

Qualified Lawyers Transfer Scheme (QLTS) Research

Solicitors Regulation Authority

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Executive Summary

The regulatory model and the SRA role

Key drivers for the regulatory model

Different regulatory models are deployed in various professional contexts and other legal jurisdictions, driven by context-specific needs and drivers:

- **The level of risk:** The key variation in approaches to admitting international professionals is in relation to the level of regulatory risk in each case. There are arguably relatively few ‘high risk’ professions in which the public protection considerations of the regulator lead to a high level of scrutiny of international professionals.
- **The type of professional regulation:** The regulatory model is also a function of the type of professional regulation enforced within a given jurisdiction or profession (i.e. the basis on which a professional might seek recognition). Where there is no requirement to undergo a professional recognition process in the host country, the professional status that is conferred takes on slightly different characteristics and this can lead to a process with quite extensive regulatory ‘hoops’ for candidates. QLTS is an interesting counterpoint here in that the scheme design is notable in its accessibility and relatively low threshold for lawyers wishing to access the assessment (even though the assessment itself is challenging).
- **The approach to regulatory reform:** Most well-established professions within a country or jurisdiction might be regarded as conservative in nature. The maintenance of professional standards in this context is, in part, based on their perceived impermeability and this creates the conditions for a risk-averse approach to reform. With notable exceptions in the medical field, it means that the basis for confidence in the process for admitting international professionals is past experience rather than objective assessment of the reliability and validity of the process itself. This also means that there is much more ad hoc refinement of admission processes than wholesale reform. There were arguably a fairly unique set of drivers for reform facing the SRA prior to the introduction QLTS (the volume of applicants through the international route, combined with a recognition that the existing system was not fit for purpose and linked to wider reform of the regulatory landscape as set out in the Legal Services Act 2007).
- **External factors: different professional entry routes depending on country of origin:** There are numerous professions where, in practice, the process for candidates is determined by country of origin. The significance in the context of QLTS is that, based on the regulatory principle of non-discrimination, the model generally envisages the same route for applicants irrespective of country of origin. This is not always the case in other professions. It might be argued that the absence of different requirements attuned to the specific education and training of applicants may lead to disproportionate entry requirements on some candidates. However, in practice, the existence of different access routes depending on country of origin tends to operate more to exclude than to include. While it is not inherently discriminatory to offer a ‘fast track’ route for applicants from some countries, there needs to be an objective evidence base for setting these requirements. There are cases that appear to be proportionate, generally applicable and based on robust analysis of different education, training and professional systems, but these are exceptional. It is not realistic to expect many regulators or professions to have the resource to be able to develop this kind of complex, global evidence base.

Outcomes-focused regulation

From a comparative perspective, it may be worth considering two dimensions to outcomes focused-regulation:

- The notion that applicants are assessed in relation to competence (achieved learning outcomes) as a basis for professional recognition, usually defined in terms of professional standards. Most professional regulators in the UK assess international candidates in relation to competence. This is arguably less the case outside of the UK, where there tends to be a greater focus on assessing knowledge and inputs to education and training (i.e. number of years or hours of study).
- The idea that the regulatory system itself is outcomes-based – in that it is less concerned about the process by which an applicant has become professionally-qualified (the training and

experience inputs) than whether they are assessed as meeting the required professional standards. There are typically a number of steps to any admission process for international professionals, but it is possible to draw out a key distinction in terms of whether the approach is based on individual scrutiny of a candidate's qualifications and experience or on assessment / examination. Neither approach is intrinsically more aligned to outcomes-focused regulation. However, in practice, most regulators adopt some form of combination of the two approaches. Admission processes are therefore on something of a continuum, and it is the relative emphasis on individual scrutiny and/or assessment that determines how outcomes-focused the regulatory model is.

The role of the regulator and resources for assessment

There are two dimensions to understanding the role of the regulator:

- The role of the regulator in providing oversight and quality assurance to the assessment process.
- Approaches to internal or external provision of all or part of the overall assessment process.

The model of regulation goes some way to determining how the regulatory role is likely to be determined. There is something of a trade-off in terms of whether significant resource has to be deployed for the administration of individual scrutiny of candidates or for the development and running of assessments for international lawyers. Where the number of applicants is low, it may not be economically viable to run an assessment – unless there is strong public protection rationale for doing so.

However, it should be noted that numerous legal regulators direct significant resource to the detailed scrutiny of individuals applicants, while also including an assessment element (albeit a less costly and sophisticated assessment). The SRA is, in effect, concentrating its resources on the assessment and, as a result, is able to provide a more sophisticated examination for a similar level of input as those regulators that have a more clearly defined two-stage process (detailed individual scrutiny followed by assessment). On balance, this suggests that the QLTS model constitutes a good balance between safeguarding consumers of legal services and ensuring that resources are effectively directed.

Where assessment is used to admit international professionals, the key regulatory distinction is between those regulators that manage the process in-house and those that use external provision (especially with regard to setting and delivering the examinations). There is much less of a focus for regulators on the number of assessment providers than the question of whether assessment should be undertaken in-house. Very few regulators use multiple assessment providers (and none of the regulators looked at in detail as part of the study). The idea of having multiple assessment providers is not seriously considered because of the perceived regulatory risk. This concern about regulatory risk is also a key driver for maintaining the primary assessment function in-house, even where a growing number of candidates put pressure on internal capacity.

For most regulators, a prime objective is to retain as much control as possible over the process for admitting internationally-trained professionals. However, the scale of resource and expertise required to run complex, high volume assessments in-house is not a realistic proposition for most regulators. This provides a strong case for having a single external contractor with close oversight from the regulator.

The assessment model

Proportionality and accessibility in the context of QLTS

The QLTS widened eligibility to 80 jurisdictions worldwide (counting the USA and Canada as single jurisdictions), with 27 new jurisdictions that include significant populations and extend the reach of potential accessibility to the profession substantially. To date there have been four rounds of the MCT assessment (and three rounds of the OSCE and TLST). There is a clear trend of increasing numbers of candidates, albeit from an understandably low base (from 25 candidates in MCT round one to around 250 for MCT round four). There is evidence the scheme has been somewhat successful in attracting some applicants from new jurisdictions, but that there is potentially significant latent demand in these countries as well.

Towards the end of the QLTR scheme, it is estimated that there were around 2,000 candidates a year. Generalising from the most recent volume of candidates for the MCT, it might be assumed that the QLTS is currently serving around a quarter of this number of candidates (i.e. around 500 candidates per year). It is difficult to directly compare candidate volumes for the two schemes as the number of candidates would be expected to reduce as a consequence of the raising of the standard. Furthermore, stakeholders generally agreed that the winding down of the QLTR scheme would impact on the QLTS. It is logical that potential candidates who were considering becoming qualified as solicitors in England and Wales around 2010 would gravitate towards gaining the QLTT certificate of eligibility while they could. Wider market changes may also impact on the demand for QLTS, especially in the context of an economic downturn (e.g. anecdotal evidence that City firms have substantially altered their international recruitment strategies in light of the downturn).

It has been argued that the difficulty and increased cost of the QLTS assessment compared to the QLTT has a negative impact on those potential candidates interested in professional and career development. In fact, many of the concerns raised by stakeholders relate specifically to the impact on those candidates who do not wish to actually practise in England and Wales. The assessments may be problematic for specialists in that they may have to reacquaint themselves with areas of law that are long-forgotten. It is not clear that this is a regulatory issue, though.

The notion of specialist or partial accreditation raises an additional set of regulatory challenges that would have to be set alongside the rationale of convenience for international specialists. From a regulatory perspective, the risks appear to outweigh the potential benefits (not least because it adds complexity to the system). It is unrealistic to expect consumers to necessarily understand the subtleties of any such partial or specialist system – providing greater risk of confusion and possibly reduced overall confidence in the system. It also adds an additional risk of partially-qualified lawyers operating beyond their remit, which may require additional monitoring from the SRA in a way that sits uneasily with its outcomes-focused approach. It is also practicably impossible to effectively monitor in relation to lawyers becoming partially-qualified in England and Wales and then practising in other jurisdictions on the basis of being fully-qualified in England and Wales. There may be more substantial evidence on this question emerging through the LETR.

Assessment method

The rationale for the QLTS assessment methodology appears to be strong. The fact that it is not more widely used in legal settings says less about the *a priori* appropriateness of the assessment than the wider constraints that shape the regulatory model in other jurisdictions and in other areas of law. Early published statistical analysis of the performance of the assessments shows high scores on technical quality indicators.

There is a powerful rationale for designing an assessment that tests competence in a comprehensive and objective fashion, rather than defaulting to an additional *de facto* training requirement (as is the case for the New York Bar and many other legal jurisdictions). The three QLTS assessments provide a sensible approach to covering the day one competences for solicitors. The use of standardised clients as part of the assessment provides an opportunity to test the real-life application and professional skills in a way that is closely aligned with outcomes-focused regulation.

Each of the assessments draws heavily on existing tests, which provides a degree of confidence in their application (e.g. the MCT is modelled on the US Multi-State Bar Exam; the OSCE drew on the PLAB examination). Fundamentally, the focus on competence rather than simply testing knowledge provides the basis for far greater confidence in admitting international professionals. There is recognition of this even among regulators that currently use knowledge-based examinations.

Cost of assessment

The assessment fee for the QLTS assessment totals £3,230 excluding VAT per attempt. Although the QLTS is clearly an expensive assessment, it is comparable with the kind of cost associated with the schemes in dentistry and architecture. Cheaper assessments in medicine are not run on a full cost recovery basis and are cross-subsidised by other activities. For smaller examinations, quality assurance procedures tend to be less sophisticated, but it is not clear that the same level of reliability could be achieved by reducing the preparatory inputs (e.g. training and using a substantial number of actors). A greater concern may be to understand the break-even point for financing this type of

assessment – as the QLTS' long-term sustainability is presumably based on having a minimum number of candidates each year. This provides a strong argument for maintaining the current assessment relationship given that development costs are front-loaded and candidate numbers in the first year at least were unsurprisingly low.

Even though the equivalent exam costs for the New York State Bar are much lower than the QLTS (and according to the New York State Bar, the examinations are cross-subsidised), the true cost of admission of international lawyers to the New York Bar is much higher. Most international lawyers are either required or encouraged to undertake a one-year LLM in the US, the fees for which run into tens of thousands of dollars.

Single versus multiple assessment provider models

Having a single assessment provider is the most straightforward way of safeguarding assessment standards. It is easier to ensure consistency in assessment standards with a single provider. It also enables the SRA to have detailed input into (and therefore control over) the design and (ability to respond to) monitoring of the assessments.

There are also risks to introducing competition within the assessment market if it is assumed that assessment providers compete on elements that are potentially counter to the need to safeguard standards (e.g. pass rates, costs). Whether this is a valid concern or not, there is a significant and widely-recognised risk of competing providers leading to negative *perceptions* of the credibility of the exam. Stakeholders in other jurisdictions and professions argued strongly that this was a central consideration for having a single assessment provider and that the credibility of the exam in the eyes of qualification users (candidates, employers, the public at large) could be affected by having multiple providers competing for business – irrespective of whether this perception was based in reality or not.

With the exception of additional providers explicitly entering the market for non-profit reasons (and it is not clear that such an organisation exists), the current QLTS market is not sufficiently large enough in the short-term to sustain multiple assessment providers without the resource for assessment being reduced significantly (at risk to the confidence provided by the scheme). Over time, this dynamic could change if the market grows. It is unlikely that the pace of growth here will be so fast that it cannot be managed by the SRA and its single assessment provider. However, it is worth noting because the practicalities of meeting additional demand appears to be a key issue that legal regulators in other jurisdictions are having to address (usually in relation to the regulator's own in-house capacity to process applications, but also in terms of logistical issues such as the provision of sufficient exam space).

Having a single assessment provider may induce a dependency on the part of the SRA on a particular provider and associated risks as consequence (e.g. that there may be insufficient independence and a difficulty for the regulator to hold the assessment provider to account). This may just be a case of ensuring that effective safeguards are in place – and it is also worth noting that there are potential benefits from having this kind of working relationship. The real risk is in relation to the current assessment provider withdrawing suddenly from the market. This, though, is not in itself a decisive argument for having multiple assessment providers – instead, it suggests that the SRA should do what it can in the first instance to reduce this risk.

There may be in the long-term the potential for collaborative models of running assessments that mitigate the assumed costs / risks of moving to a multiple assessment provider model (for example, having a community of providers working jointly to offer a single set of assessments). There was little tangible appetite for this currently across the education and training community, but this, as much as anything, may reflect internal concerns that until there is more evidence about the future scale of the QLTS market (under its current assessment format), there is no great push for involvement in assessment.

Training market

Separating the provision of assessment and training

The separation of the assessment and training role is perhaps even less contentious than the question of having a single or multiple assessment providers. There are numerous examples of similar models in other legal jurisdictions and other professions. Each of these cases shares general characteristics

with the QLTS approach and experience to date in that there is a general principle that the assessment can be undertaken on a self-study basis, but with an acknowledgement that candidates may choose to benefit from additional training or support that may be offered commercially. All of the regulators interviewed for the study felt that it was crucially important not to be offering training and assessment. It was noteworthy and perhaps a little surprising that regulators interviewed for the study tend not to keep a close eye on this additional training provision. This is in part because much of the provision is ad hoc and/or typically offered by only a small number of providers.

The focus for some of these regulators is on ensuring that information is readily available for training providers (e.g. publishing past examination questions and examiners' comments or reports or model answers). While most regulators do not get involved in the training market on the basis of this separation between assessment and training, there is still an interest in it. There are examples of regulators who informally engage with providers to ensure that candidates are receiving accurate information (e.g. attending training sessions in an observer capacity).

The QLTS training market

One of the key concerns in relation to the QLTS training market has been whether there is a market failure preventing the emergence of an effective training market – and, if so, whether this should be a concern for the SRA. It is, though, increasingly apparent that, while still maturing, there is something approaching a critical mass of training provision for the QLTS. By September 2012, there are expected to be three providers active in the market. This includes a new entrant (QLTS School) and two previous providers of QLTT training (CLT and BPP). This is commensurate with the equivalent market for much more mature schemes in other jurisdictions and professions. Providers involved in the market based their decision to engage on assumptions about likely future size of the training market. It is notable that the three current providers provide quite different approaches. This may reflect the way that the training offer is evolving, but it means that candidates have access to support in different ways.

Even those other training providers that are not active in the QLTS training market reported that this was a decision they are keeping under review, and simply reflected perceived business risks related to the current market. Overall, there is no evidence of a current market failure in the provision of QLTS training, even though there remains understandable uncertainty about the nature of the future market.

Reflecting the SRA's options for intervention in the training market

Among the options set out for the SRA to potentially intervene in the training market, the idea to introduce a training requirement is easily discounted (it is disproportionate, a potential barrier to entry and unlikely to increase public protection).

A second proposed option was to introduce a quality assurance dimension to the provision of training. This would not stimulate the training market (it may provide an additional barrier to training providers entering the market). There are, though, options for helping candidates to navigate the training market that do not necessarily involve the quality assurance or accreditation of training providers (e.g. the SRA could provide a list of training providers on its website).

The third option proposed was the SRA providing either additional information to candidates or in providing additional support to training providers. Some activity has already been undertaken in this regard – including offering information/training days to potential providers and the provision of sample exam questions, and this has reportedly made a significant difference to providers (especially the development of more detailed assessment standards).

Conclusions and recommendations

The new assessments developed to underpin the QLTS scheme are widely-recognised to be robust, appropriate and innovative. The focus in the next phase should be on refinement, consolidation and dissemination. QLTS is strongly-aligned to the SRA's regulatory ambitions. Little compelling evidence has been presented that would suggest that removing or radically altering the current assessments would offer more or the same level of confidence. The transition to QLTS has had an impact on various stakeholders (potential candidates; law firms; training providers) that creates new challenges – but the existence of these challenges appear, in the main, to be not entirely relevant to the objectives of the scheme. The standout risk in relation to the current model relates to the contract with and

dependence on the assessment provider. How these risks are mitigated going forward is likely to be central to the future success of QLTS.

The evidence is fairly clear in supporting the approach of having a single assessment provider for this type of scheme. It is the approach widely followed in most regulatory contexts. The key apparent distinction is less about the number of assessment providers, but whether the primary examination function is undertaken in-house by the regulator or externally (as under QLTS). While there is a high-impact risk related to having a single assessment provider, which relates to what happens if the provider were to withdraw suddenly from the market, the likelihood of this risk occurring may be low and it is certainly a risk that can be managed and monitored by the SRA. Greater protection would be afforded through the SRA taking direct responsibility for setting and quality assuring examinations. However, it is also recognised that this is unlikely to be a realistic ambition in the short-term given the complexity of the design of the assessment. With some exceptions, the assessments undertaken in-house by regulators tend to be simpler by design.

It is difficult to answer categorically what the impact on competence would be if assessment and training was provided by the same provider. There are relatively few meaningful comparators in other regulatory contexts. It is certainly difficult to argue that having training and assessment provided by the same provider offers the potential for a higher level of competence at admission than the current model. Alternatively, it is possible to argue that if the training market is considered to be particularly dysfunctional, then there would be an impact on solicitors' ability to qualify. This is a rather separate point – and it should be stated that there is no clear evidence that any such dysfunction in the QLTS training market exists (quite the opposite). There is a much more important point here, though, about perceptions of fairness and the integrity of the system in the eyes of QLTS 'users' (primarily candidates, but also the wider legal sector and, ultimately, the general public). There is a risk, in terms of perceptions, that an assessment provider offering revision courses could gain commercially from failing candidates. Even if this is unlikely to occur given sufficient exam controls, there is no way to stop candidates perceiving a potential conflict of interest in relation to their own experience of the QLTS process.

Recommendations to the SRA:

- 1. Maintain the current single assessment provider model in the short- to medium-term (for the next three years at least).**
- 2. If possible, continue with the existing assessment provider relationship in the next phase, but, in doing so, consider setting an explicit timescale for re-tendering the contract on a competitive basis.**
- 3. As part of the contract re-negotiation with the assessment provider, consider ways in which the risk the SRA of provider withdrawal can be minimised. Some of these options may already be included in the current contract, but in the next phase are likely to include penalty clauses for withdrawal and the possible transfer of some intellectual property for the QLTS to the SRA in conjunction with a future funding approach that ensures that the contract is commercially viable for the assessment provider based on current candidate volumes (which may be assumed to be something of a worst case scenario).**
- 4. Provide additional help to candidates looking to navigate the QLTS training market through, as a minimum, the publication of a list of training providers offering QLTS training (couched as other regulators do by being clear that inclusion on the list is not an endorsement). Provide informal control over this list by ensuring that only providers engaging with the SRA (i.e. attending information sessions) are included on the list.**
- 5. Continue to develop a relationship with training providers offering QLTS without regulating that market. Continuing to offer regular information sessions should be a core part of this activity, but the SRA should also consider offering to attend training sessions in an observer capacity.**
- 6. In light of Recommendation #3, the SRA should consider whether it is possible to make more information about the QLTS assessments publicly-available. As a minimum, there should be a presumption of openness about the exams as seen in other professions and jurisdictions. While it is recognised that publishing multiple choice exams is problematic, a wider range of sample questions may possibly be made available.**

1 Introduction

This is the final report for the study undertaken by ICF GHK on behalf of the Solicitors Regulation Authority (SRA) looking at the Qualified Lawyers Transfer Scheme (QLTS). The research was undertaken from June to August 2012.

The report refers to ‘international lawyers’ aiming to be admitted as solicitors in England and Wales. It should be noted that ‘international’ in this context refers to lawyers who were trained in a jurisdiction other than England and Wales. It therefore also includes intra-UK transfers from Scotland and Northern Ireland, and barristers trained in England and Wales unless otherwise stated.

1.1 Background to the study

The QLTS was introduced by the SRA in September 2010 and is the scheme by which lawyers qualified in other jurisdictions can be admitted as solicitors in England and Wales (as well as barristers trained in England and Wales). QLTS replaced a predecessor scheme, the Qualified Lawyers Transfer Regulations (QLTR), and marked a substantial reform of the approach to assessing international lawyers. The introduction of the new scheme also corresponded to the SRA becoming an outcomes-focused regulator. The changing regulatory approach informed the rationale for the QLTS assessment approach and model.

The SRA consulted on the proposed new QLTS scheme in 2008/09. Central to the new approach was to have a single assessment provider with whom the SRA would work to develop the new QLTS assessment. There is no training requirement for candidates as part of the QLTS process and the SRA, as an outcomes-focused regulator, chose not to regulate the market for training under the new scheme (beyond specifying that the assessment provider could not also offer training).

After an open tendering process in 2010, the SRA contacted with Kaplan to become the sole assessment provider for QLTS based on an initial three-year contract. The first QLTS assessments were run in February 2011. As the SRA moves towards the final year of its contract with Kaplan (the contract is due to expire in January 2014), it was keen to consider *‘the relative merits of appointing one or more assessment bodies to test whether an applicant is sufficiently competent’*¹ for admission.

The QLTS is based around three assessments:

- Multiple Choice Test (MCT)
- Objective Structured Clinical Examination (OSCE)
- Technical Legal Skills Test (TLST).

The focus of this research has been on testing the case for review of the current QLTS model sufficiently in advance of January 2014 so that external providers (of training and assessment), stakeholders and the SRA itself have time to respond as the scheme moves into its next phase and to minimise the risk of blockages on future development as a consequence of contractual uncertainties.

This study provides an independent view on the scheme at a critical juncture, acknowledging that various groups of stakeholders may have different – and possibly competing – interests that inform their own perspectives and that the SRA has to attempt to balance these in the context of being an outcomes-focused regulator. The study objectives are set out in Box 1 below.

¹ QLTS Research: Tender Specification

Box 1 Study Objectives

1. Assess whether in order to enable the SRA to promote the regulatory objectives and principles of good regulation (and in particular the SRA's ability to set and maintain standards and to act in the best interests of the consumer), there is an optimum number of assessment bodies, or whether a sole assessment body is most effective in fulfilling this objective.
2. Explore whether in the context of the above, there is a distinction to be drawn between high-stakes/licensure exams which will directly lead to the candidate being admitted into the profession (e.g. QLTS); and assessments which are formative in nature (e.g. LPC) as they are taken midway through the qualification process.
3. Review how the SRA's move towards Outcomes Focused Regulation (OFR) impacts on its role in overseeing the quality assurance of the assessment process and the extent to which it should be involved in overseeing the process.
4. Examine the extent to which the SRA's regulatory risks can be managed and mitigated by the number of providers delivering the assessment.
5. Evaluate the role that the SRA, as an Outcomes Focused Regulator, should play in the assessment process (whether there is one provider or many).
6. Identify the potential impacts on solicitors' competence at admission (i.e. on the SRA's regulatory objectives) where assessments and training for those assessments are provided by the same provider.
7. Consider similar assessment approaches used by other professional regulators exploring why these approaches have been adopted and identifying good practice.
8. Recommend possible variations in the way the SRA could structure its training and assessment requirements to allow it to best achieve its regulatory objectives (e.g. single assessment provider, multiple validated training providers) and the impact on the education market (in terms of assessment and training) of each approach.

1.2 Study approach

The study was guided by an over-arching analytical framework developed as part of initial scoping. The framework is presented in Figure 1.1 below. It shows the components of the QLTS model alongside four high-level dimensions to assessing the effectiveness of the current model, as well as alternative options. The framework also shows how the comparative element of the study (Study Objective #7) feeds into the overall review.

The analytical framework was used to organise the information emerging through the study. It provided the basis for developing the two study tools, which are included in the annex to this report:

- **An outline of key topics for literature review and stakeholder interviews.** This was structured in terms of the QLTS components and provided a more detailed set of questions for exploration through the research. Each question was also referenced to one or more of the measures of effectiveness set out in the analytical framework (see *Annex 1*).
- **A fiche for the desk review on potential comparator professions and other legal jurisdictions.** This aimed to capture the key characteristics of the overall regulatory and recognition model for internationally-trained professionals and the training and assessment market for a selection of other professions within the UK and other legal jurisdictions. The review was based on publicly-available information (see *Annex 2*).

Figure 1.1 Analytical framework

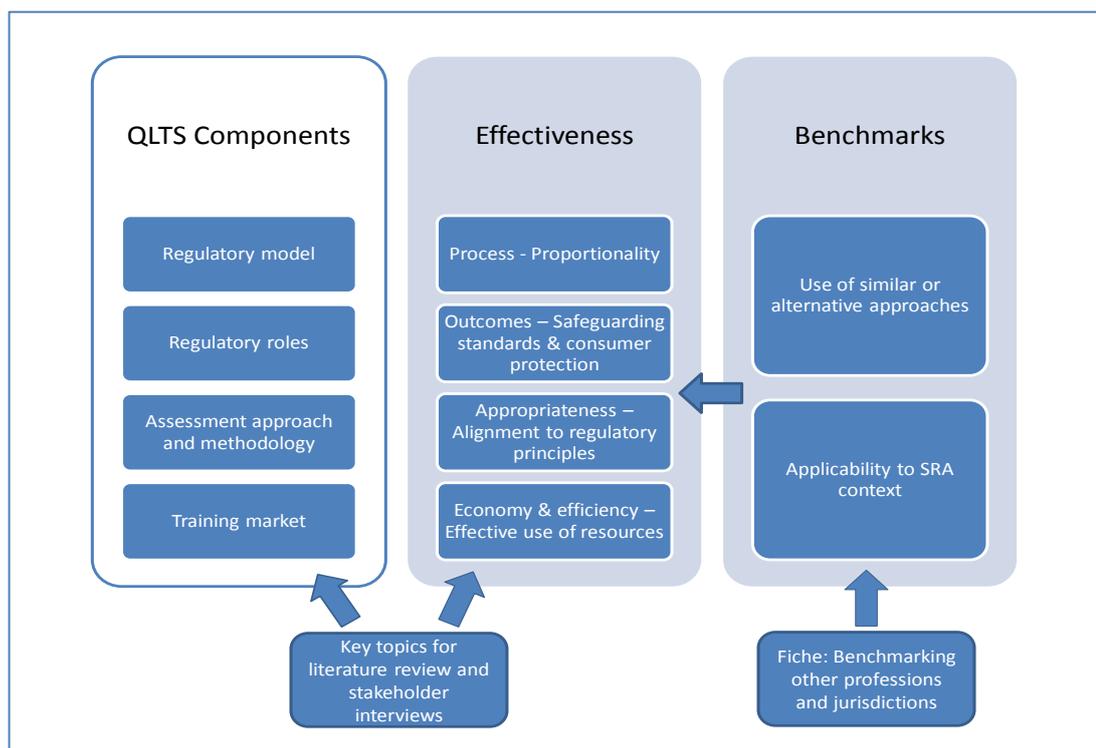


Figure 1.2 below sets out the main analytical steps within the study. This translated into two main stages of research:

- **Stage 1 - Scoping and review (June-July 2012):** Stage 1 included desk research on the QLTS evidence base and on potentially similar schemes based on a long list of 22 professions in the UK and other legal jurisdictions (see Annex 3). These were pre-selected in order to provide a mix of professions with a reasonable volume of international candidates from different types of sector with varied regulatory considerations. The initial scoping also included interviews with five stakeholders to deepen our understanding of the evolution of QLTS to date and to support the development of high-level options for the future. A paper was developed setting out the assumptions and key considerations for three possible options that appeared to be potentially viable for the SRA – although no recommended options were proposed at this stage. Based on the desk research, a shortlist of other professions and jurisdictions to include in primary research in the second stage was also produced. The three headline options proposed at this stage were:

 - 1) Maintain the current QLTS assessment and training model, but potentially include refinements within the assessment model.
 - 2) Open up the provision of QLTS assessment to multiple providers, with associated implications for the SRA regulatory role and for the provision of training.
 - 3) Maintain the current QLTS assessment model, but intervene in the training market either to introduce new training requirements for candidates, new quality assurance of providers or to stimulate a market that remains unregulated.
- **Stage 2 – Testing proposals and detailed comparative research (July-August 2012):** This stage was based around exploring the SRA’s options for reviewing QLTS with a range of stakeholders. A total of 14 interviews were undertaken using a mix of telephone and face-to-face interviews, reflecting the following categories of stakeholder:

 - *Legal education and training providers* – to test the proposed options and discuss perspectives on the QLTS model and market
 - *Regulators for other professions* – to explore approaches in more detail and provide comparative evidence

- *Regulators for other legal jurisdictions and wider legal stakeholders* – to further contextualise the QLTS model.

The list of organisations interviewed throughout the study is included in *Annex 4*.

Figure 1.2 Process map



1.3 Report structure

The remainder of this report is structured around the following sections:

- *Chapter 2: The Regulatory Model and SRA role* looks at the over-arching regulatory rationale underpinning QLTS and compares this with other professions and jurisdictions. It also addresses the role of the regulator in this context. As such it addresses Study Objectives 3, 5 and 7.
- *Chapter 3: The Assessment Model* looks at the assessment approach introduced under QLTS and addresses issues such as the fitness for purpose of the examination approach, the implications of having a single assessment provider, quality assurance and cost of assessment. The approach developed for QLTS is compared with other professions and jurisdictions. The chapter relates to Study Objectives 1, 2, 4 and 7.
- *Chapter 4: The Training Market* looks at the provision of QLTS training in the context of an unregulated market. It also looks at the separation of the assessment and training function. Comparisons are also drawn with the situation and approach for other regulated professions and a selection of other legal jurisdictions. The chapter relates to Study Objectives 6, 7 and 8.
- *Chapter 5: Conclusions and Recommendations* reflects on the options open to the SRA in relation to reviewing QLTS. It draws out the main conclusions in relation to each of the main research questions. It also sets out recommendations for future action and considers the wider implications of the QLTS experience to date for legal education and training.

2 The regulatory model and SRA role

2.1 Introduction

This chapter looks at the over-arching regulatory model for QLTS and the role of the SRA in relation to the scheme. As such, it addresses the study questions of:

- The role that the SRA, as an outcomes-focused regulator, should play in the process (whether there is one assessment provider or many)
- How the SRA's move towards outcomes-focused regulation impacts on its role in overseeing the quality assurance of the assessment process and the extent to which it should be involved in overseeing the process.

It is possible to compare the SRA's role with that of other regulators. In doing so, though, it is important to understand how the different models deployed in various professional contexts and other legal jurisdictions are driven by context-specific needs and drivers. This provides insight into whether and how the regulatory model introduced by the SRA is aligned to regulatory needs in the context of solicitors in England and Wales.

2.2 Key drivers for the regulatory model

When looking at the overall regulatory model in a given profession or legal jurisdiction, it is important to note how approaches are shaped by the interplay of specific drivers in each case. This leads to a range of regulatory models in different contexts that are a function of the level of risk, the type of regulation and various historic and cultural factors that have influenced development – often over a long period of time.

2.2.1 The level of risk

The key variation in approaches to admitting international professionals is in relation to the level of regulatory risk in each case. There are arguably relatively few 'high risk' professions in which the public protection considerations of the regulator lead to a high level of scrutiny of international professionals – and, as a consequence, anything approaching a robust and rigorous admission process. The legal profession certainly fits within this category, alongside numerous medical-related professions, accountancy and certain building- and engineering-related occupations (architects, surveyors etc). There are also a series of technical professions in sectors such as transport (pilots etc) for which there are strict regulatory controls. This means that there are relatively few direct comparators for the QLTS scheme in terms of its proportionality.

2.2.2 The type of professional regulation

The regulatory model is also a function of the type of professional regulation enforced within a given jurisdiction or profession (i.e. the basis on which a professional might seek recognition). This is a complex area and ranges from a legal requirement to register with a professional body in order to be able to practise (licence to practise) to situations in which international professionals are able to practice a profession – or at least certain professional functions – without registration, but where international professionals may seek recognition to attain a professional title.

These differences are important in understanding the rationale for an approach to professional recognition for two key reasons:

1) The assessment model and training market are, to some extent, dictated by the demand for recognition – which may not be the same as the demand for inward professional migration into a jurisdiction. If international professionals, especially in the relatively open labour market context of the UK, are able to work without seeking accreditation and perform a similar function to their home country role, there may not be a need to seek professional recognition. This may influence the nature and scope of a professional training market. It is an area in which the medical professions are arguably distinct from some of the other 'high risk' professions, because there are strict licence to

practise requirements in place for key professions. In accountancy, surveying and engineering, for example, seeking chartered status may confer additional labour market opportunities, but except for at the most senior levels, it is quite possible to operate in many jurisdictions (certainly within the UK) without having the professional title. There are strong parallels with the case of solicitors in England and Wales here, especially in the context of the growth of para-legal occupations, as noted by the LETR. A significant proportion of legal activity (especially in the context of large City firms) is unreserved, which means that holding the professional title is not necessarily a requirement to practise. This may raise wider questions for a regulator in terms of whether the regulatory focus is appropriate, but it is noteworthy in the context of QLTS that it means a high standard for admission of international professionals is not necessarily a barrier for law firms to recruit flexibly. It also means that demand for QLTS is influenced to some extent by other motives on the part of the candidate, notably the perceived professional status and kudos from holding the title rather than it being a requirement to access the profession *per se*.

2) Where there is no requirement to undergo a professional recognition process in the host country, the professional status that is conferred takes on slightly different characteristics and, as a consequence, some of the key issues in relation to the proportionality of the recognition process are arguably less relevant. This is because the recognition process is not so much a gateway to the profession, but to a status within the profession. This is a grey area and varies depending on the relationship between professional title and labour market access in practice (who will / can employers recruit; what is the relationship between professional title and the provision of services in a commercial sense). It might be argued that the flexibilities here for regulators and professional bodies provides significant leeway to set entry requirements almost wholly in terms of protecting professional standards and with little recourse to how accessible the system is to international candidates. This can lead to a process with quite extensive regulatory 'hoops' for candidates, as might be argued in relation to architects, building surveyors and some engineering professions. QLTS is an interesting counterpoint here in that the scheme design is notable in its accessibility and relatively low threshold for lawyers wishing to access the assessment (even though the assessment itself is challenging).

2.2.3 The approach to regulatory reform

It is difficult to over-estimate the extent to which the regulatory requirements for professional access tend to have deep historical roots and are inter-twined with a professional culture and organisational division of responsibilities that has evolved (and not necessarily changed much) over many years. Most well-established professions within a country or jurisdiction might be regarded as conservative in nature. The maintenance of professional standards in this context is, in part, based on their perceived impermeability.

This may generate what could be argued to be a risk-averse approach to the reform of existing processes. There is, however, a strong rationale for this conservatism based on the need to protect professional standing that has grown and evolved over many years. What it can also mean, though, is that reform is difficult to achieve and that, over time, there is more chance of additional regulatory requirements being added rather than removed. With notable exceptions in the medical field, it means that the basis for confidence in the process for admitting international professionals is past experience rather than objective assessment of the reliability and validity of the process itself. In some cases, it may mean that the overall regulatory approach struggles to keep pace with wider societal changes (especially increased international mobility).

This also means that there is much more ad hoc refinement of admission processes than wholesale reform. The development of the QLTS scheme is quite striking by way of contrast in this context. There are relatively few examples of the kind of substantial reform engendered in the introduction of QLTS, certainly in other legal jurisdictions, but also in relation to professional regulation more widely.

It should also be noted that even where admission includes an assessment or examination of the international candidate, where the number of applicants is relatively low (e.g. around 100 applicants or less per year), such as is the case for the Statutory Examination for

veterinary surgeons or the Bar Transfer Test for barristers, the schemes may be marginal to the profession and under less detailed review as a result. At the point at which the QLTR scheme was under review, it was estimated that around a quarter of solicitors admitted to practice in England and Wales used it as an entry route. Similar proportions of legal professionals are admitted through the equivalent routes in Hong Kong and Canada, although in both cases this includes significant numbers of home nationals training abroad. In Canada at least, the more pressing regulatory priority is the move to introduce common procedures for provincial examinations (which mirrors debates that are still in their infancy in the United States).

What these other jurisdictions lack, that was in place prior to and during the transition from QLTR to QLTS was the general acknowledgement that the existing system was not fit for purpose (illustrated by the evidence that complaints against solicitors coming through the QLTR route were higher than for the domestic route) and the wider context of reform to the regulatory landscape in the Legal Services Act 2007. This may have led to fairly unique sets of drivers for reform, which were the catalyst for the development of QLTS and which are exceptional to the traditional approach to reviewing and reforming the systems in other professions and jurisdictions.

2.2.4 External factors: different professional entry routes depending on country of origin

The evolution of admission schemes for international professionals has also tended to reflect historic international links. There are numerous professions where, in practice, the process for candidates is determined by country of origin. This may reflect where bilateral agreements (or de facto understandings) have been developed in response to the education, training (content and quality) and scope of a profession being perceived as being very similar and short-cutting the admission process between countries (often between neighbouring countries – such as the UK and Ireland – where there is a strong tradition of professional mobility). These schemes have evolved over time partly as a function of where the demand for professional recognition has been. This can relate either to the criteria for professional recognition or, more informally, to how applications for recognition from certain countries are treated by professional regulators.

The significance in the context of QLTS is that, based on the regulatory principle of non-discrimination, the model generally envisages the same route for applicants irrespective of country of origin. This is not always the case in other professions. Of course, on one level there are different paths for applicants hard-wired into professional recognition in all cases in the context of the EU Directive 2005/36 on the recognition of professional qualifications. This requires authorities responsible for regulated professions to allow access to the profession based on individual scrutiny of a candidate's qualifications. The focus here is on level and length of study and the identification of 'substantial differences' in training content (knowledge) and experience compared to national requirements. In certain professions, for which training requirements have been harmonised at European level (including doctors, nurses, architects and vets), there is automatic professional recognition. This arguably reduces the risk of discrimination through the imposition of additional regulatory burdens on candidates – or through the subjective assessment of an individual's skills and qualifications (which is arguably apparent within the general system under the directive as regulators are forced to answer the question of *what constitutes a substantial difference?*). Harmonisation of training requirements across the EU has not been pursued owing to differences in law and practice across Europe.

The fundamental question from a regulatory perspective is whether different entry routes depending on country of origin are discriminatory. The QLTS, even under its relatively consistent model across eligible jurisdictions, is still required to retain a different process for EU applicants as a consequence of Directive 2005/36. In Ireland, by way of contrast, anti-discrimination law means that regulators are required to use the same recognition process irrespective of country of origin, meaning the rules of the European Directive are, in effect, applied to applicants from outside of the EU as well. However, it is possible to contend that the degree of judgement inherent in the application of the Directive means that having a notionally universal process is not necessarily less discriminatory than the QLTS model.

Alternatively, it might be argued that the absence of different requirements attuned to the specific education and training of applicants may lead to a situation in which there are disproportionate entry requirements on some candidates. This could constitute a potential critique of the QLTS model which, even in the context of the European Directive, puts much greater store on a common assessment rather than individualised routes for specific groups of candidates. However, it is important to acknowledge how more diversified assessment routes tend to operate in practice. In more general terms, the existence of different access routes depending on country of origin tends to operate more to exclude than to include. While it is not inherently discriminatory to offer a 'fast track' route for applicants from some countries, there needs to be an objective evidence base for setting these requirements.

There are cases that appear to be proportionate, generally applicable and based on robust analysis of different education, training and professional systems, but these are exceptional. For example, in the case of teaching in England and Wales, there has been substantial investment from the Department for Education to assess and benchmark teacher training and the teaching environment across over 50 countries worldwide (in 2003 and in 2011) in order to provide an evidence base for understanding which countries provide for equivalence with the UK system. This has led to a situation in which, from April 2012, qualified teachers from Australia, Canada, New Zealand and the USA can apply for qualified teacher status without undertaking further training or assessment in England. The point about this reform is that it is underpinned by successive and wide-ranging review of the case for equivalence (and, although looking in detail at only 50 countries, the review covered every country worldwide and used essential criteria for teaching to make an initial judgement on potentially eligible countries).

It is not realistic to expect many regulators or professions to have the resource to be able to undertake this kind of global study. It is also noteworthy that, in the case of teaching, overseas teachers are already able to work for four years without attaining Qualified Teacher Status. The profession is therefore arguably generally accessible and the fast-track in this context can be interpreted as generally reducing bureaucracy for international teachers and schools.

2.3 Outcomes-focused regulation

There appears to be some on-going debate within the legal field about what is meant by outcomes-focused regulation and what the implications are across the range of regulatory functions. This is understandable given that the reform to the legal landscape heralded by the Legal Services Act 2007 is still in its relative infancy – which is not to say that significant progress has not been made. It is apparent that the shift from a detailed and prescriptive set of rules to a risk-based approach may be both liberating to law firms and individual legal professionals and lead to significant short-term uncertainty. It is also important to understand that many of the debates here go far beyond education and training, although as the LETR effectively highlights, the shift to outcomes-focused regulation directly informs all elements of the education and training cycle across the legal profession.

From a comparative perspective, it may be worth considering two dimensions to outcomes focused-regulation:

- The notion that applicants are assessed in relation to competence (achieved learning outcomes) as a basis for professional recognition, usually defined in terms of professional standards.
- The idea that the regulatory system itself is outcomes-based – in that it is less concerned about the process by which an applicant has become professionally-qualified (the training and experience inputs) than whether they are assessed as meeting the required professional standards.

These two dimensions are theoretically inter-connected, although not necessarily in practice. This indicates that the admission process for international professionals is not always driven by regulatory principles alone (as noted above, history and custom can play an important role).

Most professional regulators in the UK assess international candidates in relation to competence. This is arguably less the case outside of the UK, where there tends to be a greater focus on assessing knowledge and inputs to education and training (i.e. number of years or hours of study). Although this is something of generalisation, it is worth emphasising that the use of competence-based measures is more generally widespread across the professions within the UK than it necessarily is in relation to any given profession internationally.

For example, while the training of doctors in England is framed around a set of professional standards (*Tomorrow's Doctor*), even in other European countries – let alone globally – the requirements for admission for nationals is much more framed in terms of knowledge gained, measured by learning inputs.

There are exceptional cases in which admission to a profession is competence-based in more international terms. Accountancy, for example, has a particularly global dimension (similar to law) which has led to the development of international professional standards (unlike in law), the IFAC Global Accounting Standards, which can be embedded in national qualifications.

There are typically a number of steps to any admission process for international professionals, but it is possible to draw out a key distinction in terms of whether the approach is based on individual scrutiny of a candidate's qualifications and experience or on assessment / examination. We would suggest that neither approach is intrinsically more aligned to outcomes-focused regulation. However, in practice, most regulators adopt some form of combination of the two approaches. Admission processes are therefore on something of a continuum, and it is the relative emphasis on individual scrutiny and/or assessment that determines how outcomes-focused the regulatory model is. It is possible to distinguish between the following high-level models:

1) Models driven by individual scrutiny with no or minimal assessment requirements

Many of the health auxiliary professions regulated by the Health Professions Council (such as physiotherapists and occupational therapists) have a process that is geared around individual scrutiny of applicants' skills and qualifications. This is also the driving characteristic of the process for nursing (for non-EU applicants). In the case of nursing, once an individual has had their qualifications and experience confirmed, there is an additional requirement to undertake an Overseas Nurses Programme (a 20-day programme undertaken in post and covering UK law, health and safety issues, record keeping, drug administration and the Nursing and Midwifery Council code of conduct, for which there are 28 NMC approved providers). The key entry test for nurses remains individual mapping on an applicant's qualifications and professional experience.

The challenge with this model is that it tends to put the onus on the candidate to evidence how their training maps to the host country requirements and this is typically dependent on support from education institutions etc. The way in which these requirements tend to be framed (in terms of hard inputs such as level and length of study, or in terms of subject coverage), can make the process not only bureaucratic and time-consuming for candidates, but with a significant likelihood that national variations in training structure (rather than learning outcomes) mean that applicants are less likely to be successful. In a non-EU context, this can mean that applicants are required to re-take professional training and are practicably unable to practice. This means that there is often a de facto training requirement associated with professional recognition. As such, this model is rarely associated with an outcomes-focused system. The QLTR scheme previously required many candidates to evidence that had two years' work experience and this was found to be difficult to reliably verify given the global nature of that work.

2. Models driven by a common assessment and with less emphasis placed on individual training

This reflects the QLTS approach and is the model that most closely matches an outcomes-focused approach to regulation. The SRA's shift to becoming an outcomes-focused regulator

has clearly informed the design of the QLTS regulatory model. It appears to have directly influenced the following:

- The decision not to include a training requirement within QLTS and base admission primarily on the QLTS assessment itself (and, as a consequence, to leave the training market for QLTS unregulated). This is not uncommon in relation to admitting international professionals and it is fairly standard within other key legal jurisdictions to have some form of examination. QLTS might be argued to be fairly distinct in that less focus is paid to individual scrutiny of an individual's qualifications and experience than is apparent in other area, even where exams are used.
- The decision to open up QLTS in relation to eligible jurisdictions, again, with a reliance on the assessment to measure candidates' competence (irrespective of their jurisdiction of training).
- The scope and methodology of the QLTS assessment.

A similar model is apparent in relation to veterinary surgeons in the UK. The Royal College of Veterinary Surgeons (RCVS) recognises a number of international degrees (under the system of automatic recognition under Directive 2005/36 in an EU context as well as from other jurisdictions, such as the USA). There is a statutory requirement to examine all applicants who do not possess one of the required degrees (the RCVS Statutory Examination for Membership). This arguably means that the profession remains more accessible than some of those regulators using individual scrutiny of applications as the key step to recognition. However, the RCVS reported that this also leads to a very mixed cohort of candidates – ranging from vets with little or no practical experience to those with decades of experience. Similar to QLTS, the exam is based around a written stage, which must be passed in order to progress to an oral/practical stage.

According to the Examiner's Report, in 2010, 45 candidates took the exam, and 27 passed the 4 written exam papers that allowed them to progress to the next stage (the oral/practical stage). Of these 27 candidates, 17 passed the final stage (an overall pass rate of 35%, which was similar to that in 2009). Interestingly, the examiner's report suggests that: *"The poor standard achieved in the written papers by the majority who failed to proceed to the oral/practical indicates that these candidates would be strongly advised to seek a structured re-education programme before re-sitting the examination if they are to have a realistic chance of success at any further attempts."*² This might be seen as an inevitable consequence of having a relatively open, accessible process for admitting international professionals. It raises questions, though, that may be pertinent to QLTS with regard to candidates making informed decisions before entering the process and being clear about the expected professional standards.

There are also a group of professions for which entry is based around similar types of assessment, but which also have entry requirements related to education and training (as opposed to being professionally registered in an eligible jurisdiction, as with QLTS), notably doctors and dentists. In both of these cases the additional eligibility requirements for assessment relate to length of professional study and mirror the basic requirements under the EU automatic recognition scheme under Directive 2005/36. It is not clear that either profession would follow this kind of input-based eligibility requirement for accessing the profession were it not presumably driven by a need for consistency between the processes relating to EU and non-EU applications. The potential tension here stems from there being quite different training approaches in different EU countries (for example, in the case of medicine, the balance between classroom-based learning and practice/placement-based training varies), even where training requirements have been harmonised at European level. For an outcomes-focused regulator, looking simply at the length and level of training undertaken may be insufficient for being able to judge whether a candidate is competent, given that, for example, levels of patient exposure through training may vary by country/system.

² 2011 EXAMINATION GUIDANCE

In relation to doctors, the GMC process is based on candidates being able to show that their medical qualification is listed on the Avicenna Directory for medicine. This is based on surveys of medical schools and the WHO World Directory of Medical Schools. One of its key aims is to be comprehensive and to *‘facilitate transparency in understanding of the human resources for health, and of the educational background of health professionals. Fundamental information will support improvement of the quality of education, especially by providing information on the quality of education and training and by guiding users to other sources containing more specific and detailed information’*³. The GMC is therefore able to relatively easily check whether an applicant has undertaken professional training and at a recognised institution – without having to scrutinise in detail the content and fit of study programmes in different countries. This is somewhat analogous to the process by which the SRA provides certificates of eligibility for the QLTS (albeit in relation to qualifications rather than evidence of being registered to practise in the candidate’s home country). The GMC is able to use a relatively light touch approach to this initial check on qualifications, because it exceptionally is able to access a comprehensive resource listing medical qualifications worldwide. While inclusion in the directory does not mean that a qualification is aligned or equivalent to medical training in the UK, it provides a basis making an initial judgement on whether a candidate should be able to access the PLAB assessment in the first place.

3. Exemption model based on individual scrutiny and assessment

A third model, which is something of a hybrid of the previous two models, relates to schemes by which there is individual scrutiny of international professionals with a view to exempting the applicant from certain required examinations. These may be specific examinations for international professionals or the examinations (and training) associated with the domestic route to qualification. Variations of this model might be said to predominate in many of the key legal jurisdictions.

For example, in Australia, the legal profession is regulated at state and territory level. The admission process is based on a verification of an applicant’s previous educational and professional qualifications, their registration status in their home country (although the state Board makes an assessment of the home country’s regulator). There is also a requirement to pass the Practical Legal Training (PLT) programme (although applicants may apply to the relevant admitting authority for full or partial exemption based on their previous experience).

In Canada, international lawyers have to go through a two stage process: firstly to get recognition from the Federation, and then to pass a more practical assessment at the Provincial level. The Federation’s assessment is called the NCA (National Committee on Accreditation). The first part of the NCA involves assessing the applicant’s qualification (mode of study, length, content are considered). Based on this assessment of previous qualifications, the Federation requires applicants to take at least 4 exams (more if there are gaps in their academic record) or to undertake additional training.

2.4 The role of the regulator and resources for assessment

Looking at assessment-based models, there are two dimensions to understanding the role of the regulator:

- The role of the regulator in providing oversight and quality assurance to the assessment process.
- Approaches to internal or external provision of all or part of the overall assessment process.

Where assessment is used to admit international professionals, the key regulatory distinction is between those regulators that manage the process in-house and those that use external provision (especially with regard to setting and delivering the examinations).

The key study question posed as part of this research relates to whether there should be one or more assessment providers (this is discussed in the following chapter). However, it might

³ <http://avicenna.ku.dk/objectives/>

well be argued that, based on discussions with regulators as part of this research, there is much less of a focus on the number of assessment providers than the question of whether assessment should be undertaken in-house. Very few regulators use multiple assessment providers (and none of the regulators looked at in detail as part of the study). The idea of having multiple assessment providers is not seriously considered because of the perceived regulatory risk. This concern about regulatory risk is also a key driver for maintaining the primary assessment function in-house, even where a growing number of candidates put pressure on internal capacity. For example, the Hong Kong Law Society has considered outsourcing certain logistics elements of its assessment. However, even areas such as the transportation of exam scripts are felt to be too sensitive for external handling.

2.4.1 The role of the regulator working with an external assessment provider

It is clear that, in the context of the QLTS, the SRA is able to retain sufficient control over the assessment even when working with an external provider. The SRA sets out the expectations for the assessment provider in relation to quality standards – *the assessment methodology, the approach to setting the pass mark etc.* The exam board confirms the pass mark for QLTS – but the SRA is the crucial voice in these discussions. The SRA is required to attend the exam board for it to be quorate. Once these parameters have been set and embedded, this core oversight function should be relatively routine to monitor, so it does not appear to be especially resource-intensive from a contract management perspective.

Having a single assessment provider undoubtedly changes the nature of the relationship between the regulator and the provider. The assessment provider could, in this context, be seen as an expert delivery arm of the regulator and this has reported added value in terms of the responsiveness of the provider and in terms of simplifying the SRA role – *reduced dissemination costs across a network of providers, no need to share and promote good practice etc.*

There is a residual risk here that the flexibility and responsiveness in having a close working relationship with a single assessment provider *could* make it harder to maintain independence and sufficient scrutiny of the assessment provider – and that could also be problematic at the point of re-contracting. However, the SRA has also introduced an external examining team to report annually on standards under the QLTS. This has been subcontracted and requires the recruitment and training of external examiners. It should be noted that this is not the traditional external examiner function, given that it is somewhat secondary to the quality assurance provided by the statistical/psychometric evaluation of test performance. It does appear to be a useful additional check and balance on the system given the closeness of the working relationship between the SRA and the assessment provider, albeit it is presumably a resource-intensive way of providing an additional safeguard.

The closest external comparator to the QLTS model in terms of assessment approach and the existence of a single external provider is in relation to the ORE scheme for dentists. The General Dental Council (GDC) has commissioned a consortium of organisations (two dental schools combined with the Royal College of Surgeons) to run the examination process for internationally-qualified applicants. The GDC provides the consortium with the ‘blueprint’ for the examination based on its required professional standards and the consortium then writes and runs the examination (although working in close co-operation with the GDC throughout, somewhat mirroring the SRA approach). The GDC uses a number of methods to ensure that the consortium it has commissioned is doing the job properly. This includes employing their own ‘external’ examiners to monitor the consortium-employed examiners (who are all experienced examiners within the dental schools in their own right). There are parallels here to how the QLTS model has evolved.

The contract for the examination under the dentistry scheme lasts 3 years. It was recently re-tendered and was won by the incumbent – reportedly there *‘wasn’t a great deal of interest’* in bidding for the re-contract, which may flag a longer-term issue for the SRA in terms of the perceived competitive advantage of an incumbent putting off potential competitors, especially given the size of the assessment market. There may be further evidence in this

regard when the BSB puts out its contract renewal to be the single assessment provider for the Bar Transfer Test (which has not previously been put up for competitive tendering).

In relation to the ORE, re-contracting led to several changes to the contract, including:

- New requirements to ensure consistency across all the examiners;
- Improving marks sheets to ensure greater consistency across examiners (particularly given that many failed applicants request the marks sheets);
- The GDC also employed a Psychometrician who examines the marking data from the OSCE part of the practical exam and highlights areas of concern in the marking (a similar quality assurance approach to the PLAB scheme for doctors and the QLTS).

The main attributes that the GDC looked for in this tendering process was an organisation / group of organisations that can deal with high volumes of candidates and solid QA processes (*“our main goal is protecting the public”*). There was less interest in potential contractors bringing an innovative approach to the exam. The GDC has also considered bringing the exam in-house. There are several barriers to this, many of which are pertinent to the QLTS case:

- The primary barrier is lack of resources. The practical exam is longer and felt to be more difficult to run than, say, the GMC’s exam for doctors; therefore it would require more resources to administer in-house.
- Also, the number of applicants is large. Applicants are allowed to re-sit each part of the exam (two written papers; four elements of the practical exam), meaning that there are a large number of multiple entrants.
- The switchover period would be problematic. There was a period in 2011 where there were no exams put on and this caused a large backlog of applicants. It is felt that a significant change in the assessment approach would create a substantial backlog.
- There was felt to be a lack of in-house skills within the GDC at present to take up this extra role. The Exams team plays a largely administrative role (checking applicants’ previous qualifications etc). There are 10–15 applications per week (over 500 per year), so this role is substantial.

The relationship between the number of applications and the ability to undertake the assessment in-house is interesting. It was noted that one of the drivers for the provincial / territorial law societies in Canada to delegate the job of recognition of internationally-qualified lawyers to the Federation of Law Societies was due to increasing numbers of applicants and a lack of resources / expertise in the provinces / territories to undertake these activities.

2.4.2 Resources required to undertake the regulatory role

The model of regulation goes some way to determining how the regulatory role is likely to be determined. There is, of course, a distinction between the activities associated with the regulatory model and who carries out these activities (i.e. the regulator or an external organisation / organisations). However, from an efficiency perspective, it should be noted that there is something of a trade-off in terms of whether significant resource has to be deployed for the administration of individual scrutiny of candidates or for the development and running of assessments for international lawyers. Where the number of applicants is low, it may not be economically viable to run an assessment – unless there is strong public protection rationale for doing so (which is why the RCVS is required to examine even a small number of candidates). The further implication of the notional trade-off between resource for individual scrutiny and assessment is that it makes the hybrid ‘exemption model’ described above seem somewhat inefficient from a resource perspective (as it requires resource for both detailed scrutiny of individual applications and for assessment). In practice, it may constrain the type of assessment that is able to be offered / developed:

- The Federation of Law Societies in Canada estimates that it has around 5 FTE staff in an administrative role dealing with the detailed scrutiny of individual applicants’ previous

qualifications. It receives 1,250 applications per year (the figure is reportedly so high because 50-60% are Canadians who decided to study law abroad, often in the UK).

- The Law Society of Hong Kong reported that it has a team of three people working 'intensively' on vetting candidates over a three-month period and additional staff involved in exam preparation over a six-month period (reviewing the syllabus; liaising with examiners; administering the exam; marking) – dealing with just under 300 applications a year. In the 'peak season' when exams are marked, there are three people spending around 60% of their time of this activity.
- The New York State Bar reported having a 'small staff' working in-house to evaluate and authenticate applicants' qualifications (5,000-5,500 international applications per year). It has relatively straight-forward criteria for assessing applicants (based on an objective not to favour applicants from one country over another), but the impact of the volume of applications that has to be scrutinised is that potential candidates are requested to apply up to a year in advance.

In contrast, the GMC experience gives some indication of the resources required for an assessment-led approach that is undertaken in-house. Managing the PLAB examination is a key component of the GMC's role as regulator. A quarter of current registered members were trained outside of the UK (although many of these are EEA applicants), which means quality assuring international applicants is a substantial job. The GMC has responsibility for all aspects of the examination: it writes the questions (to both parts of the exam), as well as recruiting and quality assuring the examiners.

Given the importance of the PLAB to the GMC's role as regulator and the fact that it is largely managed in-house, a substantial resource is devoted to its management. This includes:

- 3 staff members who focus on question setting;
- 4 staff members who focus on the OSCE; and,
- There are also 150 doctors who are on a committee and contribute at different times of the year to different issues relating to the PLAB.
- There are 110 examiners who are doctors that assess applicants in the OSCE at different times of the year.
- Finally there are around 20 people in the GMC whose role is to assess applicants' qualifications.

The evidence illustrates a number of points. It highlights how, for most regulators, a prime objective is to retain as much control as possible over the process for admitting international professionals. It also shows, though, that the scale of resource and expertise required to run complex, high volume assessments in-house is not a realistic proposition for most regulators. The GDC and the SRA are probably in a similar position in this regard, and there is a strong case for having a single external contractor with close oversight in both cases. The strength of the QLTS model in comparative terms is that it appears to require less resource to scrutinise individual applications than some other models – which still include (less costly) assessments. On balance, this appears to constitute a good balance between safeguarding consumers of legal services and ensuring that resources are effectively directed.

3 The assessment model

3.1 Introduction

This chapter looks in more detail at assessment approaches, including the fitness for purpose of the QLTS and implications of having a single or multiple assessment providers. It also considers quality assurance and the cost of assessment.

3.2 Proportionality and accessibility in the context of QLTS

The QLTS widened eligibility to 80 jurisdictions worldwide (counting the USA and Canada as single jurisdictions)⁴ and noting that the number continues to increase as more jurisdictions apply to the SRA for recognition. Although the list of eligible jurisdictions under QLTR in 2007 ran to 71 countries⁵, a significant number (around 20) of typically smaller jurisdictions, primarily in the Caribbean, but also including Papua New Guinea and Malawi, that were eligible under QLTR, do not currently appear on the QLTS list, presumably because those jurisdictions have not provided the necessary information for inclusion.

In contrast, the 27 new jurisdictions include significant populations and extend the reach of potential accessibility to the profession substantially, including:

- Africa: Cameroon; Kenya; Mauritius; Rwanda; Sudan; Tanzania; Uganda
- Asia and Middle East: China; Indonesia; Japan; Nepal; South Korea; Oman; Philippines; Thailand; Uzbekistan
- Europe: Georgia; Gibraltar; Russia; Turkey
- South and Central America: Argentina; Brazil; Columbia; Mexico; Panama; Peru; Puerto Rico; Venezuela.

To date there have been four rounds of the MCT assessment (and three rounds of the OSCE and TLST). There is a clear trend of increasingly numbers of candidates (*notwithstanding that figures for round three are not included in this report*), albeit from an understandably low base:

- MCT #1, February 2011: 25 candidates attempting the full assessment
- OSCE #1, June 2011: 11 candidates
- TLST #1, June 2011: 12 candidates
- MCT #2, July 2011: 117 candidates
- OSCE #2, September 2011: 50 candidates
- TLST #2, September 2011: 51 candidates
- MCT #3, January 2012: 228 candidates OSCE #3, April 2012: 82 candidates)
- TLST #3 April 2012: 95 candidates
- MCT 4, July 2012: 252 candidates (83% making first attempt; 14% second attempt; 3% third attempt)⁶.

The volume of candidates provides an indication of the appropriateness and proportionality of the QLTS assessment. A lack of candidates could indicate that the raising of the assessment standard has occurred in such a way as to be a barrier on qualified lawyers choosing to work in England and Wales. It could also relate to wider factors, which although not a direct regulatory concern for the SRA, indicate that the scheme is not as accessible as it might be for qualified lawyers in other jurisdictions (*e.g. communication about the scheme; availability of information about the scheme; support and training for the assessment*).

This is an area that requires careful interpretation, partly because the SRA has been explicit that the introduction of the QLTS was a response to the previous QLTR scheme not providing sufficient safeguards of professional standards. It is therefore difficult to directly

⁴ <http://www.sra.org.uk/solicitors/qlts/recognised-jurisdictions.page>

⁵ <http://www.lawsociety.org.uk/documents/downloads/becomingqltjurisdictionstemp.pdf>

⁶ Qualified Lawyers Transfer Scheme MCT4, July 2012: Data & Outcomes: Information for the Examination Board 31st July 2012 CAQAA / Kaplan QLTS

compare candidate volumes for the two schemes. Towards the end of QLTR scheme, it is estimated that there were around 2,000 candidates a year. Generalising from the most recent volume of candidates for the MCT, it might be assumed that the QLTS is currently serving around a quarter of this number of candidates (i.e. around 500 candidates per year).

The number of candidates would be expected to reduce as a consequence of the raising of the standard. Additional verification procedures have also been introduced to the QLTS scheme, including the verification of the authenticity of applications with applicant's home bars (as well rigorous ID checks by the assessment provider at the tests further down the line). Furthermore, stakeholders generally agreed that the winding down of the QLTR scheme would impact on the QLTS. Candidates could apply for Qualified Lawyers Transfer Test⁷ (QLTT) certificates of eligibility up to September 2010 and then have three years in which to undertake the assessment. In recognition of the transition to QLTS generally being accepted as marking a more difficult assessment standard, it is logical that potential candidates who were considering becoming qualified as solicitors in England and Wales around 2010 would gravitate towards gaining the QLTT certificate of eligibility while they could. There is some evidence of QLTT providers explicitly marketing the QLTT training offer in these terms. As the marketing brochure for one training provider states:

“ACT NOW! We urge anyone who has a QLTT Certificate of Eligibility to complete the exams as soon as possible, as the new regime, the QLTS, is much more rigorous and expensive than the QLTT.”⁸

A further complication is that the transition to QLTS may affect candidates in different ways depending on their motivation for becoming qualified in England and Wales. The SRA's regulatory objectives are explicitly framed in terms of safeguarding standards of professional practice in England and Wales, but there is a common acknowledgement that QLTS (and QLTT before it) may be attractive to international lawyers who have no immediate interest in working in the jurisdiction and who, in a competitive global labour market for legal services, are interested in undertaking the assessment for their own personal and professional development.

The considerations in this case appear to be somewhat different from those relating to candidates who wish to be recognised to practise in the jurisdiction. It has been argued that the difficulty and increased cost of the QLTS assessment compared to the QLTT has a negative impact on those potential candidates interested in professional and career development. In fact, many of the concerns raised by stakeholders – not just legal education and training providers – appear to relate specifically to the impact on those candidates who do not wish to actually practise in England and Wales. These concerns cover the following:

- That the scope of the examinations (encompassing the day one competences) is problematic for experienced lawyers who may be specialists in a legal area.
- That the increased cost of assessment means that lawyers looking for a professional badge of experience will increasingly look to other jurisdictions (normally, this is related to the New York Bar).

The assessments may be problematic for specialists in that they may have to reacquaint themselves with areas of law that are long-forgotten. It is not clear that this is a regulatory issue, though. The notion of specialist or partial accreditation raises an additional set of regulatory challenges that would have to be set alongside the rationale of convenience for international specialists. From a regulatory perspective the risks appear to outweigh the potential benefits (not least because it would be difficult to monitor). There may be more substantial evidence on this question emerging through the LETR.

Wider market changes may also impact on the demand for QLTS, especially in the context of an economic downturn. The suggestion is that whereas large City law firms would in the past offer to pay for QLTT/QLTS in order to attract lawyers from some jurisdictions, this could be

⁷ QLTT refers to the test under the previous Regulations (QLTR)

⁸ <http://www.onewstudies.com/files/ows-brochure.pdf>

less prevalent today because the market does not require recruitment on such scale (and therefore irrespective of the relative cost of QLTT and QLTS).

By the fourth running of the MCT exam in July 2012, the 209 candidates undertaking their first assessment encompassed 36 jurisdictions (up from 30 jurisdictions for the second MCT in July 2011). This included nine of the new jurisdictions introduced in the QLTS expansion, totalling 19 candidates (9% of the candidates sitting the exam). The number and spread of new jurisdiction candidates was also 19 in the second MCT a year earlier (across eight jurisdictions), 16% of the total candidates sitting the exam. This suggests that the scheme has been somewhat successful in attracting some applicants from new jurisdictions, but that there is potentially significant latent demand in these countries as well.

3.3 Assessment method

The rationale for the QLTS assessment methodology appears to be strong. The fact that it is not more widely used in legal settings says less about the *a priori* appropriateness of the assessment than the wider constraints that shape the regulatory model in other jurisdictions and in other areas of law (as discussed in the previous chapter).

The common concern of most regulators responsible for high-risk professions is that the admission routes for international professionals should closely match (or mirror) the standards required within the domestic route. The point of contention or interpretation is how much can be assumed through the fact that the candidate is already qualified to practise in another jurisdiction. This often involves a judgement call based on an assessment of an individual's qualifications and experience. However, in most high-risk professions there is a degree of 'local knowledge' (e.g. understanding of the specific legal system within a given jurisdiction), which international professionals are unlikely to be able to evidence. This is why an additional training or assessment component features in most models.

From this standpoint, there is a powerful rationale for designing an assessment that tests competence in a comprehensive and objective fashion, rather than defaulting to an additional *de facto* training requirement (as is the case for the New York Bar and many other legal jurisdictions). The three QLTS assessments provide a sensible approach to covering the day one competences for solicitors. The use of standardised clients as part of the assessment provides an opportunity to test the real-life application and professional skills in a way that is closely aligned with outcomes-focused regulation. The approach has been deployed in a more basic way as part of the LPC, but as a single component to on-going assessment and therefore without the same level of statistical analysis of the performance of the test itself. In the high-stakes licensure context of the QLTS, there is a greater focus on ensuring the validity and reliability of the assessment; and this both one of the key differentiating features of the QLTS assessment and one of the key tests of the overall QLTS approach.

Each of the assessments draws heavily on existing tests, which provides a degree of confidence in their application (e.g. the MCT is modelled on the US Multi-State Bar Exam; the OSCE drew on the PLAB examination). Fundamentally, the focus on competence rather than simply testing knowledge provides the basis for far greater confidence in admitting international professionals. There is recognition of this even among regulators that currently use knowledge-based examinations. For example, the National Committee on Accreditation in Canada is considering altering the NCA slightly to include some more practical / skills-based components (e.g. it is considering a problem solving and a legal research component). Arguably no other approach under development or currently offered in a legal setting provides the same potential for statistical evaluation as the QLTS (its ground-breaking approach has been recognised by experts in legal assessment, including the National College of Bar Examiners in the US). This is intrinsic to the design of the QLTS, including having a single assessment provider. Early published statistical analysis of the

performance of the assessments shows high scores on technical quality indicators (Cronbach's alpha and the standard error of measurement)⁹.

Stakeholders generally agreed with the SRA's rationale for introducing these assessment methods and there was a sense, even at this early stage, that the tests are credible. Concerns, where they were raised, typically but not exclusively by legal education and training providers, was whether such an extensive and expensive approach was required. Some respondents suggested that the same competences could be covered through multiple choice examinations, which would be a cheaper and more flexible option. It is not clear what this would achieve in terms of improving the validity of the tests – given the strong performance of the tests to date. The SRA and Kaplan have argued that to shorten the tests in some way could impact on reliability, although there is an acknowledged need to balance reliability and cost. Certainly, the approach does not appear disproportionate when set alongside other similar assessments. For example, as part of the ORE in dentistry, the practical test of clinical ability is composed of four separate tests undertaken over three days:

- An OSCE-type assessment – using standardised clients
- Tests using a dental mannequin.
- Diagnosis and treatment planning – using standardised clients
- Medical emergencies.

There is a persuasive rationale for having the MCT as a gateway test to the others in that it minimises the financial risk to candidates. It was widely seen as potentially beneficial to the accessibility of the QLTS for the MCT to be offered internationally, with effective safeguards. The scale of the market is such that there are only likely to be limited locations in which there is a sufficient market in order to do this, but it appears sensible – indeed the MCT is being offered in New York from January, 2013. The more fundamental challenge raised by a couple of education and training providers was the difficulty in training to the MCT, because of its broad coverage (it covers the qualifying law degree and key elements of the LPC, such as professional conduct and solicitors' accounts).

3.4 Cost of assessment

The assessment fee for the QLTS assessment totals £3,230 excluding VAT per attempt. Table 3.1 below sets out indicative assessment costs for similar types of assessment in other professions and in other jurisdictions. This indicates that although the QLTS is clearly an expensive assessment, it is comparable with the kind of cost associated with the schemes in dentistry and architecture. The PLAB scheme in medicine is much cheaper for the candidate, but has to be seen in the context of the GMC accruing significant additional revenue for the provision of certificates etc. Nevertheless, the PLAB is not run on a full cost recovery basis and is cross-subsidised by other GMC activities.

The cost of QLTS is not excessive for the type of assessment offered. The cost of recruiting and training a sufficient number of actors (45 actors were used in the Round 2 assessment) is presumably substantial, but this is integral to the reliability of the assessment. There is also the cost of recruiting and training examiners. In the medical context, the GMC reported that ensuring examiners are of a high quality is a vital part of the regulation process. All examiners are doctors who take time out of work at various points in the year to act as examiners. They are paid £310 per day plus expenses, which is the market rate for such a task but most are felt to do it for vocational reasons. The selection process for examiners is rigorous. Firstly, they have to be in 'good standing' with the GMC. Then there is a two day selection process in which they are assessed closely. Once they have been selected and joined the 'pool' of GMC examiners, there is also a rigorous quality assurance process. This is driven by statistical analysis of the marks they give applicants for each assessment 'station' of the OSCE. If the marks they give are an outlier (i.e. a long way from the average for that station) they will be monitored more closely next time around. If this happens again,

⁹ The Qualified Lawyers Transfer Scheme: innovative assessment methodology and practice in a high stakes professional exam, *The Law Teacher* Vol. 46, No. 2, July 2012, 132–145

another examiner will double mark them (i.e. they will observe the applicant at the same time as the examiner in question). If there are further aberrations, they are removed from the role. All of this selection and quality assurance is carried out by the GMC.

For smaller examinations, quality assurance procedures tend to be less sophisticated. The RCVS explained that in the context of its Statutory Examination for Membership, the seven veterinary schools in the UK host the exams on a cyclical basis (though the exam is only offered once a year) and provide the examiners each time. The examiners pair-up for practical assessment to provide a degree of quality control on marking. There are no additional central quality assurance processes used by the RCVS because there is assumed confidence in the examiners given where they are drawn from (i.e. the examiners know each other; they know the RCVS and are very familiar with the standards required). In relation to the required standards, the vets' model is also based around assessment against day one competences for a graduate vet following the domestic route to qualification. The UK veterinary schools are therefore rather immersed in the required standards. The market is also quite small.

It is not clear that the same level of reliability as has been achieved under the QLTS could be achieved by reducing the preparatory inputs. A greater concern may be to understand the break-even point for financing this type of assessment – as the QLTS' long-term sustainability is presumably based on having a minimum number of candidates each year. This provides a strong argument for maintaining the current assessment relationship given that development costs are front-loaded and candidate numbers in the first year at least were unsurprisingly low.

It is also possible to compare the cost of admission via the QLTS to other routes. As part of its marketing for its training offer, QLTS School provides a comparative estimate of the cost of the LPC (“averaging out the fees of the LPC providers in the Chambers Student Guide, you’re looking at around £9,214.80 for a full-time course, excluding living costs¹⁰”) before going on to conclude that with its training package (starting at around £2,300) and assessment costs, candidates for QLTS have “almost half the cost and a fraction of the time of the domestic qualification process!”

Furthermore, even though the equivalent exam costs for the New York State Bar are much lower than the QLTS (and according to the New York State Bar the examinations are cross-subsidised), the true cost of admission of international lawyers to the New York Bar is much higher. Most international lawyers are either required or encouraged to undertake a one-year LLM in the US, the fees for which run into tens of thousands of dollars.

¹⁰ <http://www.qlts.com/blog/career-development/trainee-solicitor-minimum-wage-the-death-of-traditional-domestic-qualification-for-international-lawyers>

Table 3.1 Indicative costs of assessment

Profession / jurisdiction	Costs
QLTS	£200 for the certificate of eligibility (£400 for EU lawyers) £305 for the MCT £2,100 for the OSCE £825 for the TLST
Teachers (supported route to QTS status)	Fees vary according to the assessment provider chosen, but a large provider (The University of Gloucester) offers a supported route to QTS at £2,250. This includes training elements (handbook; online support; interview; and an initial visit from an assessor to provide guidance on the evidence required).
Architecture	£1,390 per prescribed examination (there are three examinations) £230 for referral to a lead examiner (per examination) £1,390 re-examination fee (per examination) £347.50 scrutiny fee for incomplete applications
Dentists	£600 for the Part 1 written exam £2,250 for the Part 2 clinical exam Re-sitting the Medical Emergencies exam on its own if required and eligible - £300.
Doctors	£145 for Part 1 of the PLAB test £430 for Part 2 of the PLAB test £40 for a request for clerical check of results for the PLAB test
Veterinary surgeons	£1,200 examination fee £230 administration charge
Lawyers – Canada	\$525 for credentials evaluation. \$525 per challenge examination, excluding the cost of required textbooks. \$3,000 (around £2,000) estimated required investment based on undertaking the minimum number of challenge exams
Lawyers – New York State Bar	\$750 for the application and for the cost of the test.

3.5 Single versus multiple assessment provider models

It is possible to reflect on the case for having a single or multiple assessment providers based on the evidence emerging through the study. These formed two of the key ‘options’ for the SRA developed and tested through the research.

The options paper developed as part of the research set out the following assumptions / rationale for the single assessment provider approach:

- That the QLTS is still relatively new, having only been offered since the start of 2011. In the absence of any evidence on serious risks posed by the current model (early statistical evidence suggests that the exams perform well), it should be given sufficient time to become established. On reflection, it is clear that not only is there an absence of evidence of risk associated with the current assessment, but that the early statistical evidence is encouraging. It provides more than enough evidence to continue with the current approach and – crucially – it is not clear how the current assessment methodology could be effectively replicated by having multiple assessment providers (unless each provider offers the same exam).

- Having a single assessment provider is the best way of safeguarding assessment standards. It is easier to ensure consistency in assessment standards with a single provider. It also enables the SRA to have detailed input into (and therefore control over) the design and (ability to respond to) monitoring of the assessments. This also implies that there is no reasonable alternative model for the SRA to set and ensure a consistent assessment approach with multiple providers.
- There are risks to introducing competition within the assessment market if it is assumed that assessment providers compete on elements that are potentially counter to the need to safeguard standards (e.g. pass rates, costs). Whether this is a valid concern or not, there is a significant and widely-recognised risk of competing providers leading to negative *perceptions* of the credibility of the exam. Stakeholders in other jurisdictions and professions argued strongly that this was a central consideration for having a single assessment provider and that the credibility of the exam in the eyes of qualification users (candidates, employers, the public at large) could be affected by having multiple providers competing for business – irrespective of whether this perception was based in reality or not.
- Beyond the perception issue, though, in practice this argument hinges on the assumption that multiple providers would compete and do so in a particular way. On reflection, it is debatable whether providers would compete in this way. Currently, the market is too small to sustain multiple assessment providers looking for a commercial return from the provision of assessments, especially given the investment requirement to enter to market. Any new entrant would therefore be likely to have more holistic motives (e.g. status and the visibility afforded by offering QLTS assessment in the context of the global legal training market), which arguably softens the risk of reduced standards through competition. With the exception of additional providers explicitly entering the market for non-profit reasons (and it is not clear that such an organisation exists), the current QLTS market is not sufficiently large enough in the short-term to sustain multiple assessment providers without the resource for assessment being reduced significantly (at risk to the confidence provided by the scheme). Over time, this dynamic could change if the market grows. Significant growth in the demand for QLTS assessment (beyond what is likely to occur in the next two to three years) may introduce a capacity issue in relation to the provision of assessments that creates a potential rationale for having additional assessment providers. It is unlikely that the pace of growth here will be so fast that it cannot be managed by the SRA and its single assessment provider. However, it is worth noting because the practicalities of meeting additional demand appears to be a key issue that legal regulators in other jurisdictions are having to address (usually in relation to the regulator's own in-house capacity to process applications, but also in terms logistical issues such as the provision of sufficient exam space).
- Some stakeholders also argued that previous exam quality issues in relation to assessment provider competition under the QLTR were the result of an absence of regulatory control at the time. It is suggested that the methodologies used under QLTS to quality assure the examinations (statistical evaluation, the process for setting pass marks) could mitigate the potential risk here. The problem is that this is likely to increase the resource requirement on the SRA and does not in itself ensure the consistency of assessments across providers.
- It is possible to envisage a regulatory relationship that served to safeguard standards under a multiple assessment provider model with a consistent approach – but this implies a radically different approach and a more collaborative model for running assessments (see below). Such an approach may well feature as a consideration for the LETR, but it is likely to be a long-term aspiration rather than a realistic short- or medium-term solution. It is still likely to increase costs for the SRA, however, and introduce new risks by removing the separation between assessment and the provision of training.

The case for having multiple assessment providers can also be reconsidered:

- That having a single assessment provider may be anti-competitive and, as such, out of line with the SRA's over-arching regulatory ambitions. Although the SRA is not required

to provide a competitive market for legal education providers, there is a regulatory objective relating to competition and consumer choice in legal services. The challenge in making this proposition is that there is clearly a regulatory balance in terms of relative risks (i.e. the issue of competition has to be offset against the frontline regulatory responsibility to ensure that only those who are competent enter the profession). Furthermore, it could be argued that as long as the contract for a single assessment provider is competitively tendered – and re-tendered at some point – then there is competition in the provision of this service. The *principle* of re-tendering the contract is important for providing clarity and transparency to the contracting relationship. Without re-tendering the contract, it is more difficult for the SRA to show to stakeholders that it is achieving value for money in its use of resources. It also provides the on-going defence against any accusation that the contracting model is somehow ‘anti-competitive’. Once the principle is established, the much more significant question of the timescale over which the contract should run can be determined. Given the stage of early implementation at which the QLTS still remains, the sensible course of action would be to renegotiate and extend the current contract – but with a view to providing greater clarity about when the contract will be re-tendered in future (*at least* three years hence). Overall, it is important to note that the question of competition in this context appears to be of minimal importance in practice. It was not a key concern framed by stakeholders, who, rather, reported understanding the rationale for the single assessment provider (in the first instance at least).

- Having a single assessment provider induces a dependency on the part of the SRA on a particular provider and associated risks as a consequence (e.g. that there may be insufficient independence and a difficulty for the regulator to hold the assessment provider to account). This may just be a case of ensuring that effective safeguards are in place – and it is also worth noting that there are potential benefits from having this kind of working relationship. The SRA may, for example, be better able to influence the structure and content of the assessments and have greater control over the assessment itself (ensuring its alignment to the required standards; ensuring that obligations relating to equality and diversity are easily monitored and that any issues here can be quickly identified and addressed etc.). On reflection the real risk is in relation to the current assessment provider withdrawing suddenly from the market. This, though, is not in itself a decisive argument for having multiple assessment providers – instead, it suggests that the SRA should do what it can in the first instance to reduce this risk.

The fundamental weakness in the argument for having multiple assessment providers is that it is difficult to make a sufficient case in relation to anticipated benefits that outweigh the likely costs incurred by changing, perhaps quite fundamentally, the current regulatory model. Many of the suggested benefits are incremental and do not appear to directly relate to having (in the short to medium term at least) a more reliable, accessible, higher-quality assessment of QLTS candidates. If it reduces costs, this is likely to be on a basis that increases risk.

In the long-term, there may be the potential for collaborative models of running assessments that mitigate the assumed costs / risks of moving to a multiple assessment provider model (for example, having a community of providers working jointly to offer a single set of assessments while also being able to offer training). There was little tangible appetite for this currently across the education and training community, but this, as much as anything, may reflect internal concerns that until there is more evidence about the future scale of the QLTS market (under its current assessment format), there is no great push for involvement in assessment. It has been noted that such an approach inevitably risks unfairness between candidates trained by somebody involved in the assessment and other candidates. This risk can be reduced by making sure exam information is publicly available (e.g. examination reports and guidance; model answers), but this may not remove the imbalance entirely.

4 The training market

4.1 Introduction

This chapter focuses on the training market for QLTS. The SRA requires that the single assessment provider cannot offer training towards the assessment. Beyond this, the training market is unregulated. The study objectives include the question of what the impact would be on solicitors' competence at admission if assessment and training is provided by the same provider. It also includes a research question asking what the impact of any change to the regulatory model would be on *both* the training and assessment market.

Underlying these questions is the issue of whether the current model provides for an effective training market, what such a training market looks like and whether indeed the quality and availability of training towards QLTS is a regulatory concern at all. This last issue hinges on whether QLTS can be reasonably undertaken by a 'typical' international lawyer (if such a thing exists) without additional support and training. This might be argued to be relevant to the proportionality of the overall scheme.

Furthermore, there are a set of wider considerations that should be of interest to the SRA – even they are not directly related to regulatory objectives – that revolve around candidates' experience, the potential for QLTS to be the accreditation of choice in a global legal market place and the ability of legal business in England and Wales to benefit from a scheme that provides a source of high-quality professional labour.

4.2 Separating the provision of assessment and training

It is clear that one of the most significant impacts on legal education and training providers that were (and still are) active in the QLTT market has been the shift to a system in which training is provided for an examination that the provider does not offer. Given that the QLTT market was both strategically important for a number of providers, in that it was a global service offer and had significant throughput of candidates, such a fundamental shift is not inconsequential. This appeared to lead to concerns about whether a training market would develop at all, partly because it involved a new way of working in a legal training context (as well as for other reasons, discussed below).

As noted in the previous chapter, there is widespread support for having a single assessment provider. It is seen as rational and sensible regulatory response on the part of the SRA. The separation of the assessment and training role is perhaps even less contentious in this context. There are numerous examples of similar models in other legal jurisdiction and other professions:

Key legal jurisdictions:

- The New York State Bar Association
- The Law Society of Hong Kong
- The Law Society of Upper Canada.

Relevant other professions in the UK:

- Veterinary Surgeons
- Dentists
- Architects
- Opticians / Optometrists
- Doctors.

Each of these cases shares general characteristics with the QLTS approach and experience to date in that there is a general principle that the assessment can be undertaken on a self-study basis, but with an acknowledgement that candidates may choose to benefit from additional training or support that may be offered commercially. All of the regulators felt that it was crucially important not to be offering training and assessment. It was noteworthy and perhaps a little surprising that regulators interviewed for the study tend not to keep a close eye on this additional training provision. This is in part because much of the provision is ad

hoc and/or typically offered by only a small number of providers (and this seems to be the case irrespective of the huge variation in candidate numbers in the above examples).

The Law Society of Hong Kong, which is regulator and sole examination provider, used to also offer preparatory courses for its Overseas Lawyer Qualification Examination. The main reported reason for not doing so anymore was to avoid negative perceptions that may have arisen from it offering both preparation and examination. In Hong Kong now, there is a commercial training market, with 2-3 providers that are unregulated and unaccredited, even though the examination is notionally self-study and there is no training requirement (so, the model is quite similar to QLTS).

The focus in Hong Kong has been on ensuring that information is readily available for training providers – noting that the exam has been in place since 1995 and there is a much greater information base to start with than for QLTS in its infancy. For the last five years, the Law Society of Hong Kong has offered training providers a meeting / information session with examiners – similar to recent developments from the SRA. There are strict protocols around these meetings (questions must be submitted in advance; while a discussion may take place on examiners' expectations, there is no discussion on exam content). The Law Society of Hong Kong has found that while there was initially significant interest in these meetings, this has reduced over time. This is interpreted as partly being the result of a growing awareness that the meetings will not provider exam 'hints'. It also reflects that in Hong Kong there is a wide availability of exam information. The Law Society publishes all past examination questions and examiners' comments¹¹. A similar approach to publication of previous exams and examiner reports or model answers is seen in veterinary surgery and medicine in the UK.

In the context of medicine, there is no training requirement as part of the PLAB (different from "every other medical exam"). However, the GMC suspect that the "majority of candidates" will have undergone some PLAB-specific training. The GMC emphasised that there is a lot of information on the examination which is publically available (past papers etc) and that all candidates for the PLAB should know the standard to which they need to perform (foundation year 1 i.e. the standard they should be at after one year of graduating).

In the case of dentistry, there is a substantial market of training providers, which is a function of the large market of trainees. Typically, these providers are universities, but dental practices also offer training. The GDC does not quality assure, recommend or regulate any of them (*"as long as it's registered practitioners... and as long as they are using resources in the public domain"*).

In the legal context, the Federation of Law Societies of Canada reported that there is a training market towards its assessment, although the intention of the process is that "it is entirely self-taught". It does not endorse any agencies offering training and estimates that only a handful of organisations may do so. Based on individual scrutiny of a candidate's skills and qualifications, applicants to practise law in Canada may be required to undertake 'challenge exams' in core subjects (80% of applicants are required to undertake challenge exams or undertake further legal training). It has been noted that there is a high failure rate for these exams. According to FLSC statistics, 4,515 international lawyers applied to be assessed from 1999 to 2009, but less than half of applicants, 1,708, ended up with certificates of qualification¹². In 2010, this led to the University of Toronto's Faculty of Law creating a bridging programme aimed to assist international lawyers seeking accreditation to practise law in Ontario. This deals with the academic, linguistic and cultural aspects of passing this exam and is estimated to have 40-50 students per year.

While most regulators do not get involved in the training market on the basis of this separation between assessment and training, there is still an interest in it. The Architects Registration Board has tried to informally engage with providers offering training towards its ARB Examination out of a concern to ensure that candidates are receiving accurate information. It has managed this by ARB officers attending training sessions in an observer

¹¹ http://www.hklawsoc.org.hk/pub_e/admission/oversea.asp

¹² <http://www.lawyersweekly.ca/index.php?section=article&volume=29&number=30&article=4>

capacity and being clear that in doing so it is not endorsing the training (ARB is not there in an official capacity; its officers are there in a personal capacity).

4.3 The QLTS training market

One of the key concerns in relation to the QLTS training market has been whether there is a market failure preventing the emergence of an effective training market – and, if so, whether this should be a concern for the SRA. Although notionally self-study, there are persuasive reasons to believe that there is likely to be significant demand for additional support, not least as a result of the cost of assessment (and re-takes).

More significantly, it is increasingly apparent that while still maturing, there is something approaching a critical mass of training provision for the QLTS. By September 2012, there are expected to be three providers active in the market. This includes a new entrant (QLTS School) and two previous providers of QLTT training (CLT and BPP). This is commensurate with the equivalent market for much more mature schemes in other jurisdictions and professions. Providers involved in the market set out the following rationale for their commercial decision to engage:

- Assumptions based on experience of the number of people going through QLTS that are already undertaking training (estimated to be at least two-thirds of early candidates based on a limited training market)
- Assumptions that even if the QLTS market is only 20% the size of the QLTT market, this is still a viable training market.
- Assumptions based on the number of enquiries received about training – even before the provider developed a training offer.
- The strategic importance of offering QLTS training in the context of having an international training presence and wanting to offer training across all key legal examinations.

Even those other training providers that are not active in the QLTS training market reported that this was a decision they are keeping under review, and simply reflected perceived business risks related to the current market. Overall, there is no evidence of a current market failure in the provision of QLTS training, even though there remains understandable uncertainty about the nature of the future market.

It is notable that the three current providers provide a quite different approach. This may reflect the way that the training offer is evolving, but it means that candidates have access to support in different ways:

- QLTS School's offer is based around self-preparation through the provision of a tailored QLTS textbook, practice questions, study notes and tutor support.
- CLT is focusing on methods to effectively prepare candidates for the skills element of the QLTS at a reasonable cost. It is focusing on how technology might be used to achieve this – and provide global access to the training (using Moodle, recorded role-plays etc).
- BPP is intending to offer face-to-face weekend courses, attempting to cover each of the Day One Outcomes in a day (introduction, overview and key principles), as well as offering library access. The key to its approach is that it is clear that what it is offering is not an exam preparation programme, because the nature of the MCT means that this is hard to provide confidently (other providers raised this in the context of reputational risk as being an important factor in not engaging in the market).

4.4 Reflecting the SRA options for intervention in the training market

Among the options set out for the SRA to potentially intervene in the training market, the idea to introduce a training requirement remains easily discounted for the reasons set out in the earlier options paper:

- It is likely to create a disproportionate burden on candidates, especially for those most able to meet the assessment standards.
- It could be argued to be a barrier to entry to the profession.
- Focusing on the training inputs is also against the ambitions of outcomes-focused regulation.
- It is not clear that it would provide additional benefits in relation to protecting consumers of legal services as it is assumed not to impinge on the assessment itself.
- It minimises one of the key 'selling points' for the current QLTS model: its flexibility in that candidates can prepare for it at their own pace because there is no additional training requirement.

A second proposed option was to introduce a quality assurance dimension to the provision of training. This would not stimulate the training market (it may provide an additional barrier to training providers entering the market). There is no evidence that the current provision of training somehow negatively impacts on candidates' ability to engage with the QLTS process. It could also help candidates to access training by understanding the range of provision on offer. There are, though, options for helping candidates to navigate the training market that do not necessarily involve the quality assurance or accreditation of training providers. For example, the SRA could provide a list of training providers on its website (being clear that the list does not guarantee the quality of provision – which is assumed to be a judgement for candidates under an unregulated market). This could be controlled by only including training providers that are known to offer QLTS training, but which have also engaged with the SRA in some way (i.e. having attended a training or information day). This idea received strong support from the legal education and training providers engaged in the QLTS market.

The third option proposed was the SRA providing either additional information to candidates or in providing additional support to training providers. Some activity has already been undertaken in this regard – including offering information/training days to potential providers and the provision of sample exam questions, and this has reportedly made a significant difference to providers (especially the development of more detailed assessment standards).

5 Conclusions and recommendations

5.1 Conclusions

It is possible to draw the following over-arching conclusions in relation to the QLTS experience to date, which go some way to informing the answers to the specific research questions posed in the study terms of reference and in understanding what the priorities for future action should be:

- The new assessments developed to underpin the QLTS scheme are widely-recognised to be robust, appropriate and innovative. Given the scale of reform associated with the introduction of QLTS, a significant amount has been achieved in a short space of time (especially when set alongside the evolution of similar schemes in other professions / jurisdictions). The focus in the next phase should be on refinement, consolidation and dissemination.
- QLTS is strongly-aligned to the SRA's regulatory ambitions. There is little apparent doubt that the QLTS assessments, based on the evidence so far, provide more than a reasonable degree of confidence that those international lawyers admitted to practice as solicitors in England and Wales are competent. Little compelling evidence has been presented that would suggest that removing or radically altering of the current assessments would offer more or the same level of confidence. There may be a case for offering assessments on a more flexible or accessible basis (e.g., allowing more people to undertake the MCT in other countries; more closely-combining the provision of the OSCE and the TLST), but the system is already evolving here.
- The transition to QLTS has had an impact on various stakeholders (potential candidates; law firms; training providers) that creates new challenges – but the existence of these challenges appear, in the main, to be not entirely relevant to the objectives of the scheme. It may mean that qualifying as an English solicitor becomes less attractive to some internationally-based lawyers interested in their own professional development (rather than practising in England and Wales), but some of the concerns here are legacy-related (looking at QLTS in comparison with the QLTT requirements).
- The standout risk in relation to the current model relates to the contract with and dependence on the assessment provider. How these risks are mitigated going forward are likely to be central to the future success of QLTS.

The evidence is fairly clear in supporting the approach of having a single assessment provider for this type of scheme. It is the approach widely followed in most regulatory contexts and stakeholders interviewed as part of the study generally struggled to identify concrete regulatory advantages of having multiple assessment bodies.

The key apparent distinction is less about the number of assessment providers, but whether the primary examination function is undertaken in-house by the regulator or externally (as under QLTS). Both approaches can meet the typical regulatory objectives of these kinds of scheme, although the external approach brings additional risks in the form of this dependency on the external assessment provider. This provides the most tangible rationale for multiple assessment providers – but actually provides an even stronger rationale for retaining as much in-house control as possible over the components of the assessment.

While there is a high-impact risk related to having a single assessment provider, which relates to what happens if the provider were to withdraw suddenly from the market, the likelihood of this risk occurring may be low and it is certainly a risk that can be managed and monitored by the SRA. It is not necessarily such a significant risk that it provides a strong case for introducing additional providers, especially when taken alongside the other likely consequences of doing so.

There is a clear distinction between high stakes/licensure exams and more formative assessments. Yet that distinction may, in effect, parallel that between national and international routes to professional registration in a number of professions. In this context, it is important not to under-estimate the relationship between the likely number of candidates

and the most appropriate assessment model. It is generally accepted to have multiple, accredited training and assessment providers (working to a specification and a set of standards set by the regulator) for national routes to professional registration, providing that there are sufficient controls in place (moderation; external examination). One of the potential drawbacks of high-stakes/licensure examinations is that where they encompass all areas of professional competence and knowledge, the expectations on candidates are very high. Potentially several years of professional study are condensed into a single examination (or multiple examinations). This might be entirely in keeping with the regulatory objective to safeguard professional standards and it is appropriate to the assumed candidate cohort of already-qualified professionals. However, it reflects the rather unique context for admitting international professionals.

Based on the evidence from other regulators, there is a strong case for suggesting that the SRA should – as a minimum – retain its current level of involvement in the assessment process. Greater protection would be afforded through the SRA taking direct responsibility for setting and quality assuring examinations. However, it is also recognised that this is unlikely to be a realistic ambition in the short-term given the complexity of the design of the assessment. With some exceptions, the assessments undertaken in-house by regulators tend to be simpler by design.

It is difficult to answer categorically what the impact on competence would be if assessment and training was provided by the same provider. There are relatively few meaningful comparators in other regulatory contexts. Clearly, one can draw parallels with the QLTT scheme, but it is still rather speculative as to the relationship between the assessment itself and solicitor's competence (as opposed to the assessment and training model and solicitors' competence). It is certainly difficult to argue that having training and assessment provided by the same provider offers the potential for a higher level of competence at admission than the current model. Alternatively, it is possible to argue that if the training market is considered to be particularly dysfunctional, then there would be an impact on solicitors' ability to qualify. This is a rather separate point – and it should be stated that there is no clear evidence that any such dysfunction in the QLTS training market exists (quite the opposite).

There is a much more important point here, though, about perceptions of fairness and the integrity of the system in the eyes of QLTS 'users' (primarily candidates, but also the wider legal sector and, ultimately, the general public). There is a risk, in terms of perceptions, that an assessment provider offering revision courses could gain commercially from failing candidates. Even if this is unlikely to occur given sufficient exam controls, there is no way to stop candidates perceiving a potential conflict of interest in relation to their own experience of the QLTS process.

5.2 Recommendations to the SRA

- 1. Maintain the current single assessment provider model in the short- to medium-term (for the next three years at least).**
- 2. If possible, continue with the existing assessment provider relationship in the next phase, but, in doing so, consider setting an explicit timescale for re-tendering the contract on a competitive basis.**
- 3. As part of the contract re-negotiation with the assessment provider, consider ways in which the risk the SRA of provider withdrawal can be minimised. Some of these options may already be included in the current contract, but in the next phase are likely to include:**
 - **Penalty clauses for withdrawal**
 - **Provision for the development of two complete sets of tests each year to provide a back-up should the quality of the main tests be compromised (and with the unused test providing the basis for the following year's test), while also providing additional security in the event of the assessment contract needing to be transferred for any reason and a new provider requiring time to develop its expertise.**

- The possible transfer of some intellectual property for the QLTS to the SRA in conjunction with a future funding approach that ensures that the contract is commercially viable for the assessment provider based on current candidate volumes (which may be assumed to be something of a worst case scenario).
4. Provide additional help to candidates looking to navigate the QLTS training market through, as a minimum, the publication of a list of training providers offering QLTS training (couched as other regulators do by being clear that inclusion on the list is not an endorsement). Provide informal control over this list by ensuring that only providers engaging with the SRA (i.e. attending information sessions) are included on the list.
 5. Continue to develop a relationship with training providers offering QLTS without regulating that market. Continuing to offer regular information sessions should be a core part of this activity, but the SRA should also consider offering to attend training sessions in an observer capacity.
 6. In light of Recommendation #3, the SRA should consider whether it is possible to make more information about the QLTS assessments publicly-available. As a minimum, there should be a presumption of openness about the exams as seen in other professions and jurisdictions. While it is recognised that publishing multiple choice exams is problematic, a wider range of sample questions may possibly be made available.

ANNEXES

Annex 1 Key topics for literature review / stakeholder interviews

Overarching Questions	Measures of effectiveness			
A. Is it appropriate to base an assessment on the current approach/position in relation to the key question or is the situation evolving? If it is evolving, then how and over what timeframe? What is the evidence to support perspectives on the current direction of travel and likely future position/outcomes?	1 = Process			
B. Are there alternative approaches that may be explored, which <i>could</i> improve the current approach/situation? What are the key considerations or tests to apply when exploring if any alternative approaches may be beneficial?	2 = Outcomes			
	3 = Appropriateness			
	4 = Economy & Efficiency			
QLTS Components	1	2	3	4
Regulatory Model				
1. How has the QLTS impacted on the <u>length of the process</u> for international lawyers?	X		X	
2. Does QLTS provide sufficient safeguards for <u>ensuring professional standards</u> ? Is there yet evidence to compare the QLTS outcomes in terms of level of consumer protections with the QLTT? Is it possible to benchmark QLTS performance on key measures (e.g. enforcement actions) with other regulated professions?		X	X	
3. To what extent does the <u>separation of roles</u> the provision of assessment and training play an important role in providing confidence in the assessment process? Are there ways in which existing confidence levels in this regard could be maintained if that separation was removed?		X		
4. Are there benefits associated with having a <u>single assessment provider</u> that could be achieved or replicated if there were multiple assessment providers? How directly do these benefits relate to consumer protection and the safeguarding of professional standards?		X		
5. What is the <u>risk assessment</u> in relation to the authorisation of international lawyers? To what extent is the QLTS regulatory model the result of an <i>a priori</i> assessment of risk or has it been subsequently aligned to the SRA's strategic planning (setting priorities for resources; being non-prescriptive; promoting completion; having a light-touch approach)?			X	
6. Does the existence of ambition to promote <u>competition</u> in the provision of legal services necessarily mean that there should be competition in associated 'markets' (in particular, in the provision of legal training and assessment)?			X	
Regulatory Roles				
7. What are the main aspects of the <u>SRA's involvement in regulating/managing the QLTS</u> / how does the SRA itself define its role? Which of these activities are the most resource-intensive and which are the most important? What are the day-to-day resource requirements for QLTS for the SRA? How does this compare to other parts of the SRA's work as an outcomes-focused regulator?			X	X
8. How has the <u>outcomes-based model changed the SRA (or equivalent) role</u> in relation to inputs (activities, resources) to the professional recognition process in comparison with QLTT (excluding post-authorisation inputs)?			X	X
9. Have there been <u>unintended consequences</u> of the introduction of QLTS in relation to SRA activities and what has been required of the organisation?			X	X
10. How would the <u>removal of the separation of the assessment and training functions impact on the SRA</u> ? What would the SRA have to do differently in order to provide sufficient confidence in the credibility of the assessments? What would be the impact on resources?		X		X
11. What range of <u>levers</u> is potentially open to the SRA to influence/impact on QLTS in the round? Are there direct and indirect levers in this context? Which <i>potential</i> levers have the most significant impact on the overall effectiveness of QLTS in meeting regulatory objectives (e.g. setting professional standards; setting assessment requirements; setting examinations; quality assuring assessments; quality assuring assessment providers; quality assuring providers of training)?		X		
12. What are the <u>limits to SRA involvement</u> in QLTS based on available resources?				X

Assessment Approach and Methodology			
13. Has QLTS led to the achievement of anticipated benefits in relation to <u>investment in assessment development</u> that would not otherwise have occurred (i.e. without a sole provider)? How can these benefits be characterised (assessment quality measures – e.g. innovation) and quantified?		X	X
14. To what extent is it possible and useful to separate out the notion of <u>upfront assessment development costs/investment in the context of a new set of assessments and on-going running costs</u> once the assessments have been established? Does this alter assumptions about the need for a sole provider in order to achieve sufficient investment?			X
15. What is the need for <u>on-going innovation and adaptation</u> in the context of an established set of assessments (assuming QLTS if felt to be established)?		X	X
16. Has QLTS achieved anticipated benefits in relation to <u>reduced costs for candidates</u> ? What are the appropriate comparators here? QLTT or assessments in other sectors/jurisdictions?	X		X
17. Has the assessment approach effectively <u>aligned the entry standards for international and domestic candidates</u> ?		X	
18. In aligning entry standards, what have been the implications for a 'typical' international lawyer in terms of the likely <u>requirements for additional learning/training</u> in order to pass each of the three assessments? If this is best understood in terms of clusters or groups of jurisdictions, how should this be characterised and how has the impact varied? Are the most significant demands on international lawyers related to specific assessments or aspects of specific assessments?	X		
19. Is there evidence that the QLTS has in practice effectively <u>widened access</u> in terms of the breadth of international lawyers able to realistically become authorised to work in England and Wales? Has this increased the level of risk?			X
Training Market			
20. To what extent is there a ' <u>market failure</u> ' in relation to the QLTS training market? What is the evidence for such a market failure existing now or in future? How can this best be understood in relation to the size of the potential market (i.e. the number of potential applicants given the new standards against which international lawyers are assessed) and the nature of the training expected for different groups of candidates?		X	X
21. What are the <u>additional costs to legal training providers</u> related to developing training for which the organisation does not provide the assessment? Are there potential barriers here that relate to the financial viability of providing training and, if so, can this be mitigated by the provision of additional information about the assessments? What is the nature of the information requirement here? To what extent is the market driver for offering legal training in the first place an element of competitive advantage provided by also offering the assessment?		X	X
22. Given the nature of the assessments, <u>are candidates at a significant disadvantage if they are not able to access additional training</u> towards the QLTS assessments? Is it plausible that competent international lawyers would not pass the assessments through being unable to access support/materials related to those elements of the 'day one' SRA standards that are jurisdiction-specific (e.g. the knowledge that those candidates could not be expected to have simply through being trained in another jurisdiction)?		X	
23. How easy is it for candidates to have an effective overview of their own likely training requirements when undertaking QLTS and of the resources available to them to meet their training needs, including the quality of that training? As QLTS evolves, which dimension poses the greatest risk to supporting access to the profession: <u>awareness of training requirements; understanding of the training market (i.e. knowledge of providers and courses); understanding of training quality</u> ?		X	
24. What is the interplay between the <u>availability of information</u> to potential candidates (about training needs; the range of courses and providers; the quality of training) and the responsibilities of the SRA as an outcomes-focused regulator? For which areas of information provision is there a rationale for the SRA to intervene / support and what should be left to the market to provide?			X

Annex 2 Fiche: Initial benchmarking other professions/jurisdictions

Part A) Regulation and Recognition
1. Regulatory body or equivalent (e.g. Chartered Institute) responsible for access to the profession
2. Nature recognition requirements (basis for access to the profession) <i>Whether registration or professional recognition is mandatory or it simply confer professional advantages (use of professional title) Implications for training and assessment for market for professional professionals, if known.</i>
3. Process for international professionals to become recognised (out with existing EU Regulations) <i>Are candidates' skills, experience and qualifications scrutinised on a case-by-case basis? Is there an assessment? Is this widely used or only as a second stage / in certain circumstances? Is it comprehensive in coverage or only relating to certain aspects of professional knowledge, skills and competence (e.g. knowledge of the national system or legal framework)</i>
4. Regulatory model/basis on which recognition decisions are made <i>Input-based; Outcomes-based; Mixed model</i>
5. Regulatory role of the responsible body and role / input of other organisations in this context <i>Responsibility for elements of the process, such as, setting professional standards, regulating or licensing assessment bodies, setting examinations/assessments, quality assuring assessment bodies and/or assessments, regulating or licensing training providers, quality assuring training provision.</i> <i>Note differences in role between the domestic and international routes if applicable.</i>
Part B) The Training and Assessment Market
6. Overview of market for assessment <i>Regulated/unregulated; Single or multiple providers / number of providers; type of assessment(s)</i>
7. Overview of the training market <i>Regulated/unregulated; Single or multiple providers; maturity of market / availability of training</i>
8. Evidence on volumes (Numbers of candidates)
9. Other relevant evidence – e.g. how is the market changing, has the regulatory approach evolved.

Annex 3 Comparative review sample

	Professions within the UK	Notable aspects in a QLTS context
1	Accountants (Chartered)	The ACCA manages a list of over 200 learning providers that deliver its qualification. It also awards the ACCA qualification, which embeds the global accounting standards set by the International Federation of Accountants (IFAC).
2	Architects	Architecture is fairly unique in having a portfolio-based assessment, although this is structured in terms of a Prescribed Examination set against graduate attributes based on a two-part exam assessing overseas candidates against set criteria.
3	Biomedical scientists	An international route for professional registration is open to anyone that has an overseas degree and also has some experience of working abroad as a biomedical scientist (or in an equivalent role). The Health Professions Council assesses individual applications by verifying education information (usually over a four-week period) and then assessing an individual's qualification (a 12-week process). It makes a decision based on whether an applicant's qualification meets the HPC's standards of proficiency for registration, and will consider whether professional experience makes up for any shortfall. Candidates without professional experience must apply for a certificate of competence from the Institute of Biomedical Science, which includes an academic component (an accredited degree or assessment that a non-accredited degree meets the standards) and a practical component (a portfolio completed in an IBMS-approved laboratory, and including external verification).
4	Civil engineers	Professional membership is offered by the Institution of Civil Engineers (ICE).
5	Dentists	The Overseas Registration Exam (ORE) has a written and clinical component. The regulator (the General Dental Council) sets the examination sets the exam and therefore does not offer training (or recommend training providers), although there is a training market.
6	Doctors	A key profession for comparison in that there is a high-volume of candidates, a strong public protection driver underpinning the regulatory approach, a mature market and a sophisticated approach to assessment (the Professional and Linguistic Assessments Board) that mirrors the assessment approach developed for QLTS (indeed, QLTS drew on the PLAB in its development).
7	Independent financial advisers	IFAs are regulated by the Financial Services Authority (FSA), which operates a risk-based approach to regulation. IFAs are required to be authorised or exempt under the Financial Services and Markets Act 2000. Companies carrying out particular activities (which include core IFA activities such as advising on investments) have to be 'authorised' by the FSA. Exemption is provided to individual IFAs through membership of an IFA network, which is then responsible for regulatory compliance of its members (there are around 15 self-funded networks in the UK). IFAs are required to have an appropriate qualification and to undertake CPD, although the approach varies by IFA network. The profession is subject to regulatory change with changes to the regulatory rules applying to IFAs being introduced in December 2012 as result of the Retail Distribution Review (RDR) undertaken by the FSA (which includes compliance with a code of ethics for individual advisers)..
8	Nurses	The route by which non-EU applicants are registered is framed more closely in terms of individual scrutiny of an applicant's qualifications and experience. There is, however, an overseas nursing programme (for which there are 28 approved providers), although this is a narrowly-defined training programme focusing on UK law and the

	Professions within the UK	Notable aspects in a QLTS context
		NMC Codes of Conduct for nurses whose qualifications have been recognised.
9	Occupational therapists	A profession for which there is evidence of international work to align professional standards (based on outcomes). There is no assessment for international applicants, whose qualifications are scrutinised on an individual basis.
10	Opticians	Review encompassed both dispensing opticians, where there is no assessment (applicants not eligible for exemption on the basis of their experience and training must undertake a complete course at a recognised training institute) and optometrists, where the number of candidates is smaller; there is a seven-section examination for non EEA/EU optometrists.
11	Physiotherapists	A profession facing complex regulatory challenges relating to differences in the scope of the scope profession in different countries. The regulator, the Health Profession Council, does not follow an examination approach and instead scrutinises individual candidates in terms of qualifications (including content and length of study), as well as an assessment of character.
12	Surveyors (Chartered)	Applicants are required have 2 years 'diary experience' that complies with RICS criteria and then sit the Assessment of Professional Competence exam. The route to professional membership is the same for home country and international applicants (and membership can be attained in some other countries covered by RICS). Gaining chartered status offers a professional advantage to individuals, but it is possible to access the labour market without achieving this (similar to para-legal professions). There are over 4,000 RICS-approved training firms (i.e. surveying firms approved to deliver training to their staff).
13	Teachers	There is an assessment-only route for international teachers to become qualified in England and multiple assessment providers. This allows teachers to demonstrate that they meet all of the standards of Qualified Teacher Status (QTS) without the need for further training. It includes the presentation of evidence, assessment of teaching in a school setting by an accredited and approved provider (19 providers are listed on the DfE website), as well as undertaking a professional skills test (literacy and numeracy). The scheme is in the process of reform (the requirements have been removed for candidates from some countries (Australia; Canada; New Zealand; USA), and the regulatory landscape has shifted with the introduction of new agencies (e.g. the Teaching Agency) in April 2012.
14	Veterinary surgeons	The RCVS Statutory Examination for Membership has written and oral/practical elements. It also assesses candidates against 'day one skills' for vets, an approach that strongly echoes QLTS. There are a small number of training providers and evidence of untapped demand among candidates for additional support.

Other legal jurisdictions / legal routes

15. Australia (New South Wales)
16. Canada (Ontario)
17. Hong Kong
18. Ireland
19. New Zealand
20. United States (New York)

21. England and Wales - Legal Practice Course
22. England and Wales - Bar Professional Training Course

Annex 4 Interviewees

A4.1 Scoping interviews

Mandy Gill (SRA - QASA);
Paul Maharg (LETR);
Richard Wakeford (Independent Consultant);
Eileen Fry (Kaplan);
Julie Swan (Ofqual, ex SRA)

A4.2 Testing proposals

Legal education and training providers

College of Law
BPP
CLT
Oxford Institute of Legal Practice
QLTS School

Other professions

General Dental Council
Royal College of Veterinary Surgeons
Architects Registration Board
General Medical Council
Other legal jurisdictions & wider legal stakeholders
The National College of Bar Examiners in the US
Law Society of Hong Kong
Federation of Law Societies of Canada
New York State Bar Association
Bar Standards Board