you reflected on your practice to identify your learning and development needs; how you planned and completed forms of learning and development to address those needs; and how you evaluated the effectiveness of your learning and development. You can use our [learning and development template](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/templates/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/templates/] to help.

Firms should consider whether their approach to completing and recording learning and development can be improved to help their solicitors meet their continuing competence obligations and complete the steps we expect. Our [Continuing competence resources](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/] include information to help them do this.

## **What we will do next**



Following our review, we will:

- Take follow up action with the five solicitors who did not respond to our request for evidence that they were taking steps to keep their knowledge and skills up to date. We will require evidence as to how they are doing this. A failure to respond to will result in enforcement action.
- We will seek further evidence that the 21 solicitors who did not provide us with assurances that they are keeping their knowledge and skills up to date and maintaining their competence are doing so. We will contact each of these solicitors and their firms to assess the policies and processes in place to meet our requirements. We will also look at wider information, for example, reports to us or patterns of complaints or claims.

In addition, over the next six months, we will:

- work with key stakeholders to raise awareness of the findings of our review, our Continuing competence and Advocacy resources and the importance of reflection
- continue to develop our Continuing competence and Advocacy resources
- continue to promote our Continuing competence resources, which include a learning and development template
- continue to promote our Advocacy resources
- continue to monitor reports we receive about criminal practice to identify competence themes and risks.