

**Solicitors  
Regulation  
Authority**

## **Consultation responses**

# **A new route to qualification: the Solicitors Qualifying Examination**

**Consultation on a proposal to introduce the Solicitors  
Qualifying Examination: Consultation responses**

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April 2017

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### Responses

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Accutrainee Limited

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Aspiring Solicitors Junior Advisory Board

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LEAPS Research Group  
Leeds Beckett University  
Leeds Law Society  
Legal Education & Training Group  
Legal Services Consumer Panel  
Linklaters  
Liverpool John Moores University  
Liverpool Law Society  
London Criminal Courts Solicitors' Association (LCCSA)

London South Bank University  
Lucy Burrows  
Manchester Law Society  
Manchester Metropolitan University  
Marcos Roper  
Marriott Harrison LLP  
Mary Bonsor  
Merseyside Junior Lawyers Division  
Michael Awala  
Michael Jefferson  
Michael Nathan  
Michael Rutstein  
Miller, Warwick and Partners LLP  
Monmouthshire Incorporated Law Society  
Morrish Solicitors LLP  
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Rachael Kirkup  
Raynolds Porter Chamberlain LLP  
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Riverview Law  
Rosemary Cantwell  
Scott Silbereis  
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Singletons

Society of Asian Lawyers  
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Sonal Babre  
South London Law Society  
Stephen Cutter  
Stewarts Law LLP  
Student Law Think Tank - Northumbria University  
The Law Society - Junior Lawyers Division  
The Law Society of England & Wales  
The Law Society of Scotland  
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The Yorkshire Union of Law Societies  
Tobias John Latham  
Tony King  
Tracy Savage  
Travers Smith  
Tricia Chatterton  
Tunbridge Wells Tonbridge and District Law Society  
University of Cardiff  
University of Bristol  
University of Dundee  
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University of Lincoln  
University of Nottingham  
University of Sheffield  
University of Southampton  
University of Sunderland  
University of the West of England  
University of Warwick  
University of Westminster  
Victoria Speed  
Watson Farley Williams LLP  
Weightmans LLP  
William John Perry  
Young Legal Aid Lawyers  
Сергей

## **Anonymous responses**

Anonymous - ID - 22

Anonymous - ID -104

Anonymous - ID - 199

Anonymous - ID - 215

Anonymous - ID - 225

Anonymous - ID - 300

Anonymous - ID - 422

Anonymous - ID - 447

## **Responses not published**

Law Society of Northern Ireland

Weil, Gotshal & Manges

# Consultation questionnaire

Response ID:467 Data

## 2. Your identity

### Surname

Brown

### Forename(s)

Abbe Elizabeth Lockhart

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: University of Aberdeen

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** Concern about focus on short questions/MCT (alongside essay) which will need to be delivered properly to be challenging at the appropriate level.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** Strong reliance on market model/ test results, rather than focus being placed on wider profession to provide support with does raise some concerns. From a Scottish perspective, the potential for work experience to be able to be done in Scotland with a qualified English or Scottish Lawyer would provide an exciting opportunity for time efficient dual qualification

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** As indicated before, some concerns about strong reliance on the market model and also that students will take into account factors other than SQE exam results. This could lead to established pathways and divisions continuing

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** Suggest there should be more openness to solicitors qualified from other jurisdictions, with no requirement to do SQE 1 and 2. We note that there will be further investigation in respect of cross cover from eg ILEX and Bar and this is welcomed

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** A culture could be developed of degree plus special training, or a hierarchy of institutions and pathways so still excluding groups. Deep cultural support for new approaches and change is necessary across the profession for this to be avoided. The different pathways envisaged by the Bar could also lead to greater division across the profession as a whole

# Consultation questionnaire

Response ID:549 Data

## 2. Your identity

### Surname

Cooper

### Forename(s)

Susan

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Accutrainee Limited

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:** Is it difficult to see how the exams will be managed nationally. Will candidates be required to attend locations which would require excessive travel and accommodation costs. This may put some under further unnecessary financial hardship.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** The SRA must take great care to ensure that the benefits which arise from our current prescribed form of work based training are not all diluted. The current proposal does not give any comfort on this. Para 99 of the consultation is confusing. The SRA states that it is difficult to assess work experience on a consistent basis with the value coming from the range and variety of experiences gained (something I agree with), rather than being something which can be standardised, measured and assessed. However this is exactly what the SRA are seeking to do with SQE stage 2. The SRA states that around 2,500 firms employ trainees at any time and that there is no clear performance standard to help guide firms to make decisions about whether their trainees are competent to qualify. Would it not therefore make far more sense to give firms better guidance on standards using more robust and specific requirements on what must be done and achieved during the period of recognised training rather than do the opposite as proposed by the SRA in basically declaring that any work experience will do! I can only assume that individuals within the SRA working on the proposals have not considered or are unaware of the huge discrepancies between different types of work experience within different organisations. Very little is said about the actual supervision of the candidates which is core to the value of the training contract as we know it and so much of what the profession argued to protect in the previous consultation. The SRA is seeking 'a declaration that a candidate had the OPPORTUNITY to develop some or all of the competences in the Statement of Solicitor Competence'. It is unclear what other requirements would be in place? This simply does not go far enough in itself. Just consider the following scenarios to demonstrate the difference in quality. One trainee is supervised directly and solely by a solicitor with 4 years PQE who oversees all of the work the trainee does, advising and feeding back to the trainee along the way offering advice and mentoring. Another trainee gains experience within an organisation where a newly qualified (NQ) solicitor is in charge of 30

trainees conducting predominantly routine work who are told to only speak to the NQ if they have any problems. It would be very hard to argue that both these candidates would benefit from the same quality of training. The SRA needs to protect candidates and the public by specifying minimum requirements during training as is currently the case although there would be merit making these requirements more robust. In the scenarios above, both solicitors could sign a declaration stating that the candidate had the opportunity to develop some of the competencies but that is altogether different from saying that they did develop the competencies required. The SRA seeks views on whether there should be a requirement on a minimum time period for a work placement or a maximum number of placements. The points made for including such requirements are, in my experience, valid. However, the key factor is the quality and type of supervision which can make a three month placement as valuable as a six month placement. Therefore there would appear to be more logic in stipulating a maximum number of placements provided far greater weight and conditions are given to the supervision element. There is also this question again about the training contract being a barrier to entry into the profession. I would stress again in order to ensure that the profession is not flooded, devalued and maintains its sense of desirability in order to attract the best graduates, there has to be a barrier somewhere in the process. This also results in having numbers of qualified solicitors which bears some resemblance to the number of solicitors actually needed. Already with this barrier, many argue that we have too many qualified solicitors but if the barrier is removed, the result will simply be a far greater numbers of qualified solicitors but with a far higher percentage unable to secure permanent work (which has proven to be the case in other jurisdictions). This does not serve anyone's interests.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** Although maintaining the time to count mechanism of reducing time by up to 6 months where candidates can demonstrate previous 'VALUABLE' experience (not just any experience which the SRA wishes to allow.) would be sensible.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:**

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** Obviously a substantial transition period is essential but the current proposed time frames appear to be highly ambitious both from the SQE provider's perspective but also from law firms' perspectives given the major transitions which will need to be made. In particular the initial time frame of August 2019 appears optimistic given what needs to be achieved and tested by then. The SRA should also

consider testing the different stages at which candidates can pass the exams in order to ensure that standards will remain high. For example, if candidates can consistently pass stage 2 after 6 months of work experience, it would suggest that they are not stringent enough.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Yes there will be NEGATIVE EDI impacts. One of the underlying reasons for seeking to make changes to the qualification process was to improve diversity and yet under para 141 it appears the SRA itself is not certain whether the changes will have a positive impact. You state that 'we believe that our proposals could promote fairer access' rather than stating it will promote fairer access. Much is mentioned about the cost of the LPC and how removing this regulatory requirement will have a positive impact but there is nothing whatsoever to support the statements made around this and in reality the proposals will make the current situation worse. In opening remarks you state, "The new model would introduce transparency and competitive pressures to drive up standards and reduce cost. In the current system, prices for the LPC have risen inexorably since it was introduced, in part (at least) because price is used as a proxy for quality. The proposals would also remove the LPC gamble in which some students pay up to £15,000 for an LPC in the hope of securing a training contract." This is a contradiction in terms. If under competitive market conditions the cost of the LPC has 'risen inexorably' why does the SRA believe the same will not be true of the cost of the preparatory courses. You go on to state that price is used as a proxy for quality and yet the SRA's plan to publicise results will surely just lead to the best performing institutions increasing their prices making it harder for candidates from poorer backgrounds to access the better performing courses and thus giving an unfair advantage to those who can afford the top performing courses. The SRA under para 149 states that: 'we do not expect that the cost of the SQE and preparatory training would be greater or even equivalent to this sum' referring to the average cost of the LPC. It would be helpful to know on what possible grounds the SRA is basing this statement on? Particularly when it does not know what the cost of the SQE or the preparatory training will look like, let alone cost. Unless there is greater regulation and governance around qualifying work experience, a two tier system will be introduced. In all honestly, this feels like a sneaky back door attempt by the SRA to tell the profession that they've listened to the views of the profession on the importance placed of the value of training contract where in effect all it's seeking to keep is the name and none of the requirements of what makes it valuable to trainees, the profession and the public.

# SRA, Training For Tomorrow

## A new route to qualification: The Solicitors Qualifying Examination (SQE)

This is a response from the members of the Association of Careers Graduate Careers Advisers Legal Task Group. It represents the joint view of the Careers Advisers on this Task Group, who are listed below and not the wider AGCAS membership or the individual institutions where the Advisers work.

### AGCAS Legal Task Group Members

Chris Wilkinson, York Law School Employability Tutor/Lecturer, Chair of AGCAS Legal Task Group, York University

Juliet Tomlinson, Careers Adviser, University of Oxford

Jan Steele, Senior Tutor & Careers & Employability Coordinator, School of Law, Southampton University

Helen Lovegrove, Careers Consultant, Kings College, London

Morag Brocklehurst, Careers Consultant, LSE

Bridget Lavin, Careers Consultant, Brunel University

Susan Rees, Careers Consultant (Law) De Montfort University

**Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence? (1 = Strongly agree 5= strongly disagree)**

**Unscored:** Note: As Careers Advisers, who do not recruit or train solicitors, it is difficult to give a clear answer to this question - however, please see our comments below.

### **Comments:**

1. We have some concerns that an unwelcome outcome of the proposals will be that two different types of Law degree will emerge; an integrated one which incorporates the required content and practical activities to pass SQE 1 (possibly the degree course even becoming based on the "SQE Syllabus") and another which remains largely as it is i.e. a traditional academic law degree. Whilst one could argue that there are currently many types of law degree in Higher Education, we feel that the introduction of SQE will lead to the following concerns:
  - i. Forcing of early career decisions: whilst we know that some students do make early career decisions which they follow through successfully, there are still a very good proportion who need the time at university to work out what they want to do. With SQE, students may feel that they have to decide at a much earlier stage which type of degree path to follow. We already know that approximately 50% of law

students (& up to 60% in newer universities) do not pursue the route to become practising lawyers.

ii. Lack of congruence with Future Bar Training (FBT) proposals. Whilst the FBT consultation is not yet finalised, current thinking seems to favour retention of the QLD, whereas SQE is unlikely to mandate any particular type of law degree. At present students who take a QLD are eligible to follow the barrister or solicitor route and so their first decision point is at the LPC/BPTC stage. The T4T proposal which will abolish the QLD will mean that those who opt for the integrated law degree (i.e. inclusive of the elements required to pass SQE1) will have to make the barrister or solicitor career decision aged 16 or 17 years. With extremely limited careers advice available in schools and with a potentially much more complicated system to navigate, we believe this to be a major cause for concern.

iii. A “two tier system” – one of the potential downsides of having a variety of routes to entry ( i.e. no specified academic pathway or work experience) is that one route may emerge as “the gold standard” i.e. the route that is perceived as the best way to qualify and possibly end up as the most successful route to securing a job as a practising solicitor.

2. There are some subjects which will be tested on SQE1 are not taught as part of current QLDs in many universities. E.g. Wills, Ethics. Some of the deeply and wholly academic QLDs do not teach practical elements of the law at all. Some students therefore would not have received the required preparation on using the knowledge “in practice” i.e. in client scenarios that will be tested in SQE1. Even for the ‘SQE’ subjects they have studied there could be a long gap before they are eventually examined on these for SQE1 which may necessitate revision courses at an additional cost to the student. Also, the method of assessments is very different to the way that students are taught and assessed during their degrees.

All this means that students will very likely have to do more study and revision to prepare themselves for passing SQE1 in addition to their university studies, perhaps through an additional course. This has several implications:

a) Cost implications for students who decide to take a purely academic law degree. These students may need to buy an additional course (SQE1 Preparation) to be confident of passing the SQE1. Our concern is that this will turn into another form of the LPC, with no check on as yet unknown and potentially spiralling costs of such a course.

b) For students considering where to do their law degrees, they may feel that it is better to go to an institution where SQE1 prep is built in to the law degree – to save cost / time to themselves. Universities who offer a more traditional academic law degree will find it harder to recruit students from non-traditional backgrounds who maybe more likely to select an integrated SQE1 degree. This may in turn affect certain parts of the profession.

c) Further pressure on first year students as firms might seek to test students even more rigorously to ensure their suitability and potential for passing the SQE.

d) It is possible that students who undertake a ‘traditional’ law degree will wish to follow preparatory course for SQE 1 during the summer vacations. Indeed this could be encouraged by providers and some commercial firms. Whilst there will be students who are capable of this and can afford it, it could serve to increase pressure on students and could also have a negative impact on diversity.”

3. The fact students will not necessarily have to commit to the cost of SQE2 before they have found relevant work experience should help students who are currently deterred from entering the profession because of the financial costs involved without the security of a job.

**Question 2a: To what extent do you agree or disagree with our proposals for qualifying work experience.**

**Score: 2/3**

**Comments:**

1. We believe it is a positive move to allow alternative forms of work experience to count as part of qualification. It will particularly help students who wish to gain experience and then qualify in areas such as criminal law and human rights or in firms which specialise in public interest work more generally where training contracts are much harder to find.
2. We agree that there should be a minimum period of work experience and we would recommend a period of 24 months.
3. It will be essential to have much clearer advice about what will constitute the qualifying work experience. For example, if the student works in a law clinic one day a week during their course for one year would this count? Does it need to be full time during the period that is agreed? It would be sensible to limit the number of places that in which someone worked to allow them sufficient time to actually practise the skills required. We would recommend that during the 24 months, at least the equivalent of 9 months full time should be spent in a single organisation. We do not think that university law clinic experience should count as the level of responsibility gained is not of the same level as would be experienced in say a training contract.
4. There needs to be clear guidance about what students should expect from this work experience in order for it to be beneficial to passing SQE2.
5. We are aware that some law firms are indicating that they would ask trainees to take SQE 2 before they have completed their work experience as they will be free to do this under the new system. In our view this would undermine the value and credibility of SQE2 if it were possible to pass SQE2 without prior qualifying experience.
6. We note that under the new guidelines for supervision of the work place experience that the SRA regulated body only has to sign off against the fact that they have given the candidate "an opportunity to develop some or all of the competencies". We feel that this is open to a great deal of potential misinterpretation on both sides and could result in poor quality training and experiences and ultimately less well qualified lawyers
7. International students who have qualified in their home jurisdictions will now have to also have a period of work experience before they can gain the solicitors qualification. This is different to the system for qualification under QLTS which doesn't require any work experience. In reality however, under the current system, many law firms still prefer international lawyers to have some work experience before they are employed (so a student may need to apply for some sort of training contract even though they

are qualified elsewhere) In practice therefore this may not amount to a great difference. However, the new qualification route may deter international lawyers from coming here.

**Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

A minimum of 24 months in order to give students time to experience different areas of law.

**Question 3: To what extent do you agree or disagree with our proposals for the regulation or preparatory training for the SQE**

**Score: 3**

**Comments:**

1. Given the efforts which went into creating the current foundation subjects of the regulated QLD it feels like a very different proposition to remove this regulated route. It was widely understood, it was straightforward and there rarely were complaints about students not knowing sufficient law. The new system is much more complicated (that doesn't make it right or wrong) but students seeking qualification have a great many hurdles to overcome and dates and deadlines to manage on top of a much more complicated route.
2. It is unclear as to how the SRA will measure the success of any preparatory courses for the SQE. Tracking the results of the SQE is one thing but attributing the success of "the providers" to that result is another. How will that be tracked? There is little to stop the providers developing prep courses which eventually cost the same as an LPC?

**Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**Score 2:**

**Comments:**

1. It is important to include the degree as being the relevant level of achievement for the qualification to maintain the international reputation of the profession.
2. We would request some reassurances about how the SQE will fit in relation to qualification as a barrister. One of the great benefits of the existing system is that students do not have to decide too early which pathway to follow. Forcing students in to early decisions is likely to exert additional unnecessary pressure and affect the well-being of some students.

**Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**Score 2:**

**Comments:**

1. We believe it would be appropriate to have some exemptions for barristers of England and Wales and possibly some other legal professionals who have practised solely in English and Welsh Law (e.g. CILEX lawyers) to have some exemptions.
2. Exemptions as appropriate under EU law
3. Possibly some exemptions to skills elements (SQE2) for internationally qualified lawyers with a certain level of experience.

**Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

**Score: 4**

**Comments:**

The timings are extremely tight. It is very unlikely that HE institutions would be able to alter their courses (even if they want to do this) in time for 2019. If institutions do wish to alter their courses substantial changes may be needed in recruiting staff with the right expertise ( for subjects currently not taught) and allowing the required time ( perhaps up to 3 years) to allow universities to change the curriculum through their internal education committees and so on.

Post-Brexit it is unclear what provision is to be made for UK lawyers to work in Europe and vice-versa. It is likely that Universities will want to see the shape of the post-Brexit qualification framework before they make changes to their degree programmes. Given the cost of making changes to programmes, it would be preferable if the SRA changes could be combined with any Brexit changes.

Other Points Relating to the transition phase

1. Current 2<sup>nd</sup> years (law students) will be offered TCs this academic year – what advice do we give them about the sort of contract they may be signing?
2. Admissions departments ( and Law Faculties/Career/Outreach Teams) will need to start advising prospective students from next academic year onwards (when the current Year 11s reach Year 12 and start investigating their university choices and attending open days etc.). Clear guidance will be needed urgently.
3. There is likely to be years of confusion during the transition phase – vital support will be needed from the SRA to provide to help individuals, schools, colleges and HEIs about the routes to qualification and their implications.

### **Affected Students Grid**

	SRA Timetable	Students in the current academic year 2016/17	Students in the current academic year 2016/17	Current Prospective Students (first to have to qualify with SQE)
2016-17		1 <sup>st</sup> Year	2 <sup>nd</sup> Year (TCs offered to start 2019)	Year 11
2017-18		2 <sup>nd</sup> year (TCs offered to start 2020)	3 <sup>rd</sup> year	Year 12
2018-19		3 <sup>rd</sup> year	LPC	Year 13
2019-20	SQE Autumn '19	LPC	TC	1 <sup>st</sup> Years
2020-21		TC	TC	2 <sup>nd</sup> Years
2021-22		TC	Qualification (old or new system)	3 <sup>rd</sup> Years
2022-23		Qualification (old or new system)		SQE 1
2023-24				
2024	Stop old routes			SQE2

### **Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

#### **Yes, we do in the following ways:**

1. It is likely that some students will need further preparation for SQE1 and SQE2 and this will carry a cost in addition to the law degree. The cost of this is still very uncertain but there doesn't seem to be any safeguards in the system to prevent these preparatory courses becoming expensive even if the exam is relatively low cost. For example, one can look at the experience of the United States and the high costs of the 'Barbri' preparatory courses which a great many students use to pass the State Bar exams.
2. The fact that a student may have to do an additional course (SQE1 prep) may deter them applying to universities with traditional academic degrees which are unlikely to include the required subjects. This will have an impact on diversity in those universities and ultimately in certain parts of the profession.
3. We have seen from the Bar's FBT consultation and their BPTC statistics that students "from BAME backgrounds were less likely to pass centrally assessed examinations" (see FBT, October 2016, Point 195, page 44) and so we would ask that the SRA consider this research in their plans.
4. If law firms do persist in getting their candidates to take SQE2 before they start the period of work experience, we feel that this also may lead to the unintended consequence of a reduction in diversity as those firms will be even more likely to "play it safe" in terms of their recruitment.

## **ALEX LI**

Trainee at Clifford Chance (but this response represents my own views only and not those of my firm)

### **Question 1**

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

I agree it will be robust and effective, but think that:

#### **A) The SRA should consider adopting a shorter holistic exam for part 1.**

The exam would be effective but possibly not very efficient: the length seems burdensome and the QLTS seems to do the job in a shorter amount of time. I recognise that the SQE will have the added function of replacing the GDL exams, but it might be possible to test the principles of law quite thoroughly with a shorter examination that has holistic questions as well as an additional paper with some extensive written problems. The cost disadvantage of marking written answers might be mitigated by the overall reduced examination length and the use of problem questions would mean that there would be objectively correct answers. Indeed, it may be better to do it that way, as you would be able to test candidates on their ability to select the appropriate area of law.

#### **B) The SRA should seek to retain some of the advantages of vocational education**

The current system has the advantage of preparing people for their first jobs via a comprehensive programme of vocational education, e.g. interviewing practice, advocacy training, and simulated transactions from start-to-finish. Through the electives, a fairly complete picture of certain areas is also taught to students. This is in contrast to training contracts, where it might only be possible to experience certain phases of large transactions and cases, and to research only certain aspects of the law in a specialist area. It would be helpful if the SRA could find a way to retain the advantages of the formal vocational training, not necessarily as part of the SQE or a new training course, but perhaps as part of university education requirements or training requirements on the job.

### **Question 2a**

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

I agree with them, but I think that the line between executives, paralegals and trainee roles may become blurred as a result of the proposals, and this will give rise to consequences that the SRA should consider as follows.

#### **A) The SRA should consider the role of unpaid internships and consider whether there should be a requirement that only paid experience counts as qualifying work experience.**

Increased flexibility means that qualifying work experience will be obtainable in short term blocks. This fits the pattern of current informal internships, which often last for a few months, and there is a risk that it might lead to expansion of such unpaid programmes to the detriment of paid roles. Requiring payment would reduce candidate demand for unpaid jobs (thus discouraging firms from providing these), and prevent a situation in which law firms could exploit candidates by providing a series of short unpaid internships, or a situation in which candidates who could afford to work for free would be advantaged in their attempts to enter the profession. Conversely, having such programmes might increase the number of training places available, and candidates of limited financial means could spend some months working to save for unpaid qualifying work experience.

**B) The SRA must ensure that people are aware of the available qualifying work experience roles, and also ensure that such roles are advertised correctly. It should consider maintaining a database of opportunities.**

The SRA should work with firms to make sure that people are aware of all available opportunities and that they are not given false promises in the type of training and experiences being offered. It should seek to develop transparency in advertising, e.g. adverts for law firm jobs should specify whether the job will be a Qualifying Work Experience (“QWE”) role by reference to whether there will be close supervision by a solicitor, whether Part 2 skills will be developed, and if so, which Part 2 skills will be involved. It may be good for transparency if the SRA has a central database of all QWE jobs (like the Law Society’s current Training Contract Handbook). This would allow candidates to be aware of the opportunities available at law firms and other organisations, and help to prevent nepotism in job allocation.

**C) The SRA should require work experience to be completed in two or three areas, and could consider including a 3 month pro bono requirement or similar.**

Contrary to the proposal to remove the requirement that training be in two or three areas, I believe it is important for the SRA to specify that training must span a number of areas in order to ensure that people gain the necessary breadth. The types specified could be just contentious and non-contentious, and could also include a pro bono requirement.

Under the SRA’s current proposals, people would not need to sit the part 2 exams in a contentious area, but they should still be required to gain work experience in a contentious area as the conduct of litigation is one of the reserved powers. My understanding is that the German system requires a series of six month placements with criminal firms, corporate firms and judges, and I think something similar to (but not as prescriptive as this) would be a good idea.

New York has a 50-hour pro-bono requirement, and, as trainees sometimes do not get to interview clients or witnesses, adopting a similar requirement (perhaps 3 months) would help develop Part 2 skills, as well as help to meet the profession’s responsibility towards disadvantaged people in light of cuts to legal aid.

**D) The SRA should adopt a three-month minimum period for blocks of qualifying work experience**

The minimum three month period suggested by the SRA is appropriate, as this should be enough to gain skills and insight into an organisation and methods of work, whilst not being a huge commitment for either the firms involved or the individuals. Such a prescription might encourage the profession to develop short-term training roles that can both fulfil the business needs of firms, avoid concerns over a lengthy two-year commitment, enable trainees to avoid wasting too much time if the work turns out to be unsuitable, and offer the trainee opportunities to develop a range of Part 2 skills. I do not think the proposed alternative limit of ‘experience earned in four placements’ is appropriate as this is very restrictive and would not help a candidate who finds that one placement has not been helpful to them, nor would it recognise people who have acquired relevant experience in a non-standard way.

**Question 2b**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Provided that some vocational training is offered at university, 24 months of quality workplace experience is the appropriate period of time as it will suffice to allow people to experience a wide range of work and develop a range of skills.

### Question 3

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

I agree subject to the following:

**A) The SRA should consider taking steps to preserve the body of practical knowledge regarding the elective areas.**

There are great things about the current model and hopefully the market response to the new assessment model will retain aspects of these. On the LPC, I was impressed by the quality of teachers and the preparation they offered to us for our training contracts. Part 1 of the SQE will retain testing of the core subjects, but the elective exams will be lost and with it, potentially the incentive to maintain the body of knowledge in a comprehensive, practical and easy to access way.

**B) The SRA should retain powers to censure providers.**

Although the SRA will conserve resources by not taking an active role in monitoring providers, it should still seek to retain powers of censure over providers.

### Question 4

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**A) I agree that a university degree should not be required.**

I do not think a formal degree is necessary to be a good solicitor, but I can see that it may be necessary to retain the requirement for a degree-equivalent qualification for reputational reasons, at least during the transitional period. I note that, until recently, the Japanese bar exam was open to all, even those without a degree as the test itself was difficult enough to eliminate people without equivalent skills.

**B) The SQE must test degree-equivalent skills, including extended writing.**

I would suggest that some form of holistic extended writing question is necessary to test degree level skills. This would match our current practices as well as practice in other jurisdictions - e.g. currently we have written exams on the GDL and LPC, the US has the Multistate Essay Examination, and the Japanese bar exam has a written examination after an initial multiple choice elimination stage. The SRA could adopt a written exam in part 1, or, as a more cost-effective alternative, the SRA could design the Part 2 legal research task in such a way that it would, for example, occasionally require candidates to consider academic commentary and develop legal arguments in relation to ambiguous areas of law.

### Question 5

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

I believe exemptions should not be offered, but the examination length is burdensome and should be reduced.

**A) Exemptions should not be offered for QLD students**

At the moment, university exams teach analytical skills and independent reading very well, but problem questions are occasionally optional, essay exams can be dealt with by topic-spotting, and a holistic understanding of the law is not always present. By forcing everyone to take the full exam, it may expose differences in standards across universities and incentivise them to provide a more thorough education in what is ultimately a practical field.

**B) Exemptions should not be offered for transferees but you should consider making a shorter Part 1 exam for all candidates. The SRA should consider the principle of reciprocity.**

Transferees from common law jurisdictions will have a good grounding in common law principles, so provided that transferring lawyers are only required to demonstrate understanding of English law principles rather than the burdensome memorisation of authorities and case names, no exemptions should be granted, as it should be easy to get up to speed on the differences, and the market can create appropriate solutions. It might be good to have a shorter exam that tests holistic understanding of subjects (e.g. the QLTS is a six hour paper despite covering a very wide range of topics, and this seems to have worked well so far). Consideration of reciprocity and whether this might create disproportionate difficulties for English solicitors looking to qualify abroad is another factor that should be considered.

**Question 6**

**To what extent do you agree or disagree with our proposed transitional arrangements?**

I do not know but the recruitment cycle of firms should be considered.

**Question 7**

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Many of the EDI impacts will not be clear until the market creates and prices products to cope with the Part 1 and Part 2 exams, and until we see the response that individuals and firms have to paying for these products, but some suggestions are as follows:

**A1) Positive: Universities may provide better value for money.**

The Part 1 test has potential for making universities provide greater value for money by creating market incentives for them to teach of as much of the material as possible at undergraduate level.

**A2) Positive: The LPC gamble will end.**

Candidates of limited means will not need to decide whether they should take the LPC without a training contract as they can apply for paid qualifying work experience jobs and attempt to pass the exams only once enough experience has been secured.

**A3) Positive: More jobs may become available as employers will not need to commit to a full two year training programme.**

Recognising a wider range of work experience and breaking up the training contract model may create a wider range of accessible flexible short-term jobs that can be used to obtain the necessary experience.

**B1) Negative: Universities may decline to provide preparation, and candidates will have to self-fund studies.**

Universities already cram a lot into three year courses. Universities may decline to provide preparation for the SQE Part 1 and will instead expect candidates to prepare for these themselves, in which case some may be advantaged by having the funds to do taught courses or spend long periods studying without work. I think that the solution to this is (a) for the SRA to work with universities to reform courses, (b) for the SRA to provide some free self-study materials (e.g. mock papers, a full syllabus with citations of the relevant cases and rules for candidates to research themselves at least) on its website, and (c) for the SRA to commission affordable, high quality textbooks and online self-study materials - although I am sure the market will respond by doing this anyway.

**B2) Negative: Part 2 training inequality**

The absence of formal training (like the LPC and PSC) may mean candidates who only do work experience will be unfairly disadvantaged for the specifics of the assessment format, as performance can always be improved by targeted training courses.

**B3) Negative: Unpaid qualifying work experience**

If unpaid experience (such as unpaid internships at NGOs or law firms) is allowed to count towards the QWE requirement, this could provide an advantage to candidates who can afford to work for free.

# Consultation questionnaire

Response ID:360 Data

## 2. Your identity

**Surname**

Amin

**Forename(s)**

Ami

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as another legal professional**

Please specify:: FCilex

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:428 Data

## 2. Your identity

### Surname

Martin

### Forename(s)

Anthony

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. The assessment methods are flawed. Solicitors will be under qualified and under educated. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Firstly there is a lack of structure and rigor. Having looked at the limitations of the current training contract you propose to make matters worse. Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24

months. However, some have made the case for either 18 months or a more flexible approach.” Comment: 1. It is not clear from this whether the SRA will allow part time work experience or just full time. Many students will not be able to afford to gain work experience unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career. Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify: Equivalent to 2 years - see below

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** My view is that this will not be a cheaper route to qualification than the current one.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements**

#### needed to become a solicitor?

Strongly disagree

**Comments:** SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. The lack of a need for a qualifying law degree (or conversion course) is a huge problem and will lead to a generation of solicitors with less understating of the law. 2. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 3. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendations Firstly there is a need for a qualifying law degree. Secondly the SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

#### To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Strongly disagree

**Comments:** To offer exemptions from requirements that are insufficient would be very strange

8.

#### To what extent do you agree or disagree with our proposed transitional arrangements?

Disagree

**Comments:** I disagree as I do not agree with the proposals.

9.

#### Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

**Comments:** I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers. 4. Students from modest backgrounds and overwhelmingly from BME backgrounds are most at risk of exploitation through the legal work-based experience as proposed. 5. It is doubtful that educational loans will be available, so the poorest will not be able to afford to qualify at all. 6. If the SRA was serious about addressing the lack of access to the profession they would fund bursaries by placing a levy on the practicing certificate fee.

# Consultation questionnaire

Response ID:514 Data

## 2. Your identity

**Surname**

Lawson

**Forename(s)**

Ashley

**Name of the firm or organisation where you work**

BPP University Law School

**Would you like to receive email alerts about Solicitors Regulation Authority consultations?**

Yes

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I/we have a specific confidentiality requirement as follows.: My response is my own, not BPP's response.

You may attribute my response and publish my name, but please attribute my response to me, not BPP.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**

as another legal professional

Please specify.: As a law lecturer. This is my own response, not BPP's.

## 3. (untitled)

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** Competence in legal knowledge (proposed SQE Stage 1) cannot be robustly and effectively assessed by way of MCQs. However carefully worded and well designed, MCQs point to a 'right' answer and a 'wrong' answer (even when 'right' means 'best' or 'most appropriate'). Legal knowledge (and legal practice) is difficult to assess in this way, when there can be legitimate different views, or differing reasons for arriving at the same answer, and these different views / reasons are precisely what needs to be tested and assessed.

More fundamentally, from my own experience of teaching, practicing as a solicitor and my legal education, I doubt any assessment can fully measure competence. For that reason, it must be ensured that education, training and work-placed training ensures competence in those areas that cannot be effectively measured. That is what the LPC and training contract deliver. The rigorous nature of client- focused and problem-based learning on the LPC plays a very significant role in developing the necessary competencies to be a solicitor. The second consultation concedes that study benefits students in ways which cannot be assessed: "We also recognise that the skills which students develop by studying for a degree (eg analysis, the ability to manage one's own learning, conceptual understanding) are valuable skills for the practice of law, and are likely to hold students in good stead in their future legal careers". The same is true, and even more so, of study on the LPC.

## 4. (untitled)

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** Clearly there are benefits to widening the opportunities to obtain qualifying legal work experience. However, particularly if the SRA proceeds with abolishing the need for a course such as the LPC, this work experience is very important. The current system has the significant benefit that students gain work experience in firms which intend to retain them as solicitors. This is a consequence of the fact that training solicitors costs firms money, and therefore they generally only train solicitors they wish to keep. As a result, trainees gain work experience in areas they go on to practice in. In addition, trainees are incentivised to engage fully and perform well in that training - they wish to be kept on. Firms are incentivised to train their future employees well - for their productivity and the firm's reputation. The proposed system is likely to reduce these benefits as students will gain experience from a variety of places, which are not future employers and in areas in which they may not practice.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

### 5. (untitled)

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** The SRA has identified a large number of existing LPC providers. There is clear competition in the market. LPC providers compete for the support of solicitors' firms. This is a factor which helps promote quality of the course and ensures that course design reflects the needs of the legal profession. Without any specification or regulation of preparatory courses, it is likely that some providers / courses will be tailored towards simply passing the SQE, with no broader concerns, whilst the interests and desires of the legal profession will mean that more complex and substantial courses will remain for other students. A two tier system will result, which will do nothing to help those students who do not start the process with the support of a specific firm which will insist on particular training.

### 6. (untitled)

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** Please see previous comments.

### 7. (untitled)

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

### 8. (untitled)

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

### 9. (untitled)

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:** I do not have sufficient expertise / experience to comment on this.

## **Aspiring Solicitors Junior Advisory Board – SRA SQE Consultation II – Response:**

Aspiring Solicitors is an organisation dedicated to increasing diversity in the legal profession. It does this by providing free services of advice and guidance to our members, collaborating with law firms and other organisations about how to improve diversity, and connecting like-minded people to push for progress.

The Junior Advisory Board ('ASJAB') sits with the Senior Advisory Board to support Aspiring Solicitors and help the organisation achieve its goals. The ASJAB is made up of seven trainees and future trainees at a range of law firms in the City.

ASJAB met with the SRA earlier in the consultation period to discuss the proposals. The following is our response.

**Q1 To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

### **3 - Neutral**

At present it is next to impossible to assess this. The proof really will be in the pudding. It is, however, fundamental to the success of the programme for the SQE to be respected in terms of rigour. Should it fail in this respect then it will be next to impossible to achieve its aim of ensuring that all solicitors are viewed as of an equal standing regardless of their route to qualification. Indeed, it would largely be seen as the current system in a different guise.

**Q2a To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

### **4 - Agree**

This appears to be a substantial improvement on the current position. It will help to break the hold of law firms as key holders to the profession through the giving out of training contracts. It will also help access by those of the requisite standard with the required experience being able to be in a stronger bargaining position when it comes to pay as competent lawyers will no longer be held back as paralegals when they occupy a junior solicitor's role in all but name.

The quality of this work experience must, however, be guaranteed. This is again to ensure that those qualifying through the non-TC route should not be considered lesser in anyway. The SRA must therefore be strict with what qualifies. I think that a minimum requirement of 3 months spread over a maximum of 4 places would be appropriate.

It is also crucial that SQE2 **must** be taken **after** the qualifying legal work experience. This is because it will ensure that **everyone** at the point of qualification will be deemed to be of an equivalent standard. As such, no matter whether you have proceeded through a traditional training contract, through an apprenticeship, or another means, you will be considered to be a lawyer of equal standing.

**Q2b What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months – 24 months.

**Q3 To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**4 - Agree**

We believe that this will be one of the most difficult aspects of the new position. At present, the SRA claims that the SQE will be substantially cheaper (or at least in regards to SQE1 and the preparatory training required for SQE1, which will fall chiefly on the shoulders of the student). By international comparisons, it will be extremely difficult to keep prices down. The for-profit institutions will invariably put on products that will quickly increase in price.

This will be difficult to avoid but the SRA must **not** require a person to undertake a specific qualifying course as current (e.g. an LLB or the GDL) other than a general degree or equivalent.

By not requiring a 'qualifying' degree/specific course then this means that access will be widened by people being able to self study for the exam or undertake less formalised courses to suit their particular needs and lifestyle. Upon sitting SQE1 they will naturally start the 6 year window for qualification so it should not lead to people sitting the exams piecemeal.

As with the above, however, the success of this will rely on the rigour of the exam to instil confidence in the quality of anyone passing the exam. This will help to undermine the current belief in the GDL and LPC as mere formalities and not high quality courses that prepare solicitors for practice.

**Q4 To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**3 - Neutral**

Again, this will be dependent on the quality of the exam and its perceived worth. So long as the standard is maintained and regarded as world-class then the system will be suitable. If it is disregarded as inconsequential hurdles then it will undermine the system in the same way that the LPC does.

**Q5 To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**5 – Strongly agree**

We agree entirely. Standards must be consistent and exact.

**Q6 To what extent do you agree or disagree with our proposed transitional arrangements?**

**4 – Agree.**

They seem reasonable.

**Q7 Do you foresee any positive or negative EDI impacts arising from our proposals?**

The positive EDI impacts of the new system could be numerous. They are, however, dependent on a number of crucial factors.

The chief benefit would be that new routes would be opened up to candidates and place them on an equal footing with those qualifying through the traditional TC route. This will help to undermine the current biases that favour affluent people from particular backgrounds in pursuing and securing TCs. Such success would depend on:

1. The SQE1 being available to anyone without specific qualifications (e.g. a law degree or the GDL). This will help to open access to those who cannot afford these qualifications nor have the time to pursue them full time. The standard of candidate to be of degree level. As has been said many times, this will, however, be dependent on the quality of the exam to ensure that the candidate demonstrates adequate legal knowledge.
2. The SQE2 must be after the qualifying work experience. This will ensure that people are not 'fleeced' as they currently are if they undertake the LPC without a training contract. It will ensure that only those who will be in a position to qualify will have to incur the expense of SQE2. It will also mean that solicitors demonstrate their worth at the point of qualification rather than after inconsistent standards of legal experience as is currently the case.
3. As this is so fundamental to the success of the proposal, it is worth repeating: all of the above will depend on the quality of the exam and people's confidence in the system. This encompasses the SQE being more closely connected with the reality of practice and being seen as more than mere hoops to qualification (as many see the GDL and LPC).

## Association of Law Teachers

This response is submitted by John Hodgson ([john.hodgson@ntu.ac.uk](mailto:john.hodgson@ntu.ac.uk)) on behalf of the Association of Law Teachers. The Association has an international membership, but for present purposes represents several hundred legal academics in England and Wales working primarily in universities, and involved with the teaching of law at degree, GDL and professional level.

Q1 To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

We STRONGLY DISAGREE (5).

Our concerns are not with the principle of a centralised assessment. We understand and accept that the SRA as regulator is responsible for ensuring, so far as possible, that those who enter a regulated profession have the necessary competences and attributes to function effectively in the public interest. Indeed, historically, centralised assessment at the vocational stage has been the norm, and decentralisation has only existed for just over 20 years following the introduction of the LPC. We are not convinced that there is any substantial evidence that decentralisation has led to a dilution of standards, but clearly centralised assessment is more reliable. We also accept, although we do not lay claim to any great expertise in relation to this stage of the qualification process, that assessment of the training contract is currently limited, decentralised into the hands of the training providers, who are not necessarily experts in assessment, and in the case of smaller training providers may lack the necessary resources to carry out effective scrutiny.

We are not convinced by the argument that the multiplicity of provision at the academic stage leads to unacceptable levels of variation. We note that the conclusions of the Legal Education and Training Review (LETR) were that the quality and standards of legal education, in particular at the academic stage, were satisfactory, and we have not seen any evidence which challenges that conclusion. We note that in the consultation document the SRA refers to the level of complaints against solicitors, and also insurance claims. The first point to note is that the figures given are for complaints and claims made, not for those found on investigation to be substantiated. Furthermore, all the indicators are that many of these complaints relate to dishonesty, delay and poor communication, and not to errors of law. In many cases the fee earner concerned will not be a solicitor, and there is very little evidence of any systematic deficit in basic legal knowledge. The only example of a specific knowledge deficit cited in the consultation paper relates to immigration. This is a highly specialised area, and we note that it is not part of the SQE syllabus, and so the proposed SQE would not in any event address that particular deficit. We therefore consider that there is no case whatsoever for the SRA to seek to assess basic legal knowledge as such. We entirely accept that such knowledge has to be present in order for assessment of applied knowledge in a transactional or dispute resolution context to be effectively undertaken.

In this respect, we consider that the majority of the specifications for the SQE 1 appropriately emphasise transactional and procedural issues. The one exception is in relation to the Principles

of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales, with particular reference to assessment objectives C, D and F, and the associated legal knowledge. These read far too much like a standard public law/legal system and method academic syllabus. We note that in many cases candidates are being asked to “demonstrate an understanding” of various aspects, rather than applying knowledge in a practical situation such as indicating how a particular statutory document might be interpreted, or whether judicial review or some other administrative law procedure might be available. The other heads of SQE 1 are, in broad terms, much more clearly focused on transactional, procedural and conduct related issues with the underpinning knowledge much more clearly contextualised and integrated into an assessment of the ability to deploy knowledge in a practical situation for practical purposes.

We also acknowledge that developments in assessment practice have resulted in the development of sophisticated assessment tools using multiple choice and similar questions which lend themselves to automated assessment and rigorous statistical analysis. However, we have grave reservations as to whether such methods are suitable as the almost exclusive mechanism for assessing ability to advise and undertake legal transactions or dispute resolution procedures. In the great majority of cases, solicitors will not be advising “against the clock”, nor will they be doing so by breaking down transactions into tiny elements and providing a specific answer in respect of each. We consider that a problem-based learning and assessment approach is inherently preferable. In the absence of any sight of samples of the proposed assessment materials, it is impossible to be confident that they will be robust enough to assess the relevant attributes, skills and competences. A three-hour computer-based examination requiring candidates to answer a large number of questions will place a high premium on surface learning for instant recall. This does not replicate practice in any meaningful sense. It also has important equality implications since there is strong evidence that certain personality types perform much better under time constrained conditions, and that this has little to do with their ability to do their job under normal conditions. There is a grave danger that an assessment heavily reliant on this type of assessment tool will exclude many perfectly competent individuals who are simply not good at the very artificial task of answering multiple choice questions against the clock. An effective assessment regime would include a range of assessments, which might include for certain purposes an element of multiple-choice or similar computer-based assessment, but should also include problem-based exercises, a range of research and drafting exercises and possibly other elements. We appreciate that some of these cannot be as easily administered and verified, and may well cause further increases in the cost of the assessment, but a greater degree of variation is essential if the assessment is to be not only reliable but also valid.

We appreciate that computer-based assessment is used in other jurisdictions, but we are unaware of one where it is the sole means of assessment. In the United States for example, the vast majority of those who attempt the multistate and other bar exams have completed a J.D. program which includes not only the generally accepted foundations of legal knowledge, but also substantial tuition and assessment in such skills as legal writing, research, et cetera. The MCQ element of the QLTS, which we understand the SRA has used as a form of model, is administered to those who by definition have completed a process of legal qualification in some other jurisdiction. They will therefore have undergone a much more traditional legal education,

and the role of the QLTS is merely to ensure that they have developed a sufficiently detailed knowledge and understanding of the specific content of English and Welsh law.

We are therefore far from convinced that the proposed SQE 1 is actually fit for purpose. At all events, there is a very high degree of risk associated with its introduction without adequate piloting and exposure to the critical eye of the profession and educators of the specific question styles, approaches and coverage.

At this point it is appropriate to make an observation about the methodology being adopted by the SRA in this review. It appears that the SRA intends to take a firm decision on the introduction of SQE 1 and 2 before producing sample assessments or piloting them to assess their effectiveness, validity or reliability. This is irrational. Those responding to this consultation paper are unable to provide a properly-informed response and the SRA itself cannot have the level of confidence necessary to implement such a significant change unless a proper pilot precedes the decision. Please see our response to Q. 6.

We believe that there is a greater general consensus that the SQE 2 is in principle capable of being an effective capstone assessment. It is rational for this assessment to be taken out of the hands of the training providers. As we have already indicated, many of these lack the expertise and resources to carry out any meaningful assessment of the effectiveness of the training contract or other work-based learning, and in any event for them to undertake the assessment would be marking their own homework. Since the essential concern of the SRA must be that only those who have the appropriate skills, attributes and competences should enter the regulated profession, we consider there is a strong case for the SRA confining itself to this capstone assessment. If this is undertaken on a centralised and consistent basis it should go far to eliminate any concerns that solicitors are inadequately educated.

There is currently something of a mismatch between regulation of individuals and regulation of entities. It is the entity, whether a traditional law firm or an ABS, which is entitled to carry out reserved activities. Very many solicitors do not in practice undertake reserved activities at all, and very few undertake more than a restricted range of them. It is therefore somewhat unrealistic for the regulator to require that they have knowledge and expertise in more than a suitable range. The SQE 2 recognises this and is therefore much more fit for purpose. By contrast, the SQE 1 as currently proposed is very broad ranging and could be said to impose an unnecessary regulatory burden.

Employers inevitably take on trainees who they consider will be apt to develop the necessary skills and competences to participate effectively in the practice of the employer. This will apply whether the employer is taking on an apprentice or a graduate trainee. In some cases employers will wish to observe the new recruit for an extended period before deciding whether they are suitable for the employer to wish to invest the necessary time and resources in facilitating their qualification. This process is inherently one which is better undertaken by the employer, where appropriate in conjunction with training providers, and does not really need to be the concern of the regulator.

There is a further significant potential danger with the current proposed model of the SQE. We welcome the acknowledgement by the SRA that it is in practice appropriate to indicate the likely range of viable educational and training routes for intending solicitors, and that in most cases this will involve a law degree, or a non-law degree followed by a Graduate Diploma, or alternatively an apprenticeship, which is likely to incorporate within it a law degree qualification. However, there is a danger that unregulated training providers will see a market opportunity to offer truncated programmes promising to prepare candidates for the SQE 1 more quickly and cheaply than a law degree or graduate conversion course, but in reality simply providing cramming without a proper educational journey. In addition, the same providers are likely to see a market in additional courses for graduates who wish to maximise their chances of success in the SQE 1, particularly if they have attended universities which have continued to offer a degree programme which is primarily a liberal academic qualification rather than a vocationally oriented one. The danger of the former type of course is that it will appeal particularly to students from non-traditional backgrounds who have less access to advice and information concerning appropriate educational and training pathways, but who will find that the programmes do not in fact place them in a position where they are regarded as employable in comparison to law graduates or those who have been preselected by the employer on integrated apprenticeship programmes. The danger of the latter is that they clearly represent an additional cost, over and above the legitimate cost of preparation for those elements of the SQE 1 which one would not expect to see covered in the typical degree programme.

As a regulator, the SRA clearly has responsibilities in terms of equality of access to the profession, and these are key reasons why the currently proposed SQE 1, in particular, may actually have a negative impact on equality of access to the profession.

As we have tried to make clear, we fully accept that the SRA has a responsibility to ensure that those who enter the profession are appropriately educated and trained. We consider that a capstone assessment such as the proposed SQE 2 is appropriate, proportionate, and could be introduced without significant risks in terms of the quality of those admitted to the profession. Since success in the SQE 2 is likely to be linked to the quality of the training offered by the employer under the work-based learning element of the qualification process, there is of course a potential problem in relation to equality and diversity, if candidates from non-standard backgrounds or particular ethnic or other groups are disproportionately working with employers which do not offer the highest standards of training and support.

While it would be entirely feasible to revert to a centralised vocational stage assessment, and for this to be delivered, at least in part, using modern computer-based assessment techniques, we consider that great care is needed in determining exactly how this should be structured, and in particular what areas should be covered. We believe that the current SQE 1 is over specified and will require candidates to have a detailed knowledge of a very large number of topics, many of which they will not utilise in their immediate work as trainee solicitors, and some of which they will never utilise. If, contrary to our opinion and advice, a version of the SQE 1 were to be introduced, we would strongly recommend a much more tightly focused and proportionate version of the SQE 1, with candidates focusing on a narrower range of areas, chosen to reflect the requirements of their actual employment. This could for example require all candidates to

attempt Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales, but then offer only a selection of two or three other heads, including those currently proposed, but also major practice areas such as family law, employment law and possibly areas such as intellectual property and immigration. We should stress that in making this suggestion we would expect the compulsory head to be restructured to avoid the current apparent duplication where knowledge as such rather than its application is being assessed, and that a broader and therefore more valid, range of assessment exercises is included. If this approach were adopted, clearly the pass certificate would indicate which areas had been offered, which would enable future employers to have a clearer idea of the areas of competence of the individual concerned. This would not of course prevent any particular individual who wished subsequently to refocus their career from undertaking appropriate study in order to demonstrate competent knowledge and understanding in relation to a new practice area, but would decouple this from the formal qualification process, recognising that most trainees are in fact operating in a fairly specialised environment. In our view an SQE 1 of this type would be capable of assessing functioning legal knowledge in a relevant and proportionate way.

We believe that one way of minimising the potential for unnecessary financial commitment by candidates would be to restrict access to the SQE 1 assessment process to those who have entered into an approved period of work-based learning. This need not of course be a two-year training contract, as at present required, but will require to be employment with an appropriate employer for a specified minimum period such as six months, to ensure that it is a bona fide training opportunity. We would stress that this would not necessarily be the first period of work-based learning which the candidate is seeking to have counted. For example, earlier periods working in a university law clinic or in paralegal employment could count towards the overall requirement, whenever undertaken. The nature of this specified employment would dictate, at least in part, which heads of the SQE 1 should be passed. This would, as we have suggested, have the advantage of allowing for additional heads, covering areas of practice which are currently omitted, such as family law, employment law and possibly more specialised areas such as intellectual property and immigration. We envisage that employers would identify appropriate education and training opportunities. We are conscious that major employers of trainee solicitors, such as the large international and national law firms, and public sector employers, already invest heavily in the education and training of their trainees. We acknowledge that some smaller providers may struggle to match this commitment, and therefore restricting the extent of the heads to be attempted will also limit the cost of preparation whether it falls on the training provider or on the candidate.

We acknowledge that there is evidence that access to training opportunities has in the past been restricted for candidates from non-traditional and minority ethnic backgrounds, but by reducing the length of the qualifying period of work-based learning it is hoped that additional training opportunities will be identified.

It is for the above reasons that we disagree that the proposed SQE is robust and effective. As currently proposed the SQE 1 may be robust, in the sense that it provides for consistency, but we have grave doubts as to whether it is effective, appropriate and proportionate. It still seems

to be intended in part to “second-guess” the outcomes of academic study, rather than focusing on the vocational stage of applied transactional and procedural understanding. It largely adopts a “one club” policy rather than providing for a suitable variety of assessment methods to assess the various items of knowledge skill and competence. We acknowledge that there is a research and writing assessment, but this is relatively modest in scope, and effectively dwarfed by the six MCQ based heads of SQE 1. It is unclear to what extent The SQE 1 as a whole is based on a genuine assessment of the problem solving abilities of the candidates, rather than rote learned superficial knowledge. It is unrealistically broad, given that an individual is likely to be working in a relatively tightly defined practice area and therefore does not need to have an in-depth knowledge of the broader range required by the SQE 1. It seems to proceed on the assumption that each solicitor must be able to deal with all regulated/reserved activities, rather than addressing the reality which is that it is entities which are regulated and responsible for ensuring that they employ and deploy relevantly qualified individuals in relation to the regulated/reserved activities which they undertake. It has the potential of introducing uncertainty as to what is an appropriate educational and training path towards qualification, will encourage the development of unregulated crammer courses and unnecessary supplementary courses, and seems likely to have a deleterious effect on equality and diversity, rather than a positive one. We have suggested above ways in which a more modestly scoped alternative to the SQE 1 which clearly focuses on the assessment of practical legal knowledge and skills in a practical context could be developed to avoid many of these issues, and we regard the SQE 2 as a sound basis for the development of a capstone assessment at the conclusion of the education and training process.

Q2A To what extent do you agree or disagree with our proposals for qualifying legal work experience?

We AGREE (2) with the proposals. We consider that it is not appropriate for the training provider itself to assess the quality of the training. As we have already indicated, many training providers lack the competence to do this, and they are in any event marking their own homework. We agree that work experience should normally be in a regulated entity. We consider that a portfolio of experience should be acceptable, and we note that activities such as engaging in a student law clinic or a sandwich placement will continue to be eligible to be counted. We agree, on balance, although there is some difference of opinion within the Association, that periods of employment as a paralegal or in equivalent circumstances should also be allowed to count, although we consider that there should at some point (which need not represent the first period of work-based learning to be counted) be employment for a period of six months or more which is explicitly linked to qualification as a solicitor. As we indicated above we consider that this may be the trigger point for accessing the first stage of the SQE, and in any event such a period would be necessary to enable the candidate to focus on acquiring the skills, attributes and competences necessary to pass the SQE 2.

We consider that there should be some specification of what is expected of such a period of employment and that the provider should both certify that the employment complies, and that the candidate has been given the opportunity of acquiring the relevant skills and attributes. There will also need to be some form of dispute resolution mechanism if students believe that

they have not been provided with appropriate opportunities by their employer. Compliance with these obligations should be a formal professional obligation of a training provider so that, in appropriately grave cases, action could be taken for breach of professional obligations before the SDT.

We also agree that there should be considerably more flexibility as to what is required to be covered since legal employment is becoming ever more specialised, such that many training providers will have difficulty in offering a broad range of experience, and we agree that the requirement that SQE 2 requires knowledge to be deployed in at least two practice contexts is a sufficient assurance that students are developing an appropriate level of transferable skills.

Q2B What length of time do you think would be the most appropriate minimum requirement for workplace experience?

We are NEUTRAL (3) on this issue. We express our views on this point with some diffidence, since the majority of members of the Association do not have extensive experience of this aspect of the qualification process. Internationally, a period of somewhat less than two years seems to be acceptable, although there is a danger in simply taking the time period without considering the specific context in which the training is required, and also the nature of employment in each case. We would suggest that either there is a requirement for the equivalent of 18 months full-time work-based learning, on the understanding that a candidate can attempt the SQE 2 once they can demonstrate 12 months such work-based learning, thus allowing for a further attempt if necessary within the basic training period, or a requirement for 24 months full-time work-based learning with the candidate being allowed to attempt the SQE 2 after 18 months. However, we would consider that the views of the profession, in particular those parts of it which are current training providers, should carry considerable weight in this area.

Q3 To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

We DISAGREE (4) on this issue. This is not because of fundamental objection, but because there is currently insufficient evidence to evaluate this proposal fully. We can envisage outcomes that would clearly have adverse consequences for diversity, but are not persuaded that these are inevitable; we are in effect reserving judgment until there is adequate evidence to reach a conclusion. We accept that there is a reasonable case that market forces will operate so as to identify those forms of preparation and training which are effective. We would certainly accept that training providers such as the large national and international law firms are well able to identify what is appropriate for their needs, and will ensure that their trainees receive appropriate and effective training. However, we consider that this is not necessarily the case when dealing with smaller training providers, and in particular when dealing with students who are in the process of seeking to qualify and who come from non-traditional backgrounds, in particular from minority ethnic groups and social groups who are underrepresented and who will not have the same level of knowledge or access to effective advice and guidance. Such individuals are particularly likely to be attracted by non-traditional providers offering a shorter, cheaper route, and may not appreciate how far this is likely to be attractive to potential

employers. There is a limit to what can be done in terms of advice and information, since it cannot be assumed that this will necessarily reach its intended targets.

It is almost certainly unnecessary to regulate providers who are already regulated by other means. Institutions with degree awarding powers are already subject to regulation, in particular by the QAA, and have to demonstrate that they have suitably rigorous quality assurance processes and that programmes are appropriately designed and effectively delivered. The danger comes with other providers. Even if accurate data can be obtained as to where students have undertaken preparation courses so that the comparative success rates of providers can be published, there will inevitably be a considerable time lag before underperforming providers can be identified, and a longer time lag before the implications of this are understood by candidates.

We consider that the “exemplar pathways” will need to be considerably more tightly defined. In particular, a non-law graduate will need to understand that they do not just need to be able to pass the SQE 1, but also need to place their knowledge of the law in context in order to understand the economic, social, jurisprudential, and other implications, quite apart from the transactional and procedural aspects which the SQE 1 rightly focuses on. A lot will depend on the nature and extent of the guidance which is proposed to be given in conjunction with these exemplars. If it is detailed and robust it may go a long way to discouraging candidates from selecting inappropriate means. However, without sight of the guidance, it is impossible to express a view on whether it is fit for purpose. It is essentially for this reason that we are unable to express a concluded view on this aspect, since we do not see any insuperable difficulties with the proposed approach, although we do see issues and challenges, particularly around equality and diversity, and remain to be convinced that the mechanisms proposed are indeed sufficiently robust as to be fit for purpose.

Q4 To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

We are NEUTRAL (3) on this issue. Our reservations centre on the first requirement. We continue to be firmly of the view that the legal profession is essentially one functioning at a graduate level. The obvious way of demonstrating the capacity to function at this level is possession of a degree. We do however entirely accept that there are alternative means whereby this level of knowledge, understanding and intellectual functioning can be demonstrated. We believe that there should be considerably more detail and prescription in respect of what is required under this heading. We believe that it should be specified that the degree should be a law degree, or a non-law degree supported by a Graduate or Postgraduate Diploma specified in a way that is broadly equivalent to that of the current CPE. We also consider that the acceptable equivalents should be more fully defined. We envisage that these would include a recognised apprenticeship, completion of the full diet of CILEx Level 6 subjects, including the whole range of legal foundations, the Qualified Lawyers transfer route, and possibly ad hoc approval of individual exceptional circumstances. While we understand that the SRA is unwilling to remain involved in the detailed specification of law degree programmes, we do not see why it cannot specify that the law degree, CPE equivalent, the study element of the apprenticeship and the CILEx equivalent must include substantial study of the law of England and Wales in those areas, knowledge of which is required to be applied in the context of the SQE

1 (in the sense of a more focused set of assessments concentrating on the application of knowledge and procedural and dispute resolution context, not the extremely broad syllabus envisaged by the Statement of Underpinning Legal Knowledge and the SQE 1 as currently proposed).

We have of course indicated that we consider that the SQE 1 should be significantly different to that which is proposed. Our agreement with the general proposition that candidates for admission should have passed both elements of the SQE is strictly on this understanding.

Q5 To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

We DISAGREE (4) with exemptions. It is necessary to explain that this is on the understanding that the SQE 1 is clearly structured so that it builds on, rather than duplicates, assessment for degree, et cetera, purposes. We believe that the suggestion that there should be exemptions is based on the relationship between the law degree and the old solicitors Part 1 examination. This required study of the then recognised foundation subjects in a way that was directly parallel to university study. Indeed, many articulated clerks attended university lectures as preparation for the Part 1 examination. If the SQE 1 is genuinely focusing on the application of knowledge in a transactional and procedural context it would not be appropriate to grant exemptions based on academic study. There is perhaps a stronger case for exemptions in relation to qualified lawyers transferring in to the English and Welsh profession, and also CILEx candidates who will have taken at least one practice paper which is designed to assess their functional knowledge in a transactional and procedural context, albeit through case studies rather than the type of computer-based assessment proposed for the SQE 1. A case can of course be made for requiring qualified transferees to demonstrate that they have functional knowledge in the relevant context. The only exception would be in those cases where there is a very close correlation between the requirements of the other jurisdiction and those of the SQE. In relation to the CILEx qualification, the candidate will normally have undertaken one practice paper, and there is a case for allowing an exemption on a like-for-like basis. However, no such exemptions are allowed in relation to the LPC, and it may therefore be preferable to maintain a no exemptions policy, recognising that such candidates will at least benefit in that they will require less further study in order to prepare them for the SQE 1 in this area.

Q6 To what extent do you agree or disagree with our proposed transitional arrangements?

We AGREE (2) with the principle. We think that commencement in 2019 is extremely optimistic. We very much doubt whether SQE 1 at all events can be ready by 2019, otherwise than on a purely pilot basis. We understand that there are commitments in relation to candidates who have already commenced apprenticeships. It may be that the SQE 1 should be piloted with this group, for whom there is no alternative. This will enable the claims made in respect of the reliability and robustness of the SQE 1 to be assessed in a relatively low stakes environment. There is clearly a major risk to the reputation of the profession and the SRA if the SQE 1 is introduced without appropriate testing and evaluation and proves unfit for purpose. We consider that development of the SQE 2 is likely to be less controversial since it is based on existing models which are relatively tried and tested. We certainly agree that there needs to be a

relatively intensive evaluation of both SQEs in operation, in order to ensure that there are no unintended consequences.

Q7 Do you foresee any positive or negative EDI impacts arising from our proposals?

It is difficult to be certain. We find it surprising that no proper Equality Impact Assessment has yet been done. We have indicated a number of points above where issues could well arise. The most important appears to us to be the potential for an SQE 1 which focuses on one very specific type of assessment to operate differentially and thus have an adverse impact on certain groups, some of which may be covered by protected characteristics.

In addition, we are not at all persuaded that the introduction of the SQE will reduce overall costs. There are of course models where this will occur. If universities develop degree programmes which incorporate preparation for the SQE 1 within a three-year programme, this will indeed eliminate a significant cost. It is however unlikely that major training providers will regard such a programme as appropriate for their requirements, and while they will be likely to continue to provide substantial funding for their selected trainees, if a “full” law degree followed by a “full” SQE 1 preparation course is seen as the gold standard, others are likely to follow that route at their own cost in the hope of making themselves attractive to potential employers. It would certainly be possible to incorporate preparation for SQE 1 into a four-year degree programme which would attract funding and be costed accordingly. Any market which develops for additional SQE 1 preparation will of course represent an additional cost. Any savings from the reduction in the length or complexity of the SQE 1 preparation processes, as compared with the current LPC, will be offset by the cost of the SQE 1 itself. We assume that the SRA will administer this on a cost neutral basis, but in the absence of any indication of what the total cost is likely to be, the likely examination fees cannot be estimated. The cost of providing examination venues with dedicated computers for up to 15,000 candidates a year will in itself be very substantial, and the costs of developing the SQE 1 and 2 assessment banks and the standardisation and moderation processes will also be substantial, although we acknowledge that there are economies of scale arising over time from the use of computer-based assessment. Nevertheless, it seems optimistic at least to suggest that there will be substantial financial savings.

A further concern is that there is already a considerable information gradient between students from traditional backgrounds with good social networks and attending universities with strong traditional links to the profession and other non-traditional would-be entrants. Any lack of transparency in the arrangements for the SQE is likely to increase this gradient by creating additional areas where traditional entrants are advantaged in terms of knowledge and assessment of appropriate strategies.

Overall we consider that there are high risks of unintended adverse impacts on equality and diversity, and relatively little evidence of any positive impact, unless the best case scenario in terms of reduction in the cost of qualification comes to pass, which we consider unlikely.

As this is a submission on behalf of an organisation, it is not appropriate to complete the equality and diversity information requested.

# Consultation questionnaire

Response ID:255 Data

## 2. Your identity

**Surname**

Baines

**Forename(s)**

Barry

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**  
on my own behalf as a solicitor in private practice

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Neutral

**Comments:**

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

No

**Comments:**

# Consultation questionnaire

Response ID:145 Data

## 2. Your identity

**Surname**

Balalimood

**Forename(s)**

Behnam

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a student studying for a qualifying law degree or legal practice course**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:401 Data

## 2. Your identity

### Surname

Haywood

### Forename(s)

Thomas Mark

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Bell & Buxton

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** • We agree that examinations should be centrally set and centrally marked, with a high pass mark and a requirement to pass virtually every exam first time. Despite the potential difficulties in creating a standardised exam when there are so many areas of law and a range of training contracts available (i.e. small firm, big firm, in house), we believe that it is the only real option. The commercial interests of course providers should not be a relevant consideration in deciding how exams should be set and designed, it should focus on the profession and potential applicants wanting to join the profession. • The SQE being more rigorous would presumably make it more difficult to pass and decrease the number of applications each year as it would put people off. • The SQE as proposed would not achieve its aims of being 'robust' and 'vigorous' as the practical training aka "informal unpaid work experience" has the potential for enormous exploitation and it will do nothing to increase the diversity in the profession. It will alienate the specialist skills needed in the profession such as planning, analysis, organisation and application. The proposed change puts the onus on the employer firm as the results of whether a trainee has passed their final SQE and if they will consequently be admitted into the firm. This may put firms off from offering this experience. Firms would also need more regulation (by way of inspection) to assess the trainee this way. Currently, the time that trainee solicitors spend working in legal practice is a significant and important part of the overall training scheme. There is a monitoring scheme in place which currently focuses on the overall training provision, identifying good practice and giving guidance and advice where improvements could be made. The trainee is also required to complete a training contract diary to detail the work they do throughout the training contract. The SRA will have to actively audit/assess the practical training to minimise exploitation and ensure high standards are maintained. In practice, we think that this will be both time-consuming and expensive. • Our trainees are anecdotally aware that around 80-85% of their peers had training contracts or have entered the legal profession as legal assistants/paralegals straight away after completing the LPC. Although we note the high rate of employment, we believe that a distinction must be drawn between those who eventually qualify and those who are treated as glorified photocopiers, after spending large sums of money gaining their LPC or similar qualification. To protect those who were never likely to qualify, any reforms to the routes to admission to the Roll must stop the manifestly unsuited before they begin, rather than after learning an expensive lesson. We believe that the current LPC could provide a useful and relevant introductory footing to the legal profession. It could improve students' knowledge of, for example different types of forms used in different areas of law, what they mean and when they are used.

For example, AP1, TR1, AP01, MR01 etc. Specialist legal skills such as drafting documents, interviewing and advising and solicitors accounts are extremely helpful and the skills learnt should be put into practice daily. We are not convinced that the current system achieves this and so cautiously welcome reform, but believe that the correct method is by more rigorous teaching and assessment rather than these proposals.

4.

#### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** • Whilst we understand the SRA's reasoning behind the new proposals for qualifying legal work experience, principally that it should allow more access to the profession which ordinarily consisted of obtaining a very sought after and competitive training contract, we do not agree with the proposal itself. Essentially the proposal is to scrap the existing training contract and instead to replace it with aspiring solicitors obtaining and completing qualifying legal work experience. This definition as we understand it, is very broad. The proposed work experience can apparently consist of time spent volunteering in legal clinics at university and in the Citizens Advice Bureau through to arrangements like today's training contract. This informal practical training consisting of "informal" (i.e. unpaid) work experience has the potential for enormous exploitation, will do nothing at all to increase diversity in the profession and should be firmly rejected. Further, this goes further than the SRA scrapping the minimum salary for trainees as it means the firm can effectively pay you nothing! It appears the SRA's solution to training contract and LPC fees is for students to attend university, rack up debt of £30,000+ (if they are to do the part 1 SQE) and then potentially earn nothing by being forced to work for free in an 'informal work experience' setting to essentially replace the training contract. • One of the benefits of having the current training contract is that trainees are required to complete a minimum of 3 seats, for a minimum of 3 months and this must include a contentious and non-contentious seat. This allows the trainee to make an informed decision about their career going forward. The new regime has no requirements! One could effectively work in one area for the entirety of your 'work experience', sit the SQE 2 and qualify as a solicitor in that area. What benefit does this offer the trainee who may have decided that the one area they have practised is not for them? What benefit does this offer to the profession as NQs will not have the depth of experience provided by a training contract? What benefit is offered to the public? • The proposals state that the only declaration that the firm/organisation offering work experience must make is that they provided the person with the opportunity to develop. Should the firm not have a responsibility to the individual, but also to the SRA in maintaining standards of training? • Whilst mentioned in detail elsewhere in this response, results of SQE 2 exams are to be published and the firms would be identified. Is this a deterrent for firms to offer any form of 'qualifying legal work experience' or training contract for fear of being publicised if an individual were to fail? • There should be no examination at the end of the training contract. This serves no purpose. There should be a fixed end of training contract when trainees will guarantee to be finished and to be qualified. No discretion in the training firms as to whether they do or do not "sign off". • All training contracts should be properly monitored and punitive action taken against those who are delivering poor quality training i.e. not allowed to take trainees in the future as the ultimate sanction (or possibly even the first and only sanction). In summary, the training contract should be retained. It is invaluable and irreplaceable hands on training if it is done properly.

#### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** A minimum of 2 years workplace experience is the most appropriate. However the current recognised experience/time to count regime is beneficial to both trainees and firms. We think this regime should stay. Maximum time to count should continue to be 6 months equating to a years' work in practice at paralegal/legal advisor level.

5.

#### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for**

## the SQE?

Neutral

**Comments:** The proposal states that quality can be increased by using traditional market forces: that by increasing the amount of information available to both prospective students and their employers, quality will be increased, as institutions will feel “competitive pressures... for high quality legal education and training”. The proposal also makes clear that an Ofsted-style regulation is inappropriate as it will not allow for flexibility and innovation, while inspections will simultaneously be unable to objectively judge the legal training being provided. • The first suggestion that institution information regarding results will be published isn't anything new. The information is there, all students and/or employers have to do is ask for it, albeit from the institutions themselves, and not through a simple internet search. Admittedly a centralised method of ranking would make this task easier, however the same accessibility of information is available for undergraduate law degrees, and with over 90 universities offering qualifying law degrees there is no suggestion that information availability has any effect on the amount of students applying. On this basis, it is dubious whether information availability will have any effect on quality-assured teaching. By no means is the idea of centrally publishing institution information a bad one, conversely it would formalise a league table for the LPC/SQE, however the institutions at the bottom of that table would continue (and be permitted) to teach, due to the overwhelming number of students being put through undergraduate courses with the belief that they will get a training contract/find qualifying legal work experience. The problem of the route to qualifying is oversupply of applicants, not a lack of information. Perhaps a more appropriate suggestion is to raise, or at least standardise the minimum requirements to be accepted on to the LPC/SQE to a 2:1 undergraduate degree classification (many institutions offer a place with a 2:2 degree), along with a short yet rigorous entrance examination (however this is outside the scope of this section). • The dismissal of Ofsted-style inspections should be re-examined. Market forces can only work insofar that public information is a reflection of achievement, but not necessarily quality. Obviously the two are interlinked, but there would be nothing to stop institutions teaching how to pass an exam rather than teaching what legal practice in its many forms entails. If the examinations are all sufficiently rigorous then no issue arises. We doubt if this is likely to be the case. All employers have to provide is the opportunity to develop under the new proposals, not educational or professional development per se. The same principle applies here - without any checks in place, there is no facility to scrutinise the level of education and training being provided. Raw numbers and pure statistics alone, formalised in a league table or otherwise, do not get to the root of what the overarching objective of qualification reform is trying to achieve – consistent results may be achieved, but perhaps at the expense of professional standards, as institutions offering training and education will have at the heart of their training policy the objective of reaching the highest possible position in a league table, and not the creation of a higher brand of solicitor. • We argue that one aim of any reforms to legal education must be to ensure that any bottleneck in terms of people v jobs should be placed as early in the process as possible, preventing young people from incurring large debts and wasting their time. An inspection-based system would make sure that the above would not take place. The SRA wishes to achieve “high, consistent, professional standards for the future”, which, while well-intentioned, will not be the same objective as that of institutions offering the LPC/SQE. In order to balance out these conflicting interests, institution inspection would balance out the needs and requirements of the providing institutions against the requirements of the SRA.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** On paper, the four proposals that could replace the current system are not hugely different from those currently in place. Each proposal shall now be addressed in turn. Candidates have a degree (or equivalent) The requirement that candidates are educated as such provides for a solid basis on which legal training and vocational education can be taught. Without prior exposure to the intellectual and academic rigour that qualifying as a solicitor requires, candidates are unlikely to succeed. Therefore a high level of discipline, time management, prioritisation, among other core skills will need to be demonstrated by

not only those with a degree in law, but also those from a non-law background in order to be accepted onto the SQE. A way in which this could be achieved is through some sort of screening exam prior to being accepted onto the SQE, which would hopefully achieve a reduction of applicants who would not succeed further on in the SQE. Those from a non-degree background should too have to provide evidence of having sufficient skills to be able to handle the academic rigour that the SQE will require. Legal executives and paralegals with sufficient exposure to the legal sector could also prove that they have the sufficient skills in the same way as those with a degree and/or GDL or its equivalent – through a pre-entrance exam. This could incorporate both breadth and depth of legal knowledge and understanding, as well as a suitability and character requirements test. A minimum period of workplace experience. Currently, graduates of the LPC have to complete a highly sought after two-year training contract. Competition for these places is very competitive and while the new problems may ensure that the problem of quantity of QWE is solved, it does not ensure quality of legal workplace education, which generally speaking is already at a sufficiently high point. If the quality of workplace experience drops, then the legal profession will be filled with qualified individuals who are inadequately trained and ill-experienced who historically wouldn't have been practicing the law. By way of example, it has been noted that certain roles, such as advisory positions at the Citizens Advice Bureau would qualify as sufficient legal training, yet the difference between the standard required for the CAB and legal practice is monumental. Have passed SQE stages 1 and 2 The explicit statement that SQE stage 1 should be concentrated around practice as opposed to academic law should be embraced. There has been significant complaint that trainees arrive after completing the LPC to start their TCs without the sufficient knowledge of legal practice, and therefore employers/training providers end up filling in the gaps before or as the trainees require. Stage 2 may address the above complaint. By testing the 'show-how' as well as the 'know-how', training providers should be satisfied that SQE graduates are able to complete tasks that are not currently explained on the LPC. We accept this, but feel that if Stage 1 was sufficiently rigorous then stage 2 would be entirely unnecessary.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** There should be no duplication of learning for law graduates as opposed to non-law graduates, so some form of conversion course for non-law graduates should be retained.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** • If the SQE were to go ahead, we think that it should not come into force until 2020. This is largely because many (although not our own) firms recruit for training contracts two years in advance, so as it stands, those few who have obtained a training contract at present will be due to start their (standard) two year training contract in 2018. Whilst the transitional arrangements specify that these candidates can choose which route to qualify under, in terms of the old route, this does state 'subject to availability' and we foresee this causing further problems if there are candidates who are forced to take the new route simply because the old route has ran out of places. • By commencing the SQE from 2020 onwards this minimises disruption and also allows further time for critique and evaluation in places of the proposed new system. • In terms of the Qualified Lawyers Transfer Scheme (QLTS) and candidates being allowed to choose to do either the QLTS 2 or the SQE stage 2, again this is subject to availability and poses the same problems mentioned above. In addition, as the SRA talks about the purposes of the new system being to implement a "single assessment for all" and to avoid the current problem of "inconsistent and variable provider – dependent pass rates", surely this will hinder this more unified approach that is trying to be implemented. It is perhaps better to push back the start of the SQE to 2020 in order to minimise the inconsistencies.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** It is clear that the proposals will have a negative effect on EDI. There are clearly social, commercial, and moral benefits to the profession being opened up people from different walks of life and it is not clear that these proposals do this. • We are told that these proposals will be cheaper than our current system. We are not convinced of this. Certainly, the SRA has produced no convincing evidence to support their claim. o The LPC might no longer be needed, but the providers will begin to provide “SQE Preparation Courses” or the like replace them. If the exams are rigorous (which we surely all agree they must be) then such a system inherently benefits the wealthy few able to afford these courses. There would be no commercial incentive for firms to pay for their future employees to undergo such a course. This is therefore likely to benefit the wealthy but not necessarily too bright. o The proposals do not set a cap on the number of resits permitted. Unlimited resits benefits the wealthier student who can pay the necessary fee. Quite aside from our concerns about the inherent lowering of standards, any cost associated with resits will disproportionately affect the poor. • Although we doubt that the same level of financial support will be available from larger firms as currently exist for new trainees, we would point out that the higher the costs of qualification are the smaller the incentive is for the poorer student to enter traditionally lower paying areas of work. These proposals will therefore have a special EDI impact on what might be broadly called “High Street” firms, such as our own. • We are concerned about the proposal to allow unpaid and unmanaged work experience to count as relevant work experience. There is a risk that this will simply be as competitive as current training contracts and vacation schemes, but without the comfort that these are, at least, paid. I am concerned that less scrupulous firms will take advantage of young graduates, offering them little money and security in exchange for the prospect of one day being qualified. Once qualified, there is likely to be little incentive for the same firm to take on that person and give them a properly paying job. This obviously benefits those who can afford to work for low wages and take the risk of there being no job on qualification. We are also concerned that other firms might not recognise the value of such experience in for example legal clinics (whom we suspect might very well be from non-typical legal backgrounds) more. The impact on EDI is clear. • We welcome the proposal for a Cohort Study to assess the impact of these proposals, if implemented. We see no reason this cannot be done on an annual or biennial basis.

# Consultation questionnaire

Response ID:303 Data

## 2. Your identity

**Surname**

George

**Forename(s)**

Bernard

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:** I am very impressed with the thoroughness and thought that has gone into the SQE. It will be a terrific improvement on the low and uneven standards of the LPC.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** It is not realistic to have a flexible period, as it is not practical to assess the candidate's readiness other than by formal examination. Leaving it to employers to certify if someone is ready creates unacceptable conflicts of interest.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:** This at last offers the profession a really robust and fair assessment model. The only enhancement I would suggest would be (post-qualification) mandatory assessment and certification of specialist knowledge in an individual's chosen post qualification practice area(s).

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** Why would people need exemptions? If they can reach the required standard they should have no trouble doing the assessments.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** These reforms will be very helpful to students from less wealthy backgrounds. If they can prove their knowledge and ability they will be able to proceed without having to pay huge fees to course providers.

## **Berwin Leighton Paisner**

### **A new route to qualification: The Solicitors Qualifying Examination – Consultation Response**

#### **Consultation question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence**

#### **4 - Disagree**

##### **Competence standard**

We disagree that the proposed SQE will provide a robust and effective measure of competence required by large commercial practices. We doubt that the SQE will be able to test all of the competencies set out in the Competence Statement in a meaningful way, for instance those in Section C (working with other people) and D (managing themselves and their own work). These are more appropriately assessed during a period of work-based experience. The proposal only requires an individual to have had the opportunity to develop such skills, rather than any confirmation that they have reached a level of competence.

##### **Syllabus breadth and relevance**

The syllabus of the SQE is too narrow and will prepare students for a form of practice that no longer exists. Instead of narrowing the training experience, the SRA should be considering how best to prepare student lawyers for the way law will be practised in the future, for instance the increasing use of technology.

SQE 1 will not prepare candidates adequately for a period of work-based experience. They will have developed fewer skills and will not have any opportunity to study electives which would give them an opportunity to deepen their knowledge. Their foundation legal knowledge and understanding of legal process and the practical application of the law will be narrower and more superficial than trainees currently have on joining a firm.

Individuals will start their work-based experience period having received no training in drafting, advocacy and interviewing. The development of research skills in preparation for the Practical Legal Skills Assessment proposed for Stage 1 will be basic given that, in 3 hours, students will be required to undertake an online research task, produce a research trail, write a memorandum or briefing note and then write two formal letters on separate issues. Many students currently have opportunities to practise their research, writing and drafting skills integrated into their Core Practice Area and Vocational Elective modules. These opportunities will be lost when the majority of the assessment is focused on whether they can answer MCQs correctly.

The electives are fundamental in preparing students for practice particularly in large commercial practices (as with all other trainees). The requirement for this vital knowledge is now being lost from the qualification process.

The Draft Assessment Specification contains insufficient detail to be of benefit in assessing the rigour of assessment of the areas listed. What it demonstrates is that a more narrow syllabus will be followed than currently during the academic and vocational stages.

The SRA previously amended its regulations to give LPC providers more flexibility to design and deliver a variety of LPCs suitable for students planning to enter different areas of practice. This flexibility responded to the needs of, and was widely welcomed by, the profession. In the consultation document, the SRA seems to be criticising institutions for taking advantage of the flexibility they were given (e.g. comments relating to differing

lengths of assessments, open and closed book assessments, and varying breadths of module syllabi). What has changed in the SRA's thinking?

### **Cost**

We disagree with the SRA's conclusions on costs. The SRA suggests in its timelines that little preparation will be required. SQE 1 preparation will be cheaper than preparation for the GDL and LPC, but at the cost of producing candidates who are far less prepared for practice (albeit with a consistent low level of understanding). To make up for the shortfall, many firms that currently sponsor students through Law School will need to finance additional tuition to bring them up to a level that is consistent with the current capabilities of first seat trainees. This is likely to lead to a two-tiered system, with the employment prospects of candidates taking the minimum requirement SQE approach being compromised. We are concerned that the cost of the additional tuition required to prepare candidates for SQE 2 as well as the cost of the assessments may be more expensive than the SRA is suggesting.

### **Assessment method – Stage 1**

We believe that the focus in the Functioning Legal Knowledge assessments will be on knowledge recall as opposed to application. The Case & Swanson paper has not persuaded us otherwise. We believe candidates should be tested on their ability to apply the law to a specific set of facts in different contexts as well as on recall. This can involve interpreting a client's instructions, spotting the relevant issues, applying the law, describing the process to be followed, advising on the consequences of failing to do so and advising on other options available under the law. Computer-based questions with a closed set of potential responses will only allow for individual elements of the application process to be tested. In particular, we have not been persuaded that issue-spotting can be tested by MCQs where the issue will necessarily be brought to a candidate's attention. For instance, a question requiring candidates to spot a potential conflict of interests will necessarily have to include this as one of the correct answers, be it a single best answer or extended matching question.

The comparison with medicine is not helpful. The examples of questions used in the Case & Swanson focus on a candidate making a correct diagnosis from the described symptoms and identifying the appropriate treatment. This is not analogous with the practice of law. There is usually a greater element of objectivity in medicine than in applying the law which can often be highly subjective.

We believe that the LPC currently tests not only knowledge, but also the key skills of written communication, critical thinking, problem solving and analytical reasoning. We are concerned that students will lose the ability to develop these skills in preparing for the proposed SQE 1 computer-based assessments.

Paragraph 56 makes the distinction between MCQs and essay-type questions as if these are the only two options available. The LPC assesses knowledge and application through scenario-based questions and not essays. This is more reflective of practice.

The proposal is that all SQE 1 assessments will be sat in a single window. This is reminiscent of the Law Society Finals. Either the breadth of syllabus of the SQE 1 assessments will be significantly reduced from the Academic and Vocational Stage equivalent modules or this will be a major revision undertaking for candidates to be completed in a short period of time. There is a risk that the proposal to sit all the assessments in one assessment period will prejudice some candidates with learning support arrangements.

The proposed SQE 1 assessments total 17 hours of testing. Currently, the minimum time period allowed for the three Core Practice Area, Professional Conduct and Solicitors' Accounts is 13 hours. This does not include the current Academic Stage assessments. We believe that

this demonstrates that SQE 1 will provide a less rigorous examination of legal knowledge and its application than under the existing arrangements.

We cannot comment definitively on the nature of the assessments without sight of sample papers.

## **Assessment method – Stage 2**

Of the options listed in paragraph 67, our preference is option 2 where candidates have the option of a wider set of contexts. We anticipate difficulties in scheduling the Stage 2 assessments and we will need to give individuals as much flexibility as possible to ensure they can attempt the assessments having experienced one of the available contexts.

We cannot comment definitively on the nature of the assessments without sight of sample papers.

## **The case for change**

The SRA has expanded on its justification for change from first consultation but the evidence given does not stand up to close scrutiny. We believe that a convincing case for change has still not been made.

In particular, we have concerns about the following evidence presented:

- In paragraph 36, statistics are given for the number of indemnity insurance claims made. We would be interested to know the source of this data. We do not believe that these figures are useful without some comparison being drawn either with previous years or other professions. We also believe that the figures need to be viewed in context, such as in relation to the number of transactions and cases solicitors work on each year as well as the type of claims and the sectors in which they arise. The statistics do not make clear what proportion of these claims arise from educational failings (see below) or how many errors are made by those educated under the LPC or its predecessor arrangements (the Law Society Finals) Of these claims made, "so far about one in five have resulted in payments". This amounts to approximately 2,840 successful claims per year.
- Paragraph 37 refers to more than 800 complaints being upheld by the Legal Ombudsman. A review of the decisions made by the Legal Ombudsman in 2015-16 shows a significant number of these are for claims arising from events that we do not believe are either covered in the existing training process or will be addressed following the proposed changes.
- Paragraph 37 refers to dissatisfaction of the quality of wills. This is an odd example to raise given that will writing is not regulated. The statistics quoted are only useful if expressed as a proportion of wills that were drafted by solicitors. With will writing services advertising fixed rates as low as £19.99, a significant element of consumer dissatisfaction is hardly surprising.
- We would be interested to know the evidence supporting the statements made in the boxes at the top of page 9 "skills poorly taught" and "assessment processes have fallen behind best practice in standard setting".

Given the number of practising solicitors and the number of transactions worked on and cases brought per year, we do not believe that these figures justify a radical reform of the current system. The evidence produced demonstrates that dissatisfaction is only with a very small percentage of the profession.

The consultation contains no evidence that the cause of the dissatisfaction arises from the current training process or that the SQE will improve the situation. If anything, we think the SQE will result in a greater level of consumer dissatisfaction.

The SRA has identified three key drivers for reform – a significant reduction of cost, a consistent qualification standard and widening access to the profession. Consistency seems to be the overriding objective as we believe that the other two objectives are unlikely to be met. The SQE will achieve consistency, but at the expense of standards. The choice of MCQs as the sole assessment method for the Legal Knowledge Assessments seems to support this. MCQs are the only feasible assessment method for one institution to assess SQE 1, even if excluding longer form question results in candidates not being assessed on legal knowledge in a manner that reflects the way solicitors provide advice in practice.

The SRA is putting forward the SQE as the only way to address its concerns. We still believe that the SRA's objectives are more likely to be met through the current routes to qualification and a rigorous monitoring and regulation of standards (resulting in a greater knowledge of the law than under the proposals).

**Consultation question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

**4 - Disagree**

On qualification, a solicitor will not need to demonstrate competence in all areas set out in the Statement of Solicitor Competence. The SQE will only assess some of these competencies at a very superficial level (if at all). We have concerns that, on qualification, solicitors will have very different levels of competence and consistency will only be achieved in certain areas and at a low level.

We welcome the ability for solicitors to qualify by using a wider range of opportunities to demonstrate qualifying legal experience. However we are concerned that there will be no monitoring or quality-assurance of these experiences.

We believe that there should be a minimum time period for a placement and this should be 3 months. However, we would be concerned should a candidate be able to qualify on the basis of 8 periods of work-based experience of this length, particularly if they were with different organisations. This situation could be avoided by imposing a maximum number of placements. Our trainees are currently required to complete seats predominantly of 6 months and we do not envisage changing this policy.

**Consultation question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Previously we had advocated for an 18-month minimum period. However, given the lower base knowledge required for the SQE and the time that employees will need to spend out of the office studying for and taking the SQE 2 assessments, we now believe the minimum time period should be two years.

We are concerned that any minimum period should not be diluted in the future. In particular, with the emphasis being placed on the SQE to assess an individual's competence to practise, questions may be asked about the purpose of the workplace experience requirement. We believe that the workplace experience is an essential part of the training requirement of a solicitor given the knowledge and skills an individual acquires and develops during this period.

We are also unsure of the position of an employee who has undertaken qualifying periods of work experience some time before joining the firm (for instance a paralegal who has undertaken a number of three-month spells as a paralegal at various firms). Would a firm be

able to ignore this previous experience (on the grounds that it was insufficient preparation for practice in a firm) and require that employee to complete a full workplace experience period with the firm before it would consider employing them as a solicitor?

**Consultation question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**4 - Disagree**

We believe that a regime of inspections and visits is the best way to encourage high-quality teaching. We believe that the nature of SQE 1 with its emphasis on knowledge recall and the use of market information to regulate the provision of training will lead to teaching to the test to the detriment of the wider educational experience students currently enjoy. There is a danger that courses will provide little in the way of formal or informal skills development. For instance, skills developed through working collaboratively in small teams on problem-solving activities. The emphasis will instead be more on the cheapest and quickest route to passing the SQE.

**Consultation question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**4 - Disagree**

We believe that the proposed strategy for the Functioning Legal Knowledge assessments will mainly test knowledge recall. As mentioned previously, the syllabus of the SQE will be narrower than what is currently covered in the Academic and Vocational Stages. We will be losing the Vocational Electives and students will be required to complete a small amount of skills training and assessment prior to joining a firm. Drafting training is the key omission. As mentioned previously, we believe that the SQE will be a meaningful test of only some of the competencies set out in the Competency Statement. Many will be tested, at best, at a very superficial level. In any event, this level of competency is insufficient for a large commercial firm.

We do not believe that work experience alone will be sufficient preparation for the Stage 2 assessments. Competence is to be assessed according to specific objective criteria and a candidate's ability to qualify will depend on the candidate meeting these criteria. Given the importance to both the candidate and the employer, we anticipate that most candidates will need to attend a significant period of assessment preparation.

Two assessment points for SQE 2 per year will be insufficient given the impact on individuals and firms of a candidate either failing an assessment or not being able to attend on the arranged date (e.g. due to illness or client demands). We also believe it will not be feasible for an assessing institution to schedule all the assessments into just two periods given the likely number of candidates.

With anything up to 7,000 candidates per year and at least four days of SQE 2 assessments per candidate, the emphasis for the assessing institution will be on processing assessments as efficiently as possible, and we believe this will have an impact on quality. We are concerned that assessment rigour will not be a high enough priority for the assessing institution. We also worry about the ability of an assessing institution to engage a sufficient number of assessors with the required ability and experience.

**Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**4 - Disagree**

Given the short period of time the SRA envisages non-law graduates will need to prepare for the SQE 1 assessments, it is difficult to believe that any current Law Degree or GDL produces a lower level of legal knowledge and understanding than that which will be required for the equivalent areas of SQE 1. The Draft Assessment Specification provides insufficient detail to gauge the depth of knowledge that will be required, but the reduction in the preparation time envisaged for the assessments suggests that it will not be as great as currently. A requirement that QLD graduates will need to undertake the SQE without benefiting from any exemptions therefore seems hard to justify.

We do not understand paragraph 134 as it suggests that the knowledge students acquire during a QLD/GDL is of little benefit to a practising lawyer. QLD/GDL graduates study the substantive law that is the fundamental basis of legal practice. On the LPC they learn to apply that law in a practical manner. A significant element of the LPC is helping students to understand how to move from the more theoretical approach of a degree to the more application-based approach required for practice (a change in approach that many students across the ability range struggle with). We remain to be convinced that preparation for a set of MCQ papers over a shorter period of time will achieve this.

**Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

**3 - Neutral**

The transitional arrangements may have a negative impact on part-time students and that those who defer assessments or take a period of interruption of studies. However, we understand the need to limit the period of the LPC and SQE running concurrently. Running the LPC and SQE systems in tandem will have cost implications for both providers and firms.

We have concerns that the timeline will not give institutions sufficient time to design courses given the lack of detail and sample papers currently available.

**Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Yes**

We welcome the SRA's attempts to make it easier for people from a broader range of backgrounds to qualify into the profession. However, we don't believe the proposals will achieve this objective.

Having SQE 2 as a pre-qualification test will enable some students to avoid incurring further costs if they are not successful at SQE 1. This will still be a minority of students. Requiring individuals to study for and sit SQE 2 during workplace experience will create significant disruption to the businesses of firms. The accountancy-style model of training has been available since the SRA allowed the Vocational Electives to be disengaged from Stage 1. Such a model allows Vocational Elective study and assessment to take place during the training contract. Whilst this has the advantage of allowing the trainees to study the subject area whilst or shortly before they sit in the relevant department, very few firms have adopted it due to logistical difficulties. Legal practice lacks the predictability of areas of accountancy practice, notably audit. SQE 2 will force this model on firms.

It will be possible for candidates to take the cheapest possible route to the SQE assessment. The cost of the preparation is likely to be reflected in the quality of the training. This will impact on such candidates' ability to pass the assessments. Candidates from more affluent backgrounds and those being sponsored by employers will have access to more comprehensive preparation meaning that candidates will not be competing on a level playing field. Larger firms will have the scale to be able to deliver the additional training to the

students it sponsors, enabling them to complete SQE 1 and additional training in the skills and specialist elective knowledge they will require for the work-based experience. Smaller firms will find this harder to achieve.

A requirement to take all assessments in one period of time is likely to disadvantage many students who sit their assessments with the benefit of learning support arrangements.

Whilst we welcome the SRA's proposals to produce toolkits and exemplar pathways, we believe that there will still be a lack of clarity. Those from disadvantaged backgrounds are less likely to have access to appropriate guidance and may choose a pathway that limits their ability to secure employment as a solicitor.

# Consultation questionnaire

Response ID:523 Data

## 2. Your identity

**Surname**

MANKAD

**Forename(s)**

BHARAT

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of a Law Society board or committee.**

Please enter the name of the board or committee:: Lawyers Disability Division

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:** It is early stage to make comments in favour though it seems positive.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** Legal work experience is as important as theoretical knowledge as where solicitor will learn to apply the knowledge got at Legal study and develop other skills: legal drafting, ADR, client dealing, negotiation, research and advocacy

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** In this period trainee will learn from pre-action to completion/enforcement procedure in depth.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Agree

**Comments:**

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Agree

**Comments:**

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

**Comments:** At the test if a student won't be provided "reasonable adjustments" such as assistive technology, magnification software, large print text, Barile text and additional time then there will be certainly adverse effect on Disabled student.

## **BIRMINGHAM CITY UNIVERSITY RESPONSE:**

### **SRA Consultation – “A new route to qualification: The Solicitors Qualifying Examination (SQE) October 2016”**

#### **Consultation question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

There appears to be no consideration required as to whether we agree with the proposals per se and therefore if the rationale for overturning the current route to qualification is justified.

Nonetheless it does seem appropriate before answering this question to comment that the evidence does not seem persuasive that the QLD and LPC are not effective. Even if they are then there could be ways of dealing with the current regime that could improve its overall quality if that is perceived as being poor. For example monitoring visits could be re-introduced.

While the comment at paragraph 30 of the Consultation Document may be true it does not adequately explain why we must conclude that the solution is central examination of the entirety of the required core knowledge. The current plans appear to necessitate complete rethinking of the structure of Law degrees, possibly to the detriment of the very many students who do not intend to go on to become solicitors. An alternative way of addressing this problem would be to standardise and centralise assessment of the existing LPC, if necessary amending or increasing LPC content to reflect any particular areas where there is perceived to be a problem. For example if the SRA felt that students were not sufficiently trained in Business Law this could be addressed by central assessment of BLP on the LPC course. If a student had not been taught the underlying Company Law principles adequately then this would be apparent in the student's inability to succeed in the BLP assessment.

The assessment of the position (paragraph 39 of the Consultation Document) assumes that degree providers will not be market responsive. If the LPC were to be 'tightened up' in such a way as those students who were poorly prepared by their LLB degree courses would find it difficult to get through the LPC then the market would operate to penalise those universities which were not providing adequate preparation. The SRA could assist by providing general guidance to degree providers as to what would be suitable to prepare students for moving on to the LPC and universities would then be able to amend their degree programmes accordingly. A heavy scrutiny regime would not be required in this approach, thus answering the objection as to strain on SRA resources

There seem to be assumptions being made about the cost of LPC's which would be removed by this new route that again are not fully justified or explained. There are no forecasts as to how much an SQE Prep Course would be. It may also be the case that law degrees will need to be 4 years rather than 3 to accommodate all the extra SQE elements that are on top of the QLD parts.

With regard to the specifics of the question itself. It is difficult to say without seeing samples of the proposed assessments. Whilst the draft assessment specification has been produced it is still not sufficiently detailed.

Will the assessment organisation provide sample/past papers to SQE training providers? Is the intention to have regular meetings between the SRA, the assessment provider and SQE training providers so that guidance can be given/sought regarding the Assessment Specification?

Whilst the Assessment Specification appears, at first glance, to be quite detailed, due the breadth of topics covered, it is, in reality, rather broad.

For example, with regard to Inheritance Tax, it simply says 'Apply exemptions and reliefs in appropriate circumstances' - with regards to reliefs, how much depth is required with regard to Business Property Relief and Agricultural Property Relief?

It appears that the assessment is going to examine procedure/practice issues more than substantive law. For example, with regard to Property Law and Practice, the Assessment Specification outlines assessment areas more closely aligned with LPC topics than LLB topics.

In Wills, Estates and Trusts, are trusts only to be examined in a very practical sense in the context of the devolution of estates under a Will/the intestacy rules? What about formalities, the three certainties, resulting trust etc? There is a case for saying that you can't understand the practical application of the law unless you understand the law itself, but that isn't necessarily true. A person can recognise a mortgage and know the procedure for dealing with it in a property transaction without a full understanding of the law of mortgages as would traditionally be taught on the LLB/GDL. This also leads on the question of how much case law will be examined in the SQE and therefore need to be taught.

With regard to SQE Stage 2 It is arguable that a candidate with only family law experience would be able to demonstrate interviewing skills in another practice area, for example, Wills and probate. However, it must be the case that it will be considerably easier for candidates who have spent, say, 18 months in a probate department as they will have an understanding of the law and be able to 'speak the language'. Would a candidate with only employment law experience know, for example to ask a Will client whether they had made any gifts within the last 7 years, would they know about potential claims against the estate by persons being maintained, children etc?

Even if it this transferability of skills is possible in interviewing, it is hard to see how it is in other skills, for example, drafting. A candidate with experience in a real estate department is going to be much better placed to review a transfer deed than a candidate with employment law work experience. It is difficult to see how you can overcome this in the assessment.

The EDI agenda may be impaired by this requirement. Some institutions have a greater percentage of students with a broader social background. They tend to struggle more with centralized assessments and so it is likely that EDI will be reduced by this type of exam.

**Consultation question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

There should be a period of qualifying work experience.

The timing of SQE 2 though is of concern. What if someone fails SQE 2 but is mid-way through the qualifying legal work experience element? Employers may then be in a difficult situation. There could be claims against employers if they didn't effectively train someone to sit SQE 2. This may lead to firms requiring an applicant to have completed SQE 2 before commencing employment.

**Consultation question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 to 24 months.

**Consultation question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

More information is needed as to what this will cover.

For instance:

- Does an SQE provider have to self-certify that that is what they are?
- Will all institutions that offer law degrees be considered an SQE provider? All providers of law degrees will need to have the answer to this question confirmed in order to know how to respond to these proposals.
- If a student attempts an SQE prep course but does not take the exam for some time (due to a range of personal and economic reasons) they are more likely to fail and yet the SQE provider will be judged by that failure

**Consultation question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

We agree that the appropriate level in order to qualify should be degree level or equivalent. However the SQE proposals are of concern and in particular what is expected of these types of courses.

**Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Overall we consider that the QLD should remain. A more robust regulatory regime could cover the LPC but failing that a centralized assessment of the LPC elements only could replace the existing route. The QLD should then continue to provide exemption.

Indeed it could be argued that without this there are increased costs to students who will be paying for a law degree that gives them no exemptions, AND then paying for SQE prep course/s.

**Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

The long-stop date of 2024 appears to be reasonable on the whole. However introducing the new regime for September 2019 without all the details being finally confirmed seems to be unrealistic and impractical. Providers of Law degrees will need to know what impact this has on them in order for them to respond. As the proposals are not yet final it is difficult to start planning what shape degrees should be.

In order to know what type of SQE Prep course to design (whether it is included in a degree or not) sample assessments need to be available. Comments have been made above concerning the content of the Draft Assessment Specification and that it is not as detailed as it needs to be.

**Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

These proposals will have no substantial EDI positive impacts, and may actually have negative ones, because the advantaged will figure out how to use the new system more quickly than the currently disadvantaged. It is likely that candidates with better education, training and money are more likely to succeed in much the same way as they do now.



**BIRMINGHAM LAW SOCIETY**  
one profession • one region • one voice

**A New Route to Qualification: The Solicitors  
Qualifying Examination (SQE)**

SRA Consultation  
October 2016

**January 2017**

# Introduction

The Birmingham Law Society ('BLS') represents 4500 members and is the largest provincial Law Society through individual and corporate membership. Its membership consists of a broad spectrum of lawyers and practices from sole practitioners up to the largest law firms. Many, including a significant number of smaller firms, have international practices which are particularly reliant on the reputation of the solicitors' profession. All firms are dependent on the generally held perception that solicitors are trained to the highest possible standards to uphold the rule of law and professional in their work. This response has been prepared by the BLS Training and Education Committee which consists of a broad spectrum of practices and academics after taking into account comments received from a number of members. It accurately reflects the views of all participants in the process.

## Question 1



To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree

Birmingham Law Society (BLS) strongly believes that the SQE will not effectively measure competence and the reasons why will be expanded upon below. We recognise that the SRA has, since the last consultation, reviewed its proposals and has provided more detail for stakeholders which is welcomed. However, we believe that the proposals, albeit in a revised format, will still affect the standing of the profession and what it stands for, that of integrity, professionalism, and the rule of law, by diluting the quality of training. This will have an adverse effect both domestically and internationally. The Solicitors' profession is a profession, it is more than a job or role, as the holders of such a title uphold the rule of law and are not merely providing a commodity, which we feel has been lost in these proposals. We are concerned that these proposals may have a detrimental effect on the profession's reputation and service delivery.

Initially, we would say that:

- a) The proposed SQE creates a gap between the requirements of the assessment and the personal effectiveness and workplace competencies required of legal employees in the modern profession;
- b) There are significant issues with the breadth and depth of the proposed curriculum and proposed diet of assessments;
- c) The methodology of assessment proposed particularly for SQE1 is not searching enough and will encourage surface learning rather than deep reflective practice;
- d) The timing and practice context areas of SQE 2 takes no account of current recruitment and training practices in the legal profession and poses significant logistical issues;
- e) The SQE proposal creates hidden costs and will have unintended consequences.

SQE stages 1 and 2 are not robust and effective to enable an individual to be assessed as competent to enter the solicitors' profession as we note that in relation to Stage 1 (largely the testing of knowledge), the proposal is to assess this exclusively via multiple choice type questions. This form of testing fails to test candidates' ability to formulate reasoned answers to questions, to set out their ideas logically and clearly, and to do this in the wide range of subjects that is required at present to underpin the Legal Practice Course. There is a continuing worry, therefore, that the mode of assessment will lead to a dumbing down and that the new centralised assessment will not be sufficiently rigorous or test candidates in the most appropriate way in Stage 1. Mcqs will just lead to rote learning and the emergence of crammer style learning which will not show that an individual can analyse, research, think logically, construct effective arguments etc. essential skills within the stage 1 subjects. In relation to Stage 2 it is lacking in the depth of skills and breadth of subject areas which a student currently experiences on the LPC where students undertake work and transactions in many contexts within the compulsory and elective subjects and are assessed within those areas. Fundamentally of concern is that within Stage 2 students are assessed within two contexts only. Also, students/trainees are not required to be assessed in their training within both contentious and non-contentious areas which we feel is not meeting the requirements of an assessment system assessing the knowledge and ability of someone entering the solicitors' profession.

Overall, the above expressed concerns do not lead us to believe that an effective and robust measure of competence by means of the assessment regime will be achievable, and it is not as professionally testing on knowledge and skills as the current methods of assessment.

## Question 2a

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree

Comments

BLS agrees that work experience is important to the development of the skills and knowledge of a trainee and is pleased to see that this is recognised. However, where we do not agree with the proposals for qualifying legal work experience is that the proposals could create a two-tier system and dilute the perception, standing and quality of the profession. We have concerns around a 'build your own' PRT model based on potentially disparate work experience gained in paralegal placements where there is a possibility of this being poorly supervised, low level work.

It is unclear how a system where employers could, with lack of full knowledge of the work experience of the trainee, sign off statements to confirm a candidate has the 'opportunity' to acquire skills is better than the present system. Whilst the candidate still has to pass the SQE 2 exam, there is no underpinning requirement for them to have completed a well- designed scheme of work based training, including the current system of seat rotation and including contentious and non- contentious work. It is agreed that not all firms can offer this but some further requirement for a rounded properly supervised experience to replace this requirement would not only be desirable but essential.

We, therefore, are concerned that the proposals:

- i. do not measure the quality of the different experience or experiences in training. This is of serious concern to us as it is not merely the duration of training which is relevant but the quality of supervision, the level of work experienced and the breadth of the training.
- ii. will enable the period of training to be made up of training with other organisations/employers. This not only poses potential questions about quality as referred to in i. above, but will pose problems for the employer providing final sign off where an individual is drawing on other experience. How will the signing off employer be confident about the level etc. of the previous experience where it has been undertaken in a non-regulatory environment and, therefore, able to certify that the competences in the statement have been met?

i. and ii. above may mean that many, if not most firms (and almost certainly the larger more specialist firms) will be concerned about employing solicitors who have not undertaken sufficiently substantial work within a regulated environment and a two-tier system may be created because of the concern over the quality and level of experience that some may have experienced.

Whilst we embrace diversity and the opening up of the profession to all, it is important that the integrity and good standing of the profession is not compromised in any way and that the public is protected.

The SRA states that it is difficult to assess work-based learning and, therefore, they do not intend to assess this aspect of training. Testing will be by SQE Stage 2. However, the key is the quality of the experiential learning what is recognised/not recognised for the purposes of qualification. It is hard to assess work-based learning but we would query whether SQE Stage 2 can be an adequate measure of assessing when it is limited in contextual focus as referred to in answer to Question 1 above.

## Question 2b

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

- No minimum
- Six months
- One year
- 18 months
- Two years
- Longer than two years
- Flexible depending on the candidate's readiness
- Other, please specify Please enter an 'other' value for this selection.

### Comments

A trainee must have a meaningful experience of work-based learning and two years has been tested as appropriate across all size of firms and practices. Again, less training would affect our standing within the global market place and our service delivery. If a shorter period of time were permitted, then this could jeopardise how solicitors are recognised internationally and the equivalence of standing would be threatened.

Our response to 2 (b) must be read together with 2(a) above in connection with the quality of work-based learning obtained and the ability to assess the level and standard for signing off purposes, of which we have serious concerns as expressed.

It is argued in the proposals that Stage 2 alone will be able to assess the work experience, yet how could a trainee pass Stage 2 if the period of work experience is short? Either Stage 2 assessments will be set at a low threshold or they are able to be passed by mere rote learning which for skills areas /practice should not be possible.

### Question 3

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree

#### Comments

We are very concerned about the lack of regulatory requirement to study law to any great extent as part of preparation for SQE1. We accept that students are required to have a law degree, GDL or graduate equivalent which the SRA has recognised as important which will mean that students will have had to study law, in order to prepare for Stage 1. However, the approach to mcqs is likely to result in a number of 'crammer' style courses which will concentrate on simply passing the assessments unlike the current system where the legal knowledge is an underlying basis for writing, drafting, research, analysis and constructing arguments. There will be a watering down of skills for trainees. Students will want guidance about approaching mcq style questions and a course or courses to enable them to sit the Stage 2 assessments appropriately to meet the style of assessment being set. Also, firms have different in-house styles in approaching client care, drafting, letter writing, interviewing etc. Therefore, students/trainees will need to be familiar with the style adopted by the SQE assessments not only the approach adopted by their particular firm. They will need to be familiar with the drafting documents to be used etc. in order to fairly attempt Stage 2 in particular.

Also, a lack of regulatory requirement will result in larger firms resourcing a 'LPC' style course for their trainees, which may create a two-tier profession as not all firms will have the resources to do this and not all students/trainees will have access to this training.

As it is likely that students will want to undertake preparatory courses for the SQE and the consultation document does refer to providers, additional concerns of BLS are that we do not know what the cost of these courses will be and, also whether they will not be regulated. Less expensive courses may be inferior and students with less money may attend these courses and not obtain a quality programme and will be financially burdened. The SRA states it is relying on market forces to provide quality courses but we believe that particularly students with less finances will be at risk and may be adversely affected. As a variety of training routes emerge all firms agree they will need to more forensically check CVs and the routes/pathways applicants have taken. Those who have already been trained by a quality programme will inevitably fare better in the application round. Those who have selected a cheaper crammer

just to get them through the test may find themselves with worse career prospects and may be treated with less regard throughout their working lives being given lower level work and being paid less.

There is no specification of how to prepare for these courses except guidance via the exemplar pathways. Also, students and careers advisors may find the different routes challenging to understand even with a toolkit as a lack of regulatory direction may create a lack of clarity.

Therefore, we disagree with the proposals for the regulation of preparatory training because of the concerns we have raised above which affect all stakeholders.

## Question 4

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree

### Comments

Whilst we accept that a consistent approach to assessment is always a positive aspect for equivalence of ability, we do not believe that this model is suitable for testing the requirements of the needs of a solicitor because of the issues set out in the comments to Questions 1 and 3 above in relation to mcqs and the lack of testing of analysis, synthesis and being able to consider effectively the issues arising from a client's problem and weighing up the options. As already mentioned the transaction based aspect of a solicitor's work and the client care aspects do not seem to have been considered sufficiently.

We do not agree that the SQE model proposed is a sufficient test of the requirements to be a solicitor as the broad range of skills and competences set out in the statement of solicitor competence are not assessed by the SQE notably the reflective practitioner skills covered in elements A2 and A3 of the competence statement, the collegiate and team working behaviours in C3 and self- management behaviours in D1. Whilst much of this would be expected to be developed in the work based learning part of the training model there is no formal portfolio assessment built in to the qualification process apart from a vague requirement to keep records and for the firm to certify that opportunities have been provided to develop the competences. In our view this is wholly insufficient compared to the more highly regulated training framework of the Period of Recognised Training.

Trainees who come into a firm need to be able to undertake a certain level of interviewing and advocacy for firms requiring entrants to have these skills. The assessments are not training students/trainees for Day 1 of the work place unlike the LPC.

Also, the specialist elective subjects which are key to practice are not present, therefore, not providing a suitable test to becoming a solicitor in the modern business world.

As trainees are to be admitted into employment before the second stage, smaller firms may be reluctant to take trainees because of lack of resources unlike the current system where smaller firms take trainees post the LPC.

We are pleased that the SRA now agree a degree (or equivalent) should be a pre-requisite

for entrance to the SQE. However, it does not specify this should be a law degree or confirm the concept of a 'Qualifying law Degree' will survive the introduction of the SQE. If the SQE is introduced, we strongly support the retention of the requirement to have a law degree or GDL as a pre- requisite to taking the SQE. An exception for apprenticeships should be acknowledged and also Fellows of the Legal Executives as currently.

We are concerned that the SRA places an over reliance on the practices current in the medical professions as a basis for these proposals. We accept that there are parallels but there are also significant differences. For example, for doctors there is the pre- requisite of a medical degree before professional examinations. Additionally, within medical education there is an emphasis on self- assessment and reflection through portfolio based assessment. This element is missing from the SRA proposals as mentioned previously.

## Question 5

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

- Strongly disagree
- Disagree
- Neutral
- Agree
- 

Comment

BLS is of the view that where an individual has studied and successfully passed a module or subject at the required benchmark level that they should not have to sit that examination again. This is putting an unjustifiable financial burden on the individual.

Students were exempt from the old Part 1 examinations (prior to the Law Society finals) and were only then required to take the Part 2 examinations. It was acceptable then and there were many LLB/CPEs being taught at that time. Also, other professions such as the accountants permit exemptions from equivalent degree modules.

Therefore, where there is equivalence there should be exemptions but there should be careful monitoring of comparability.

## Question 6

To what extent do you agree or disagree with our proposed transitional arrangements?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree

### Comments

We think that if these proposals are brought in 2019 as a launch date is optimistic in ensuring that firms, graduate recruiters, careers advisors and providers will be in a confident position to inform students of the different routes to qualification and the pros and cons. Also, that the provider who is chosen to set up the SQE is in place and ready to move with a bank of good quality mcqs (should such a misguided approach be retained) and skills assessments.

It would be essential that all stakeholders were fully briefed, particularly, the students and employers and that the assessments had been trialled and tested to prevent any disasters occurring which would reflect upon the profession.

With all the stakeholders who need to be fully and clearly engaged, 2019 would be too early a date.

## Question 7

Do you foresee any positive or negative EDI impacts arising from our proposals?

- Yes
- No

### Comments

BLS welcomes any change which increases diversity within the profession for able individuals meeting the necessary skills required of a solicitor. However, it appears that the proposals may have adverse impact on equality because of the potential cost of preparing and sitting Stages 1 and 2 of the SQE, as the cost of preparing for and paying for the SQE Stages 1 and 2 will in many cases need to be borne by the individual. The SQE cost will be in addition to the cost of undertaking an LPC style equivalent course which is on top of the LLB/GDL. Those with limited means may not have the ability to fund such a cost and, unlike with the current LPC, where banks often fund the course by way of career and professional development loans, if there is no requirement to take such a post graduate vocational course then banks may not recognise such courses for funding. As the skills for SQE1/2 differ and vary from degree programmes, it is generally accepted that students will want to undertake courses and the argument that there will be any cost savings is not substantiated. In fact, those students most in need of financial support may be in a worse position, and may attend courses which do not provide the right level of quality because of lack of resources. Reference to the impact of cost was also referred to in answer to Question 3 above.

The SRA has not been able to provide any examples of what the proposed changes will cost and what, if any, cost savings there will be. Therefore, any statement about this new system reducing costs or increasing diversity because of cost reductions is unsubstantiated. Given the additional assessing post the degree/GDL and the unknown cost of courses which will appear in the marketplace, the extra financial burden may inhibit rather than encourage new entrants.

Training places will decrease because some smaller firms will no longer be able to take trainees post the LPC with more skills and transaction based experience before entering the firm as they will not have the resource available to them to provide for trainees who will need more training on Day 1.

We do not see evidence that the needs of students with disabilities has been sufficiently considered in relation to the type of assessments being proposed or the assessment process. This will have a negative EDI impact. For example, the SRA proposes that all 6 SQE assessments must be taken in one sitting. It has not proposed what the length of that sitting

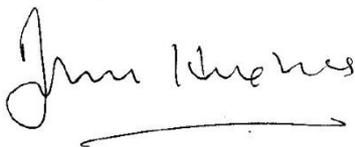
might be and therefore has not recognised the effect of taking 6 high- stakes exams over that period of time might impact students with protected characteristics or learning support /disability requirements. As there is no proposal from the SRA it has not identified this as an issue for potential negative impacts on EDI.

We are concerned that the SRA proposals have the potential to create a bottleneck of candidates at the point of qualification. The proposals make it possible for a student to qualify through a range of experiences and training which might not be acceptable to the type of law firm that the candidate wishes to work at. Currently, there is no guarantee of a job after the LPC stage. The SRA proposals move that to the point of qualification. Students may find out after a substantial period and cost of study that they have qualified but there is no one willing to employ them. This will have a negative impact on EDI.

## **In Conclusion**

BLS asks the SRA to consider our concerns in relation to the proposals which we believe will affect the global standing of the profession and its reputation as BLS still believes that the SRA is extending its reach beyond its regulatory powers into controlling entry into the solicitors' profession, standards etc. As we mentioned in our response to the first consultation proposals on the SQE, we are extremely concerned that this consultation, as well as other reviews ongoing, will fundamentally undermine the perceived independence and highly regarded standards of the solicitors' profession and the rule of law in England and Wales within the international context. Also, that the proposals put, if implemented, would seriously compromise the branding of the profession and adversely affect the continuing future economic prosperity to England and Wales obtained as a result of the globally acknowledged high quality legal service supplied by solicitors/legal firms within the international market.

3 January 2017



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John Hughes  
President  
Birmingham Law Society

## **Response on behalf of BPP University Law School to the SRA Consultation Paper: ‘A New route to qualification: The Solicitors Qualifying Examination October 2016’**

### **Executive summary**

- The SQE is not fit for purpose and is not a sufficient test of requirements to be a solicitor.
- Many of the original concerns from the first consultation have not been addressed.
- Case for reform not made out and is not evidence-based.
- There is no substantive or persuasive evidence of a ‘public appetite for reform.’
- The existing trailblazer apprenticeship needs amending.
- Current pathways to qualification are still fit for purpose and should be preserved.
- If the SRA is determined to implement the SQE we have made detailed suggestions on how to improve the proposal.

### **Introduction**

BPP Law School (‘BPP’) is one of the largest providers of professional legal education in England and Wales. We offer the LLB, GDL, LPC, BPTC and a suite of LLMs to the market. It has over 5,000 students across the country and seven Law Schools in London, Leeds, Manchester, Birmingham, Liverpool, Cambridge and Bristol.

BPP has exclusive relationships, as provider of choice, with over 60 of the leading law firms in England and Wales. We are the provider of choice to the majority of the Top 20 largest law firms in the country, many of which operate internationally. As such, we have a good knowledge of the needs of a large and diverse section of the profession. We have held extensive one to one meetings and roundtable discussions about these further SRA proposals with many of our clients and with a range of other law firms and stakeholders and our views are informed by the discussions we have had. We also have a significant proportion of students who do not have training contracts and our response also takes into account the perspective of these students.

BPP does not agree that the SQE is fit for purpose. Fundamentally we still do not agree that the alleged problems identified in the system of training of solicitors in England and Wales are legitimate, nor that the proposed SQE and changes to work based learning models address those perceived issues. Many of the concerns expressed in our response to the original consultation remain. We are surprised and dismayed that this new consultation has been released with so little amendment to the proposals and we now fear the SRA will simply press ahead with the SQE in the face of widespread objections and opposition.

BPP does not agree there is substantive and persuasive evidence of a ‘public appetite for a central assessment.’ The ‘ComRes’ survey referenced by the SRA asked questions that appear to lead the respondents to agree with the SRA’s proposals on the introduction of the SQE. Without further context, the wording of these questions are likely to make it difficult for some people to answer that they are not in favour of solicitors undertaking the same final exams. This is not a legitimate basis for sweeping change in a broadly functioning system.

Our response to this consultation is therefore multi-layered. Many of the points made in this response about the detail of the SQE are not intended to be read as any form of endorsement for the proposal, simply an attempt to marginally improve the proposed system should it be imposed.

Additionally, the SQE is already in place as the end-point assessment for the solicitor apprenticeship. Many of the firms we work with have solicitor apprentices and others may wish to take on more apprentices (via graduate and non-graduate entry points), as a result of the Apprenticeship Levy coming into force in April 2017. Therefore, many of the points we make in the response to this consultation are also important to take on board to improve the SQE for the apprenticeship route. In fact we would strongly urge the SRA to consider amendments for the existing trailblazer apprenticeship route, even if the SQE does not go ahead with the traditional route.

In summary it is our view that the existing traditional pathway to qualification as a solicitor by way of a QLD/CPE, LPC and a two year PRT is broadly fit for purpose and we support its preservation as many of the issues/outcomes identified in the consultation document could be more effectively achieved by simpler and less disruptive means.

However, as the SRA seems, in our view, ideologically committed to a centralised assessment, we have summarised below key changes we believe should be made to the proposal, if it goes ahead. These suggestions are explored in more detail in the answers to the consultation questions that follow.

- Make a law degree (QLD or CPE as currently defined or suitably amended) a pre-requisite for sitting SQE 1 rather than extensively re-examining this curriculum at SQE 1.
- Retain a requirement to offer a broader range of legal practice areas (electives) set by providers perhaps with centrally set assessments for the regulated core practice areas; a model currently used in the BPTC.
- Consider allowing both SQE 1 and SQE 2 to be taken before the period of work-based learning to overcome the identified logistical issues faced by the profession in current proposed recruitment and training models.
- Retain and enhance the need for reflective practice with the use of formal and assessed portfolio reflection submitted at the end of the period of work based learning.
- Offer more contexts for SQE 2 that reflect a wider range of practice area to reflect the diverse legal professions we have in England and Wales. Allow providers to draft and administer these within broad but clear guidelines along the BPTC model.
- Review the nature and scope of the functioning legal knowledge tests including re-evaluating the usefulness and merit of MCQ formats and the number of MCQs to be attempted in the exam period.
- The Assessment Organisation ('AO') should publish a more comprehensive description of syllabus objectives and sample papers at an early stage in the planning process to enable providers to more effectively prepare candidates for the SQE.

**1. Consultation Question 1: To what extent to you agree or disagree that the proposed SQE is a robust and effective measure of competence**

**Strongly disagree**

1.1 There are many issues that contribute to our view that the SQE as proposed is not an effective measure of competence.

1.2 The issues to be discussed in this section fall under the following categories:

- a) The proposed SQE creates a gap between the requirements of the assessment and the personal effectiveness and workplace competencies required of legal employees in the modern profession
- b) There are significant issues with the breadth and depth of the proposed curriculum and proposed diet of assessments
- c) The methodology of assessment proposed particularly for SQE 1 is not aspirational and will encourage surface learning rather than deep reflective practice
- d) The timing and practice context areas of SQE 2 takes no account of current recruitment and training practices in the legal profession and poses significant logistical issues
- e) The SQE proposal creates hidden costs and will have unintended consequences

a) The proposed SQE creates a gap between the requirements of the assessment and the personal effectiveness and workplace competencies required of legal employees in the modern profession

- i) As a knowledge test and a test of basic cognitive skills SQE 1 is broadly fit for purpose (although the scope of the syllabus is not). It can test skills such as remembering, understanding, application, analysis, evaluation and even synthesis in a limited way. The proposed assessment protocols in SQE 2, of role-play, research activity and writing tasks should also be suitable to assess professional values and practice skills such as receiving and responding to information, expressing value judgments and organising information. These are largely skills that can be mapped to level 6 descriptors and arguably level 7. However the profession wants and needs rounded, capable and mature graduates that are 'work-ready' and many of the competences identified in the Statement of Solicitor Competence are not covered by either SQE 1 or 2.
- ii) It is our view that the SQE assessments as proposed place too great an emphasis on knowledge and only a moderate competency in cognitive skills. This would appear to leave a gap between the requirements of the SQE and the wider workplace competencies required of legal employees in the modern profession and those described by the Statement of Solicitor Competence.
- iii) The SRA places an over reliance on the practices current in the medical professions as a basis for these proposals. Whilst parallels exist there are also significant differences. For doctors there is the pre-requisite of a regulated medical degree before professional examinations. Additionally within medical education there is an emphasis to ensure self-assessment and

reflection through portfolio-based assessment. This formal element is missing from the SRA proposals (the record keeping referred to in paragraph 113 looks wholly insufficient).

b) There are significant issues with the breadth and depth of the proposed curriculum and proposed diet of assessments

*The SQE, as proposed, offers less practical skills training prior to work based learning and less coverage of legal practice areas than at present*

- i) Our extensive consultation with firms indicates that if the SQE were introduced as set out in the consultation paper and no further training were to be provided, the knowledge and competence standard of a trainee entering the workplace would significantly reduce.
- ii) The firms with whom we work have clearly stated they will require a package of additional 'remedial training' to develop candidates to previous competence levels provided by the current route. Essentially our exclusive firms do not want their trainees to arrive with less knowledge and skills than they have now. The elective modules, pre-workplace skills training and business/commercial awareness we provide is considered essential to ensure the trainees enter the firm with a consistent body of knowledge and a baseline set of professional skills. Whilst these firms can pay for this 'gold standard', entrants to the profession who do not have access to this additional funded training will be less competent.
- iii) Smaller firms who do not pay for the LPC at present and who recruit from a pool of those who have self-funded the LPC, also rely heavily on the skills developed during the LPC. Small firms who give trainees a caseload from day 1 require their trainees to interview clients, go to appear before a district judge and to draft documents. They rely on candidates having selected LPC electives like family law and immigration law for example so they enter with a baseline of practice knowledge. Yes there is supervision in these firms but if there has been no consistent course that specifies this training in the future, firms will be selective and more forensic about who they take on (only people who have paid for additional training, only those with prior work experience) because they are not prepared to take on the additional cost of providing that training in-house. This is a clear example of the how costs the SRA claim to be eradicating will instead be hidden elsewhere. It is likely to fall to small firms who cannot afford to pay. Those firms therefore may not take trainees in future.
- iv) As a variety of training routes emerge all firms agree they will need to more forensically check CVs and the routes/pathways applicants have taken. The 'gold standard' trained applicants will fare better. Those who have selected a cheaper crammer just to get them through the test may find themselves with worse career prospects and may be treated with less regard throughout their working lives being given lower level work and being paid less.

**If the SRA are determined to press ahead with the SQE in some form we would urge it to retain a requirement to study a broader range of legal practice areas (electives) set by providers and broader curriculum for non-law students than that proposed. Centrally set assessments could be required only for the regulated core practice areas. This model is currently used in the BPTC.**

*The SQE 1 attempts to examine too broad a curriculum in one diet of assessment*

- v) The proposed module content for each of the functioning legal knowledge papers is extremely wide, covering materials from a QLD/CPE as well as core LPC knowledge. Little guidance is given about the depth of knowledge required. The breadth of learning outcomes and the need to assess a combination of substantive and procedural law appears to dilute the rigour of the SQE assessments. It is our view the SQE is attempting to assess too broad a curriculum in one diet of assessments but not wide enough to cover the current underpinning law content. The proposed curriculum reduces current QLD/CPE syllabus content by up to 30% overall and by up to 85% of some individual modules.
- vi) At present the information provided makes it extremely difficult to design a module curriculum. From BPP's experience of the BPTC Criminal Litigation and Civil Litigation external assessments which are assessed by means of SBA and MCQs we anticipate that this may lead to lengthy enquiries of the AO as to what is examinable. The BPTC team has found that, where the boundaries of the curriculum have been drawn too widely, it has led to arbitrary decisions being made by the BSB on the scope of the syllabus (for example, where the definition of a concept may be examinable but its application is not). This approach has encouraged selective rather than holistic learning amongst BPTC students. Consequently more detail will be needed down to lists of all potentially examinable sections (including sub-sections) and examinable cases. Although the specification states students will not need to recite case names, examinable principles arising from them will need to be clearly mapped out.
- vii) **We would therefore encourage the AO to publish a more comprehensive description of syllabus objectives at an early stage in the planning process and an ongoing consultation/conversation with providers as the syllabus evolves.** At present the assessment objectives, as currently stated, appear to lack detail and are expressed at a relatively high level. See Appendix I for BPP's detailed comments on the individual functioning legal knowledge assessments curriculum specifications. Significantly more work will need to be done to the assessment specification for it to be meaningful for providers of preparatory courses.
- viii) **Additionally for SQE 1, the AO should be required to provide a range of specimen papers with marking guidance and estimated mark bands.** For constructive alignment, the specimen papers are needed so that the course materials and teaching & learning activities align as closely as possible to the assessments students will be expected to undertake, to achieve the assessment objectives of the SQE. While we appreciate that the assessment

model allows for comparisons to be made between students over time, students need to be aware of broadly what standard they need to reach to achieve a pass in advance.

- ix) **For SQE 2 the AO should be required to provide:**
- **samples of the documents that students will need to draft;**
  - **sample scenarios/ tasks;**
  - **marking guidance and/ or assessment sheets filled in by the assessors; and**
  - **the training documents that are given to the assessors e.g. videos of interviews that the AO would categorise as of a pass and fail standard.**
- x) **We would also recommend that further detail is requested on the AO's feedback processes.** Our professional qualifications team who train accountants have found that it is useful to have a breakdown of candidate performance per topic area to inform future teaching and module design. This service is provided by some accountancy exam boards.
- c) The methodology of assessment proposed particularly for SQE 1 is not aspirational and will encourage surface learning rather than deep reflective practice
- i) Lawyers are encouraged to analyse: to weigh up the advantages and disadvantages of a case and work with a client; to act in their client's best interests; and to see practical alternatives. Throughout their undergraduate legal studies, students are discouraged from seeking the one correct answer and instead to develop their analytical skills. In long form questions they receive as much credit for their arguments and their clarity of explanation as for their conclusion, which might be dependent on a number of factors which are not within the facts. In advising a client on their options in a police interview, for example, it would be misleading to say that there is always one correct answer as to which option is best. Whilst an MCT can be drafted that has options such as:
- "if J does not explain how the blood came to be on his hand in his interview then the court could draw an inference from his failure to account under s. 36..."* this would be legally correct but the same could not be said for the statement: *"J should be advised to explain how the blood came to be on his hand to prevent the court from drawing an inference under s. 36"* as in fact this might not be in his best interests.
- ii) To encourage students to always seek out the one best answer is potentially dangerous and not necessarily the approach that will be best to adopt in practice. However sophisticated the online SQE tests, the nuances of this skill are not truly tested.
- iii) The complaint remains that multiple choice tests do not assess writing skills, nor do they assess in-depth knowledge of a particular topic. Instead there is evidence that MCQs more frequently promote the surface learning

associated with memory recall there is also evidence that repeated exposure to MCQ style testing develops a skill in information retrieval, based on previous right and wrong answers.

- iv) The number of questions per assessment and the time for completion would appear to be very challenging. If the SQE is truly assessing higher order cognitive skills in each question we believe it is unrealistic to complete each question in 1.5 minutes.
- v) It appears that the SQE 1 is modelled on assessment strategies employed in the medical professions. Although, for example, pharmacy students are required to attempt 120 questions in 2.5 hours, these questions often contain fewer facts and have single word answers (e.g. of a drug / condition) for students to decipher. By way of comparison, the BPTC Civil and Criminal Litigation assessments require students to attempt 75 questions in 3 hours (2.4 minutes per question). Such scenarios provide better comparisons for the types of legal scenarios that would be necessary to assess higher level analysis.
- vi) BPP's experience is that a pass/fail grading model discourages a culture of achievement and encourages students to focus on the minimum knowledge required to pass.
- vii) We anticipate that this will be exacerbated by the number of assessments students are expected to take at SQE 1. It is worth noting that the majority of accountancy students study for 1 to 2 papers at a time. Even on the full-time accelerated Graduate Diploma in Accounting programme at the Business School students study for only six ICAEW papers spread over their first year.
- viii) In the current proposal the relative weightings are set out according to each assessment objective. Even if the Angoff procedure is applied, students could presumably study strategically and omit topics, knowing that they only account for 10-20% of the assessment. In comparison the pharmacy profession framework links each of the learning outcomes tested by the registration assessment to 'indicative assessment topics'. Each outcome to the registration assessment is then given a weighting of high, medium or low. The risk is that an already smaller curriculum will be ruthlessly dissected by students just seeking to pass – this cannot protect the consumer.
- ix) At BPP we therefore believe that in order to meet the requirements of the profession with whom we have consulted widely, it will be necessary to design academic programmes which build upon the very basic competencies required by the SQE. To incentivise students' engagement with competencies which are wider than those required of the SQE we anticipate that we will need to link them to the award of an external qualification such as a Masters.

**We would urge the SRA to review the nature and scope of the functioning legal knowledge tests including re-evaluating the current over-reliance on MCQ formats and the number of MCQs to be attempted in the exam period.**

- d) The timing of SQE 2 takes no account of current recruitment and training practices in the legal profession and the areas of context are not appropriate for all
- i) There are a host of practical issues presented by the proposed timing and contexts of SQE 2.
  - ii) SQE 2 will be a time intensive assessment with oral skills requiring one to one assessment in a simulated environment. Currently 5000 trainees are admitted per year. To get through 5000 candidates in two assessment windows a year, even if these are evenly spread, will take significant resources. It is likely to mean the 'window' has to be several weeks if not months long.
  - iii) It may take 2-3 months for results to be processed once this extended SQE window closes. If the SRA is using the Angoff method all assessments will need to be complete before finalising results – so logically the first person who sits SQE 2 in that period could have to wait 9 months for results. This is completely impractical – the proposed timescale is 5 years from first SQE 1 exam to receiving results for SQE 2.
  - iv) Whilst the SRA mention that 'stage 2 is not an assessment of the law', however, a 'candidate cannot be competent in a skill area if they misconceive the law'. If candidates are not able to 'correctly identify and apply legal principles or ethical considerations, they will fail the assessment'. The practical impact of this would be that they will need a refresher of stage 1 functioning knowledge before sitting stage 2 assessments. Additionally not all skills assessed in SQE 2 will be developed to the same level in all firms.
  - v) Firms, particularly those with large trainee intakes, are very concerned about the following:
    - Practical implications of having trainees out of the office for extended periods of time for training and assessment and how that will impact on the transactions and casework they are involved in.
    - Provisions that will be need embedding in employment contracts to cover the consequences should trainees fail SQE 2.
    - Many firms were highly skeptical that SQE 2 could be taken without any formal training course as opposed to work based learning but given trainees are fee-earners time out of the office for training would have to be minimised for commercial reasons.
    - These are 'high stakes' examinations that would cause a great deal of stress for already very busy fee-earners.
    - There is an obvious requirement for additional training / refresher training to prepare candidates for the limited context areas of SQE 2 which do not map to the practice areas of every firm. This is true for

many firms large and small, commercial and niche. Many firms cannot offer more than one context.

- How will firms deal with a demand from trainees to have seats that will help with context for assessments?
- Firms are also concerned that if they took the training in-house they would not necessarily have the right skills or knowledge about what the examiner is looking for in such high stakes assessments.
- If, as has been indicated in some discussion fora with the SRA, a context is randomly selected instead, concerns were expressed that e.g. a very high performing trainee in banking legitimately may not pass SQE 2 in context of Wills. How is this fair compared to a candidate who has been practicing in private client for the last 6 months?
- If a trainee fails SQE 2 before the NQ process but has already been allocated a role on qualification, this makes pipeline management and budgeting very difficult for the firm. If they defer them to the next intake – there may not be a position available.
- Will the SRA consider running assessments outside of the UK for the growing number of trainees on secondment abroad?

**If the SRA decides to press ahead with some form of SQE, BPP urges it consider allowing both SQE 1 and SQE 2 to be taken before the period of work based learning to overcome the logistical issues faced by the profession in current recruitment and training models. It could retain and enhance the need for reflective practice with the use of formal portfolio reflection at the end of the work based learning instead of SQE 2.**

**Additionally the SRA should consider offering more contexts for SQE 2 to reflect a wider range of practice areas given the diverse legal professions we have in England and Wales. It could consider allowing providers to draft and assess these within clear guidelines. Again this is not dissimilar to the current BPTC model.**

e) Hidden costs and unintended consequences

- i) Part of whether the proposed SQE is an effective measure of competence would include whether it is cost effective, yet the SRA 'cannot know the exact cost of the SQE before the appointment of the AO'. It is noted that there are still no projected costs included in the consultation documentation.
- ii) The imperative to reduce cost is understood, but the cost of training solicitors will need to be borne somewhere in the system. Firms are concerned it is being pushed on to them to spend more time doing remedial training (either in-house or buying it in) because passing SQE 1 before joining the workplace is insufficient.
- iii) Some firms feel the regime proposed is so complex and difficult and potentially costly to navigate they will only recruit NQs and abandon having trainees in the workplace. This cannot be good for the profession.

- iv) As a result of this change to the work based learning model firms are concerned that paralegals working for them would seek to use that experience as part of their 'work based learning' and once those individuals had passed SQE 1 and 2 (self-funded and independently of the firm) would then require the firm to provide different work and a pay rise commensurate with their new status as solicitor. This would not be appropriate for the firm's business model. Firms may now recruit paralegals specifically stating in the employment contract that the work will not be signed off for the purposes of the SQE.
- v) The bottleneck will likely move from training contract to an oversupply of NQs. There will therefore be a number of 'solicitors' doing paralegal work at paralegal rates. All of the current legal marketplace changes indicate the profession may need less not more solicitors and work needs to be done at more varied levels.

## **2. Consultation Question 2:**

**(a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

**Disagree**

**(b) What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

**Two years**

- 2.1 We believe that two years is broadly a suitable timeframe in which to develop as a legal practitioner within a well-designed scheme of work based training. However we have concerns around a 'build you own' PRT model based on potentially disparate work experience gained in paralegal placements where there is a possibility of this being poorly supervised, low level work.
- 2.2 It is unclear how a system where employers could negligently sign off statements to confirm a candidate has the 'opportunity' to acquire skills is better than the present system. Whilst the candidate still has to pass the SQE 2 exam, there is no underpinning requirement for them to have completed a well-designed scheme of work based training, including the current system of seat rotation including contentious and non-contentious work. It is agreed that not all firms can offer this but some further requirement for a rounded properly supervised experience to replace this requirement would be desirable.
- 2.3 The lack of an assessed formal portfolio even signed off by a training supervisor is a significant omission from the proposals.
- 2.4 The problem of access to workplace experience is acknowledged within the research the SRA commissioned for this consultation. This is unlikely to go away. There is clearly a risk that students that report difficulty securing one training contract or even informal

workplace experience are placed in a position that they must go through this application process up to four times.

**Consultation Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE**

**Strongly disagree**

- 3.1 We fundamentally do not agree that it is appropriate for the SRA to simply outsource a central exam to an AO without specifying and regulating preparatory courses for that exam. We believe that the market behaviour that will follow this decision will result in a reduction in training standards and ultimately a reduction in the skills and competences of future solicitors. This is not good for the reputation of the profession or protection of consumers.
- 3.2 The consultation paper states that the SQE will provide data that will ‘inform candidate choice’ and create competitive pressures ‘to drive down price’ and for ‘high quality legal education and training’ (paras 42 and 121). The SRA’s rationale for the SQE includes allowing ‘candidates to choose the training that best suits their circumstances.’ Based on our experience in the accountancy profession we believe this will have a number of unintended consequences:
- a) there is an inherent conflict between self-funding students whose primary focus is cost and the needs of employers for employees who are adequately prepared for the practical demands of the workplace. Large employers will purchase additional training to bridge this gap. A two tier system will emerge.
  - b) BPP’s extensive experience of the assessment processes and the commercial pressures within the accounting profession suggest that the publication of pass/fail data focuses self-funding students on the minimum level required to pass the assessment in the cheapest way possible (often with limited recourse to education and training). Far from driving up standards, our experience is that assessment, without the requirement for education and training, encourages rapid and strategic surface learning of material amongst self-funding students.
  - c) Over time, several accountancy firms have concluded that a slower, more thorough and rigorous approach to the acquisition of knowledge is required to prepare their employees appropriately for practice. In our experience this has led to a range of bespoke academic programmes being developed by individual employers. The same is highly likely to occur in law.
- 3.3 So far from introducing a ‘consistent, high standard’ (paragraph 26) BPP predicts that the introduction of the SQE will create two different levels of academic and professional competence within the profession in the longer term. This is the ‘gold standard’ referred to in paragraph 1.2 (b) (iv) above.
- 3.4 There is a tension between the SRA’s rationale for bringing in the SQE (to ensure that candidates pass the same examination to qualify) and what the SRA consider to be features of high quality teaching being an ‘ability to innovate’. The current system is likely to offer training providers more ability to innovate, given they can try out new teaching

methods and course materials. This does not equate to an improvement in standards. In fact there would be a risk under the proposed system that innovations will not be positive and may lead to a higher fail rate amongst candidates, given the training provider would not be setting the external assessment and may struggle to align its programme to the assessment standard if inadequate information is provided by the assessment organization (see paragraph 1.2 (b) (vii)-(xi)).

- 3.5 BPP has doubts about the ability of the SRA to collect and publish data about the success rates of training providers. It is unclear how data could be collected about where and how a candidate had trained for the SQE. This would require self-certification by the candidate and even if they provide details, candidates may have used numerous providers and materials and the SRA would be unable to verify/triangulate what the candidate says. The data would therefore not be reliable.
- 3.6 If data can indeed be published in the manner suggested, information should be collected that would allow providers to calculate the 'value-added' to candidates by attending their institution. Training providers are not necessary providing high-quality teaching because high performing Russell Group university graduates pass the SQE, for example.
- 3.7 Finally, despite what the SRA has previously said about comparative data for employers that the SQE will provide, firms have said they will not look at the SQE results as a benchmark of quality because, as presented in the consultation paper, the test itself is not respected. For many, it will also be too late for their recruitment cycles and so the degree result or predicted degree result is a better indicator.

**4. Consultation Question 4: To what extent to you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor**

**Strongly disagree**

- 4.1 We do not agree that the SQE model proposed is a sufficient test of the requirements to be a solicitor. As stated in paragraph 1.2 (a) (i) the broad range of skills and competences set out in the Statement of Solicitor Competence are not assessed by the SQE notably the reflective practitioner skills covered in elements A2 and A3 of the competence statement, the collegiate and team working behaviours in C3 and self-management behaviours in D1. Whilst much of this would be expected to be developed in the work based learning part of the training model there is no formal portfolio assessment built in to the qualification process apart from a vague requirement to keep records and for the firm to certify that opportunities have been provided to develop the competences. In our view this is wholly insufficient compared to the more highly regulated training framework of the Period of Recognised Training.
- 4.2 It is pleasing to note the SRA now agrees a degree (or equivalent) should be a pre-requisite for entrance to the SQE. It does not however specify that this should be a QLD or confirm the concept of a QLD will survive the introduction of the SQE. If the SQE is introduced, BPP and all of the firms it has consulted with, strongly support the retention of the requirement to have a QLD or CPE as a pre-requisite to taking the SQE. An exception for apprenticeships should be acknowledged (although as previously stated BPP is firmly of the view this should have been created as a degree apprenticeship in the first place).

- 4.3 The SRA places an over reliance on the practices current in the medical professions as a basis for these proposals. Whilst parallels exist there are also significant differences. For doctors there is the pre-requisite of a medical degree before professional examinations. Additionally within medical education there is an emphasis to ensure self-assessment and reflection through portfolio based assessment. This element is missing from the SRA proposals. See paragraph 4.1 above.
- 4.4 At para 54 of the consultation paper, the SRA draws comparisons between the SQE and testing used in other ‘high stakes professions’. Note that each of the professions it cites require candidates to have completed (and been assessed upon) a substantial period of prior academic study in their chosen field before sitting the test of professional competence (e.g. pharmacy requires a 4 year degree, Multi-State bar exam requires a QLD and the Qualified Lawyers Transfer Scheme (‘QLTS’) requires entrants to be qualified in other jurisdictions).
- 4.5 Emphasis is placed in the consultation on the SQE being a test of professional competence and not of the academic curriculum (para 129 and 134) but BPP and the firms it works closely with believe that competent legal practitioners need a thorough and in-depth foundation in legal concepts and reasoning. This should be examined during the qualification process either in the context of a QLD or CPE. The deep thinking around legal issues required by a QLD will still be missing for non-law graduates and the long term competence of the profession will be diminished. Firms do not wish legal instinct to be ‘gleaned on the job’ and are very clear that they would require non-law graduates to take a CPE or equivalent programme prior to any SQE preparation module. This requirement will not reduce cost.
- 5. Consultation Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2.**

#### **Disagree**

- 5.1 BPP is still of the view that students who have invested time and money in a valuable educational process should be given credit for that in the form of exemptions. Granting exemptions is a well-established practice within Higher Education and other professions do allow exemptions from their assessment. For example BPP’s Advanced Diploma in Accounting and Finance which is accredited by the ACCA provides students with exemptions from taking the nine Fundamental Level Papers set by the ACCA although students sit BPP assessments. Another example is BPP’s Graduate Diploma in Accounting which gives students exemptions from six ICAEW module papers. However, BPP assessments are written and provided by ICAEW.
- 5.2 As stated in our response to the previous consultation, there is no logic in preventing a student who has studied, for example, contract law and passed an assessment at degree level, to not be exempt from that element of the SQE. To require such a student to pass a further assessment will drive up costs and focus the student on passing examinations rather than developing professional competence. There is no justifiable benefit in over-examining students through the qualification process.

5.3 EU law remains an issue notwithstanding the referendum result. It requires that prior experience and education must be taken into account when candidates apply to undertake the QLTS. It is possible that two lawyers from the same jurisdiction will have attended a variety of Universities and followed a range of paths to qualification in their own jurisdictions. It seems perverse that these students should be able to obtain exemptions for a period of time and yet the domestically educated applicant should not.

**6. Consultation Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

**Strongly disagree**

6.1 The SRA has proposed transitional arrangements in recognition that candidates will be part way through the qualification process. BPP is of the opinion that the transitional arrangements are prima facie discriminatory and unfair; particularly in their effect on overseas candidates, part-time students, and, students who have reason to interrupt their existing studies.

6.2 The proposal that overseas students are immediately required from August 2019, no matter at what point of legal education they have reached, to take the SQE whereas domestic students are required to take it only from 2024 is discriminatory.

6.2.1 Overseas candidates have already made buying decisions, planned a career and made contractual arrangements already for a QLD/CPE and LPC with the legitimate expectation that they would be qualifying routes. For example, an overseas (non-tier 4) part-time LPC student may have started the LPC in September 2016 and has 4 years to complete the programme (by summer 2020), and will find that the qualification is now non-qualifying.

6.3 For domestic candidates, the long-stop point of 2024 is seemingly predicated on the standard progress of full-time students following a traditional model of study. The SRA appears to have ignored sizeable cohorts of students. It has, for example, not taken account of the current length of time of qualification for part-time students, students with protected characteristics or other diverse backgrounds, or, those students who have needs to take interruptions of study or decelerate their progress though qualifications for any number of reasons related to, for example, family life and illness. For example, a student commencing a QLD programme in May 2019 would have 6 years under the current regulatory timescales to complete the qualification as a QLD. The SRA proposals would see that student fall under the longstop date of 2024 with a non-qualifying degree.

6.4 BPP does not believe that the transitional arrangements will create a market-led approach where students have sufficient information about education and training opportunities to be able to make effective decisions for their circumstances.

6.5 The SRA is unreasonable in its expectations that both an AO (appointed by winter 2017) and education providers will have had sufficient time to:

- a) design learning opportunities and materials;
- b) deploy adequate programmes of education and assessments; and

- c) communicate these to the market in its proposed timescales.
- 6.6 We do not believe that the SRA understands the buying/application cycle for full time and part time QLDs, CPEs and LPCs in its proposal to commence the new qualification route in September 2019. The SRA appears not to comprehend that it is proposing a complete revolution in legal education and routes to qualification.
- 6.7 It does appear in its timescales that the SRA might have already pre-selected an AO in its expectations of the timescales that an AO will have to design and deploy assessments and sample assessments.
- 6.8 BPP believes that a transitional arrangement should include:
- a) Full and comprehensive support and communication from the appointed AO to any training and education provider and students on an ongoing basis for:
    - i) Module syllabus and assessment including specimen papers
    - ii) Detailed weighting guidance
  - b) Measures in the year prior to the SQE introduction to test the questions, marking methodology and proposed test centres.

**6. Consultation Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Yes**

- 7.1 We note that the SRA has recognised the need for an EDI impact assessment in its consultation. It is unfortunate the SRA has not commissioned, as part of **this current** consultation, a draft systematic EDI impact assessment for each of the protected characteristics.
- 7.2 The SRA had commissioned an evaluation report from AlphaPlus on its previous proposals in Phase 1 of the consultations. The recommendation in that report at section 6.9 is interesting in how it discusses bias and reasonable adjustments but makes no mention of *alternative forms of assessment* which are considered a standard reasonable adjustment across the sector. There seems to be an over-focus on extra time as a sole means of reasonable adjustment. In any best practice in this area, extra time is only one of a wide set of arrangements currently available. The SRA/AlphaPlus report has not referenced nor acknowledged the diversity of reasonable adjustments made and/or required.
- 7.3 The SRA has also not provided specimen papers or questions for any of its proposed assessments. The SRA has not provided a proposal for a period of time over which the SQE assessments must all be sat – i.e. the duration of a sitting. It is irrational and unreasonable to consult on an unseen assessment proposal. The below response is based on what can be gleaned from the proposal information the SRA has provided in the absence of a full and proper set of specimen questions and assessments.

- 7.4 The SRA has not provided any evidence or proposal of how it intends that either it, or, the AO, will provide sufficiently, or at all, for students with learning support requirements or disabilities. It is unreasonable to ask for a response to proposals and their impact on EDI without that sort of information forming part of the proposal.
- 7.5 The SRA states that it believes its proposals will create fairer access to the profession but not does supply any sufficient evidence base for its belief.
- 7.6 The SRA has included a number of factors as areas of concern in its proposals. It is not consulting on the effect of its transitional proposals in its EDI assessments.
- 7.7 BPP University has a number of areas of concern that there are substantial risks of negative EDI in the SRA proposals;
- a) The cost of qualification;
  - b) The nature of the assessments and the wide range of learning support needs and disabilities;
  - c) The nature, objectives and accessibility of the period of workplace experience and educational experiences; and
  - d) The changing recruitment and sponsorship practices due to the proposals.
- a) The cost of qualification
- i) The SRA states that it believes the cost of qualification will fall and that the cost of the SQE will be less than that of the LPC. The SRA is confusing the cost of an exam and the cost of a programme of education which includes an exam.
  - ii) BPP and the law firms consulted are of the opinion that the cost of qualification will rise, not fall, and that costs will be transferred to students/candidates in ways which will reduce access and have negative impacts on EDI;
    - Trainees will be less useful and productive in the office as they may still be studying for SQE 2 at the same time and will not have had the same quality of legal education prior to being in the workplace. This will have a detrimental effect on the salaries paid to trainees under the proposed system. Future trainees following the SQE proposal will be paid less than current trainees who can be productive and focused professionals in the workplace from day 1. Law firms will not be able to charge clients the same rates for the work of future trainees as they do now. These trainees will be seen as less valuable. There will be a negative impact on EDI through the reduction in the value of and salaries paid to trainees undertaking workplace experience.
    - While the SRA has abolished the mandatory minimum trainee solicitor salary in favour of the national minimum wage, the Law Society has recommended minimum trainee solicitor salaries, calculated on the basis of the Living Wage and LPC repayments. The Law Society, on the

basis of an equality and impact assessment, highlighted that the removal of the mandatory minimum trainee solicitor salary would have a negative impact on entrants to the profession from poorer and ethnic minority backgrounds. If students can obtain periods of work experience through working in a student law clinic or through a placement as part of a sandwich degree, or through a collection of internships in private practice, this could potentially mean that students are not paid at all while gaining workplace experience, losing even the guarantee of the national minimum wage. While this could lead to exploitation of candidates generally, losing this protective 'floor' would be undesirable for potential entrants to the profession from less affluent backgrounds in particular. Bodies like Intern Aware believe that 'unpaid internships are exploitative, exclusive and unfair. By asking people to work without pay, employers exclude those with talent, ambition and drive who cannot afford to work for free'. This will have a negative impact on EDI.

- iii) Until the market settles down in terms of what law firms expect, students may be spending money on unregulated legal education (i.e. falling outside the regulatory framework mandated by the SRA) in a vacuum, uncertain whether or not law firms will take account of such courses in their recruitment processes. BPP believes this will have a negative impact on EDI and a diverse profession.
  - iv) Students on the existing qualifications have access to SFE funding for disabled students. Non-award courses for the proposed qualifications would not attract this funding. This cost would become the liability of the provider and therefore ultimately the student. This would have a negative impact on EDI.
  - v) Education providers currently offer a wide range of scholarships and bursaries for their programmes of study. As these programmes would no longer be valid qualifying routes it is inevitable that the level of support for students with financial needs would diminish. The SRA proposals do not contain any proposal for financial assistance for the SQE or period of workplace experience. This would have a negative impact on EDI.
- b) The nature of the assessments and the wide range of learning support needs and disabilities
- i) The SRA has not included in its consultation any recognition of the needs of students for a robust and accessible deferrals and mitigating circumstances process. The SRA has not provided any proposals for creating or handling such a process. A clear and accessible process for deferrals and mitigating circumstances ought to be inherent in any scheme of assessment. In this respect, the SRA proposals will have a negative effect on EDI.
  - ii) The SRA proposes that all six SQE assessments must be taken in one sitting. It has not proposed what the length of that sitting might be, and therefore has not recognised the effect of taking six high-stakes exams over that period

of time might impact students with protected characteristics or learning support/disability requirements. As there is no proposal from the SRA it has not identified this as an issue for potential negative impacts on EDI.

- iii) The principal issue with MCQ only assessments relates to inclusive practice which is about providing a range of assessment methods which enable students with a broad spectrum of learning styles, abilities and cultural backgrounds to demonstrate their skills, the application of skills, their knowledge and understanding. This range of assessment types enables students with learning difficulties and disabilities to have equitable access to be able to demonstrate their skills and understanding throughout a range of assessments.
- iv) Assessments must be able to be adjusted into alternative formats, not just extended in duration e.g. 25% extra time. For example an examination question can be reasonably adapted into a coursework assessment and vice versa. MCQs are too rigid. They do not provide the opportunity for students to explore concepts, ideas and demonstrate their application in a variety of settings. As already stated, MCQs do not account for differences in learning styles which include the result of personal strategies to overcome dyslexia or indeed a wide range of learning difficulties and disabilities.
- v) There are cultural and mental health issues to consider. For example one of our students with post-traumatic stress disorder was adversely affected in an exam due to the description of an incident which was close to their own real life experience. Will the MCQs consider gender/racial bias which could be a barrier to students identifying the correct answer or perceiving the bias/discrimination of how a group is portrayed in a question?
- vi) Current research suggests that MCQs may present more difficulties for students with dyslexia. The format of the test requires skills in visual tracking both vertically and horizontally which is a barrier to some students with dyslexia. MCQs also require the subtle distinction between several similar/conflicting statements which can unnecessarily confuse students whilst they may in fact have the skills and knowledge for direct application or synthesis. Students with dyslexia often have issues with short-term memory and when presented with several conflicting statements will have difficulty holding the information at the same time and importantly processing this in tandem. Dyslexia is the largest cohort of students in any educational setting by disability type. MCQs do not measure ability to organise and express ideas. They limit expression, and are not suited to students with dyslexia.
- vii) Performance on MCQ items can be influenced by student characteristics unrelated to the subject matter, such as reading ability, deductive reasoning, the use of context clues and risk-taking. Students with autism and students with ADHD will be disadvantaged due to the way they organise their thoughts. Students on the autism spectrum (ASD) may have difficulty in ascertaining the differences or intended meanings of the statements which can lead to unnecessary confusion. Students with ASD may go into the exam

with an excellent understanding of the subject knowledge and have the skills to explain themselves and a rationale for a particular line of argument, but faced with several options where the meaning is subtle or more abstract can, again, lead to confusion. It will obviously vary with each individual.

- viii) MCQ items are subject to clueing. Clueing may disadvantage some students. How will students organise these multiple answers? Will it be easy for a visually impaired student to organise their answers and rely on clues that other students can more easily rely on?
- ix) The SRA has given no evidence that its SQE will be culturally accessible and neutral. For example, will second language English speakers be disadvantaged by misleading or subtle differences in answers, is it more a test of good English than legal practice and can the two concepts be separated when using multiple choice?

c) The nature, objectives and accessibility of the period of workplace experience and education

- i) BPP believes that firms will require a pass at SQE 1 prior to offering workplace experience. This will favour those students with access to funds to pay for recognised high-standard training and education. It will put those students who cannot afford that level of training at a disadvantage. This will have a negative impact on EDI.
- ii) BPP believes, in consultation with law firms, that the absence of a clearly defined and assessed process of workplace experience, such as the training contract, will have a negative effect on EDI. BPP believes that a wide range of workplace experience will become available – some below and some above the current baseline standard of the training contract. Those students who are better able to access informal networks, or, internships for high-quality workplace experience will be better placed to be recruited than those without such advantages.

d) Changing recruitment and sponsorship practices due to the proposals

- i) The unanimous view of BPP and the law firms consulted by BPP is that the SRA proposals will create a bottleneck of candidates at the point of qualification. The proposals make it possible for a student to qualify through a range of experiences and training which might not be acceptable to the type of law firm that the candidate wishes to work at. Currently, there is no guarantee of a job after the LPC stage. The SRA proposals move that to the point of qualification. Students may find out after a substantial period and cost of study that they have qualified but there is no one willing to employ them. This will have a negative impact on EDI.

# Consultation questionnaire

Response ID:497 Data

## 2. Your identity

### Surname

Podger

### Forename(s)

Laura

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of a Law Society board or committee.**

Please enter the name of the board or committee:: Bristol Junior Lawyers Division

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** Bristol Junior Lawyers Division (JLD) believe that by completely changing the current system firms will have to under go large administrative changes and it is likely to discourage firms taking on trainees in the future. In addition a purely exam/test based approach could lead some students to purely memorise information rather than learning how to apply it practically. Slightly worryingly the case used for supporting evidence against the positivity of a computer based testing approach is based on research carried out 16 years ago, Case V Swanson 2001, surely more up to date evidence should be acquired/cited.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** JLD agree that a period of legal work experience should remain in place and that 12 months is not long enough to gain the experience required. While many firms have concerns about experience gained in other employment, if this experience is appropriately assessed and the candidate can demonstrate the legal skills required to do the job then allowing greater flexibility should be welcomed.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** 2 years but this should be flexible depending on the candidate's readiness.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** While it is welcoming to see the legal apprenticeship route included JLD remain unclear as to how the SQE would be implemented across institutions. It would also seem to limit the exposure of future trainees to areas of law outside of the core subjects which they may be interested in.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:** It is agreed that the standard should be set at degree level or equivalent and that the character and suitability requirement would still need to be demonstrated however without viewing a proposed model paper this question is difficult to adequately comment upon.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** JLD believe that in taking away exemptions for courses such as the GDL students will not want to study at institutions which offer these courses resulting in students having to undertake a less rigorous degree followed by the SQE course which is likely to lower standards. In light of the unknown future in regards to the economic landscape JLD would urge for any changes to the exemptions to be put on hold until there is more clarity on the position.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly agree

**Comments:** JLD believe that 2019 is far too soon to implement changes and will jeopardise the future of those who will be studying law degrees or post-graduate conversion courses at the time. Furthermore JLD feel that such students should be allowed to continue with their route of qualification under the current scheme.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** More Negative than Positive At current without further clarification around points and a model paper example the equality and diversity impacts cannot be assessed as being positive or negative. However JLD do not believe that the SQE will promote fairer access and will instead provide more barriers and expense for law firms and discourage those who shy away from entirely test based routes from entering the legal profession.



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9 January 2017

Dear Sirs

### **SQE Second Consultation - Bristol Law Society Response**

This letter is the official response of the Bristol Law Society ("BLS") to the SRA's Consultation regarding the introduction of a Solicitors Qualifying Examination ("SQE"). The text of this letter has been created collaboratively by members of the BLS Council on behalf of the wider membership of BLS.

#### **Question 1**

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

#### **5 – Strongly disagree**

BLS remains sceptical that a complete overhaul of the current system is the best way to address the findings of the Legal Education and Training Review ("LETR"). The feedback from the majority of firms is that, while the proposals may open up routes to qualification, the proposals are unlikely to significantly change firms' existing trainee recruitment processes. Further, most firms believe the proposals will only create more of an administrative and preparatory training burden on the firms, despite a lack of evidence that the SQE will be an effective measure of competence. The SQE may provide more alternatives alongside existing training programmes, which firms are willing to explore, and on the face of it the SQE appears to provide greater flexibility. However, the general feeling is that firms do not see the current system as broken and they don't want more uncertainty.

Bristol's legal community comprises a number of firms which focus on national and international commercial law, including some with great levels of specialisation. Equally, Bristol has a number of small firms with a private client focus. Some of these firms may be too specialist to provide experience to aspiring solicitors in two of the five contexts of Part 2 of the SQE examination. Whilst many firms, especially the larger ones, would not find this difficult at all, others will struggle. There do not appear to be any details in the consultation as to how firms, or aspiring solicitors, may be able to respond when faced with this issue. Before committing to move forward with introducing an SQE, fundamental details like this must be given full consideration.

#### **SQE1**

It has been proposed that the SQE is to be delivered in two stages ("SQE1" and "SQE2" respectively). SQE1 is to be assessed by way of 20 hours of computer-based "objective" testing to determine candidates' functioning legal knowledge. Firms have raised concerns about this method of assessment and whether it is rigorous enough. Some firms felt that this style of testing alone was insufficient, whilst others have raised concerns about, simply

by way of example, analytical skills not being assessed in favour of rote memorisation. Put another way, firms are concerned that the SQE1 would motivate potential solicitors to memorise a large body of information rather than learning how to apply legal knowledge. That can only be harmful to the profession as well as harmful to the public.

Tellingly, no example questions have been published by the SRA as part of the present consultation, it is not currently possible to determine the standard or difficulty of the assessment. Until this is done, it is impossible to form a view regarding whether or not the test properly assesses legal knowledge to a sufficient standard. It is noted that this method is currently used in the QLTS and is considered to be rigorous but such an abstract comparison is of little value in the circumstances.

The consultation document suggests that the SQE1 would test candidates' ability to "write, to formulate arguments, to analyse and to research". The only place for this appears to be the Practical Legal Skills element of SQE1, which is arguably simply one exercise shifted forward from SQE2 (discussed below). Assessing skills in this way as part of SQE1 appears rather curious given the stated objective of SQE1 to be an objective assessment of functioning legal knowledge.

The requirement for candidates to take all assessments in a single assessment window, and the cap on re-sits, sounds sensible in principle. However, detail is lacking regarding how exceptional circumstances may be handled. Further, it should be noted that this may serve to create a new artificial barrier to qualification for some candidates who are already under-represented in the profession.

## SQE2

Firms have raised concerns about the value of the SQE2, especially as it is proposed that SQE2 could be taken at an early stage in the 2 year period of work experience. The SRA have been vague about timings of the SQE2 assessment and have only stated that it must be taken "during" the 2 year work experience period. Larger firms are unlikely to make significant changes initially to the structure of their training from the existing training contract format, but many have raised concerns about timing and the extra administrative burden and preparatory training that will be required. It has been suggested that there should be a minimum amount of work experience required before candidates can take the SQE2 – this does not appear to have been explored by the SRA.

As noted above, the skills assessments are to be taken in 2 practical contexts (from criminal practice, dispute resolution, property, wills and estates, and commercial and corporate practice). Even larger firms who do have the capability to offer experience in all of these contexts have raised concerns about giving suitable exposure to these areas for all of their trainees and have questioned how it would be possible to assess skills if a trainee had not experienced the practice context. The SRA has said that SQE2 would be looking to assess the underlying skills and not the context it was learnt in (this being assessed in SQE1). However, it is clear from the draft assessment criteria that trainees who had not experienced the practical context would be at an obvious disadvantage.

Additionally, and of greater concern, if the assessment can be easily passed by someone who had not experienced the practical context (which seems a natural conclusion if knowledge of the context is not being assessed) then this raises a number of very serious questions about the suitability and rigour of the assessment. Until a model assessment paper (or similar) is published, few firms are prepared to agree that the SQE2 would meet the required objectives.

The alternative suggestion of requiring candidates to be prepared to be assessed in any of the five contexts will simply increase the requirement for preparatory training and thereby create more barriers to the profession, particularly impacting those currently under-represented. This will not solve the problems around the cost of training, nor regarding unregulated courses or access to the profession and, as such, it is not considered to be an appropriate measure of competence to practice.

Ultimately, until and unless a model paper is published (or at least a significantly comprehensive set of example questions covering all six SQE1 topics, together with

examples of the practical legal skills assessment, and examples in each context of SQE2), it remains that there are fundamental problems with the idea behind the SQE. At present, we simply cannot agree that the proposed SQE will provide a robust and effective measure of competence,

### **Question 2a**

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

### **3 - Neutral**

BLS believes that a period of pre-qualification workplace experience should remain a requirement but we endorse the idea of allowing flexibility, in particular as part of an overall review of the process of qualification.

The larger firms have raised concerns about the proposal to allow work experiences gained outside of employment to count towards work experience (e.g. legal clinics and pro bono) and whether this may undermine the rigorous nature of work experience found in the firms. Further concerns were raised over whether this may also impact the suitability of a trainee when they become Newly Qualified solicitors and whether or not they will be ready for this role.

Many firms also have concerns in relation to experience gained in other employment (other firms, for example). As with 'time to count' under the current rules, we may find that employers prefer trainees to complete the two year period under their employment to "standardise" their trainee intake, and limit their administrative burden. The use of prior qualifying legal work may be at firms' discretion and therefore introduce variability to a process which the SRA suggests is intended to introduce consistency. Equally, however, the use of other qualifying legal experience may give smaller firms and organisations the flexibility they need to hire according to their requirements.

The proposals do allow for greater flexibility, and they allow for work experience to be transferable. In each case, any period of qualifying work experience should be signed off by a qualified solicitor supervisor to ensure robust training and understanding is promoted. It should be observed that this suggestion is not dissimilar from the present training contract regime.

### **Question 2b**

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

### **Two years, subject to flexibility as below**

The appropriate minimum requirement should be a minimum period of two years at the required level of work experience. There should still be guidelines in relation to what this work experience should be and when it should be signed off to maintain standards. Multiple short placements will not give candidates the right experience and exposure to develop the right skills. Therefore a minimum time period for each placement should be put in place. It is believed that the requirement for a placement to be a minimum of 3 months continues to be appropriate, but there would still need to be safeguards in place to ensure that the work was of a sufficient standard.

However, it is recognised that different people may develop skills in different ways, and that not all workplace experiences are the same. For example, one person may develop the necessary experience in a single year in a well-organised training programme with a large employer, whilst another may spend several years as a paralegal but not be exposed to the same range of experience. It would therefore appear more appropriate to have a scheme allowing flexibility based on an assessment of abilities, rather than strictly an effluxion of time.

Any suggestion of allowing candidates to self-certify that their experience matches the skills and abilities in the areas to be assessed in SQE2 is to be viewed with extreme scepticism. This would be open to abuse with the potential for wasted efforts and costs as many candidates may have expectations of the requirements which do not match the

reality, leading to failed assessments. Again, the emphasis should be on competence not just time served. As a general rule, two years is an approximation of the appropriate time but some candidates may require more, or indeed less, experience.

Further and better details for these proposals must be submitted to the profession for further consultation before making any decision to implement changes.

### **Question 3**

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

#### **4 - Disagree**

BLS agrees that the standard should be set at least at the graduate level or equivalent. It is good to see the inclusion of the apprenticeship route as one of the standard pathways.

However, it remains unclear if, whether, and how much of the SQE material may be taught within an undergraduate law degree. If some universities adopt an "SQE preparatory" model, whilst others maintain a more general law degree (to include, for example, those students wishing to become barristers), this would make delivery more complex for training providers and thus will almost certainly increase the cost of qualification to students.

If undergraduate programmes were split into "SQE prep" and "other" law degrees, this would also serve to make many aspiring solicitors believe they must decide to pursue the profession as early as age 17, whilst still studying for A-level exams. This cannot be in the best interests of those individuals, the profession, or the public at large who buy legal services. This is a fundamental concern arising from the current proposal.

The position of non-law graduates must also be considered. Whilst the present "GDL" may no longer be relevant, it appears there would still be a need for an extended SQE Preparatory Course to be provided to 'fill in the gaps' in legal knowledge for graduates of non-law subjects. As such, there continues to be a need for additional training; this is likely to sit with current GDL/LPC providers, though it may be delivered as part of a preparatory course for the SQE1 and SQE2.

Additionally, there is a significant risk that after completing SQE1, candidates may start their 2 year period of legal experience (comparable to today's training contract) with a lower level of legal knowledge than the present system provides. This shortfall would have to be made up by the firms during the training period, creating an extra burden on the firms.

If the SRA believes that these areas (non-law graduates and gaps in legal knowledge among graduates) would be addressed by teaching within law firms, there would appear to be a great misunderstanding as to the resources available to firms. This would not be a workable solution for all but the largest commercial firms. Three outcomes would therefore appear possible, either the lowering of standards, increase of barriers to qualification, or the creation of a two-tier profession – none of these are satisfactory.

Finally, it is observed that at present, LPC Electives provide a useful way for future trainees to gain insight into an area of law that their future firm works in or specialises in, before they start their training contract. The LPC Electives also provide an opportunity for future trainees (whether they have already secured a training contract or not) to study areas of law outside the core areas that they may be interested in. The electives provide a more diverse range of subjects which keep future trainees options open for longer in terms of the practice area they ultimately choose. The SQE proposal does not appear to provide any comparable facility.

### **Question 4**

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

**3 - Neutral**

BLS agrees that the standard should be set at least at the graduate level or equivalent; the inclusion of alternative pathways (such as apprenticeships) is to be welcomed, provided equivalence is maintained.

However, the key to making the model work is that the actual SQE assessments and experience requirements must be appropriate, both in terms of both content and rigour of assessment method. As the SRA has not yet produced a model paper, or even suitable exemplar materials, it is unclear if these fundamental elements would be a suitable test.

**Question 5**

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

**2 - Disagree**

BLS believes at the moment there is not enough information to comment on exemptions and that specific proposals should be made; we cannot agree that the SRA should simply decide these details at a later date without further consultation.

Many existing undergraduate Law programmes at universities (such as the University of the West of England and others in our region) provide a very rigorous legal education and produce exceptional graduates. The current SQE proposals bring a very real risk of disincentivising students from studying at such institutions, in favour of doing a less rigorous degree followed by a short "SQE prep course" (which would inevitably be offered). This would serve only to increase the cost of qualification whilst also lowering standards.

As such, relevant exemptions should be available to students completing relevant degree courses. The detail of any arrangements for such exemptions, however, should be subject to further consultation.

Given the lack of clarity regarding the European Union position, any exemptions in that regard should be based around "transitional" provisions, likely subject to further consultation as appropriate.

**Question 6**

To what extent do you agree or disagree with our proposed transitional arrangements?

**1 - Strongly disagree**

BLS believes that the timetable is overly ambitious.

Firstly, introducing the SQE for the academic year 2019 is far too soon. This would be completely unmanageable for training providers, for students, and for almost all of our member firms. At least two or three years, perhaps more, need to be added based on the present state of the proposals (which remain significantly incomplete, as noted above).

BLS believes that students who begin studying a Qualifying Law Degree under the existing system should be able to continue their route to qualification under the present scheme. Any changes should take effect only for those students beginning a course after decisions are finalised and full details about new pathways/qualifications/examinations are published. As an absolute minimum, students who have commenced studies under the present regime should be given a waiver for SQE1 as expressed in the current proposal.

Many students plan their education several years in advance. Most businesses do likewise. Firms have raised a concern that the current proposals would mean that a non-law graduate undertaking a vacation scheme, who may be offered a training contract next summer, would be subject to the new rules; the firms are, however, not yet in a position to assist these candidates with their progression toward qualification.

Training providers also require a significant lead time to adjust their material to be able to cope with whatever changes are introduced. The publishers of academic texts will have to

be allowed sufficient time to adapt their publications which are used as teaching materials. Accordingly, a change as fundamental as that which is proposed and on which we are being consulted must not be rushed.

Appropriate provision must also be made for those studying/working part-time, so that they can continue working towards qualification on their present path, including anyone who set off on the path before any changes are introduced. This is more likely to impact those who are presently under-represented in the profession.

### **Question 7**

Do you foresee any positive or negative EDI impacts arising from our proposals?

#### **Yes - negative**

Diversity remains largely unaddressed. The SRA originally said that by opening up routes to qualification it would allow better access to the profession and that it would be cheaper to qualify. As it currently stands it looks like the proposed pathways will not be cheaper for students. Indeed, very worryingly, students may opt to access "discount" unregulated courses to prepare themselves for the SQE1 without any guarantee of quality or success.

The cost of the SQE, to the profession at large and specifically to training providers, students, and the firms supporting future solicitors, must be considered carefully. The SRA has not provided a cost, or even an estimate, for a candidate to sit the proposed SQE assessments. It is understood that the QLTS, which operates on a similar assessment structure and is referred to as a comparator in the consultation document, costs over £5,000 per candidate. The QLTS is also notably less complex than the present proposal. If this is added to the cost of academic training (such as a degree), professional training (such as the LPC), and the cost to firms to provide legal work experience (such as a training contract), the impact of the SQE could actually be a significant increase to barriers to access to the profession.

As well as the very real prospect that the proposed SQE regime will involve prohibitive cost generally, there is a great risk that this increased cost and the additional layers of administration and requirements to qualification will create new barriers which are most likely to impact those already under-represented in the profession. Additionally, it appears likely that administrative and training burdens would increase pressure on smaller firms with already limited resources, which may lead to reduced opportunities for qualification being available (again, likely disproportionately impacting those already under-represented).

In conclusion, BLS believes that the present consultation does not meaningfully build on the position after the SRA's first SQE consultation. Whilst the idea of a qualifying examination remains reasonable in principle, until far greater detail is published it would be premature to commit to introducing the SQE.

If the SRA maintains that the best way to address the LETR findings is to introduce an SQE-type examination/assessment – a fundamental question about which BLS remains unconvinced – then we would invite the SRA to conduct a third consultation following publication of the additional information noted above (including, crucially, model assessment materials).

As we, and many others, stated in response to the first SQE consultation, "the devil is in the detail". Until the SRA publishes and consults on the further details identified above (and in the first consultation), no decisions should be taken.

Yours sincerely



**Becky Moyce**  
President

# Consultation questionnaire

Response ID:561 Data

## 2. Your identity

### Surname

James

### Forename(s)

Kerry

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Burges Salmon LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We agree with the aim of ensuring high, consistent professional standards and the desirability of widening access to the profession. We strongly disagree that the SQE will produce the knowledgeable, skilled, effective solicitors that the profession needs. Our view is that the existing traditional pathway of a QLD/CPE, LPC and 2-year PRT is broadly fit for purpose and we advocate for its retention. We entirely support the development of diverse pathways and new entry routes. We see that the existing regime could be improved and streamlined. However, many of the issues and outcomes in the consultation document could be achieved effectively without a seismic shift in the regulatory regime. We are very concerned that the process of qualification does not prescribe a period of study of law, which puts the reputation of the profession at serious risk. Our understanding is that England and Wales would become the only jurisdiction in Europe without its training prescribed. The SRA's emphasis on comparisons with other professions, such as the medical profession and accountancy, is misleading and over-simplistic. We also disagree with the separation of training in substantive/ procedural law and practice, which does not happen in other professions. For all its faults the LPC did much to address the concerns that used to be levied against the LSF. The proposed SQE undermines the progress that was made. SQE 1 Our concerns about the contents are that SQE 1 combines elements of the QLD/GDL and LPC without adequately replacing either of those courses. We are particularly concerned about the downgrading of Contract and Tort and the removal of the LPC Electives. Without a prescribed course of study it will be very difficult to understand what level of knowledge and skills people have attained when they begin QWE, but it is clear that, without further training, the knowledge and competence standard of a trainee entering the workplace after SQE 1 would be significantly lower than that of our current intake. We would like to see a QLD/GLD being a pre-requisite for entry to the profession (with limited exceptions, e.g. for apprentices). We are very likely to require our own LPC-type course to cover the 'missing elements' because we recognise the value of pre-workplace skills training, business and commercial awareness and a consistent body of knowledge which is at least the level of our current trainees. The SRA's requirement for minimum competence is inadequate. We will continue to offer a high standard of training whatever the outcome of the consultation. Smaller firms also rely on the knowledge and skills learnt during the LPC and may not be able or prepared to fund the additional training required for new recruits to perform at a competent level, particularly in specialist areas that are not covered in the reduced syllabus. This is a concern for professional standards generally. Regarding the method of assessment, our view is that testing the core subjects by MCQ alone where each

answer is required after approximately 90 seconds cannot possibly test the higher level analytical and evaluative skills required to practise as a solicitor. The nature of legal practice is that there may not be one correct answer to a complex problem and even the most sophisticated MCQs cannot test the analytical skills required to advise. The curriculum for SQE 1 is not wide enough to cover the essential building blocks for practice. On the other hand, the idea that all those modules can be tested in one diet of assessments is unrealistic and very likely to result in a 'dumbing down' of the assessment content and/or even further narrowing of its scope (as happened with the revised BPTC) and/or tactical learning and question spotting. Particular issues arise for students with protected characteristics who may be at a disadvantage in taking so many assessments at once. SQE 2 We do not accept that it is possible to test the legal skills without some emphasis on the relevant area of practice. If SQE 2 is to be a measure of competence at qualification level, then detailed and complex patterns of fact and law are needed. It is inevitable that a candidate will feel better prepared for a set of examinations in a property context if they have undertaken a property seat. These will be very important and highly stressful examinations for students to undertake, while they are also trying to impress an employer. We anticipate a number of negative implications, for example: (a) Pressure for seats to be in relevant 'context areas' in the early stages of QWE (i.e. pre-SQE 2), which will be difficult to accommodate for large groups of trainees and which will distort the wide range of experience we currently offer; (b) The need for a preparatory course (of longer than the weekend suggested by the SRA) to give trainees the best opportunity to pass SQE 2, which will be disruptive to the QWE and the business; (c) The need for time to prepare, which will be disruptive to the QWE and the business. The timing of SQE 2 would need to be in the relatively early stages of QWE with the firm to allow for results publication before decisions on qualification are made. If SQEs are to be held twice a year, the assessment provider would need a long window to accommodate the numbers of students. Allowing at least 3 months for results to be returned, it is likely that we would need trainees to undertake SQE 2 at the end of their first year of QWE at the very latest. This undermines the concept of measuring developing practical experience through SQE 2. Given the stress to trainees, the difficulties with timing and the disruption to the business and the QWE itself, the proposed SQE would need to be taken before the QWE with our firm begins. A requirement that SQE 2 be taken at the end of the QWE would extend the length of work experience beyond 2 years for the reasons set out above.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** We agree that QWE is critical to the qualification process. Allowing experience from different periods and different environments to count is also logical. However, clear guidance is needed as to what counts as QWE. We believe that QWE should be regulated. The only regulation seems to be that the provider of SQE signs a declaration that a trainee 'had the opportunity to develop some or all of the competencies in the Statement of Solicitor Competence'. This is so vague as to be meaningless. More detail is needed about the quality and time spent on the experience for it to constitute QWE. It needs to add value beyond poorly supervised, low level, routine work for it to be recognised. Trainees would need to collate an evidential base to show a future employer what they have learnt. In the current proposals, the requirement for a trainee to have completed a well-designed scheme of work-based training is missing.

##### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** Our view is that the length of QWE should be 2 years and subject to the requirement for regulation as set out above.

#### 5.

##### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** Our understanding is that the SRA is not preparing to regulate preparatory training at all. We disagree that this can be left to market forces. It is inevitable that crammer courses will emerge to 'get people through' the assessments as cheaply and quickly as possible. Our firm will pay to fill the gap and do our best to produce lawyers with a high standard of training and qualifying experience. However, the proposals will do little to ensure consistency of quality and standards across the profession, which was the SRA's aim. It is hard to imagine how data can be published that will give students enough information to make informed choices, particularly when the proposals are complex and vague. Those with least experience of the profession and the higher education system will be at the greatest disadvantage.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We strongly believe that there should be periods of specified study and work experience conforming to clear criteria and monitored by experienced supervisors. Assessment is not in itself a sufficient measure of competence. The SRA has asked the public about the need for rigorous assessment standards. Has it asked whether the public (or the person on the Clapham omnibus) expects solicitors to undertake a compulsory and regulated period of study? The answer to that question surely would be an overwhelming "Yes!" Has it asked whether work experience should be regulated and overseen? Again the answer would be "Yes!" The proposals ignore the value of study and practice that has resulted in our profession being respected for generations. When that is lost it will be difficult to recover. We believe that the current training regime can be altered to improve access and diversity by incorporating some of the SRA's ideas but a complete revolution is risky and unnecessary.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** We cannot comment on this until the model has been finalised.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** The timescales are far too tight. We are already recruiting for 2019. With the final consultation due later this year, there would be less than 2 years to develop and implement the new system. We strongly believe that more piloting should be done of any proposed changes before they are rolled out across the profession. Other pilots (e.g. work based learning portfolios) resulted in significant changes of direction when practical disadvantages were identified.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Our view is that the proposals will have a significant negative impact. The system will increase the advantage to those who have early access to funds and information. Others may unwittingly undertake the cheapest and quickest courses and compile a piecemeal CV of QWE which is unattractive to prospective employers. We are advised that students with certain disabilities will be negatively affected by the emphasis on MCQs. Some students with protected characteristics will find it difficult to undertake multiple examinations in one sitting.

## **Cardiff and District Law Society's response to SRA Consultation – 'A new route to qualification: The Solicitors Qualifying Examination (SQE), October 2016'**

*The Incorporated Law Society for Cardiff and District trades under the name Cardiff and District Law Society (CDLS). CDLS is the largest local law society in Wales. It has a membership of over 1,000 people including solicitors, barristers, legal executives and academic lawyers.*

*CDLS appoints a number of specialist committees, including a Regulatory Issues Sub-committee.*

*Through these committees CDLS responds to a number of public consultations on matters which affect the professional lives of solicitors in the Cardiff and District area. CDLS welcomes the opportunity to respond to the SRA's Consultation: "A new route to qualification : the Solicitors Qualifying Examination".*

### **Introductory/general comments**

Like many organisations that responded to the previous consultation on the SQE in March 2016, we were critical of many aspects of the SRA's proposals. Although we continue to have concerns about certain aspects of the SRA's proposals contained in this current consultation, we are pleased to see that the SRA has listened to the criticism it received, and that some important and sensible changes have been made to the proposals.

We are pleased to see: (1) that the SRA has acknowledged that a period of recognised work training is essential, (2) that the profession should be a predominantly graduate profession (or that if a solicitor does not have a degree they should have something 'equivalent'), (3) that Stage 1 of the SQE (the knowledge tests) are now a much more substantial set of assessments than previously, (4) that the ability for students to 'cherry pick' assessments has been removed by requirements to sit all assessments in a given assessment window, and (5) that unlimited resit opportunities have been removed. Our main concern with the proposals in the previous consultation were that the proposals threatened to dumb down the training process significantly, and thus devalue the qualification of solicitor, both in this country and overseas.

We continue to have some concerns and reservations about the SRA's proposals, but fewer than we had with the previous consultation.

### **Question 1 – To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

It is fair to say that opinion is divided on whether there is a need for a new centralised assessment.

Many solicitors see no inherent problems of quality of trainee under the current system of LLB (or another degree plus GDL) followed by an LPC. Many think that the SRA's case (that there is a problem of quality of entrants to the profession) is unproven. The current system is based upon the maintenance of a set of minimum standards and is policed by external examiners appointed by degree and GDL/LPC providers, in accordance with established QAA (The Quality Assurance Agency for Higher Education) requirements. There is no evidence that this system is failing in terms of quality or protection for the public. The SRA's reporting of the level of indemnity insurance claims and complaints to the Legal Ombudsman cannot be attributed directly to the current system of training, as many claims and complaints can be attributed to solicitors who qualified under previous training regimes, not dissimilar in many ways to the one the SRA is proposing. We are not persuaded that an SQE will have any beneficial effect on the level of claims or complaints. In fact, if more

solicitors qualify as a result of greater freedoms on work training, the number of claims and complaints may well rise.

However, there is also considerable support among other practitioners for a centralised assessment. The argument in favour of a centralised assessment is that every solicitor takes the same test, and thus firms can be assured of consistency (or more consistency than is possible under the current system). One comment was that if the profession was starting from scratch/working with a blank canvas, then it would almost certainly choose a centralised assessment. The main concern of those practitioners who support the introduction of a centralised assessment is that the assessment should be sufficiently rigorous and not be dumbed down.

On this, there continue to be widely held concerns about the nature of the proposed Stage 1 assessments. Practitioners simply do not consider that a series of multiple choice questions, single best answer questions and extended matching questions are an appropriate means of assessing future solicitors. Whilst such forms of question have their place, and have certain advantages, such as providing a variety of methods of assessment, they really need to be part of a suite of question types which include extended written answers (as currently happens on the LPC). The suspicion is that the forms of question suggested by the SRA are suggested for means of convenience, because those forms of question can be more easily administered on computer and in bulk, and marked quickly and automatically by computer. There is a danger that the logistical needs of a centralised computerised assessment are determining the types of question used, rather than choosing the sorts of question that best ensure rigour and best ensure high standards. There is therefore a grave danger that the method of assessing Stage 1 will lead to a dumbing down of the assessment of potential solicitors, particularly compared to the core elements of the LPC, which is the place where most of the SQE Stage 1 proposed content is currently assessed. We are not convinced by the SRA's arguments on quality and appropriateness of the forms of question being proposed for Stage 1.

Although there is an element of reasoning and writing lengthy answers to some of the Stage 2 assessments, it is notable that candidates will be told what the relevant law is for some of those assessments before producing their work, on the basis that the skill is being assessed, not the candidate's knowledge of the law.

We also do not think that the tri-partite structure of legal education, criticised by the SRA in the consultation paper, will disappear entirely. If Stage 2 of the SQE does not have to be deferred until during or towards the end of the period of work based training, then we can see that the market will push students to taking both Stage 1 and Stage 2 of the SQE before the period of work based training. Employers will want trainees (or employees) to be as well qualified as possible, and as useful as possible, from day 1 of the period of work based training. Firms may therefore require students to complete the SQE before joining, or before entering the office. If this happens, then we will continue to have a tri-partite structure.

Will universities really bring the SQE Stage 1 subjects within the LLB as is hoped by the SRA? It is entirely possible that this will not happen, or only happen in the case of a few universities (probably the new universities, that do not generally draw on the stronger students). Most universities (certainly the more prestigious ones) will continue to want to deliver a liberal law degree, with a wide choice of subjects for its students. The SQE Stage 1 subjects, whilst important from a practical point of view, are quite prosaic, and largely mirror the vocational subjects currently on the LPC, where relatively little academic law is considered. They are not subjects that sit easily within a degree, and the SRA's proposed method of assessment is quite alien to the methods appropriate for deciding whether a student should obtain a 1<sup>st</sup>, 2.1, 2.2 or 3<sup>rd</sup> class degree. It is likely that large

commercial firms will recruit their students from law (or other) degrees at prestigious universities. How then will students study for the SQE Stage 1? Probably via a postgraduate course. If this is combined with a study in preparation of Stage 2, then you will have postgraduate course not dissimilar to the LPC. That course will cost money. The cost will be not dissimilar to the cost of the LPC. Added to that, students with a non-law degree may be at a disadvantage unless they have some grounding in law, in that firms might not recruit them in such numbers if the only legal education they have had is an SQE preparatory course. There may be a similar course to the GDL, therefore (although perhaps with a different suite of subjects, say including company law). That course will cost money.

On top of those courses, candidates for the SQE Stages 1 and 2 will have to pay hefty examination fees. The SQE itself will not be cheap.

In other words, the tri-partite system may not disappear and the financial cost of qualifying will remain high. All that would be achieved would be replacing distributed assessments with a centralised assessment, but is that worth the considerable upheaval and uncertainty that will be caused by changing the system? As said, many practitioners are not convinced that there is a problem with standards under the current system, and there are concerns about the centralised assessment in that it could lead to a dumbing down.

Another concern about the SQE and about the SRA's proposals as a whole is that there will be a considerable narrowing of the breadth of knowledge and experience that qualified solicitors may have under the new system.

This will happen as a result of several changes being made by the SRA. Firstly, there is the possibility that universities, or some universities, will bring the preparation for SQE Stage 1 into their LLBs. If that happens, then the scope for covering other legal subjects on the LLB will be reduced, as students will have to take the SQE preparatory modules. Indeed, it is possible that no prior knowledge of the law is required before a student studies for and sits the SQE. Secondly, the 3 elective or optional subjects currently studied by students on the LPC will disappear. There is no equivalent for them under the new system proposed by the SRA. Trainees will thus have a narrower range of knowledge when starting with firms. Thirdly, there will no longer be a requirement for 3 seats in the period of work training. A solicitor could spend all of their period of training undertaking one type of work (perhaps in a commoditised Personal Injury operation). The only check on this is that the SQE Stage 2 assessments have to be in two separate contexts, but the SRA is proposing that the legal content needed for each Stage 2 assessment will be given to the candidates in the assessment itself – in other words, the candidate actually need know very little about the relevant law before sitting the Stage 2 assessment. Lastly, but importantly, there will be no requirement to cover both contentious and non-contentious work in the period of work based training, or even in the Stage 2 contexts: 'Persuasive Oral Communication' can be chosen instead of Advocacy. Collectively, these changes will lead to many qualified solicitors who have a much narrower range of understanding of the law and practice than solicitors do at present. This represents a dumbing down of the qualification of solicitor and is also potentially dangerous to the public.

On the publication of the results of Stage 1 – we do not understand how the results of candidates from different assessment windows can be compared if the pass mark for Stage 1 is variable. The explanation given by the SRA on how the 'raw' mark will be converted to a standardised mark scale is not clear. It would be helpful to have examples to show how this will work. Firms will want information on how well candidates have done on the SQE, so it needs to be clear how this will work, and firms need to have confidence in the process.

Comments on Stage 2 – as said above, we can envisage a situation where firms will be reluctant to take ‘trainees’ who have not yet passed Stage 2, as they (a) would not wish to engage someone who then subsequently failed Stage 2 and (b) would resent the considerable time out of the office needed both to sit the Stage 2 assessments and to attend preparatory courses for Stage 2. We think it likely that market forces will mean that students will seek to sit Stage 2 before beginning their period of work based training, mirroring the current situation of the LPC preceding the training contract.

We support the SRA view that Stage 2 should be taken in two contexts, of the candidate’s choice. We recognise it would be too complex to allow a wider range of contexts, and the provision of some choice for the candidate is welcomed. The Stage 2 contexts also align with a number of the Stage 1 groupings of subjects, which is sensible.

As with Stage 1, firms will want to be assured that there is a consistent means of judging the marks obtained by candidates, so this needs greater explanation so that firms can have confidence in the method.

**Question 2a – To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

We are pleased that the SRA has recognised that a substantial period of work experience is required.

However, we have concerns about the proposal that the work experience need no longer include three areas of practice, and that it need not contain both contentious and non-contentious work. As noted earlier, when combined with the loss of the current LPC electives and the possible loss of optional content in the LLB, this will narrow the knowledge and understanding of a newly qualified solicitor dangerously. It will be possible to qualify as a solicitor by doing no more than basic paralegal work in one narrow area of practice. This will diminish and devalue the qualification of solicitor, and make solicitors indistinguishable from legal executives.

We are also concerned by the proposed declaration that a supervising solicitor must make in respect of the candidate. The supervising solicitor will be required to declare that a candidate had ‘had the opportunity to develop *some or all* of the competences in the Statement of Solicitor Competence’. This is incredibly vague. How many competences constitute ‘some’? It is so vague that it becomes almost meaningless, and is not a substitute for assessing whether a candidate has met competences during the work experience – it seems like mere window dressing. (It should be said here that we recognise that it is extremely difficult to assess competences during the period of work based learning and we do not advocate that there should be assessment – we agree with the SRA that this would impose an undue compliance burden on candidates and firms alike.)

Provided it is properly regulated, we agree that qualifying work experience could be obtained outside of a formal training contract. We agree that the person should be regulated by a solicitor, but we have concerns (related to the recent SRA consultation on the Code of Conduct) that this might be supervision by a comparatively junior solicitor operating in an unregulated body.

We agree with the SRA that work placements outside a formal training contract should be of a minimum length to qualify as part of the period of work based training. We think there should be both a minimum length for the work placement to be counted, and there should be a maximum number of work placements that could be counted. It should be possible to count periods of (say) three months or more, but with (say) a maximum of four placements, so that the average time on a placement would have to be six months.

We agree with the flexibility allowed by the rule that the completion of work-based learning would be required by the point of admission, not as condition of eligibility to sit Stage 2.

We agree with the proposal that candidates should maintain a record of their qualifying legal work experience.

However, a major concern is that relaxing the rules on how and where legal work experience can be gained, will lead to a far greater number of solicitors qualifying. The SRA has rightly noted there is a bottleneck for potential entrants to the profession currently, due to the limited number of training contracts available: there are more students seeking training contracts than there are opportunities. However, changing the rules to include a wider range of work experience will lead to more students qualifying. Will this simply shift the bottleneck to newly qualified posts, in that there will then be an oversupply of newly qualified solicitors, many of whom will not be able to secure employment as an assistant solicitor?

**Question 2b – What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We consider that a period of two years' work experience is appropriate, as now. We do not agree that there should be a minimum level of two years - we think the period should be two years.

To specify a minimum that is less than 2 years will mean that the majority of firms will opt for the minimum, so the minimum will become the norm.

Also, to specify a minimum implies that a candidate might need longer. This could lead to abuse by employers, who refuse to sign the declaration that someone has met the competences in order to retain the cheaper labour of a trainee for longer.

**Question 3 – To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

We recognise that if the SRA implements the proposed changes it will be very difficult to regulate any preparatory training for the SQE, as the modes and timing of available training courses will vary widely, unless the SRA imposes a model, as is the case with the LPC.

On publication of results, we can see confusion arising between the results of degree provider and the results of a particular SQE preparatory course. Given that no particular course will be required for preparation for the SQE, a multiplicity of courses and pathways will arise. Will it be possible to provide meaningful statistical information about all of these different courses and pathways? In particular, when assessing how well or how badly candidates have done according to the educational provider, will they be judged by the degree they did, or by which method they used for preparing for the SQE? We suspect the latter, but then if the student did not use the degree as part of the preparation for the SQE, also giving data by degree provider will not be meaningful, and will either be of little help to, or will be misleading for, potential employers.

We suspect that the SRA's hopes, that the new system will be cheaper than the current system, will be largely unfounded. As mentioned in the answer to question 1 above, we think it highly possible that new preparatory courses will arise to prepare candidates for both stages of the SQE. Those courses are unlikely to be cheap. Added to that will be cost of the SQE itself. It is entirely possible that the market will lead to a situation where most students will continue through a tri-partite system. The only significant change will be that the assessment will be centralised.

However, there will be a difference, in that currently the LLB, GDL and LPC is subject to regulatory oversight, by the SRA and due to QAA requirements. This regulatory oversight will be absent if the SRA is content to leave it all to the market, and it is possible that quality will suffer as a result. There will be no mechanism (other than published data on pass rates) to identify poor course provision, and some candidates will enrol on and pay for sub-standard courses, with minimal regulatory protection.

**Question 4 – To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Please see the answers to questions 1-3 above, particularly the answers to question 1 on reservations we have with the proposed SQE.

We are pleased that the SRA considers that candidates must have a degree 'or equivalent'. We agree with this in principle. However, we do have concerns that the issue of equivalence will be properly regulated by the SRA in practice. It must be made clear exactly what is equivalent to a degree. We agree that equivalence should include apprenticeships or prior attainment as, say, a legal executive.

**Question 5 – To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

We recognise that it will be very difficult to provide exemptions from the SQE Stage 1 and 2, and to do so would undermine the system proposed by the SRA. We have concerns, though, about the possibility that EU candidates (even post-Brexit) may be granted exemptions from the SQE, when domestic candidates and other international candidates will not be allowed exemptions. We see no reason for preferential treatment of EU candidates in this regard. Will the SRA engage with the UK Government on this issue?

**Question 6 – To what extent do you agree or disagree with our proposed transitional arrangements?**

We welcome the flexibility for students to complete the process of qualification under the current system if they have already started the process before a certain date. The main concern with the transitional arrangements is that it may be too ambitious of the SRA to introduce the SQE in September 2019. Legal education providers will need a significant lead in time to adapt their LLB and other courses to meet the requirements of Stage 1 (and possibly Stage 2). New or re-designed courses need to go through processes of validation to comply with QAA requirements. All of this has to be done sufficiently far in advance for providers to comply with CMA (Competition and Markets Authority) requirements on advertising and marketing of courses to prospective students, many of whom will be at school and still considering what to study at university and where to study. Until the assessment organisation has been appointed and produced sufficient sample assessment materials it will not be possible to design or re-design courses. In addition, to say that the work involved for the appointed assessment organisation is considerable would be an understatement. For this reason we doubt that the revised timetable proposed by the SRA is realistic.

**Question 7 – Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes, although we are pleased that the SRA is not now proposing that candidates can have unlimited attempts at the SQE, or that they can spread their assessments over several assessment periods.

Concern persists that a two tier market will arise, with more privileged students still doing a full 'liberal' law degree, followed by an LPC style course, followed by a two year training contract. Less

privileged students may do a degree at a less prestigious university that includes SQE preparatory content, be less prepared for the SQE, may need several resits, and will be undertaking paralegal work limited to one area. Come the point of qualification, there will be a (quite probably accurate) perception of difference between the one qualified solicitor and the other.

We also see negative EDI impacts of publishing candidates' scores by legal education provider, specifically if the data shows where the students studied their law degree. It is more than possible that more privileged students (who come from wealthier, middle or upper class backgrounds, who go to private schools where more individual assistance with exams is provided, who then get better A level results, and thus join more prestigious universities, who have less need to obtain part time work due to family finance, and who obtain jobs where their employers pay for the fees of the SQE and any preparatory course) will obtain better results than less privileged students who do not enjoy any of those advantages. In particular, a student from a more difficult, perhaps ethnic minority, background, may struggle to enter a more prestigious university, but will go to a newer university. That student's marks on the SQE may be adversely affected by a range of factors, but to link that student's weaker marks with attendance at a particular university, comparing it with a more privileged student at a more prestigious university, may have a negative effect. By reinforcing the perception that certain universities, ones which typically take less advantaged students, are inferior, publication of this data has the potential for harming the employment chances of students who attend those universities. If this is taken into account by employers when making decisions about who to recruit, then the effect on EDI will be negative.

Another concern is that the new system of qualifying may prove more expensive than the current system, when the cost of the SQE itself and SQE preparatory courses are compared with the LPC, and especially when the SQE is compared with what is currently Stage 1 of the LPC (the core subjects). There is no elective content in the SQE (what is now Stage 2 of the LPC). The cost of Stage 1 of the LPC is only a proportion (around 70%) of the current cost of the LPC. If, instead of introducing the SQE, the SRA simply removed the elective content from the LPC, the cost of qualification under the current system would reduce considerably, and would almost certainly be cheaper than the SQE and any attendant preparatory courses. We believe it is a flawed assumption of the SRA that the cost of qualifying would be reduced by taking out the LPC, because we believe that other courses would arise to take its place.

A more specific, but nonetheless important, concern is whether a single assessment provider will be capable of providing a sufficient geographical spread of secure assessment centres to avoid students having to travel long distances for their assessments, and even having to book overnight accommodation to do so, something that would impact adversely on poorer students. The number of candidates for the SQE is likely to greatly exceed the number of candidates for the QLTS. We doubt that one organisation is able to effectively resource this. Also, it is not clear on how long an assessment window will be. Stage 1 of the SQE includes 7 assessments, totalling 19 hours of assessment time. Within what time period will a cycle of assessments be held? Will it be a return to the bad old days of the Law Society Finals with multiple assessments crammed into a very short space of time? Linked to this is a concern about students with disabilities and who require specific provision. If the assessment window is very short, how will arrangements, including extra time and other additional provision, be provided by the single assessment provider, particularly when these special provisions will need to be made available in a sufficiently wide range of assessment centres across England and Wales?

# Consultation questionnaire

Response ID:383 Data

## 2. Your identity

### Surname

Wildig

### Forename(s)

Charlotte Lucy

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part time work experience or just full time. Many students will not be able to afford to gain work experience

unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career.

Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:**

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

# Consultation questionnaire

Response ID:312 Data

## 2. Your identity

### Surname

Perry

### Forename(s)

Christina

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: Queen Mary University of London

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** We consider that the proposed SQE is an ineffective measure of competence. The proposed SQE does not provide a fully effective measure of the competences needed to be a solicitor is because it does not assess many of the competences needed for the modern practice of many solicitors. The subjects examined in the proposed SQE 1 and 2 contain nothing concerning international or trans-national issues. They are heavily focused on private law rather than public law and do not address areas of law affecting social justice or welfare such as Family Law, Employment Law, or Immigration Law. In addition, there is no evidence to suggest that computer-based testing alone can show skills and abilities at graduate level. 2.2 of the Law Subject Benchmark Statement states “degree-level study in law also instils ways of thinking that are intrinsic to the subject, while being no less transferable. These include an appreciation of the complexity of legal rules and principles, a respect for context and evidence, and a greater awareness of the importance of the principles of justice and the rule of law to the foundations of society”. The computer-based testing that is planned for SQE 1 can test basic knowledge, but it (plus one skills assessment) cannot robustly assess the analytical skills and understanding of a graduate.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** We fully agree with the SRA’s proposals for qualifying legal work experience, with the exception of the possible limitations on shorter placements. We consider that experience gained on sandwich degrees, in clinical legal education, on vacation schemes, in legal NGOs or through paralegal work ought to count towards qualification as a solicitor and that trainees can gain relevant skills outside a conventional training contract. On the question of whether shorter placements can contribute to the development of skills, we disagree that placements of a few weeks or months tend to be too short and too constrained to allow for much more than informing career choice or recruitment decisions. We consider that experience gained in a clinical legal education 15 credit module, for example, may be the equivalent in contact hours of two weeks of full time work. However, because the student spends a significant amount of time in independent learning outside class, the educational value of the module is much greater than the class contact time. Accordingly, we would recommend neither a minimum time period nor a maximum

number of placements. If one of the two must be chosen, we would recommend a maximum number of placements, and would suggest a maximum number of 10 placements. However, we would recommend that a student's experience during a degree ought to count as one placement. For example, if a student were to undertake both a sandwich degree and work in a legal advice centre at the same university, they ought to count as one placement. This is because they are part of the same educational experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:** We consider 18 months to be a more flexible amount of time than 24 months, whilst still providing a rigorous and substantial amount of workplace experience.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** We have no objection to the SRA compiling and publishing data about training providers' performance on the SQE. However, we would recommend that publication of details about prior education be limited to general data and not institution-specific information. The experience of a candidate who completed a degree 5 or 10 years prior to deciding to become a solicitor, possibly in a subject completely unrelated to law, is unlikely to provide meaningful information about the university and/or the legal education received by the candidate. This is a significant difference from the system in the United States, where by definition all candidates will have been required to complete 3 years of legal education prior to becoming eligible to take the bar exam.

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** As discussed in Q1 above and especially with respect to the issue of exemptions for SQE 1 (discussed in Q5 below), we disagree that the proposed model is a suitable test of the requirements needed to become a solicitor.

**7.**

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** Students who have studied the subjects required at present for the Qualifying Law Degree or GDL should be exempt from SQE 1. Students who study those subjects at degree level at present already study these subjects to a high level of competence at graduate level. Allowing such exemption arrangements would provide sufficient assurance for regulatory purposes that the students are obtaining the required knowledge. If, as the consultation states, Stage 1 is assessing the candidates' ability to use their legal knowledge in practical contexts through assessments which integrate substantive and procedural law, then we disagree that it is not assessing what is assessed in an academic law degree. Academic law degrees assess not just substantive law but the application of such law appropriately and effectively to client-based, philosophical and ethical problems and situations encountered in practice. This is also the case because universities are significantly regulated and already provide consistent standards. Such standards are set forth in QAA and acknowledged by HEFCE. HEFCE has acknowledged this specifically in para 81 of Future approaches to quality assessment in England, Wales and Northern Ireland: Consultation): "It is important to note that as funding bodies we are not advocating a shift away from the autonomy of degree awarding bodies to set and maintain standards. Nor are we proposing the development of either a national curriculum or a national student examination. Far from it. Rather, we are

seeking to develop established elements of the wider quality assurance system so that clearer assurances can be provided to students, governments and other stakeholders on the issues that matter to them.” We consider that applicants who have obtained a Qualifying Law Degree will be considerably more qualified to become solicitors than those who have only completed the SQE1.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** No opinion.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We foresee significant negative EDI impacts from these proposals. Given that it has now been acknowledged that students should possess a degree or equivalent in order to be eligible for the SQE, there is likely to be a material additional burden on students. The SQE will require additional time and cost to undertake, beyond the cost of the degree. This additional time and cost will disproportionately affect students from poorer backgrounds, who are disproportionately likely to be students of BAME origin. Even if the Legal Practice Course is no longer required, the SQE1 and SQE2 will not attract student loan funding. In addition to the cost of the exams (which are likely to be substantial, especially in the case of SQE2) students are likely to wish to take preparation courses for the exams. In addition, given that many potential trainees will have less legal education than they do at present (as there will be no incentive to take a conversion programme such as the GDL or Senior Status LLB), and as the results of the SQE1 may be of little assistance in the employment process, then it is likely that there will be more emphasis on students' previous results and prior education in obtaining a training contract. It is also likely that legal employers will prefer to select trainees who have completed a law degree rather than non-law degree trainees, due to their greater legal knowledge. This is likely to diminish diversity at legal employers.

# Consultation questionnaire

Response ID:517 Data

## 2. Your identity

**Surname**

Severn

**Forename(s)**

Christina

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a trainee solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Longer than two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:**

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Disagree

**Comments:**

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

No

**Comments:**

# **A new route to qualification – the Solicitors Qualifying Examination**

**A response by  
The Chartered Institute of Legal Executives**

**6 January 2017**

## **For further details**

Should you require any  
further information,  
please contact;

Vicky Purtil  
Director of Education  
[vpurtill@cilex.org.uk](mailto:vpurtill@cilex.org.uk)  
01234 845761

January 2017

## **ABOUT CILEx**

The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executives, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. CILEx is also a nationally recognised Awarding Organisation, regulated by the Office of the Qualifications and Examinations Regulation (Ofqual), Qualifications Wales and CCEA.

CILEx has reviewed the information contained within the consultation documentation, has considered the questions posed and provided responses to these questions.

### **1. To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

CILEx agrees that this is a robust series of assessments.

The syllabus for the SQE Part 1 is extensive and although it is stated that this is not intended to be an academic test, but one of professional competence, it is assumed that there must be a significant amount of knowledge retention required across a syllabus, which takes in the current foundations of legal knowledge and the LPC, in order to be able to pass the assessments. To require this and to require that all tests from each stage be sat in the same session is indeed a challenging exercise for candidates. Although it does not appear to be specified, it is assumed that the tests are 'closed book' as there is a requirement that the examination centre is 'secure', although this does not necessarily follow. The proposal to use variations on the MCQ, through for example, single best answer questions, may prove challenging for an assessment organisation to develop and administer and it would be helpful to see sample assessments to understand how the SRA envisages the questions to be structured. In addition, the time taken and expertise needed to develop and test such assessments cannot be underestimated. Although CILEx has not reviewed the syllabus in detail, it is noted that the criminal law syllabus does not cover homicide, although the partial defences are included within the defences section.

SQE Part 2 appears to effectively test knowledge, skills and competence in an integrated way, simulating the experience of legal work undertaken by a solicitor through the use of role play and computer-based testing. The use of actors and more than one assessor may limit the ability to standardise the assessment and it is unclear from the documentation whether the assessments would be filmed to enable standardisation of assessment to take place, in

addition to the borderline regression model proposed to grade candidates. Such information will also be essential for the processing of enquiries and appeals.

In addition, a 6 year limit on qualification may disadvantage apprentices, as they will be required presumably to develop the knowledge over the first 4 years of the apprenticeship, which will only leave them 2 years to pass all elements of the SQE 1 and SQE 2 or extend the apprenticeship period beyond the 6 years stipulated. Whereas for those following a more traditional route to qualification i.e. undertaking a degree at University, the clock will not start ticking on the 6 years until they attempt the SQE 1 for the first time.

**2a. To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

CILEx agrees that there is significant benefit in including qualifying legal work experience as part of the admission requirements and the proposed 2 year period reflects the current requirements of the training contract. The increased flexibility on recognition of types of work which would qualify under the definition may reduce the bottleneck for admission created by the current requirement to obtain a training contract and therefore is likely to have a positive impact on equality and diversity. The requirement for employers to identify and therefore appreciate the need to develop outcomes within the competence framework provides further benefit to individuals seeking to qualify as solicitors. The SRA could consider including a requirement to have all qualifying legal work experience undertaken in one of the 2 specialist areas selected for assessment in the SQE Part 2, as this may assist candidates in preparation for the final assessment.

**2b. What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

CILEx does not offer a view on the time scale. However, Chartered Legal Executives require a minimum of 3 years of qualifying employment, with at least 12 months of that time spent in qualifying employment after the completion of the academic and vocational qualifications.

**3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

There are risks inherent in not accrediting training providers for the SQE. Reliance on market forces and data from previous cohorts runs the risk that those organisations considered to

achieve better results will be able to charge more for the supporting courses and therefore create a tiered system based on performance, which may in turn negatively impact on social mobility.

**4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

CILEx does not offer an opinion on the suitability of the test of the requirements to become a solicitor. However, the competency framework and related documents have been consulted upon previously and these tests assess the competencies identified in those documents.

**5. To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or stage 2?**

CILEx offers no view on the exemptions proposed for the new SQE. CILEx Regulation welcomes the opportunity to discuss the future of the current exemption of CILEx Fellows from the training contract.

**6. To what extent do you agree or disagree with our proposed transitional arrangements?**

CILEx offers no view on the transitional arrangements beyond the observation that the timescales for the introduction of the proposed changes seem reasonable. The timetable will depend on the appointment of the assessment organisation as the development of the SQE Parts 1 and 2 will take a significant period of time, owing to the challenging nature of the assessments to be developed.

**7. Do you foresee any positive or negative EDI impacts arising from our proposals?**

Having reviewed the proposals, CILEx offers the following issues for consideration in relation to equality, diversity and social mobility impacts:

- The requirement for a degree or equivalent Level 6 qualification: this requirement is in addition to the completion of the SQE, as this will not be levelled and therefore successful completion of the SQE will be in addition to any preceding qualification. This is likely to mean that the routes to qualification may be amended but are unlikely to change in the vast majority of cases. This will involve a significant cost implication

to the individual, particularly to those who are unable to access informal information sources as to the 'best' route to qualification. This is also likely to perpetuate a 'gold standard' route to qualification.

- The institution against which success in the SQE will be measured: it is not clear from the documentation whether this will be the degree awarding institution or subsequent training organisations, which are likely to emerge as a result of these changes. If the former, then the lack of accreditation of training providers is likely to result in a plethora of training organisations against which no data will be available and which may enable the unscrupulous from profiting from those less able to access information. If the latter, then costs for this additional training is likely to rise for those which achieve the best outcomes from the individuals they train and again, this may enable wealthier candidates to access the best tuition and therefore have a negative impact on social mobility.
- Apprenticeships: the requirement to complete all elements of the SQE in a 6 year period, which has been chosen to reflect the 6 year solicitor apprenticeship, may in fact negatively impact on apprentices. This is because the 6 year time limit does not start until the candidate sits the SQE Part 1 for the first time. For those candidates who have completed a degree or equivalent through the 'traditional' route, the 6 years will not begin until they have completed the academic requirements. Whereas the development of academic knowledge and skills will be embedded within the 6 year timeframe for apprentices, effectively reducing the available time to complete both parts of the SQE to 2 years (or extend the apprenticeship accordingly) in which case the reasoning for the 6 year time limit is not justified.
- Further investigation of the relative success rates of different protected groups when taking multiple choice assessments is recommended once the sample assessments have been developed.
- Enabling a wide variety of work placement opportunities to count towards the qualifying legal work experience is beneficial and likely to have a positive impact on equality, diversity and social mobility.

# Consultation questionnaire

Response ID:376 Data

## 2. Your identity

### Surname

Perera

### Forename(s)

Cindy Namal

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
in another capacity**

Please specify: LPC graduate

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** I believe that 12 months practical training is adequate. But this must be in both contentious and non-contentious areas of law.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

One year

**Comments:** 12 months is adequate if the placement is in a law firm.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** LPC is adequate.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** SQE is just another version of the LPC.

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** Graduates like myself had to take out a loan in order to study the LPC. We have nothing to show for it. We are in no man's land. We cannot call ourselves trainee solicitors.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** If the training framework is to be changed it must be with immediate effect. But the framework must be correct. The SQE is just the LPC in another format.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Sorry, what is EDI? The proposals are not what is required. How about all the LPC graduates who are in debt because of having had to study for the Legal Practice Diploma. Now the goal posts are being moved yet again. This is not fair.

**The City Law School  
City, University of London**

***Response to the SRA's Second Consultation***

The City Law School, City, University of London welcomes the opportunity to present its response to the Solicitors Regulation Authority's second consultation on its proposals to introduce a new route to qualification as a solicitor, the SQE.

We continue to have a number of general concerns about the proposed introduction of centrally set assessments and regarding the vocational education requirements detailed in the consultation paper.

**First, assertions have been made without objective evidence.**

- It is stated that there is a lack of consistency and rigour in the current qualification process. No evidence from either the SRA or from employers has been provided to support this assertion.
- It is suggested that there may be some correlation between the current method of qualification and indemnity insurance claims and/or complaints about solicitors. However, no evidence has been provided to support such a causal link.
- Assertions are made about the rigour of the proposed SQE but there is no evidence against which to evaluate this claim. No assessments have yet been devised and therefore scrutiny is impossible.

**Second, the case has not been made that the SQE will result in any cost savings.**

This undermines the claims which have been made by the SRA with respect to widening participation. Those from more privileged backgrounds will be prepared to take the risk of an assessment for which there will be no regulated preparation or training and will be financially better placed to manage that risk by investing in unregulated preparatory courses. This potentially opens the door to the development of a two-tiered qualification system and, by extension, a two-tiered profession.

**Third, the proposals will threaten the continued existence of some liberal law degrees as providers in parts of the sector will feel compelled to teach to the SQE in order to maintain their market share.**

This risks a bifurcation in undergraduate legal education with some degrees retaining their academic rigour and breadth while others become largely instrumental. Young people thereby will find themselves obliged to make career choices at an even earlier age than at present.

**Fourth, the proposed timescale is not sufficient to tender for, and appoint, an assessment provider nor to create sufficient banks of both practice and assessment questions so as to allow the initial cohorts of students to adequately prepare for the SQE.**

Given the level of risk involved, it is incumbent on the SRA to demonstrate its ability to undertake a procurement process for a venture of this magnitude and on this timescale.

**Fifth, the publication of results will be divisive, misleading, and will inevitably lead to the creation of unofficial, and possibly inaccurate, league tables of providers.**

The publication of results will not improve the quality of education delivered. Instead, it will incentivise providers to teach in such a way as to maximise pass rates.

We turn now to our responses to the consultation questions.

**Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

At present, we do not have confidence that the proposed SQE will be a robust and effective measure of competence. However, the requirement that an individual seeking qualification should have a graduate level education as a prerequisite is welcomed.

The consultation paper asserts that computer based testing is successfully used in other professions such as medicine and pharmacy. However, this fails to acknowledge that such assessments are taken in conjunction with mandatory degree or postgraduate level education. The comparison is therefore spurious.

There are significant risks that the proposed methods of testing for SQE 1 will lead to courses that are specifically designed as 'crammers'. These courses will coach candidates towards SQE 1 and benefit only those capable of learning in a vacuum. This is because SQE 1 inevitably will undermine the testing of the application of knowledge and the provision of advice. These skills are currently taught and assessed within a law degree and the LPC. It is highly unlikely that any computer based MCQ assessment alone can ensure that competence in these skills has been demonstrated.

Moreover, SQE 1 will not provide adequate training for the development of those competencies required by a practising solicitor, such as the analysis and evaluation of practice based problems through which students demonstrate their ability to formulate sound and robust advice to clients. This will be to the detriment of consumers of legal advice in the future.

The removal of elective subjects from SQE 1 will diminish understanding of key practice areas by students. Whilst this may place a positive obligation on employers to ensure adequate training in these areas, the risk is that such training will be provided only by the diligent employer. As a consequence, it is highly likely that firms will still require candidates to undertake courses prior to the commencement of legal work experience. We believe that this will lead to a two tier approach to qualification whereby sponsored candidates will be required to undertake more vocational education than is required to pass the SQE. The result is that the sponsored student is immediately placed at a competitive advantage. For all other candidates, the result will be increased cost as they will be obliged to further invest in their vocational education in order to compete in the market on a level playing field.

We are also concerned about the potential narrowness of SQE 2 in this respect. The removal of electives will mean that successful SQE candidates may not have the breadth of knowledge and skills needed for practice.

Although the view of the SRA may be that SQE 2 is not intended to assess specific knowledge within a subject area, we believe that those who lack legal work experience in the fields of practice examined inevitably will seek out, and pay for, additional training in the subject. The result will be that the cost to students will rise further as they seek support for SQE 2 in an unregulated market for training courses.

Additionally, there is a real danger that, for students, legal work experience becomes purely a box ticking exercise in order to demonstrate the various competences. Furthermore, if

skills and elective requirements are removed from SQE 1, students will potentially commence their period of QLWE with little or no skills training. The end result is that the development of the student into a professional will be undermined. This will be compounded by the fact that SQE 2 training courses will bear little relationship to legal work experience, in part because of how the contexts for the skills assessments are chosen.

**Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Although there may appear to be benefits to be gained from the widening of the contexts in which work based learning can be undertaken, we are concerned about the lack of monitoring of qualifying legal work experience (QLWE). This potentially creates a risk for the wider public. It has been argued that the current training contract is insufficiently supervised or monitored by the SRA. However, it seems perverse to attempt to remedy the situation by removing almost all regulatory oversight. There are clear risks in permitting an entirely unsupervised and unregulated period of QLWE as part of the qualification process. The SRA's proposals do not provide confidence that consistency and quality of experience will be ensured.

At the moment, many firms choose not to offer training contracts as a result of the investment required to provide supervision and training. The lack of regulation of the QLWE may well result in more firms and other bodies offering 'training contracts' but with no real commitment to the training and development needs of students.

**Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We believe that the current requirement of 24 months should be maintained. However, what will be needed is clarity as to when SQE 1 and 2 can and should be undertaken. For example, the question as to when SQE 2 is sat will be of concern to employers as it inevitably will require a student's release from work in order to undertake the examination. This will place undue pressure on students as they seek to balance the needs of employers against their interest in passing SQE 2. There is also a need for more guidance as to the quality and type of QLWE that should be undertaken.

However, the current proposals are unclear as to when SQE 2 is undertaken. This lack of clarity will cause confusion as to whether it is preferable to sit SQE 2 after the bulk of the QLWE has been completed or, alternatively, whether SQE 2 can be attempted at any point during the QLWE. In turn, this raises the question whether those candidates with 'training contracts' can be released from employment and required to complete SQE 2 at a very early point in their QLWE, or even before it commences. If so, the question then will be asked whether this means that a candidate qualifies immediately. Is such a candidate still required to undertake the full QLWE period? What monitoring would be required so as to ensure a suitable work experience and the satisfactory training of that individual?

In any event, we believe that SQE 1 alone is unlikely to prepare a student adequately for QLWE because that student will not have gained the necessary level of skills. This will make it more difficult for firms to assess the quality of candidates at the point of SQE 1. The result, once again, will be a two tier approach to qualification whereby those with connections to practice or a chance of obtaining QLWE will have confidence in pursuing the SQE 1 qualification, while those who are disadvantaged, will not.

**Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

The proposal not to regulate preparatory training (except through the publishing of results) will open the market to unscrupulous training providers with an eye only to profit and with little regard for the quality or appropriateness of the training provided. Additionally, we do not believe that the cost of the SQE combined with preparatory training will result in any significant savings for the candidate. Ironically, it may make it more expensive. The lack of regulation of training thus could exacerbate the problem of cost.

We are aware of anecdotal evidence concerning the variability of the currently unregulated market for QLTS training. The SQE will be a much bigger market. Furthermore, it will be very different from the market for QLTS training. The latter is offered only to qualified lawyers. By contrast, SQE training will be available to inexperienced and potentially vulnerable young people.

We also wish to raise concerns in relation to the process for deciding on potential providers of the centrally set assessments. The experience of moving to centrally set assessments for the QLTS was not without issues. Great care and diligence will be required of the SRA in the appointment of the provider(s). Timely clarification of the Draft Assessment Specification will be essential so that those providing SQE training are made fully aware of the form and approach to assessments.

In sum, the setting of a qualifying examination which may be passed without any prescribed prerequisite course will not ensure that candidates possess the requisite skills to embark upon QLWE. Assuring that candidates possess those skills to the required level ultimately is necessary for the public's protection. It is only through the regulation of preparatory training that the SRA can provide the assurance that successful candidates possess the level of skills and competence that the current system provides.

**Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

For the reasons explained above, we do not believe that the proposed model is a suitable test of the requirements needed to become a solicitor.

Furthermore, we have concerns regarding the Draft Assessment Specification. The syllabus is considerably wider than what is currently required on the Qualifying Law Degree. As well, the combination of subjects within individual SQE 1 assessments, and the resulting weighting this places on different parts of the syllabus, requires further review if the SQE is to reflect the realities of practice. So too, further consideration is required concerning some aspects of the assessments. For example, we would strongly argue that it is not appropriate to test the fundamental responsibility of the solicitor in relation to the holding of client monies and the undertaking of monetary transactions -- namely Solicitors' Accounts -- by MCQs or single answers alone. A similar point can be made in relation to professional conduct. For instance, if a candidate, in undertaking SQE 2, demonstrates a major error of professional conduct, or indeed of law, what will be the outcome of the examination? In this situation, the required skill may well be demonstrated but can it really be said that the candidate is to be regarded as competent?

**Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

We are concerned that the proposal not to offer exemptions will result in additional and unnecessary costs to potential solicitors. There currently are legal practitioners who have attained the requisite knowledge and skills through recognised and rigorous routes. It seems illogical, under the SRA's proposals, that someone in that position in the future will be

required to undertake assessments which are comparable to assessments that have already been successfully completed. The obvious examples would be barristers and CILEx fellows.

Moreover, if a student has successfully completed a law degree, we believe that it is disproportionate to assess a student on areas of knowledge which they have studied and on which they have been assessed.

As well, consideration will need to be given to the status of degrees obtained from institutions outside of the United Kingdom. Under what circumstances will overseas degrees be considered equivalent to a UK honours degree and who will make those determinations?

### **Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

We do not believe that the proposed transitional arrangements are adequate.

A considerable number of candidates have already embarked on their route to qualification and it is vital that none of the expense and effort that they have incurred should be in vain. It is imperative that transitional arrangements achieve clarity and that they are fully communicated by the SRA to current students.

We would strongly advise that the SRA reconsider its intention for the first assessment point for SQE1 to occur in September 2019. This is a wholly unrealistic timeframe in which to achieve the introduction of any new route to qualification, particularly when consultation is still being undertaken in 2017. The tendering process for the assessment provider(s), the appointment of the provider(s), and the design of all of the examinations for a first sitting in 2019 is a monumental undertaking. It will require substantial resource on the part of the SRA and training providers, especially as it will be crucial that sufficient samples of all assessments are published so as to ensure that training is adequately tailored to the examination. As well, the assessments themselves will need to be piloted, fully tested and reviewed.

Training providers, particularly those operating within the traditional University sector, will need time to develop suitable and effective SQE courses capable of preparing students for QLWE and assessment. On the proposed timeframe, there is a real danger that public confidence in the profession will be severely damaged.

We would also welcome reassurance from the SRA in relation to the appointment of the assessment provider(s), as well as with respect to the commissioning of any organisation to undertake assessment design, that the appointees themselves will be precluded from offering training relevant to the assessments. We would argue that, as a regulator, it is imperative that the SRA ensures that no conflict of interest – or a perception of a conflict -- arises as a result of the process of commissioning.

### **Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

We acknowledge that proposals to widen the scope of the QLWE could have a positive EDI impact, although we would repeat the concerns, which we articulated above, regarding unregulated QLWE. We also understand the intuitive appeal of allowing training providers to develop more flexible courses.

However, we would highlight the negative EDI effects of the proposals:

The cost of the new route to qualification may well be significantly greater than the current

regime. The lack of regulation of preparatory training and the unintended creation of a two tier system will result in increased costs, making the profession less accessible to many.

High calibre students from traditional universities most likely will continue to gain opportunities for QLWE and sponsorship from city firms. They also will receive quality bespoke training as a result of those advantages. But the widening of the scope of QLWE will encourage less diligent employers to take on students without providing appropriate training. The reality is that those students will come from less advantaged backgrounds.

The two-stage SQE model may deter students from less advantaged backgrounds who will be concerned that they will not obtain QLWE. The result will be that these students will reconsider embarking on a qualification that in all likelihood they would successfully complete under the current regime.

Finally, the proposed lack of exemptions will disadvantage those wishing to enter the profession from non-traditional backgrounds through alternative routes.

Thank you for the opportunity to engage in this consultation process. We hope that the SRA finds our views to be useful in its deliberations.



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9<sup>th</sup> January 2017

Dear Sir/Madam

**City of London Law Society Training Committee Response to the SRA's Consultation:  
A new route to qualification: the Solicitors Qualifying Examination**

The City of London Law Society ("CLLS") represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response to the consultation has been prepared by the CLLS Training Committee.

## General Remarks

We recognise that in its second Consultation, the SRA has gone further in providing detail on the outline proposals contained in its first Consultation which now provides a clearer picture of the proposed new requirements for qualifying as a solicitor. We also acknowledge that two crucial features of the current system are likely to be retained. These are the possession of a degree or degree equivalent (or a level 6 or 7 apprenticeship) as an entry requirement and a period of qualifying workplace experience of a fixed term (although there are shortcomings as we see it, in the workplace experience in its proposed form).

However, despite the SRA's own acknowledgement that much of the large response to its first Consultation was negative, it is still broadly pursuing the same strategy and the same proposals. This is disappointing. In our response to the first Consultation, we said that we were unable to support the SRA's proposals because of some very fundamental objections. We invited the SRA to consider making changes to the existing framework that would instead build upon and improve the current system. We still consider it ought to be possible to achieve the SRA's goal of consistency in standards through having a central assessment whilst retaining the valued features of the existing qualification requirements.

Our analysis of the proposals follows a consultation and feedback with member firms. It has led us to the conclusion that the proposals might achieve the objective of consistency in standards but they fail to demonstrate high standards of learning or to deliver a modern and relevant syllabus of study which provides newly qualified solicitors with a knowledge base and the skills to be effective in providing a broad range of advice in the most appropriate areas of practice.

On the first issue of high standards of learning, we note that the standards of the assessments are not addressed at all in the second Consultation. We are told that the standards in the SQE will be high and the testing rigorous but there is no independent or objective benchmarking. There are no model assessments and there are no standard setting indicators. Furthermore, we are sceptical about the intended standard setting for SQE2 in the light of the SRA's suggestion that it would be possible to pass these assessments without any qualifying workplace experience in the relevant area of law.

Closely linked with standard setting is the chosen methodology for SQE1. We have already expressed reservations about multiple choice testing and yet it is retained as the sole method of testing legal knowledge. We set out our arguments why we disagree with this approach in our response to Questions 1 and 4.

The second issue is a modern and relevant syllabus studied in appropriate breadth and depth for a professional qualification. The proposed syllabus for SQE1 leaves out many of the vital topics of the current combined Qualifying Law Degree/GDL and LPC syllabuses and particularly those which corporate practitioners need, including (but not exclusively) those who are City bound. Equally importantly, the depth of knowledge required in other core areas of legal knowledge is reduced. CLLS member firms are very aware of the importance of this and much attention, time and resources is dedicated to this aspect of managing their businesses. They are not alone in this and it is perplexing that the SRA does not appear to have dealt with this point at all.

In summary, there is insufficient evidence that the proposals are better in terms of quality assurance or that the proposed syllabus is better than the current one. In fact it is clear that

the result will be a qualification with a narrower knowledge base which is significantly less relevant for many solicitors qualifying today or in the future. We know of no other regulator in the UK or elsewhere reducing the practical relevance of the training and education which it is assessing as part of a proposed qualification.

Turning to other aspects of the proposals, we are pleased to see that the SRA agrees that it is vital we have a qualification that justifies the high reputation of solicitors of England and Wales around the world. Where we disagree is that we do not see how the Consultation demonstrates that the proposals help maintain and improve the international standing of solicitors of England and Wales through “introducing a consistent, high standard at a time of change”. Consistency yes, through having a central assessment, but high standard, no - not demonstrated, nor indeed in providing better coverage of the areas of legal knowledge which are relevant for lawyers qualifying in the modern world.

To compete successfully on the modern stage and maintain our global pre-eminence as a legal profession, it is surely folly to be going backwards in what solicitors are expected to know on qualification. In the light of our impending departure from the EU when we will experience direct European competition, our international competitiveness has, if anything, become even more of an imperative. We do not want to open a door to any EU suggestion that we fail to meet an equivalence standard, nor do we want to open ourselves to the longstanding US criticism that the solicitors’ qualification is “law-lite” by comparison with the JD degree in the US.

We are unconvinced that the international benchmarking exercise which the SRA has carried out supports the proposals in their present form. The SRA says that the majority of the reviewed jurisdictions set a central assessment but of those less than one quarter use multiple choice testing and almost all include written examinations. Whilst not stated, it seems unlikely that the written assessments in the reviewed jurisdictions are limited to skills testing as opposed to legal knowledge testing, as is proposed for SQE1. We therefore continue to look for the education and training of solicitors to remain internationally competitive.

One further aspect which is of overriding concern to us is the nature of the qualifying legal work experience. We welcome the SRA’s firmer attitude to the fixed term aspect of the work experience but there are many aspects of the workplace experience which provide such a high degree of flexibility and optionality, that in our view, it will begin to undermine its value and will almost certainly undermine its fixed term nature. We elaborate further on this view in our answers to Questions 2a and 2b.

It is our view that the SRA’s pursuit of achieving its twin goals of absolute consistency in the assessments and a methodology of examination at stage 1 of the SQE at the lowest cost possible, has meant that the SRA has closed its mind to many of the other considerations.

The SQE remains at the heart and soul of the proposals but we do not agree that its introduction in its current form will achieve what it sets out to do. However, the concept of a central assessment could be embraced as part of the existing framework. To do that, we propose the following as a basic framework, whilst recognising that there are other issues which will, of course, need to be addressed:

- 1) The requirement of a law degree or GDL (or apprenticeship equivalent) which recognises the importance of a deep understanding of the law and legal analytical skills to develop an

ability to apply legal principles in practice. The SQE on its own is inadequate for non-law graduates.

- 2) A central assessment which then tests the practical application of law that is required by solicitors in practice.
- 3) Optional legal topics in SQE1 of the central assessment alongside core mandatory topics for the syllabus to be modern and relevant. If MCQ is part of SQE1 and it is a reliable and valid method of testing, then consistency in standards where there are optional subjects, as well as mandatory ones, should not be an issue. SQE1 should also include written examinations covering research, analytical, problem-solving and writing abilities.
- 4) Optional topics in SQE1 and SQE2 taken after 18 to 21 months of the workplace experience, although the timing will only be feasible if changes are made to SQE2. At present, it seems that the numbers taking SQE2 in each year and the number of assessments in “viva” format might well make SQE2 unworkable at least in a cost effective way.
- 5) Workplace experience of, preferably, 24 months with placements of a minimum period of four months but six months if the workplace experience is with more than one organisation and a maximum in all circumstances of three organisations.

And two final general remarks: first, we do not think the transition arrangements are workable in practice (see our comments in Question 6). Second, we remain unconvinced that these proposals will be better for breaking down social and diversity barriers which the SRA has always maintained is an intended goal. As indicated in our response to Question 7, we fear that the reverse might well be the case in the likely result of an entrenched two-track qualification: those whose study is based on meeting the SRA’s minimum competence requirements and those who qualify into firms who provide enhanced training and study, such as City firms.

If the SRA is looking to achieve a level playing field, then there will need to be a broad consensus on the reforms. If not, then many, including City firms, will not rely on the regulatory standards set and will set their own requirements and the level playing field with enlarged access for all, will not be achieved.

## **Question 1**

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

### **Strongly Disagree**

We feel that the revised SQE proposals do not provide a sufficient test of competence. Without centralised standards for the delivery of preparatory training for the SQE (see response to Question 3), the provision of such training, being market-driven and demand-led will inevitably narrow in focus to reflect the fact many prospective solicitors will choose to pay as little as possible to achieve a pass result. Indeed that will become a selling point of courses stripped to the bare minimum to enable a decent attempt at the SQE and over time professional training will simply become limited to what is needed to pass the SQE. This may even become the case to some extent in law degrees, to the extent that the traditional subjects in law degrees are pared down to make room for the SQE-compliant elements. We feel that consumers will be put at risk and that the profession's reputation and capability will suffer irreparable damage both domestically and internationally.

## **1) The MCQ in SQE1**

Multiple choice style testing of legal knowledge in SQE1 will necessarily need to focus on areas where the law is relatively clear, since a firm, single sentence answer will be required. The proposal that the papers will typically comprise 120 questions to be completed in 180 minutes reinforces this impression. We do not consider that this can be an effective or sufficient measure of competence. Lawyers need to be able to do more than identify or worse, guess a correct answer swiftly. They need to have the analytical skills developed in a legal context to develop a sustained, persuasive argument from first principles and then to test and challenge their own approach by considering case law and legislation. This will give them the skills to deal with multi-faceted problems or problems where the law is unclear. MCQ is therefore not appropriate as the sole legal knowledge testing technique.

We understand that the SQE model is closely based on the current QLTS, which is designed for candidates who have experience of practice in another jurisdiction (and who mostly have a law degree as well), where a significant amount of analytical legal writing, cognitive skills of analysis, problem-solving and critical judgment and evaluation would have been required and assessed. We do not see how prospective solicitors, particularly non-law graduates, who have been only trained for the SQE will have developed the necessary skills to provide this level of legal analysis competently. We fear that the quality of legal education will be severely compromised by this approach and thus lead directly to a poorer standard of advice to clients.

We have no objection in principle to multiple choice tests and are, of course, aware that they are currently used as a small part of the assessment process on the GDL and as part of the testing in a few overseas jurisdictions. However, we do have an objection to legal knowledge being solely, or even principally, tested in this way. We return to this point in our response to Question 4.

## **2) SQE1 and SQE2 skills**

We are pleased that the SRA recognised the need to include some element of skills testing in SQE1 following the first consultation but what is proposed is not sufficient. In the SRA's own words the testing of research and writing in SQE1 is of "basic" skills only. It is insufficient preparation for the workplace. The test duration (together with the nature and number of tasks that candidates are required to complete) suggests that candidates will not be expected to deal with complex areas of analysis (where the law is difficult, unclear or evolving). We feel this will be a thin way of testing the ability to apply analytical writing skills to legal knowledge in a factual context. This is the fundamental skill of a solicitor and requires rigorous testing.

While the SQE2 will test writing and research skills at a higher level than SQE1, it will not focus on the detailed analysis and application of legal knowledge. It will be task based and the number and nature of the tasks in the allotted time again indicate that these assessments will not test the level of analytical writing needed for practice. The test will focus on writing for clients, which whilst an important skill will not offer an opportunity for a rigorous test of legal analytical writing that only writing to the "other side" can showcase. The suggestion is that a trainee would not need to have worked in the area of law being tested (e.g. Criminal Practice) in order to pass the assessments because they are only testing basic skills. This merely confirms and compounds our view that the SQE2 assessments will not fill the gap in

SQE1. Further, if SQE2 is to be tested towards the end of the period of workplace training only, trainees will be expected to start their workplace experience without having to demonstrate any substantive analytical legal writing skills. We do not believe it is realistic to expect firms to take on such untried, and literally untested, candidates without being assured of such basic skills.

To be meaningful, SQE2 needs to test skills in a more sophisticated way, in a broader range of contexts and follow a mandatory period of workplace experience.

### **3) Legal knowledge assessment**

We are aware that universities and law schools will be better equipped to respond to the SQE1 legal knowledge syllabus which is set out in the draft assessment, but nonetheless we would like to add a few observations of our own.

We think that there is a disproportionate weighting of some of the topics in the draft assessment, whilst others are too lightly covered: for example, Contract and Tort are combined with Dispute Resolution in one of six assessments. Within this assessment, the description of the test on dispute resolution in contract or tort is weighted heavily in favour of the process and procedure of dispute resolution and reduces the importance of both contract and tort to an unacceptable level. This is further demonstrated in the weightings where they are given a relatively low status and are incorporated into the 30% weighting which comprises an analysis of the “merits of a claim or defence, using key principles of contract and tort”, whilst the remainder covers the process and procedures for dispute resolution. Although there is some contract law in the Commercial and Corporate Law and Practice assessment, the weightings appear to refer to the core principles of contract law only in a very limited way and in only one of the eight sections: “Evaluate a client’s extant and prospective rights, duties and responsibilities ... as a party to common commercial transactions.”

Furthermore, the breadth of these topics appears to be reduced. We note that, in the list of core principles of Tort that need to be examined, there is no specific mention of defamation or trespass to the person torts, professional and clinical negligence or employers’ primary liability and occupiers’ liability.

To us, this is a clear indication that these topics have been relegated and the knowledge to be acquired diminished. Contract and Tort underpins most of the work of solicitors in our law firms (as must also be the case with many other practitioners) and any SQE should reflect that reality. If it does not, it will be a false measure of competence.

As a further example, the first assessment covers Principles of Professional Conduct, Public and Administrative Law and the Legal Systems of England and Wales which seems to be unrealistically wide and has the result of devaluing their individual importance. The assessment is heavily weighted towards Professional Conduct, which is worth 45% of the marks whilst Constitutional law only carries 15%. This currently features heavily in a standard law degree meaning that those coming directly to the SQE without a law degree or GDL may be at a disadvantage.

The topics within the LPC electives are largely absent, including those needed by City practitioners.

We believe that the SRA should consult further on SQE1, particularly with practising solicitors and academic institutions.

#### **4) Practical Issues**

Aside from the content of SQE2 and the standard at which it will be set, we are concerned that from the vantage point of practices, preparation for and sitting SQE2 will detract significantly from the benefit of the training seat in which SQE2 is taken as trainees will understandably wish to focus on passing SQE2. Client and overseas secondments during the fourth seat, as offered by many City-based firms now and which are directly relevant to the levels of competence which we require from our solicitors on qualification, may also prove to be impossible.

Although the SQE2 assessments may be split across two sittings, with each covering a single context, this would necessitate attending training twice (in order to prepare for the five skills in each context) and would still cause the same disruption to practice. Moreover it will place pressure on the employer to use the trainees on tasks which will maximise their chances of passing the SQE2, a case of "employing to the test".

Parallels have been drawn between the SQE2 and the accountancy training model. However, the ability of law firms to accommodate day-release or other absences for training is not comparable. Audit work is more predictable in both timing and duration and trainee resource and the skills required are readily transferable from one client matter to another. In contrast, legal work cannot be predicted months or years in advance and needs continuity of staffing, because it requires detailed knowledge of a client and matter, built up over time.

We therefore consider that for trainees to take time out of the workplace training to prepare for and sit SQE2 (as currently formulated) risks reducing the overall competence of newly qualified solicitors in our member firms compared with their predecessors qualifying under the current regime.

The inadequacies of SQE are already apparent from the conversations our member firms are having with GDL and LPC providers. There is real concern that a "teach to the test" course for SQE1 will provide insufficient training for non-law graduates and firms will expect non-law graduate trainees to have undertaken a GDL-type course, as well as an SQE1 preparation course prior to taking SQE1.

Many firms are already considering also requiring trainees to undertake a course equivalent to the current LPC electives prior to joining so that they will have the skills and readiness for work of current trainees. This is clear evidence of the perceived low standard of competence needed to pass SQE1: candidates who pass SQE1 will not be "reasonably prepared for their legal services workplace experience", the stated intention behind SQE1. The quality and rigour of the SQE2 assessments are impossible to gauge at present. Our member firms continue to feel that SQE2, at the time it is proposed to be taken, will add nothing to the competence of their trainees on qualification and will be an unnecessary diversion from ongoing development and training for qualification during their workplace experience.

#### **Question 2a**

## **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

### **Strongly disagree**

There is a real danger that the different types of qualifying legal work experience could create a two-track system with the formal training contract being perceived as superior and having higher quality controls than that gained in a student law clinic, as a paralegal, within a work placement or even as an apprentice in some circumstances. This is likely to have a chilling effect on future lateral hires.

Whilst recognising that the difficulty of obtaining a training contract is a barrier to becoming a solicitor, an unintended consequence of a more liberal approach to workplace learning is that it may move the difficulty, for those outside any formal training contract framework, to obtaining a newly qualified position following qualification.

City firms are likely to adopt additional requirements to those required by the SRA in order to meet their business needs, so they may choose, among other things, to require their trainees to undertake both contentious and non-contentious work and have experience of three distinct areas of law, along with additional commercial and business training which are over and above the SRA minimum requirements.

As to the timing of the workplace experience, we remain to be convinced that pre-SQE1 workplace experience should count, or count to the same extent as post-SQE1 workplace experience, because of the likely quality of that work experience. We believe that further thought should be given to how much should be permitted and in what circumstances.

In principle, we agree that the bulk of the work experience should be completed before sitting SQE2. This is consistent with the SRA's proposition that workplace experience should be needed to pass SQE2. On that basis we have considered the case for specifying that 18 months or perhaps 21 months of workplace experience should be undertaken before the test, but we have concluded that the practical difficulties surrounding the taking of SQE2 preclude this. These include the fact that there are only to be two SQE2 sittings per year and the time it is likely to take for large numbers of candidates to take all of the SQE2 assessments, for them to be marked and the results published. This would need to be accomplished before the end of the workplace experience.

At the other extreme, if all that is required is for the workplace experience to be undertaken before admission rather than as a condition of eligibility, then there is scope for the SQE2 to be undertaken with little or no workplace experience. If, over time, this should begin to happen, the very concept of the workplace experience risks being undermined - not necessarily because of its intrinsic value but because SQE2 is not rigorous enough. The SRA should be looking to enhance the intrinsic value of the workplace experience and this will only be truly tested if SQE2 is rigorous. The description of workplace experience as one of "developing some of the competencies" in itself is not enough.

Overall, we think that there should be fewer variables and options surrounding the workplace experience so that there are clearer parameters relating to what is required and the circumstances in which the experience can count as qualifying experience. This would reduce the risk of a hierarchy of qualifying workplace experience from developing.

We also think that a less ambiguous approach to what constitutes workplace experience would benefit the profession and prospective solicitors, and consequently the consumer, in particular so that the effectiveness of this approach can be measured in the future and be capable of meaningful improvement in quality, if necessary.

## **Question 2b**

### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

#### **Two years**

The majority of member firms prefer 24 months and so far as we are aware, none would be happy with less than 18 months as a minimum requirement for workplace experience, in order to give enough depth and breadth of experience in different practice areas and allow trainees to experience both transactional and advisory work, as well as contentious work, where applicable. There is little doubt that, over an extended period of workplace experience, the effectiveness of trainees increases significantly as they grow into the context of their work, learn a specialism and understand the socialisation aspects of the workplace, all within the relatively safe environment of being trainees.

Allowing more flexibility through reducing the minimum period of time in each work placement has a certain superficial attraction, but we are not yet convinced that this reduced minimum combined with the opportunity to move from one organisation to another will result in the same quality of workplace experience as that received by a trainee who works consistently and progressively in the same organisation. Experience tells us that it takes trainees at least a couple of months in each seat to find their feet and the possibility that they could not only move away from that seat but also to a completely different organisation after three months and for that period to count towards properly developing the requisite competencies gives us cause for concern. We think that placements should be a minimum of four months but six months if with more than one organisation and a maximum in all circumstances of three organisations.

Put another way, short periods of experience are likely to result in a poorer quality of learning by virtue of their disjointed nature. It will be more difficult for employers to make the commitment and invest the time in the trainees who are not with them for long. Therefore, in reality, to maintain the expected standard of workplace experience, firms are likely to choose to introduce more robust selection methods when recruiting at trainee and NQ levels. The proposed flexibility over workplace experience could put some trainees at a disadvantage during the qualification process if they have completed training in more than one firm or other organisation.

We agree that workplace experience should be expressed as a period in terms of a number of days to account for flexibility to allow for annual leave and other types of statutory leave. However, we do not think that part-time work place experience will provide the quality of work experience required and it should not be permitted.

In any event, we would expect guidelines to address the concern that shorter and piecemeal workplace experience could produce solicitors who are neither socialised to an office environment, nor capable of working effectively within teams or as advisers to their clients at the level and standard expected.

### **Question 3**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

#### **Neutral**

We would prefer to see this regulated by the SRA. Experience tells us that otherwise we will see a flight to the bottom. On the other hand, regulation of the paths to qualification seems to us to be incompatible with the principle of the SQE. Therefore we agree with the SRA that the paths do not require regulation. Provided the SQE is sufficiently robust (although we do not think it currently is), it will represent the standard which must be achieved and the route which a candidate takes should be at their (or their firm's) discretion.

Careful signposting will be necessary to make sure that the paths are clearly laid out and are transparent so that candidates understand what each path offers as well as what they cost and how long they take.

City firms are likely to specify the path (and probably the provider and course) that their candidates follow. Many will also pay for additional training to supplement the minimum coverage of the SQE compare to the current requirements and because of the MCQ approach to the testing of legal knowledge. This will represent an additional cost for firms, some of whom might think twice about taking on as many trainees, but we see it as being a necessary one to ensure a higher standard of legal education than is required by the SQE. This might be capable of being absorbed into our member firms' business models, but does seem very likely to add to the risk of the development of a two-track profession.

We are concerned that less well-informed candidates may be driven (by cost or a lack of good information) to pay for training courses that will subsequently close off avenues of employment, even if it does enable them to pass the SQE. Simply publishing pass rates will not tell a candidate anything about the standard achieved by other candidates who have taken the same path. Have they all simply scraped by? What proportion excelled? How many have secured jobs as solicitors at the end of the process and in what areas of law?

### **Question 4**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements to become a solicitor?**

#### **Strongly Disagree**

We disagree that the proposed model is a suitable test of the requirements to become a solicitor.

We welcome the requirement for a period of qualifying legal work experience and have outlined our specific thoughts on this elsewhere in our response.

We are also supportive of the requirement of a suitability test pre-admission.

We have already dealt in detail with the content of the SQE and whether it is a robust and effective measure of competence. In response to this question, we have confined our remarks to some general points on whether, as an integral part of the proposals, the SQE is a suitable

test of the requirements to become a solicitor. We give these views on its suitability based on the detail on SQE content that we currently have, which is far from comprehensive.

We reply in relation to the SQE under three main headings:

### **1) What the SQE is testing**

The removal of the requirement of the QLD and GDL as well as the LPC places a great deal of strain on the SQE as the only examination of the solicitors' qualification. The degree requirement (or its alternatives) is only an entry qualification and the proposal that there are no exemptions for an award of a law degree reinforces this.

Since many of the elements of the current examinations are missing from the legal knowledge testing in SQE1, as we have described above, this will inevitably result in new solicitors qualifying with a narrower range of knowledge, and therefore competence, than is currently typically the case. This in turn may well diminish their suitability to succeed as a solicitor. If new solicitors have not been tested in the missing areas of law, and are not educated in relation to them, they cannot be said to be meeting the current needs and requirements of many mainstream solicitors. It therefore seems difficult to argue that SQE1 constitutes a suitable test. We have seen some draft replies from academic institutions in relation to the missing aspects and would urge the SRA to reflect on these.

We anticipate that SQE-teaching universities will need to reduce the content of the courses they currently teach in order to accommodate new SQE-compliant elements. It is likely that certain aspects such as family and social justice law will fall out of typical law degree courses – this is not to the benefit of the profession or society as a whole. We also anticipate that the depth to which universities will teach their courses will reduce as they seek to provide SQE-compliant courses. This is not a positive development.

We are aware of the concerns about today's cost of qualifying as a solicitor and the desire to bring in a new route to qualifying in the most cost effective way possible, but equally we are also conscious of the imperative of maintaining standards and the need to protect consumers of legal services and to protect the profession's standing within our shores and internationally. Consequently, it is our view that the QLD, or the GDL as the alternative for non-law graduates, should remain and be a requirement for entry onto the SQE. This would address many of the profession's concerns about the assessment methodology chosen for SQE1 and ensure that candidates have sufficient depth of legal knowledge to practise safely. Additionally, the need for re-testing for those with a traditional law degree (assuming exemptions are not permitted), could be significantly reduced. This is an aspect which the SRA proposals fail to provide an answer.

SQE1 would then be the common assessment of the application of legal knowledge and would still meet the SRA's concerns about consistency of standards. By retaining the QLD/GDL (or apprenticeship) we think there would be less damage to the credibility of the English qualification and to the international reputation of English law.

We note that a degree in law is required in the majority of overseas jurisdictions. Although the New York Bar examination includes a significant proportion of multiple choice testing, candidates are also required to have a degree in law.

Of equal concern is the removal of the elective elements of the LPC which at present allows prospective solicitors to study subjects more relevant to their intended areas of practice, and also allows their employers, such as our law firms, to tailor courses and competence assessments to the needs of their practices, and their clients. This is a hallmark of the quality of our solicitors and law firms and it is a retrograde step to remove it. The SRA should reconsider its view on this.

Overall, we do not think that topics covered in the SQE accurately reflect the reality of the requirements of solicitors in practice. We also think that the removal of the requirements, or ability, of candidates to evidence their knowledge and skills in areas of law in which they are planning to practice is a backward step. We therefore do not understand how this approach can constitute a suitable test.

## **2) Whether what is being tested is being properly tested**

We have mentioned our concern that legal knowledge is only to be tested on a MCQ basis. We have made the point that SQE1 needs to test legal analytical skills and the ability to present logical and persuasive arguments in the context of the legal knowledge being displayed. Therefore there should, in our view, be at least 50% of the testing suite dedicated to research, analytical, problem-solving and writing abilities – such as essay questions. The New York Bar exam is an appropriate benchmark for City-based practitioners.

The impression is given that the SRA has proposed the SQE1 with a view as to its convenience of delivery rather than whether this is a suitable test for the requirements to be a solicitor. We should not be proceeding on the basis of what is easy to deliver (computer-based MCQs) rather than what will test someone's actual ability to perform.

SQE 2 test does not appear to test legal knowledge beyond SQE1 level, with candidates being shown a set of facts and underlying law before an assessment. We are also not persuaded by the proposal to test in two areas that are unlikely to reflect the areas in which our lawyers tend to work. We would want to see a wider range of practice area contexts from which candidates can choose, in order to allow our lawyers to be tested on areas of law they had actually experienced. We have been worried by comments from SRA representatives that the trainees at our firms would in practice be able to undertake only a weekend preparatory course to pass SQE2. This does not indicate that a robust test, sufficient to show suitability to be a solicitor, will be in operation, particularly in the absence of a set of LPC-like examinations.

## **3) Whether the proposal can work in practice**

The SRA appears to be relying on universities falling into line by teaching SQE1 content on their law courses. We do not anticipate this being immediately successful. Conversations we and others have been having with academic institutions, means that we expect many universities, including those with the highest academic reputations, to decline to teach SQE elements. Those who do choose to teach SQE elements will require their faculty to have practitioner-level experience in order to teach for example, LPC-equivalent elements of the course, so a change in faculty would likely be required. We envisage significant challenges here. Academic institutions, for example, the law schools many of our firms use, offering SQE1 preparatory courses would also need to change their teaching approach to become MCQ-appropriate. Again, we envisage significant practical challenges here. We are unclear

who the faculty members will be who can teach across elements currently contained in the QLD, LPC and PSC to an MCQ-testing approach.

We are unsettled by the possibility that institutions might “race to the bottom”, teaching courses where students will pass the SQE but will not in fact gain the deep academic experience they typically currently receive which better equips them to perform the role of a solicitor in practice. We cannot emphasise enough that life as a solicitor rarely presents binary-answer opportunities, the life of a solicitor is much more nuanced, complex and delicate than that – something that cannot be adequately furnished by an institution teaching primarily to MCQ-passing standard. Those whose only legal education is on an SQE-compliant course will be severely disadvantaged compared to those who undertake longer law courses.

We anticipate that the offering of SQE2 on only two occasions a year will not work in practice. The candidate, actor, assessor and logistical staff numbers will simply be too great for this to be delivered. More sittings each year will be required.

We envisage taking our trainees out of the office for several weeks to prepare them for SQE2, and to make them available to sit SQE2, particularly given the very limited legal contexts that the assessments allow. We anticipate that this will mean taking them off client and time-intensive work for several weeks and months before and after this “out of office” time. This will be challenging for our firms operating within the business models we have (and no doubt for all others continuing to offer workplace experience equivalent to the training contract). Equally, removing trainees from the practice during their workplace experience will be detrimental to their learning experience and ultimately on their readiness for practice on qualification, which in turn is less likely to equip them to succeed as working solicitors. We envisage trainee seats that correspond with SQE2-tested legal areas becoming more popular, again affecting trainees’ ability to develop experience in areas in which they might ultimately practice – trainees will be tempted to take up seats that help them pass the test rather than ones which give them the experience to succeed in working life.

## **Question 5**

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

### **Neutral**

On one basis, if the SQE model is implemented as currently proposed by the SRA, then we could support a system of exemptions for those who have completed a QLD, GDL or relevant law degree from another jurisdiction. We believe that these would most appropriately apply to SQE1. In our view a failure to do so risks:

- 1) Putting an additional and unnecessary time and cost burden on aspiring solicitors (which also has negative implications for increasing access to the profession); and
- 2) Making the QLD less attractive as a route to qualification for aspiring solicitors.

On the other hand, we struggle to see how a system of exemptions might work. For example, candidates will, no doubt, study contract and tort as part of the QLD or GDL but not “Dispute Resolution in Contract or Tort” and so an assessment by assessment exemption is unlikely to

work and a full exemption for SQE1 for those who have done a QLD or GDL would not be appropriate as they will not have covered the LPC elements of SQE1.

If the SRA accepts that, as proposed elsewhere in this response, the entry requirements to the profession should include the completion of the QLD, GDL or an apprenticeship and, therefore, the focus of the SQE becomes the ability to apply the legal knowledge gained during the completion of a degree or apprenticeship, then we do not think that a system of exemptions is needed.

## **Question 6**

### **To what extent do you agree or disagree with our proposed transitional arrangements?**

#### **Strongly Disagree**

As indicated in our response to the first Consultation, we believe that a number of aspects of the transitional arrangements are potentially detrimental to individuals and firms and require further refinement.

Our main concern stems from the fact that our member firms currently recruit trainees, in the main, two to three years before the start of their training contracts (currently a “period of recognised training” or “PRT”). As a result, they will, between now and the autumn of 2017, be recruiting trainees to start in the autumn of 2019 and spring of 2020. There will be two further rounds of trainee recruitment, in addition to the current round, before the SQE is introduced: the first in 2017/2018 for trainees to start in the autumn of 2020 and spring of 2021 and the second in 2018/9 for trainees to start in the autumn of 2021 and spring of 2022.

Accordingly, irrespective of when the SQE is introduced, there would at that time be several thousand individuals who had previously accepted offers under the existing qualification framework.

While, under the proposed transitional arrangements, the option of continuing under the existing qualification framework is given to all those who have started a QLD, CPE, LPC or PRT before September 2019, we continue to believe that this option needs to be further extended to all those individuals who have, at the time of the introduction of the SQE, accepted an offer of a PRT under the existing framework.

The reason for this is that otherwise there will be a category of new entrants who will be treated differently from their contemporaries, and required to take the SQE at a time when others are not required to do so. The category is made up of those who are studying for a non-law degree and who graduate in 2019 or later. Any person falling into this category would, under the proposed transitional arrangements, be required to take the SQE – because they had not started a QLD, CPE, LPC or PRT experience before September 2019.

This has a significant practical impact on our firms because it means that their trainee intakes from the autumn of 2021 onwards (and potentially earlier depending on how SQE1 is implemented) will include both those who are required to take the SQE as well as those who can continue to qualify under the existing framework.

We do not believe it will be practical for our firms to follow both the existing regime and the SQE in parallel for trainees joining in the same intake – either from an internal management or a business perspective – as this places a significant additional burden on them in addition

to those already arising from the implementation of the SQE. So while the Consultation refers to candidates having the ability to choose which route to follow, firms will not in practice be able to offer their trainees that choice, and will instead specify that all their trainees joining in a particular intake must either take the SQE or follow the existing route.

On this basis, we think that the effect of the proposed transitional arrangements is that any firm taking non-law graduates as trainees will, by default, be required to adopt the SQE for any trainee who joins from the autumn of 2021 onwards, if not before then. This is not a “market-led approach to implementation” as described in the Consultation and rather than “allowing the education and training market time to adapt to the new landscape”, it is forcing firms to make a decision either (a) to adopt the SQE for all their trainees earlier than would otherwise be required, or (b) not to take non-law graduates as trainees until such time as the SQE becomes compulsory for all new entrants.

Our proposed approach of allowing anyone who had accepted an offer of a PRT before the introduction of the SQE to continue to be allowed to qualify under the existing framework mitigates these concerns.

In particular, it would allow firms to continue to undertake trainee recruitment activities (and candidates to participate in the trainee recruitment process) between now and 2019 against a background of regulatory stability. We reiterate the comments made in our response to the first Consultation that it is appropriate that any individual who accepts an offer of a PRT before the introduction of the SQE should know that, if they accept the offer, they will be able to qualify under the existing framework. Similarly, we do not think it is appropriate for firms to be in a position where they are required to make offers to trainees to qualify under the SQE before the SQE has actually come into effect.

Our proposed approach would also give firms at least one additional year (until 2022) to plan for the introduction of the SQE, which we believe is necessary.

There will be some individuals who are adversely affected by the proposed cut-off date of 2024 for qualification under the existing regime. For example, any individual who started a three-year QLD in 2018 would be unable to undertake any further study, or take time off before the start of his or her PRT, without passing the cut-off date for qualification under the existing regime. We think that a one year extension to the cut-off date to 2025 would be appropriate to allow for this.

## **Question 7**

### **Do you foresee any positive or negative EDI impacts arising from our proposals**

**Yes**

We are concerned that the SRA has not undertaken a piece of research on the impact of the proposed SQE regime before consulting with the profession. We note that a final Equality Impact Assessment is to be published, taking into account comments from the Consultation, when the SRA responds. We consider the timing of this is unfortunate and, ultimately, undermining of the validity of the SRA’s consultation, as we see little in the current proposals which will actively assist in ensuring fairer and wider access to the profession.

#### **1) Creation, and reinforcement, of a two-track profession**

SQE1 proposes a return to an examination which is premised on the need to cover areas of law which comprise, principally, the “reserved activities” set out in section 12 of the Legal Services Act 2007 to the exclusion of other areas of law which are more relevant to a significant percentage, if not the majority, of solicitors in England and Wales. Consequently, many students may question its relevance to them and this, in itself, will create a barrier to entry to the profession. We have similar concerns as employers. Many of us have been surprised to discover that the combined effect of SQE1 and SQE2 will be that our trainee solicitors will have a less broad theoretical and practical education to meet the needs of clients than those who qualified under Law Society Finals over 20 years ago.

Contrary to the SRA's assertion, member firms do not believe that passing SQE1 means trainees will be workplace ready/competent as new trainees. They will not be adequately prepared for the role. We consider this to be a self-defeating move as any lack of faith in the robustness of the SQE1 to test actual knowledge will simply lead to quality assurance moving further along the professional pathway, potentially making firms more risk-averse when it comes to candidate selection. Simply passing the SQE1 will be seen as no assurance of quality and could make firms inherently reluctant to risk recruiting less conventionally educated candidates.

As explained elsewhere in our response, our firms will be forced to adapt and extend their training of those who have undertaken the SQE1 and SQE2 both to ensure that they pass each exam as efficiently as possible but, more importantly, to ensure that they will be ready to undertake the role of trainee solicitor within an international, commercial context where the UK is still perceived to be among the leading jurisdictions.

Other firms practising within other contexts will be forced to do likewise in order to maintain the standards of competence required by the SRA and to meet the expectations of their clients.

Consequently, we fear that, by the time trainees reach qualification, their career paths will be already set, ultimately reinforcing a two-track profession where those who have passed the basic needs of SQE1 and SQE2 and whose employers are less invested in their trainees, will not have been educated, and trained, to the same demanding level as others. This does not sit well with the SRA's need to protect consumer interests and the general public interest and ensure diversity within the profession.

## **2) Disabilities**

We understand that there are concerns about candidates with learning disabilities being able to cope with a significant number of MCQs in a short period of time and, with an examination which is overwhelming focused on using this method of assessment in a very short space of time, some candidates may be disadvantaged.

## **3) Costs of preparation for each exam**

We note that the SRA feels that the introduction of SQE1 and SQE2 will lead to universities offering a combined degree which would enable the cost of completing academic and practical training to be more manageable. If, as we have discovered from our discussions with various universities, many do not propose to integrate SQE1 into their degrees and “teach to the test”, students will be faced with the costs of undertaking a crammer course to be able to sit the SQE1 in the period between undertaking their degree finals and potentially starting work as trainee solicitors. This will have a cost burden but also the effect of

rendering them incapable of earning money between university and the start of the training contract. For those from less advantaged backgrounds, this may prove to be a material disincentive from undertaking a law degree which might stretch them academically but be less relevant to their future professional needs, to the detriment, ultimately of their future careers and the profession as a whole.

For those who are unable to secure a training contract where the costs of SQE2 are met by their employer, the costs of preparation for that exam, together with the costs of doing the exam itself, will add further burdens and, we believe, a further disincentive against joining the profession. Again, we fear that this will ultimately reduce diversity across the profession.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY TRAINING COMMITTEE

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**THE CITY OF LONDON LAW SOCIETY  
TRAINING COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Caroline Pearce (Cleary Gottlieb Steen & Hamilton LLP) (Chair)  
Rita Dev (Allen & Overy LLP)  
Lindsay Gerrand (DLA Piper LLP)  
Ruth Grant (Hogan Lovells International LLP)  
Caroline Janes (Herbert Smith Freehills LLP)  
Hannah Kozlova-Lindsay (Berwin Leighton Paisner)  
Greg Lascelles (Covington & Burlington LLP)  
Patrick McCann (Herbert Smith Freehills LLP)  
Frances Moore (Slaughter and May)  
Catherine Moss (Winckworth Sherwood LLP)  
Ben Perry (Sullivan and Cromwell LLP)  
Stephanie Tidball (Macfarlanes LLP)

## SRA consultation – Changing assessment for qualifying as a solicitor - Solicitors Qualifying Examination

### CLEO (Clinical Legal Education Organisation) response

**(CLEO is an independent charity dedicated to ‘promoting the advancement of legal education and the study of law in all its branches’)**

This response has been collated from comments from CLEO members, many of whom are active in the area of clinical legal education linked to or within universities, and within our membership we have a broad range of expertise which could support and inform proposed changes to qualification. Please note that CLEO would be willing to cooperate with the SRA in working out how our membership and their law clinics/pro bono projects could positively contribute to proposed changes to the qualification route.

#### **1. To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

##### **5 Strongly Disagree**

We are pleased that the SRA appears to have listened to some of the criticisms in response to the previous consultation in March 2016.

However, CLEO still has concerns about the proposals. We do not believe that the SRA has made a sufficiently strong case for making such drastic changes to the legal education framework. We question the underlying assertion that the current system is deficient, and that the SQE will improve quality, reduce cost or increase access. There is no evidence that this system is failing in terms of maintenance of standards, or protection for the public. The SRA’s reporting of the level of indemnity insurance claims and complaints to the Legal Ombudsman cannot be attributed directly to the current system of training, as many claims and complaints can be attributed to solicitors who qualified under a previous training regime, not dissimilar in many ways to the one the SRA is proposing. We are not persuaded that an SQE will have any beneficial effect on the level of claims /complaints.

CLEO members have expressed specific concerns in the following aspects;

- A lack of emphasis on ethical framework- The proposal lacks any consideration of the cultural values which should be instilled during the period of Work Based Learning – the focus is on skills and competencies not on the values which should be transmitted during a work based learning programme (establishing a Community of Practice with a broader ethical focus) SQE1 is not shown to be adequate to demonstrate the qualities, understanding and skills needed at that stage of developing as a solicitor. Although one paper is intended to be different, the other five are all based on multiple choice questions and there is no realistic way in which the qualities one would expect from a graduate in law can be assessed.
- The proposals are seen as a backward step in terms of teaching and learning methods, encouraging surface, not deep, learning - We refer you to the original ACLEC reports of the 1990’s on legal education which criticised the ‘artificially rigid’ separation of the academic and professional stages of legal education- the Report called for the adoption of active learning methods and a move away from rote learning towards greater flexibility and diversity of teaching and assessment methods – something which these current proposals appear to reverse.

- There is an underlying assumption that the over-riding need is for standardisation, and that this equates to validity. This is not the case, as evidenced by researchers looking at professional learning environments such as the training of doctors. Is consistency being confused with quality? In a professional context, a more complex approach is needed for meaningful assessment. Standardisation does not equate to validity. Are more complex cognitive skills being effectively tested?
- Further, the SRA appear to be discarding the existing system on the basis that there are variations between providers, instead of working to explore the reasons behind those alleged inconsistencies, bearing in mind that the Chief external Examiners exercise suggested that appropriate standards are being maintained in relation to the existing LPC.

Stage 1 -There is a risk that people who can retain knowledge can pass the test- but it is the application, critical thinking skills and development of judgement which is more important. Here there appears to be little application, a lack of depth, all in order to standardise the assessment.

SQE 1 does not appear to assess or require the development of the higher intellectual skills required by the QAA Law benchmark:

It does not appear to address:

*viii ability to recognise ambiguity and deal with uncertainty in law*

*ix ability to produce a synthesis of relevant doctrinal and policy issues, presentation of a reasoned choice between alternative solutions and critical judgement of the merits of particular arguments*

SQE 1 is likely to encourage students to focus on the application of straightforward principles of law in everyday practice situations without sufficient regard to complexity and ambiguity as required by the QAA Law Benchmark. Students qualifying without having taken a law degree will be less prepared for practice at the highest standard of competence and students who qualify with a law degree are likely to have engaged in additional time and expense. This is likely to impact on professional standards or diversity or both. This problem is compounded by the fact that the SQE 2, which is taken at the point of qualification, does not purport (despite some ambiguity) to assess legal knowledge at all.

Stage 2 assessments- the SQE2 appears to be better founded in the experience of running similar assessments and, provided the proper amount of appropriate work experience is also required, could be a reasonable basis for the demonstration of the necessary outcomes.

However there is concern at the areas proposed and impact particularly on access to justice, with a lack of emphasis on some areas, and inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

Overall, there is a lack of emphasis on the key skill of writing. There appear to be only 2 assessments that require the students to produce a piece of writing, which does not reflect the work of lawyers in practice. Solicitors need to be able to express themselves clearly in writing, producing well-structured coherent documents that are appropriate for the intended audience. If the SQE 1 is all multiple choice with one written assessment, then the universities and other providers who prepare students for the test will not focus on teaching students to write. Good writing takes practice and we are concerned that we will be producing law graduates and newly qualified solicitors with poorer literacy skills, which is not what employers want.

**Costs-** without more detailed costings for these new proposals, there is no assurance that this reduction in costs will take place. In particular, the SQE 2 requires 10 practical skills assessments with 20 hours of testing, presumably requiring trained clients, and experience legal practitioners to be appointed as assessors. There will also be the costs of assessment awards board using expert panels.

The concerns about SQE1 are exacerbated by the fact that it has not been piloted and that there are no plans to pilot it before the decision to adopt it in principle is taken. At the moment the SRA appear to be proposing the adoption of SQE1 and 2 and then piloting it (presumably to adjust and improve it). This is methodologically flawed and (we would argue) irrational.

**Recommendation - We request that full piloting of the SQE1 be completed before the decision in principle is taken.** We urgently need to see example assessments and model answers so that we can develop teaching and learning and assessment resources to prepare our students for the SQE – whether as part of an LLB, or a LLM or dedicated short course. As discussed, the actual scope of the SQE in terms of knowledge and skills is not clear. Students will also need access to exemplar assessments and model answers in order to be able to prepare for the SQE.

#### **2a. To what extent do you agree or disagree with our proposals for qualifying legal work experience? 4 Disagree**

We support the SRA's apparent recognition that students working in clinic and properly supervised pro bono activities may contribute to the work experience element of developing the skills and qualities of a solicitor. As an organisation with a focus on the value of clinic and experiential learning, we welcome the inclusion of this as potentially valid work experience.

We welcome the requirement for a degree or equivalent, and the requirement of a substantial period of work based training.

However, it is concerning that there is to be no confirmation of competence, or regulation of the nature of the work experience, and this appears to be based on the premise that 'it is difficult to assess work experience on a consistent basis' (para99). On this basis, any attempt to regulate or require any quality control has been abandoned, and as a result, there is no real link or alignment between the work experience, and either the SQE1 or 2- indeed, it appears possible to engage in the work experience after taking SQE2. Our view is that you are overestimating the difficulty of assessing skills in the work place. We suggest thought is given to providing a platform in which learning experience can be recorded, particularly if work experience is to be done in different places. The Law Society could have a role here.

Clarity is needed on when work experience can be completed- we suggest that it should be possible to complete it prior to SQE1, so that experience gained during university education can count, but there may need to be a limit on how far back the work experience can go to be counted, otherwise out of date experience may be relied on. Also clarity required on how many different work placements can be used- too many may lead to overly fragmented experience of little value.

Some CLEO members have expressed concern that you are separately considering the removal of the requirement of 3 years Post Qualification Experience before a Solicitor can become a sole practitioner (Para 14)

**2b. What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

**2 yrs**

As to work-based learning period, we suggest a minimum period of period 18 months with a normal 24 months plus exemptions for qualified barristers and others who have a work-based learning law qualification (e.g. ILEX). Clarification if pre SQE 1 clinic experience to be included as time to count.

Method of calculation should enable varied work patterns to be included – SRA proposes counting days, but some CLEO members have suggested hours equivalent.

**3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE? 5 Strongly Disagree**

There appears to be little protection for the consumer here – whilst advocating standardisation and consistency, there is little really detailed guidance on what the tests will entail, to enable providers to provide a quality service. Without assurance or quality monitoring, and a reliance on market forces, consumers who have little experience in selecting providers may be driven by price, and because feedback on course results is likely to lag behind, this will not provide sufficient protection against ‘rogue’ providers. There is too much emphasis on assessment in exam conditions with too little information on the preparation required for SQE 1 and 2. Lack of regulation of the work experience phase – see above.

**4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor? 5 Strongly disagree**

Lack of an ethical framework – this needs to be pervasive. No acknowledgement of the value of existing QAA benchmarks. We are concerned that the depth and breadth of legal knowledge, the intellectual skills, the value of qualifying legal work experience and the level of professional practice skills required to pass the SQE will be less than required at present

**5. To what extent do you agree/disagree that exemptions should be offered from SQE stage 1 or 2? We agree that exemptions should be offered and disagree with proposal to offer no exemptions**

- The six year period may be too short to complete SQE1 and SQE2, if this also includes work based experience to enable students to be prepared for SQE2.
- If there are no exemptions for those sitting a law degree, it is difficult to see how this can be cost-neutral when comparing to the existing LPC system.

**6. To what extent do you agree or disagree with our proposed transitional arrangements? 5 Strongly Disagree**

- We have concerns that you will not be able to produce sufficient examples/ practice assessments in time for institutions to design appropriate courses and for students to have a sufficient opportunity to prepare for the first offerings of the SQE in 2019.

**7. Do you foresee any positive or negative EDI impacts arising from our proposals? Yes- we foresee negative impacts**

The proposed solution will end up costing students a substantial sum for the tests. Our members have estimated that the SQE will cost £6,339. This does not take account of any study costs and assumes that all assessments will be passed at the first sitting.

The reality will be that most students (especially those from EDI backgrounds) will require assistance in passing the test – costing further money. Those from upper income bracket backgrounds will still get jobs with the bigger employers who will subsidise or pay for all of this. Those from EDI backgrounds will have to fund themselves. The solution to EDI issues is to force the big employers to genuinely recruit from wider backgrounds and stop the increasing public school concentration of power and money at the top of the big firms. Where is the evidence that these proposals will impact positively on EDI?

The SRA appears to believe that this system will prove to reduce the cost of training and so to encourage diversity. We suspect that this will not be the case. The existing high-status firms will continue to ensure that their entrants receive the training they want. There is a serious risk that a two-tier development of courses will develop with the result that non-standard entrants will tend towards those that develop a lesser reputation. The cost of the centralised assessments will be a considerable burden over and above the costs required for the teaching and learning and assessment necessary for the proper running of university programmes.

There is a risk of exploitation of some students through the legal work-based experience as proposed. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all.

There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

As one of the major barriers to access to the profession is the limited number of training contracts currently available, we also welcome in principle the proposal to widen the situations in which aspiring solicitors can obtain work based training. However, we have concerns that this may simply move a bottleneck from lack of training contracts to lack of positions for newly qualified solicitors, and that students qualifying through non-traditional routes may face difficulties in finding employment.

As stated at the outset, CLEO would be willing to work constructively with the SRA in looking further at aspects of these proposals to produce a workable qualification system.

## SQE Consultation Response – Clyde & Co

### Introduction

In principle Clyde & Co are supportive of the overarching aims of the consultation. We feel it is integral to the profession to continue to ensure that we have "*high, consistent, professional standards for the future.*" Ensuring that we continue to uphold the confidence of the public and maintain the well-recognised and respected qualification of an England and Wales qualified solicitor is essential to us maintaining our professional services.

Equally, we view diversity as critical to the international nature of our business and we therefore fully endorse the basic aim of the consultation in attempting to widen access to the profession.

Unfortunately though we presently remain unconvinced that the current proposals will meet these aims and in some instances, as elaborated on below, feel that the new proposals will be directly counterproductive to the issues the SRA seek to address.

### **1) To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

#### **DISAGREE**

The proposed SQE1 appears to be a combination of the core elements of the GDL, LPC and the PSC with an aim to assess the students not only on their technical knowledge but also on the practical application of this knowledge or "functioning legal knowledge". We have strong concerns on whether this knowledge can be adequately tested and assessed by using multiple choice assessments.

The multiple choice, computer based exams can have their worth and merits but they have limits. In the old written exams, the general model was 'understand the facts, identify the relevant law, apply the law to the facts, give clear practical advice to the client' – there is often no simple right or wrong answer to a legal issue – it is all about giving appropriate advice, giving the right 'weight' to different aspects. Can you do this in a multiple choice paper?

Without seeing some proposed sample questions, or even better, testing the proposed SQE1 assessments, we have no comparison between the proposal for SQE1 and the existing LPC to be able to make any sound statement around it being a robust and effective measure of competence and to see how it compares to the existing system.

We also have strong concerns that individuals entering the profession under the new proposals may do so knowing substantially less law than those who currently enter the profession due to a) the removal to have a qualifying law degree (or equivalent) and b) that the proposed SQE1 assessments do not cover the current breadth of the GDL, LPC and PSC combined.

We are in complete agreement with the LETG that the removal of the need for a qualifying law degree (or equivalent) would be extremely detrimental to the overall perception of the E&W qualification in the international market. It seems remarkable that there is no formal requirement to study law as part of the qualification process.

While we also appreciate that the SRA has the job of setting the minimum competence standards required for the wider legal profession, the new SQE1 proposal will see us lose many of the current elective and firm specific elements of the LPC which we see as crucial to the quality and competency of our trainees before they commence their training period with us. Under the new proposals these will all be lost and it will not be feasible to build in these extra areas into the SQE. The dropping of

electives means a general 'dumbing down' of the qualification, and there will be a greater burden on firms to impart the higher level of knowledge.

The likely impact to us as a city firm may remain relatively small as we will seek to develop our own replacement-LPC training course to ensure that individuals meet our own competency requirements at the point of joining. However we are in agreement with our fellow LETG members that this will likely lead to a two-tier system which will do very little to address the current inequalities within the existing system.

Regarding SQE2, while in principle we are not against the idea of a centralised assessment, we have deep and fundamental concerns around the current proposals and the impact these will have to our business.

While we generally have no concerns with the proposed contexts, we would nevertheless welcome a broader range of contexts for individuals/the firm to select from. This would allow us to be far more confident that our trainees will be assessed in areas where they have had significant practical experience.

Contradictory to the SRA's views, we are of the opinion that a significant amount of pre-training will be required ahead of SQE2. In the event that the assessments will need to be sat during or after an element of qualifying work based learning the pre-training required will cause significant disruption to firms. It is unrealistic to expect that firms will be able to allow entire trainee intakes to be released en-masse from the business and be able to maintain standards and client service expectations.

We have serious concerns that the current proposed timing of the SQE2 assessments could severely limit our trainee's qualification options as it may effectively rule out the last 6 months of the training period. We feel this could be hugely damaging to our trainees overall career opportunities and to the firm's ability to retain our trainees. The timings of the SQE2 assessments may also have serious impacts on our ability to facilitate international secondments or client secondments, both of which are integral development opportunities needed and expected of a global law firm. We believe serious considerations need to be given to the timings of the SQE2 assessments, the length of time it will take to facilitate the assessments and that it is imperative that the time taken from the assessment stage to the exam results being released is significantly reduced.

We therefore feel that the SRA's current proposal to run only two-assessment periods per year will not be satisfactory. We feel that it will be necessary for the SRA to run these assessments on a quarterly basis as a minimum, but that more assessment windows would be welcome.

## 2)

### a. To what extent do you agree or disagree with our proposals for qualifying legal work experience?

#### NEUTRAL

We feel that a defined period of work based learning is critical and essential in enabling candidates to develop the necessary competencies for practice as a solicitor.

In principle we agree that recognising a wider spectrum of work experience gained outside of a training contract, plus the proposal to remove the requirement for individuals to see three distinct areas of law and practice, could allow us to adopt more flexible pathways to qualification.

However the current framework allows our trainees the ability to gain experience across a number of different practice areas thereby strengthening their legal abilities to work independently and make positive contributions to the business. Additionally, it assists with personal decision making of selecting a sector or area of focus which they wish to pursue throughout their careers. Without experiencing a range of practice areas trainees will be limited on the areas they can hope to qualify into, thereby creating potential barriers to their career aspirations and potentially forcing candidates to specialise in a particular area from an incredibly early stage of their career. From the employer's perspective, the current duration of training and level of exposure within the firm assists in the retention decisions of our trainees.

**b. What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

**TWO YEARS**

We feel that there are no issues with the current framework in place in regarding the length of a two-year training period. As per our response in the initial consultation, the current framework offers a number of benefits, both to us as an employer and to our trainees. A sufficient period of training and supervision is essential to ensure that they are of a standard we, and our clients, have become to expect of our newly qualified associates. As the large majority of candidates coming to us will be direct from university, ensuring they have enough real life exposure to the intricacies or realities of our practice areas to service our clients efficiently is essential. Moreover, we see our trainees skills flourish throughout the training period, satisfying Partners that they can practice independently, efficiently and effectively.

**3) To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**STRONGLY DISAGREE**

As per our original response, we still feel that regulation of the preparatory training for the SQE will need to be provided, at the very least until there is robust data available in the marketplace which will enable individuals to make informed decisions. There is a risk that without the regulation of the training and education providers there could be an impact on the quality and credibility expected of training providers in the marketplace.

In addition, while de-regulation potentially allows opportunities for greater diversity amongst the training and educational providers, this also greatly increases the possibility of inconsistent approaches and substandard quality to candidates going through the process. This leads to the possibility of significant risk of failure for candidates embarking on a new and untested exam.

**4) To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**STRONGLY DISAGREE**

Whilst we believe that all candidates should have a degree (or equivalent), have completed a minimum period of work experience, have passed both SQE 1 & 2 and satisfied the character and suitability requirements, we strongly disagree that the proposed model is a suitable test of the requirements needed to become a solicitor.

In the interests of safeguarding the public, it is crucial that competence is measured over a range of methods and time, to produce a complete picture of competence. At this stage of development

taking a snapshot of knowledge and ability will never produce as true a representation as ongoing assessment and review.

Fundamentally the breadth and complexity of variables that faces the trainee in real life are vastly broader than those in a controlled test environment, and as such it will never be able to replicate the challenges and hence learning that would occur outside of the sterile test environment.

As such, assessments alone are not enough to measure a trainee's competency. As with the new statement of solicitor competence, the SRA promote a "reflect and review" learning practice, this needs to be consistent at the trainee level too.

Firms need to have the capacity to also review and reflect on how a trainee is progressing and this needs to make up a necessary element of assessing trainee competence.

We would echo the LETG's comments that we believe whilst elements within the proposed assessment are good, on its own it would not be sufficient to measure solicitor competence.

**5) To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**NEUTRAL**

If direct comparisons can be drawn between the SQE (or aspects of the SQE) and other regulated titles and qualifications, such as overseas lawyers, then it may be appropriate to allow exceptions to some or all parts of the SQE. However it would seem contradictory to the aim of "*assuring consistent and comparable high quality standards at the point of qualification*" if exemptions continue to be provided. The provision of exemptions will continue to enable the perceived inequalities between various routes of the profession.

**6) To what extent do you agree or disagree with our proposed transitional arrangements?**

**STRONGLY DISAGREE**

We are of the opinion that it would be most appropriate to take the requisite time to get this right, with the correct safeguards in place (such as piloting), than to do this quickly and potentially recklessly.

As many pieces of the proposal are still extremely vague, and with the consultation not being finalised until later this year and a lot of uncertainty in the marketplace around what will be offered by universities and training providers, we do not believe it is feasible to implement the new system in less than two-years.

**7) Do you foresee any positive or negative EDI impacts arising from our proposals?**

**YES**

While it is difficult for us to predict the impact the new proposals will have, our feeling is that the new proposals have the potential to negatively impact on EDI.

Some of our concerns are:

Non-law students may find themselves at a significant disadvantage compared to law students. While no specific information is yet available the general belief is that the new proposals will likely be more expensive than the existing system. In this event, law students may prove more attractive to many employers as it becomes increasingly more expensive to recruit non-law students and firms may be less willing to incur further additional costs.

There is the possibility that fewer students consider a non-law route into the profession if it becomes significantly cheaper and shorter to pass SQE1 via the law based routes. This could lead to a much narrower talent pool for recruiters. Given the breadth of sectors that we cover we place a lot of value on recruiting talent from a wide range of academic backgrounds and subjects and would not wish for individuals to be deterred from pursuing a non-law degree subject.

There is a strong possibility of exacerbating a two-tier system between large City-firms or employers with significant means, and those who are less able to provide comprehensive and rigorous SQE1 and SQE2 training.



Edward Mills-Webb  
**Training Principal**

Signed on behalf of Clyde & Co LLP  
9 January 2017

# Consultation questionnaire

Response ID:488 Data

## 2. Your identity

### Surname

Wheeler

### Forename(s)

Sally

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on behalf of a representative group**

Please enter the name of the group.: CHULS

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We have asserted that we believe that the solicitors' profession should be one of graduate entry. This does not necessarily mean that would-be solicitors must have a law degree, but we cannot envisage a person who does not possess a degree level qualification or equivalent having the intellectual depth or high level cognitive function being able to cope with the rigours of solicitors' practice. We are therefore pleased to see that the SRA has now said that graduate level education (or apprenticeship, which we assume means at level 6 or 7) will be a pre-requisite. However, at present we do NOT have confidence that the proposed SQE will be a robust and effective measure of competence. Without seeing examples of the proposed assessments at both levels, it is impossible for us to comment in detail, but we have concerns that: The proposed methods of testing for SQE 1 are too superficial and, unlike a law degree plus LPC (or degree plus GDL plus LPC), will not permit the testing of a wide range of degree level skills. SQE 1 may provide an adequate test of knowledge (but as mentioned above, we would need to see some examples to be sure), but not of the types of competence needed for a practicing solicitor, such as the ability to analyse situations, to evaluate evidence and make judgements. Paragraph 54 of the consultation paper asserts that computer based testing is successfully used in other professions such as medicine and pharmacy; but this comparison is disingenuous, as the assessments mentioned in those other professions are taken in conjunction with mandatory degree or postgraduate level education in those subject areas. The consultation paper suggests that candidates may take SQE 1 before completing their work based learning, with SQE 2 being taken at the end of the work based learning period. It is stated that SQE would include a test of legal research and a writing test. At present, it is normally not possible to commence a training contract without completing a law degree or equivalent and the LPC. Many firms require this level of qualification even for paralegal roles. It is therefore unrealistic to expect that firms will want to take on employees who are even less well educated and trained than at present. We are concerned that SQE 2 may be too narrow; the removal of electives will mean that successful SQE completers may not have the breadth of knowledge and skills needed for practice. Those wishing to practice in, for example, Family, Consumer, Employment, and Immigration law, to name but a few, will be put to greater expense in paying for additional training in order to gain employment. Given that there are various 'reserved' areas of work which are the province of solicitors, we are confused as to why the SRA considers it appropriate that a person could become a solicitor with no testing whatsoever of their practical ability to conduct work in all of those reserved areas. As currently proposed, a candidate could pass SQE 2 having taken assessments

only in non-contentious areas, and the next day appear in court for a client. One of the reasons for the introduction of the LPC was to ensure that students had practical competence in all the reserved areas, and we are concerned for consumer safety if the proposal for only two areas of practice is implemented.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** In principle, we welcome the concept of widening the number of contexts in which work based learning can be experienced. However, we are concerned that it appears that there will be no monitoring of qualifying legal work experience (QLWE). There are criticisms that the current training contract is insufficiently supervised or monitored by the SRA but we are not sure that the removal of almost all regulation is the way to improve this situation. We are unsure as to the value of making an entirely unsupervised and unregulated period of QLWE part of the qualification process, and it is our view that the proposals as currently set out do nothing to promote consistency or quality of experience. It is common ground that there currently is a mismatch between the number of training contracts available and the number of LPC graduates. Allowing would-be solicitors to gain QLWE in other contexts may seem at first glance to be a positive move which would widen access to the profession. However, our experience is that one of the reasons why firms do not offer training contracts is that they require considerable investment from the firm in terms of time spent in supervision and training. Lack of regulation of QLWE could encourage firms and other bodies to take on 'trainees' with no real commitment to their training and development.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We believe that the current requirement of 24 months is about right. However, we need further clarification as to when the SQE stages 1 and 2 could / should be taken - for example, we assume from the paper that a candidate could take SQE 1 before any QLWE is undertaken; could that person then take SQE 2 after, say, six months of QLWE, and, if so, would this mean that person became a qualified solicitor immediately after passing the assessment, thus bypassing the QLWE requirement?

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** Whilst we can understand why the SRA takes the view that deregulation of the training process may allow for greater innovation in training offered, we have serious concerns that the market could become taken over by unscrupulous training providers with an eye only to profit and with little regard for the quality or appropriateness of the training provided. Anecdotal evidence suggests there is, for example, already some concern about the variability of the currently unregulated QLTS training, and of course the SQE would be a much bigger market. It would also potentially be a very different market than that for QLTS training which is by definition only offered to qualified lawyers; SQE training may conceivably be offered to relatively inexperienced or vulnerable 18 year olds. We believe that one of the SRA's aims is to make the profession more accessible to people of all backgrounds, and arguably reducing the cost of qualifying will contribute to this. However, we do not believe that the cost of the SQE and preparatory training will result in any significant saving - in fact the process could become more expensive. Lack of regulation of training could exacerbate this problem.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We disagree that the proposed model is a suitable test of the requirements needed to become a solicitor for all the reasons that we give in response to these questions and for the general observations we make in free text.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** Whilst we can to an extent see the logic of not offering exemptions, we have concerns that this will result in additional and unnecessary costs to potential solicitors. Education to degree level is a pre-requisite for the SQE, and if that degree happens to be in law, we see no logic in expecting those who have already taken and passed relevant assessments having to take more assessments. There are also individuals qualified to appropriate levels by recognised and rigorous routes for whom it seems illogical to expect them to take very comparable assessments to those they have already passed; for example, barristers, CILEx fellows, and licensed conveyancers.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

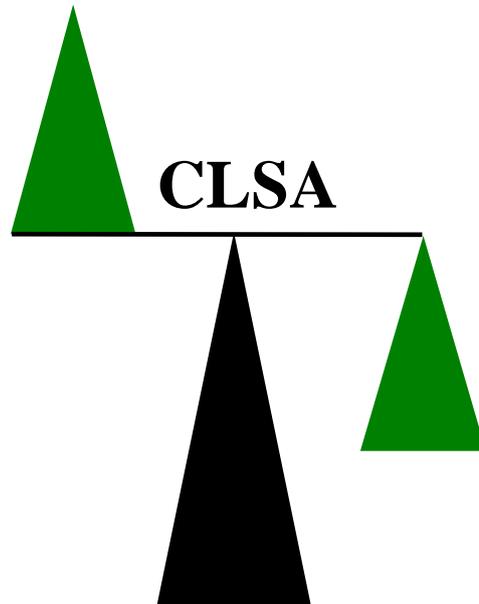
**Comments:** We are concerned that the proposed timescale for change remains very challenging. Many individuals have already embarked on their route to qualification and it is very important that none of the expense and effort that they have already incurred should be in vain, so our main concern about transitional arrangements is that they are both very clearly set out and very clearly communicated to current students.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Whilst the proposal for widening the scope of QLWE could be (cautiously) welcomed subject to the concerns expressed above, we are concerned that there could also be negative EDI effects to these proposals, as follows: • We are not convinced that the cost of the new scheme will be significantly less than the current regime and we are concerned that lack of regulation of preparatory training could push costs up. • Whilst very highly qualified students from the traditional universities may continue to be employed by the larger city firms, who will continue to provide good, bespoke training, the widening of the scope of QLWE might encourage less diligent employers to take on employees without providing appropriate training, to the detriment of those employees, who may well be from less advantaged backgrounds in the first place. • The proposed lack of exemptions might disadvantage those wishing to enter the profession from non-traditional backgrounds - for example, those lawyers who have qualified as mature students through the CILEx route and now wish to bring their usually considerable experience to the solicitors profession.



**Criminal Law Solicitors' Association  
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**CLSA response to consultation**

**'A New Route to Qualification: The Solicitors Qualifying Examination'**

The Criminal Law Solicitors' Association is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales and membership of the Association is open to any solicitor - prosecution or defence - and to legal advisers, qualified or trainee - involved with, or interested in, the practice of criminal law. The CLSA is responding to the consultation on behalf of its members.

1. We intend to respond from a mainly criminal law firm perspective not least because a broader response has already been submitted by the Law Society and we support and endorse most of the Society's comments.

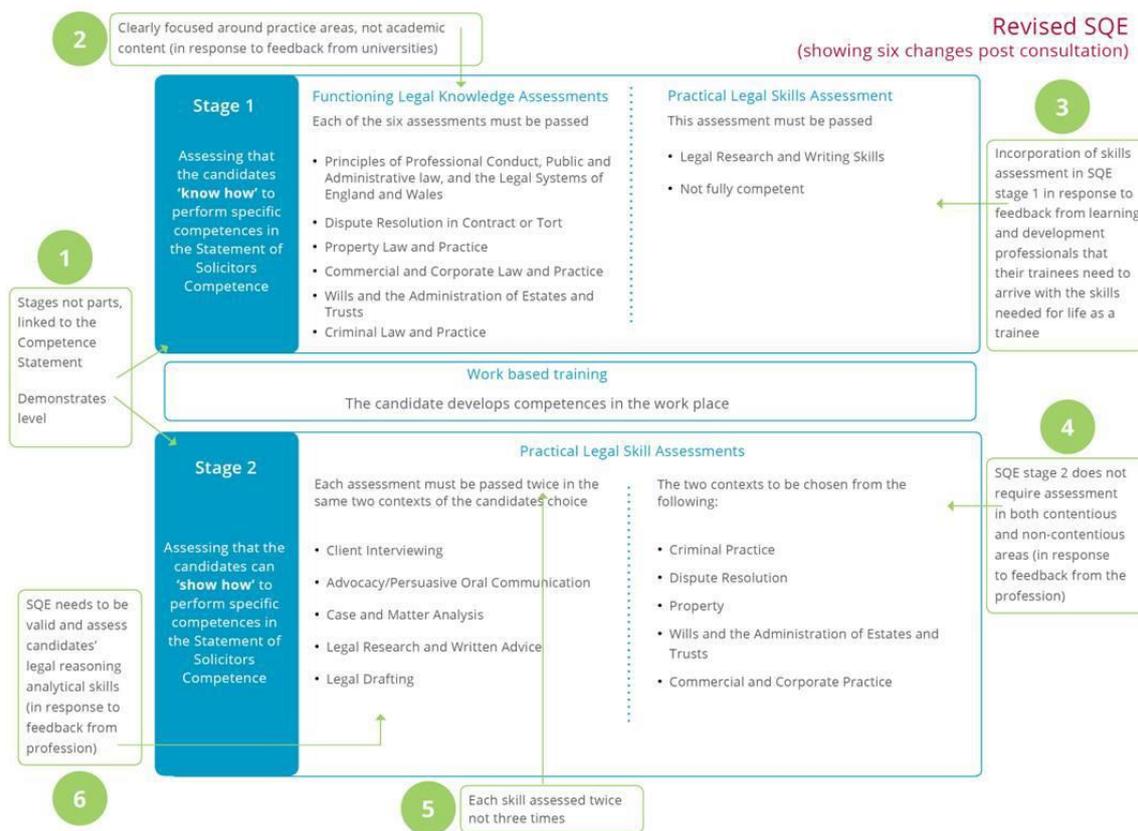
2. We wish immediately to highlight the main problems faced by criminal firms that do need addressing in these proposals to make them work for the majority of these mainly legal aid funded firms. Specifically in relation to the training proposals set out for SQE stage.

3. We admit that we do not have formal collated statistics for this but our common experience is that many criminal legal aid practices no longer offer training places to any large extent. There are a number of existential reasons for this:

- 1) The funding crisis in legal aid resulting in firms no longer being able to offer training places due to critical financial pressures due to cuts and a downturn in legal aid work.
- 2) Related to 1) above, in many areas of the UK the further pressure upon reputable firms to survive who might otherwise be willing to assist with a long term training legacy caused by twin pressures of ghost duty solicitors and touting.
- 3) The substantial number of criminal legal aid firms who offer only one discipline or area of work.

4. The SRA has no or little influence over 1), some influence over 2) but it is 3) that we wish to address in some detail because the SRA could change the landscape for firms and student substantially if it had the will to do so, albeit in cooperation with other agencies and organisations.

5. In paragraph 71. The issue is illustrated in the diagrams below taken from the consultation:



The simple reality is that many if not most Criminal legal aid firms are highly specialist and simply do not offer training in the work place of any of the subjects suggested to be the practical legal skill assessment contexts. They will offer 'criminal practice' but rarely other areas such as Wills, dispute resolution, property, trusts and Estates or commercial and corporate practice etc.

6. This main problem is set out in Paragraph 107. Although the proposal would no longer specify that work experience should include experience of at least three areas of practice, including contentious and non-contentious there remains the requirement to demonstrate skills in two different practice contexts in SQE stage 2. This is not possible for most legal aid firms in house especially from the areas of work specified. There is no family law, immigration or benefit law for example.

7. Many firms and trainees have found it very hard to find short term placements in other disciplines. Sometimes they find themselves having to pay towards another firm's salary bill whilst the trainee worked away there simply out of desperation. Often the trainee will drift away to that other firm with the link weakened. In addition the very narrow context to be chosen from will be with firms with whom the criminal legal aid practice will have few or little contact to arrange such a placement.

8. The consultation says 'Any work-based experience' that allowed a candidate to develop the competences in the Statement of Solicitor Competence could count. Periods of experience acquired under a formal training contract or through working in a student law clinic, as an apprentice or a paralegal, or through a placement as part of a sandwich degree could all contribute to this requirement. But we ask how many of these organisations offering e.g. property, Wills or

commercial law are likely to be interested in taking trainees from criminal practices for 3 months or more. In our experience very few would. There is no incentive for them and no quid pro quo that can be offered by way of reciprocation.

9. It is odd to proffer criminal law and practice on PQE courses without enabling or signposting the practical means to facilitate training placements when the two context experience requires is nearly impossible to secure. We would be interested to learn how many legal aid practices now offer training places. We doubt these proposal will make a lot of positive difference.

10. We appreciate that this may be difficult and optimistic but as this is a consultation so we hope anything can be contemplated but we would urge particular consideration be given to the following:

- I. Given the importance of the criminal law that the SRA consider making representations to the Government and perhaps magic circle commercial firms to set up financial assistance to help defray the cost of the employment of trainees otherwise the supply of criminal solicitors may either 'dry up' or be restricted to a better off economic section of the population able to subsist on low salaries.
- II. Engaging with the Law Society etc and setting up a structure involving firms who might offer legal aid firms direct support by taking and paying the salaries of trainees during a 3 month placement for their trainees so they can gain experience in areas such as Wills, dispute resolution, property, trusts and Estates or commercial and corporate practice.
- III. Contemplate what a missed opportunity this is to make a contribution to society by having such narrow areas for training. Why not family law, Housing law, benefit law, debt counselling and immigration? If the SQE taught these subjects in phase one they could be applied in CAB's, Law centres, advice centres etc. There might be a role for local law Societies to provide a supervision structure and back up. This could be a tremendous boost for the voluntary sector. Trainees with knowledge of the law and gaining experience in areas of law perhaps more relevant to criminal cases and clients than trust and commercial law etc.

To be brutal having tested membership opinion there are no or hardly any trainees going to be taken on by Criminal law practices. Many used to but cannot afford to do so now and if they did no longer have other placements for this type of 'context 'work. If you wish to see the comments we will ask their permission to pass these on.

The path ways will only work for the top end (financially) of the profession not therefore most criminal legal aid firms.

## Other issues.

Para 26. We agree it is vital we have a qualification that justifies the high reputation of solicitors of England and Wales around the world.

Para 27. We support a one stop consistent examination at the point of qualification for solicitors.

SQE stages 1 and 2. We support the new course structures subject to our criticism that they ignore subjects like family law, Housing law, benefit law, debt counselling and immigration. The emphasis neglects these vital subjects in terms of work training.

Para 59. Rather than actors why not involve real local lawyers in role playing?

Para 67 stage two. Is there not scope for some specialist option as well? So a candidate could at least have part of the marks allocated to their chosen specialisation if they wish to?

Criminal Law is a much specialised skill requiring particular adversarial skills not necessarily used in other areas. Not suggesting excluding others and support broadness of approach but It would help on job market and most advocacy is done by solicitors.

We have no issues as to the design or methods of assessment.

## Questions

We do not wish to add to the answers given by the Law Society on behalf of the profession and support and endorse those responses. We have dealt with issues not picked up by the Society which are specific to our members.

## Final Comment.

If the SRA wish to do more than pay lip service to the aim to include Criminal legal Aid firms in the provision of training contracts (and Law students will have to study criminal law as part of SQE) then further steps will have to be taken to support those firms and their potential trainees otherwise the concept and actuality of training contracts will remain theoretical. This means newly qualified solicitors will be unleashed upon the public without specialist training. Broad applicability of skills from other areas will, with great respect be of limited value when being humiliated in court or a police station due to lack of practical training. It will not seem theoretical but very real to the firm and the individual concerned.

The SRA with the Government and the Law Society have an opportunity to breathe new life into the training legacy of the profession related to criminal law and practice. Unless these issues raised above are addressed the essential availability of practical training now barely on life support will die altogether with the public being collateral damage.

# Consultation questionnaire

Response ID:510 Data

## 2. Your identity

### Surname

Angell

### Forename(s)

Jonathan Charles

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Dechert LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We do not believe that the SQE is a robust and effective measure of competence for the following reasons: SQE 1 • The proposed structure of SQE 1 is MCQs. There is limited written analysis – a three hour legal research and writing assessment taken online which we understand will be ‘basic’. The SRA has not provided sample tests so it is difficult to assess whether we have concerns about the standard of the MCQs. However, we believe the lack of long form and essay style answers could encourage SQE 1 ‘crammer’ courses which may fail to deliver the depth of legal knowledge expected of those entering the legal profession. • We believe that to allow City trainees to enter the City workforce without any training in City competence would be unwise for all parties. The current City LPC Electives – banking and debt finance, mergers and acquisitions and public companies – are being deregulated and will no longer be taught or tested. This is a gap that City firms will need to close. SQE 2 • We also believe it is unwise to allow trainees to enter the workforce without teaching them basic legal skills and measuring their competence in those skills. Trainees are an important cohort of a firm’s workforce and it is in both the public and firms’ best interests that trainees arrive equipped with an understanding of the skills required for the job. Some training and testing of competence should continue to take place before trainees enter the workforce. Those skills can then be improved during WBL. • The SRA’s proposal that a trainee can learn all requisite skills during the period of WBL without any formal training is unrealistic and places an impractical burden on firms. • We are concerned about the timing of the SQE 2: the SRA’s intention is that it should take place towards the end of WBL. We believe SQE 2 should be taken before WBL. The proposed timing is likely to cause the following logistical problems for firms in terms of: o qualification offers: SQE 2 results will be unknown until late in the WBL, plus it is unclear whether it will be possible for trainees from the same firm to sit exams/receive results simultaneously; o managing time away from fee earning in the office to study for and sit SQE 2. We do not believe that trainees would be able to take the ten SQE 2 exams without attending formal skills training and as a firm we would not want to expose them to the risk of failure. On this basis, towards the end of their WBL, trainees would need to: (i) attend formal skills training; (ii) revise two areas of SQE 1 legal topics (the SRA has said that although SQE 2 is a skills test, trainees will need to get the law right in the two out of five chosen areas of law, which may be areas that the trainee has no plans of qualifying into and has no practical work experience of); and (iii) physically sit the ten one on one face to face assessments. This means that revision and exams will take place at the point a trainee is more experienced. However, we feel that it is precisely at this level of experience that a trainee experiences

significant learning as they are able to work at a higher level and contribute substantially towards practice group workloads. Taking them away from the workplace at this point will be disruptive both for the firm and for the trainee's learning. • Unnecessary stress for trainees. SQE 2 will take place at the point when many trainees are typically concerned about jobs on qualification. Some will also be going through internal selection processes and be keen to be visible in their workplace. We do not think it is prudent for trainees on the point of qualification to be absent from the workplace and distracted by exams, particularly since some trainees will be forced to take the SQE 2 exams in areas of law that they do not intend to practise in.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** • We agree that a period of legal work experience is essential before qualification. • We strongly disagree with the SRA's proposals. Solicitors need to be competent at the point of qualification. So WBL needs to be appropriate for the type of law the trainee plans to practise on qualification. The proposed range of options available to students for WBL is too broad and will not always result in a student gaining experience that will allow them to practise as competent solicitors in their chosen field. For example, work experience gained at a student law clinic is likely to be less pertinent for students entering City law firms than experience gained as a paralegal in a City law firm.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We agree that reductions for prior work experience could still be awarded to reduce the overall period of 'formal' work experience, in the same way that current trainee solicitors can apply to their firm to reduce their PRT by six months if they have previous relevant experience. However, it should be up to each firm to determine whether the particular prior work experience is relevant for their firm and if so, the extent of any reduction. This is for the same reason as above: solicitors need to be competent at the point of qualification and any exceptions to the 24 month period of WBL need to be relevant to the type of law the trainee plans to practise on qualification.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** • The SRA should exercise regulatory oversight of the providers of SQE 1 and SQE 2. Simply relying on publishing provider performance data is unlikely to be sufficiently thorough and may encourage 'crammer' teaching. • The SRA should also regulate the content of preparatory training for the SQE in a similar way to the current GDL and QLD. • Students should still be required to have a qualifying law degree or the GDL before entering the profession and this should be a pre-requisite for sitting the SQE 1.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** • Please also refer to our response to Q1 above. • The content of SQE 1 will not sufficiently prepare a trainee to be ready for work in a City firm. They will have minimum competence, not City competence. The burden for providing extra City training in terms of time and cost will fall onto individual firms. We are especially concerned about non-law students who may not have undertaken any formal academic legal study before sitting SQE 1. • We see a risk that City law firms may feel forced to recruit from a smaller pool of students and that non-law students will be at a disadvantage. This is because the proposed format of the SQE will offer little comfort that students have a sufficiently deep understanding of

the law and an ability to write and reason well. Law firms may seek to address these concerns by recruiting law students from the best universities as these students will have already demonstrated an understanding of the law and an ability to write and reason well. • The impact of recruiting a trainee with little in-depth legal knowledge is likely to have a negative commercial impact on firms. Trainee supervisors will have to find time, on top of their already busy jobs, to 'teach' the law to trainees. This could lead to some firms taking the decision to stop recruiting at trainee level. We therefore believe that trainees need to complete either a GDL or QLD so they are fit for purpose when commencing legal work experience and have the academic, in-depth knowledge required of those entering the profession.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** • We agree that exemptions from SQE 1 and SQE 2 should be offered. However, we disagree that exemptions should be limited to overseas lawyers. • In our opinion, the parts of SQE 1 that equate to the current GDL should not be re-examined by those who have done a QLD.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** • The proposed transitional arrangements present logistical challenges. Students who have started a law degree, GDL or LPC course before the introduction of the SQE in September 2019 will have the option to continue under the existing regime or take the SQE. Those students who have not started a law degree, GDL or LPC by September 2019 will be required to sit the SQE. It is unlikely to be practical for firms to allow trainees the option of choosing which regime to follow, or to allow both the existing regime and the SQE for trainees joining in the same year. • The SRA also may not be allowing sufficient time to select and brief an assessment body to write the SQE in time for September 2019.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** • We foresee that there may be a negative EDI impact arising from the current proposals. • The proposed introduction of SQE 1 may place non-law students at a disadvantage as they will require additional training before they are able to sit the exam. The proposals may lead to firms targeting top law students at a smaller pool of universities, which may result in a less diverse solicitor population. • City firms will need to provide additional training to plug the gap left by the removal of the LPC and the City electives. This will lead to an increase in costs and could result in a two tier profession divided into those solicitors who are seen as qualifying with 'basic competency' and those who are seen as qualifying with 'enhanced competency'. If you have any queries relating to my response to any of the questions in this Consultation please do not hesitate to contact me. Please also include my colleagues Rosie Warren-Cafferty, Director of Legal Learning and Development (Rosie.Warren-Cafferty@Dechert.com) and Lara Machnicki, Graduate Recruitment Manager (Lara.Machnicki@Dechert.com) in any correspondence.



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**Your reference**

**Our reference**

JL/TL  
UKM/80461526.1

11 January 2017

Dear Sir/Madam

**RESPONSE TO THE SRA'S CONSULTATION: A NEW ROUTE TO  
QUALIFICATION: THE SOLICITORS QUALIFYING EXAMINATION**

We are represented on the City of London Law Society Training Committee and adopt in its entirety their response to this consultation, dated 9 January 2017, which reflects the position of DLA Piper.

Yours faithfully

**JANET LEGRAND**  
**Partner**  
**Senior Elected Board Member**  
**DLA PIPER UK LLP**

[janet.legrand@dlapiper.com](mailto:janet.legrand@dlapiper.com)

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INVESTOR IN PEOPLE

# Consultation questionnaire

Response ID:512 Data

## 2. Your identity

### Surname

Iredale

### Forename(s)

Edward

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: City, University of London

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** It is ineffective because it does not apply students to apply law and practice to the facts. There is insufficient emphasis on skills. It is a retrograde step to abolish elective subjects and the specialization that they offer.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** It should be kept at 24 months (subject to an exemption of up to 6 months for time served).

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** It is unsuitable to deal with the complexities and nuances of practice.

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** A QLD should give Stage 1 exemption.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** I do not have enough information to answer this question.

# Consultation questionnaire

Response ID:144 Data

## 2. Your identity

### Surname

Gillow

### Forename(s)

Elizabeth

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: Staffordshire University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

**Comments:** I think this question can only be answered once the system is up and running. However I agree that a centralised system would provide a more robust measure of competence than at present.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** Qualifying legal work experience should be in blocks of at least 3 to 4 months (preferably longer) , so that, as the consultation paper suggests, trainees have the opportunity to be able to progress transactions over time.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:** 2 years would also be appropriate. However I am not convinced that the work experience needs to be undertaken before the Stage 2 assessments.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** I agree that a period of qualifying legal work experience should take place. However the Stage 2 assessments could equally be taken by candidates who have other relevant work experience, not necessarily legal work experience and I welcome the comment that "the completion of work-based learning would be required by the point of admission, not as a condition of eligibility to sit SQE Stage 2".

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:** We have a number of international students who study the LPC with us. The SQE could equally be a suitable qualification for them but I do think it needs to be borne in mind that they may want to complete Stage 1 and Stage 2 in as short a time as possible, probably without the work-based experience in the middle. They might well wish to get their qualifying work experience afterwards.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** There should be no exemptions. If students have already got relevant knowledge/work experience, they should be able to pass both stages easily.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** Why is it necessary for overseas candidates to take the SQE only from September 2019? What about those who are studying the LPC part time and have by then completed Year 1 of the LPC, hoping to complete Year 2 of the LPC in the year 2019/20? It may take longer for overseas jurisdictions to recognise the SQE, so would it not be logical to allow the LPC qualification to continue to count up until 2024? I am thinking particularly of our Trinidadian students who come over to the UK to complete their LPC and then go back to practise in Trinidad.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I believe that the SQE will be accessible to more people, partly because the overall cost will be less, particularly for non-law graduates. However I would like the any further consultation to address in particular the issue of how the overseas students will obtain their qualification, and whether there should be a longer transitional period for them. Consideration should also be given to providing a stand alone SQE for overseas students, with the timing of exams suitable for someone wishing to take Stage 2 very shortly after completing Stage 1.

# Consultation questionnaire

Response ID:197 Data

## 2. Your identity

**Surname**

Golding

**Forename(s)**

Eric

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Chartered Accountant

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** There is need to include an important element of understanding how a business operates

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

**Consultation by the Solicitors Regulation Authority**  
***A New Route to Qualification: The Solicitors Qualifying Examination***

**Response from the Four Law Subject Associations: the Socio-Legal Studies Association,  
the Committee of Heads of University Law Schools, the Association of Law Teachers  
and the Society of Legal Scholars**

You will have had detailed responses, answering specific questions in the consultation paper, from each individual association. This joint response distills the essence of those responses and focuses on the issues a) that we believe are most critical; and b) where we jointly have most experience. We therefore focus on the proposal for SQE1 as a replacement for the QLD/CPE (recognising that SQE1, if implemented, would also cover some areas currently covered in the LPC). The major problems with SQE1 are:

**1. It is unprecedented**

SQE1 is sometimes described as similar to the New York Bar exam, QLTS, ‘European’ systems or UK medical education. In fact all of these four approaches have more in common with the current system than with the SRA proposal. All require UG and PG education in the relevant subject (albeit usually in a broader context and/or with other subjects), followed by (or integrated with) vocational education, the total lasting at least 5 years (excepting the current system to the extent that the UG+Vocational stage can be completed in 4 years). The SRA proposal would enable students to take SQE1 after just a 3-year UG programme that could include no legal study, although we recognise that many would take longer than this and the majority would have law degrees. In no other legal system that we know of is it possible for legal understanding, knowledge and skills to be tested solely by a set of centralised – and largely multiple choice – examinations prior to practice, even the limited practice that is implicit in a training contract. In particular, where MCQ etc. *are* used, there is also a more ‘traditional’ course of study preceding this element, with a broad range of assessments.

Doing something unprecedented is not necessarily wrong. However, it is first important to recognise that this is what is proposed, and to consider why no other jurisdictions, and no other UK professions of which we are aware, have adopted the proposed approach. Second, since there is no working model on which to base the proposed system, it is incumbent on the SRA to justify its proposals, and deal with the objections to it, more fully than is done in this consultation.

**2. Access**

We fully support proposals that widen access. But this proposal is likely to have the reverse effect. Most solicitors’ firms, particularly the largest, which do the most complex work, will continue to seek students who have achieved excellent grades in high quality programmes with substantial intellectual content. They know that students with this background, and who have had their transferable intellectual skills sharpened by that kind of education, make the best lawyers. They choose relatively few students who take vocationally-oriented law degree programmes. Most students of substantial and moderate means who seek a legal career are

therefore likely to continue to attend high-ranking universities if they can, and not to rely primarily on 'cram' courses that would produce SQE1-ready students. Many will, as now, take non-Law degree programmes and then take a conversion course. But a one-year conversion course will not produce SQE1-ready students, so these students will need to take a 'cram' course as well, or take a 2-year conversion course that provides an intellectual education as well as training for SQE. Thus students who can afford to will, in the main, follow routes that large firms offering high salaries prefer. Students of modest means, predominantly from low and marginal socio-economic groups, and disproportionately from BME communities, are likely to take vocationally-oriented law degree programmes producing SQE1-ready students who will not be sought after by most law firms (this point is reinforced in 4 (a) below). Although this is unfortunate in many ways, it is also understandable, since firms will continue to seek students with a sound intellectual education as well as vocational knowledge and skills.

### **3. Cost**

Widening access requires cost reduction. The SRA proposal incorporates an intrinsic cost-escalation for all students who already have a QLD/CPE. Under the present system, LPC students are required to have a QLD/CPE, so they have knowledge and understanding of 'core' subjects and a high level of legal skills; these are therefore not directly tested again. The SRA proposal neither requires nor recognises the QLD/CPE, and so core knowledge, understanding and skills will all be tested in SQE1. For most students this will be an unnecessary duplication, and the costs will have to be borne somewhere.

### **4. Quality**

There are two major quality issues:

*a) Depth:* SQE1 will test a very wide range of knowledge in a limited number of assessments. Depth cannot therefore be required to the extent normal in the QLD/CPE, especially as most assessments will be multiple-choice. Again there is no valid medical analogy as medical multiple choice assessments are only one element of medical assessment, not the main gateway. Similarly, the QLTS candidate will have already been rigorously educated and assessed in another system. The lack of depth required by SQE1 will not matter for students with high grade degrees. But it will matter in relation to other students. The problem of access in 2. above will therefore be exacerbated as firms come to realise this.

*b) Reliability v Validity:* The SRA observes that there is a degree of unreliability in relation to standards and knowledge coverage when (as now) universities design and mark their own programmes. However consultation documents have consistently failed to provide robust evidence to support this suggestion and in some instances have misrepresented evidence that is cited. SQE1 would seek to solve this alleged problem by taking the form of centralised assessments, which are mainly multiple-choice. But the supposed problem of reliability would be replaced by that of validity. We doubt that such assessments would be a valid assessment of the knowledge, understanding and skills that intending lawyers need. Preparation for them would, for many students (where financial resources permit), be by 'crammers'. So students without a high quality degree education would lack the underlying depth of understanding that all graduates with good grades possess.

## **5. Risk**

Risk assessments are part of standard planning practice. If there has been a risk assessment of SQE1 we would like to scrutinise it. We believe that this is an exceptionally high risk proposal. We have identified above the risks that:

- It will cost most intending lawyers more than now.
- It will reduce access, since it will cost more than now to secure the kind of education that most firms will continue to prefer.
- It will reduce access and increase costs because most firms will (understandably) not regard SQE1 as an adequate assessment of the knowledge, understanding and skills that intending lawyers need, so they will largely still seek candidates with a traditional university education.
- In order to contain costs SQE1 will be likely to be narrow in depth; or, in an attempt to increase its sophistication, its cost will rise yet further.
- Introducing a system on the huge scale necessary with few, if any, working models elsewhere has high potential to fail.

## **Conclusion**

To design a whole new system to deal with the supposed unreliability of degree standards, creating the other more serious problems that we have identified, would be a mistake. But we acknowledge that the current system is far from perfect. We would welcome the opportunity to meet the Board, or a working party of the Board, to discuss how the current system can be reformed and improved in order to reduce costs while increasing access without sacrificing the quality of legal education and training.

Association of Law Teachers (ALT)  
Committee of Heads of University Law Schools (CHULS)  
Society of Legal Scholars (SLS)  
Socio-Legal Studies Association (SLSA)

6<sup>th</sup> January 2017

# Consultation questionnaire

Response ID:562 Data

## 2. Your identity

### Surname

del Balzo

### Forename(s)

Francesco

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**  
**on my own behalf as a solicitor in private practice**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** Pre-qualification work experience is really important and it is required in almost all jurisdictions. However, I believe that work requirements should be relaxed or excluded altogether for transferring lawyers who have already accomplished a two-year pupillage at home and/or who have already gained extensive work experience. A 40-year-old transferring fully-fledged advocate from overseas who successfully passes a hard exam (like the proposed SQE) should not undergo a compulsory pupillage or traineeship.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** The SRA should continuously monitor and assess the quality of the training provided by any firm or organisation admitted to taking on trainees.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** The only thing I do not agree on is to admit candidates without a law degree. In many

jurisdictions, only a 5-years' law degree opens the path to legal professions like advocate, notary, etc...

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** There should not be any, except under special circumstances.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I foresee really positive impacts. The more standardised is the exam, the more likely are candidates to be on an even playing field when accomplishing their route to qualification.

# Consultation questionnaire

Response ID:320 Data

## 2. Your identity

### Surname

Karat

### Forename(s)

Paulo

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: Director, fresh Professional Development Ltd

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** The 'competence' which needs to be tested is "the ability to perform the roles and tasks required by one's job to the expected standard" (Eraut & du Boulay 2001). The SQE will assess the candidates ability to pass an assessment in assessment conditions and will not be able to truly replicate the real world of a solicitor's practice. As such, it is not enough in itself to be a robust and effective measure of 'competence'.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** Greater flexibility in obtaining qualifying legal work experience is a positive step - however, the proposals are vague as to how the SRA will quality assure the experience and those offering it. The SRA should require that those signing off a candidate's training are suitably vetted to ensure that the experience being provided is appropriate and that they have an appropriate level of understanding as to their role. If the SRA does not regulate this area there will be a real risk that any work experience will be allowed to count, irrespective of its quality. The sign-off should also be made outcomes-focused with reference to the Statement of Solicitor Competence. The form of words in the consultation, that sign off should confirm that the candidate has had exposure to "some or all" of the competences in the SoSC is inherently contradictory. I would suggest that the SRA specifies which competences it expects candidates to have had experience in by the end of their period of work based experience. Without this kind of regulation the period of work based experience will become a purely time served exercise.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for**

**the SQE?**

Neutral

**Comments:** There will inevitably be casualties in an unregulated market and it remains to be seen how effective the publication of performance data will be in reducing the number of rogue or inadequate providers who will inevitably spring up in the market.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** Provided the period of work based experience is appropriately regulated.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** Exemptions would cut across the underlying rationale for a centralised assessment.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** Query whether the long stop date is long enough for those starting a QLD / GDL before September 2019 who are on part-time routes and/or take a year out before or after a period of study.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** It is difficult to see any positive EDI impacts from the proposals. The curriculum of the SQE 1 is significant and a course of similar length to the current LPC would seem necessary. Many university law faculties will be unable to accommodate SQE 1 into their curriculum which means that law graduates will need to do SQE 1 training. In addition, the SQE 2 will introduce additional cost into the system both for the assessment and for preparatory courses. It seems unlikely in this context that EDI will be improved and may even be worse than under the current arrangements.



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21 December 2016

**Response of Freshfields Bruckhaus Deringer LLP to the SRA's consultation "a new route to qualification: the Solicitors Qualifying Examination (the SQE)" (the Consultation)**

Freshfields Bruckhaus Deringer LLP (SRA ID 484861) (*Freshfields*) is an international law firm with over 2,500 lawyers in 28 offices around the world. The Freshfields London office employs approximately 600 lawyers and 160 trainee solicitors. We offer approximately 80 training contracts per year. We also have a Legal Services Centre in Manchester, where we employ approximately 60 legal support assistants (non-qualified). We do not currently offer training contracts in our Legal Services Centre.

Many of our lawyers are solicitors admitted in England and Wales. We are happy to be identified as a respondent to the Consultation.

**Our overall view on the Consultation**

We support the aims of the Consultation to ensure that all solicitors qualifying in England and Wales meet a consistent and high standard at the point of qualification. It is important that all stakeholders, including consumers, clients, providers, firms and other legal systems, maintain confidence in solicitors qualified in England and Wales. Accordingly, if the proposed new regime is implemented, the SRA will need to ensure that all stakeholders have confidence in both Stage 1 of the SQE (*SQE 1*) and Stage 2 of the SQE (*SQE 2*).

It is critical that the SQE and workplace training requirements are capable of producing well-rounded solicitors who have had a range of qualifying legal work experience, regardless of the type of firm or organisation in which they do their training. This is not only important to ensure the safeguarding of the quality of newly-qualified solicitors but also to ensure the standing and perception of the solicitor qualification outside of the jurisdiction, which will become of even greater importance after the

United Kingdom's exit from the European Union.

We are pleased that the SRA has taken on board comments that we and other stakeholders made during the previous consultation (see our response dated 4 March 2016), in particular concerning the need for qualifying legal work experience; the requirement that all solicitors should hold a university degree or equivalent; and the reduction of the contexts for the assessment of competences to two out of the proposed five, rather than three out of the proposed five.

We are supportive of the SRA's efforts to improve access to, and diversity in, the profession by providing multiple paths to entry. We are committed to widening access to the legal profession by recruiting talented individuals and creating a welcoming, positive and supportive environment in which all can flourish, regardless of their gender, race or ethnicity, background, religion, physical abilities, sexual orientation or gender identity. However, as stated in our consultation response dated 4 March 2016, our experience tells us that introducing the SQE and reforming requirements around workplace training will not, on their own, achieve this objective.

Once the new regime is in place we will, as now, consider candidates who have taken any recognised approach to solicitor qualification, but our current thinking is that, at least for the early years, we will maintain a model similar to the current training contract. In other words:

- We will continue to recruit most candidates (either law or non-law undergraduate degrees) at the university or postgraduate stage.
- The candidates will pass SQE 1 (either as part of their university law course or in some other manner) and ideally SQE 2 before joining us as trainees.
- The candidates will need to undertake a period of qualifying legal work experience with us, in the same way that our current trainee solicitors do. We are likely to require most candidates who come to us to spend time in a number of core practice areas, irrespective of any previous work experience that they have undertaken.

It is in this context that we provide the responses below. References to “trainees” are to those candidates who have joined us following passing SQE 1 and SQE 2, until the point that they qualify. References to the “training contract” are to the qualifying legal work experience that they undertake with us.

**1. Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

- 1.1 We agree that, in principle, a centralised test is an appropriate way of assessing the competences and knowledge set out in the Statement of Solicitor Competence and the Statement of Legal Knowledge, to the standard of a newly qualified solicitor set out in the Threshold Standard.<sup>1</sup> We remain of the view that much will depend on the detail of the SQE and the SRA should publish and consult on such information, including sample questions,

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<sup>1</sup> The Consultation, para. 45.

sample assessments, draft marking schedules and assessment standards, prior to any changes being made.

- 1.2 Equally, we believe the SRA should inform and consult on what the assessment methodologies will be as it is critical that the assessment methodologies adopted in the SQE are robust and effective and perceived to be robust and effective by all stakeholders. A robust SQE is paramount to ensure the candidates possess sufficient knowledge and skills required to be a solicitor and to ensure the strong international and domestic reputation of the England and Wales solicitor qualification, at a time of challenges to the global reputation of the profession and to English law more generally. Education providers and others with specific expertise in this area should confirm the effectiveness, robustness and suitability of the proposed methodologies for the SQE before any changes are made.

### **Stage 1 of the Solicitors Qualifying Examination**

- 1.3 We agree that SQE 1 should test substantive law and procedure and ethical judgement in the areas identified in the Solicitors Qualifying Examination: Draft Assessment Specification (the *DAS*). We also agree that SQE 1 should test candidates' legal knowledge as well as their legal research and writing skills<sup>2</sup>, as we expect our trainees' abilities in these areas to be at an appropriately developed level by the time they join the firm. We want to understand what the SQE 1 standards will be before we comment on whether they are adequate or not, and accordingly ask the SRA to consult on this before implementing any changes.
- 1.4 We have some concerns with the SRA's proposal to limit SQE 1 to one assessment window, to be scheduled twice in a calendar year.<sup>3</sup> Two annual assessment windows will not provide firms and candidates with a sufficient level of flexibility and we ask that the SRA schedule at least four SQE 1 assessment windows annually. The majority of firms accept their trainee cohorts twice annually in mid-February and mid-August. Accordingly, the SRA should consider scheduling the SQE 1 assessment windows to fit that timing. It will be imperative that we know whether a candidate has passed or failed SQE 1 and ideally SQE 2 before he or she joins the firm as a trainee, and we would not want our prospective trainees to be in limbo for any significant time period between completing SQE 1 and SQE 2 and joining the firm.

### **Stage 2 of the Solicitors Qualifying Examination**

- 1.5 We agree that SQE 2 should assess the practical legal skills identified in the *DAS*<sup>4</sup>, as it is an accurate reflection of the core skills required of a solicitor.
- 1.6 We support the changes the SRA has made to the assessment contexts, in particular that candidates will be assessed in two of the five proposed contexts, rather than three. The structure of our training contract is likely to mean that all of Freshfields' trainees will obtain workplace experience in two of the five proposed contexts: dispute resolution and commercial and corporate practice.

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<sup>2</sup> The *DAS*, 5.

<sup>3</sup> The Consultation, para. 76.

<sup>4</sup> The *DAS*, 52 - 54.

- 1.7 We have identified a number of challenges associated with SQE 2, which we discuss in the paragraphs that follow:
- (a) The SRA should permit candidates to sit SQE 2 before commencing their qualifying legal work experience.
  - (b) Taking trainees out of the business to prepare for and sit SQE 2 will be disruptive and may result in cost implications.
  - (c) Will SQE 2 test legal knowledge?
  - (d) Two assessments in a calendar year will not provide us with sufficient flexibility.
  - (e) When will we receive the SQE 2 marks?
- 1.8 The Consultation does not clarify how much, if any, qualifying legal work experience will need to be undertaken before candidates can sit SQE 2, only that the SRA will issue guidance that the “bulk of it” should be completed before SQE 2.<sup>5</sup>
- 1.9 If the SRA requires candidates to sit SQE 2 after they have commenced their period of qualifying legal work experience, our trainees will require time out of the office to prepare for and sit SQE 2. Trainee solicitors are an integral part of our business and they are embedded in transaction, case or matter teams. Releasing one quarter of our trainee population twice annually to prepare for and sit SQE 2 would be disproportionately disruptive to the management of client work and to these trainees’ own development. Candidates sitting SQE 2 before commencing their training contracts will provide firms with much needed flexibility, and will avoid the logistical, operational and resourcing challenges associated with releasing trainees from the firm. Our view is that candidates should have the option to sit SQE 2 before commencing the period of qualifying legal work experience.
- 1.10 The Consultation states that SQE 2 will be an assessment of skills, not an assessment of the law<sup>6</sup>, but it also states that, “getting the law right is clearly a core competence”<sup>7</sup>. Whilst we agree that getting the law right is absolutely paramount for a practising solicitor, the SRA should clarify whether technical legal accuracy will be assessed in SQE 2. If so, this will affect the training that we will require our trainees to undertake before sitting SQE 2.
- 1.11 We have concerns around the lack of flexibility that will result from the SRA’s proposal to limit the SQE 2 assessment windows to twice in a calendar year, particularly if the SRA does not permit candidates to sit SQE 2 before commencing their period of qualifying legal work experience. We are of the view that there should be greater flexibility and suggest that the SRA schedules at least four SQE 2 assessment windows annually. This will help ensure that candidates can undertake the assessment at a time that is right for them and us as an employer.

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<sup>5</sup> The Consultation, para. 111.

<sup>6</sup> The Consultation, para. 67.

<sup>7</sup> The Consultation, para. 61.

- 1.12 If the SRA cannot provide more than two SQE 2 assessment windows annually, which we think it should, we request that the SQE 2 assessments are timed as follows:
- (a) If candidates can sit SQE 2 before commencing their qualifying legal work experience, which we support, we request that the SQE 2 assessments are scheduled in January and July.
  - (b) If it is a prerequisite that SQE 2 candidates have commenced their qualifying legal work experience, we request that the SQE 2 assessments are scheduled in March and September.
- 1.13 Given the nature of the SQE 2 assessments and the complex marking process that will follow, we assume that it will take some time to receive the SQE 2 results. For both scenarios outlined at paragraphs 1.12(a) and (b) above, we ask that we receive the results within two months of our candidates completing the SQE 2 assessments. This will be particularly important in scenario 1.12(b) above, as it is imperative that we have certainty regarding the SQE 2 results before our trainees commence their associate positions as qualified solicitors.

## 2. Questions 2(a) and 2(b)

### **Question 2(a): To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

- 2.1 A period of pre-qualification legal work experience is an important and valuable part of intending solicitors' training and is a recognisable characteristic of the route to qualification for solicitors qualified in England and Wales. We agree with the SRA that a period of legal work experience should be a qualification requirement. Maintaining a requirement for a period of legal work experience will help to ensure quality and rigour around the qualification process during this period of change.
- 2.2 We note the SRA's proposed changes to the qualifying legal work experience requirements:
- (a) Recognising workplace experience outside of a formal training contract, including any experience obtained at either a SRA regulated firm or under the supervision of a solicitor in a non-SRA regulated entity.<sup>8</sup>
  - (b) Removing the requirement that firms confirm the competence of individuals to be solicitors.<sup>9</sup>
  - (c) Requiring firms to sign a declaration that candidates have had the opportunity to develop some or all of the competences in the Statement of Solicitor Competence during the period of legal work experience.<sup>10</sup>
  - (d) Removing the requirement that legal work experience should include experience of at least three areas of practice, including contentious and non-contentious.<sup>11</sup>

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<sup>8</sup> The Consultation, para. 106.

<sup>9</sup> The Consultation, para. 100.

<sup>10</sup> The Consultation, para. 100.

- 2.3 We support the SRA's proposed changes in principle. The proposed change set out at paragraph 2.2(a) above will remove the regulatory burden felt by some of securing and completing a training contract prior to qualification. The SRA has identified the training contract as a contributing factor to restricting access to and diversity in the profession. We are supportive of removing barriers to achieve the SRA's access and diversity objectives, provided that the quality and rigour of such qualifying legal work experience is not compromised.
- 2.4 We nevertheless have concerns with the proposal outlined at paragraph 2.2(c) above. By way of example, in our London office, we employ approximately 50 paralegals and we have a team of approximately 60 legal support assistants in our Manchester Legal Services Centre. In theory, based on the types of work that they do, we could confirm that all of our paralegals and legal support assistants have had (in the language of paragraph 100 of the Consultation) the "*opportunity*" to develop "*some*" or all of the competences in the Statement of Solicitor Competence. However, the question – for paralegals, trainees or anyone else interested in joining the profession – should not be whether they have had the opportunity to develop some competences, but rather whether they have in fact reached a sufficient skill level in all of them. Accordingly, we have concerns that the proposed declaration lacks substance and meaning.
- 2.5 Providing an individual with the opportunity to develop some of the competences places virtually no onus on the workplace training provider, which is what the SRA currently relies on for admitting solicitors. Removing this regulatory safety net in advance of the SRA being certain that the SQE can robustly and accurately test a candidate's competence as a solicitor is premature, and risks compromising the key requirement that all stakeholders, including consumers, clients, providers, firms and other legal systems, maintain confidence in solicitors qualified in England and Wales.
- 2.6 It will be important that the SRA publish detailed guidance to enable firms to make such declarations with confidence and to give others confidence that only candidates with adequately rigorous, diverse and quality qualifying legal work experience are able to qualify. Firms will need to understand the potential consequences, if any, of a firm making a declaration on behalf of a qualifying solicitor who, after qualification (soon after or years after), is found to be unable to provide a proper standard of service. It is also important that the declaration is complemented by clear and rigorous guidelines as to the standards and quality of qualifying legal work experience which are required for the experience to be adequate.
- 2.7 We support the proposed changes to abolish the regulatory requirement that intending solicitors' experience three areas of law, including contentious and non-contentious.<sup>12</sup> This will provide candidates and firms with greater flexibility for qualifying legal work experience as candidates can develop the core skills of a solicitor in any area of practice. This will also enable candidates to specialise earlier, which will be a welcome change for some firms and trainees. However, we would be concerned if the consequence of the proposed change is that the quality of qualifying solicitors is diminished as a result of a

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<sup>11</sup> The Consultation, para. 107.

<sup>12</sup> The Consultation, para. 107.

narrower range of pre-qualification legal work experience and so as a minimum would still expect the period of workplace training to involve a number of practice areas.

- 2.8 We agree that the SRA should prescribe a minimum time period for each qualifying legal work experience placement and a maximum number of placements. We consider that each placement should be no shorter than six months to ensure that the candidate has the opportunity to gain substantive experience in the competences and for the employer to have sufficient exposure to the candidate (although there should of course be scope for the candidate to work in multiple areas of practice within each such placement).

**Question 2(b): What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

- 2.9 See our response at paragraph 2.1 above.
- 2.10 We agree with the SRA that 12 months of qualifying legal work experience is not enough to develop the appropriate experience and skills required to be a solicitor.<sup>13</sup> We are of the view that 24 months should be retained as the minimum requirement for qualifying legal work experience. Practical workplace experience is an invaluable element of preparation for practice and we are concerned that a reduction would result in less “work-ready” solicitors, with less opportunity to develop skills and experience in a range of practice areas. In addition, we would be concerned that the shorter minimum requirement could be perceived as being less rigorous, especially outside of the jurisdiction. We encourage the SRA to retain a two-year mandatory period of qualifying legal work experience, at least in the initial years of the new regime, with a view to reviewing the minimum time period at a later stage.

**3. Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

- 3.1 Our reading of the SRA’s proposal regarding preparatory training for the SQE is that it will be up to the candidates, or the firms depending on the candidates’ arrangements with their employers, to identify the level of training required in advance of sitting SQE 1 and SQE 2. We support this approach in principle.
- 3.2 In removing the SRA prescribed preparatory training requirements, the SRA will need to be confident that the SQE can test candidates’ legal knowledge and skills to a newly qualified level. The SRA will also need to provide firms with a comprehensive understanding of what will be tested and assessed in SQE 1 and SQE 2 well in advance of the SQE live roll-out. This information will be imperative to ensure we can develop and implement an appropriate training programme, or outsource it, if appropriate.

**4. Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

- 4.1 While we encourage and support access to and diversity in the profession, our view is that the SRA is right to prescribe entry requirements in addition to passing the SQE in the form of a degree (or equivalent) and qualifying legal work experience. These requirements will help

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<sup>13</sup> The Consultation, para. 23.

to demonstrate that SQE candidates have reached a certain academic and skill level. In particular it is important that the period of qualifying legal work experience is of adequate quality, diversity and rigour. These requirements will contribute to mitigating the risk of relying solely on a new and untested assessment model that has not yet had the opportunity to establish its credibility in the domestic and international market.

4.2 We agree with the SRA's proposal to maintain the current character and suitability requirements of becoming a solicitor, as we consider these critical to ensuring that those who enter the profession are capable of upholding the moral and ethical standards expected of a solicitor qualified in England and Wales.

**5. Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

5.1 Given that one of the SRA's key drivers for introducing the SQE is consistency, it would be counter-intuitive to make provision for exceptions, except as required by EU law (to the extent it remains applicable).

**6. Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

6.1 In the first consultation, the proposed timeline was that the SQE would be introduced during the 2018/2019 academic year with a long-stop date of qualification under the current route being 2025/26. The Consultation proposes to introduce the SQE in 2019, but the SRA has reduced the corresponding long-stop date by two years, making it 2024 rather than 2026. It is important that students, graduates and trainees are not disadvantaged by the change in regime, and we ask that the SRA take a risk averse approach regarding the long-stop date. We recommend that this be 2026 (at the earliest), as initially proposed.

6.2 As stated in our consultation response dated 4 March 2016, we recognise that the practical implications of introducing the SQE are significantly higher for the education providers. The Consultation states that the proposed timetable will allow the education and training market to adapt to the new landscape.<sup>14</sup> We defer to the education providers on this point and support their requested timetable amendments, within reason. If the proposed timetable is extended, we would expect the long-stop date to be amended accordingly.

6.3 The Consultation states that after the SRA has appointed an assessment organisation, the structure of the SQE and the Assessment Specification will be further developed following a period of pre-implementation testing during 2018 and 2019. We ask that the SRA share and consult on the results of the pre-implementation testing and provide stakeholders with sample questions and papers.

6.4 More generally, we have concerns around the feasibility of a 2019 live roll-out of the SQE. As stated in our consultation response dated 4 March 2016, it is important that the risks associated with implementing a new regime are sufficiently mitigated. Timeline constraints should not be a barrier to ensuring a comprehensive procurement process as well as robust

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<sup>14</sup> The Consultation, para. 139.

and rigorous design, development and testing of the SQE before it is implemented. In the event that the SQE is implemented, we ask that the timeframes allow sufficient time for:

- (a) firms to prepare for and implement changes, as the new regime is likely to have an impact on the firm's training programme and budget;
- (b) the education sector to plan for and adapt to the required changes to ensure that students are not disadvantaged; and
- (c) the SRA to develop, hone and test the SQE to ensure that it is calibrated appropriately.

**7. Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

7.1 See our response to Question 2(a) above.

7.2 As we stated in our consultation response dated 4 March 2016, how the education sector will respond to the SQE is uncertain. It seems that some universities have an appetite to adapt to the SQE and will develop a "SQE 1" degree while other universities will maintain academic freedom and will not amend their syllabi to align with SQE 1. Accordingly, it seems likely that an academic law degree and a vocational law degree will emerge. This could be advantageous, as it would give students more choice and it would give employers more variety when recruiting. However, academic standards for both degrees would need to be equivalent to avoid negative EDI impacts. It would have an adverse effect on the SRA's diversity and access agenda (which we support) if the cheaper and faster route to qualification (the vocational degree) was not regarded as highly as the more expensive and time-consuming academic degree.

7.3 Our own experience tells us that the introduction of the SQE will not, by itself, lead to success in achieving the SRA's objective of increasing diversity in and access to the profession. Our learnings show that targeting people at a young age, good career guidance, genuine career opportunities, pastoral support, availability of role models, openness within organisations to accepting people from diverse backgrounds, development programmes and meaningful engagement of and commitment from firms are more likely to contribute to this goal.

Yours faithfully

Freshfields Bruckhaus Deringer LLP

# Consultation questionnaire

Response ID:169 Data

## 2. Your identity

### Surname

Russell

### Forename(s)

George

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as a student studying for a qualifying law degree or legal practice course**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** The difficulty with this mode of assessment, particularly at Stage 1 is that i will effectively be repeating many of the things I have already done on my qualifying law degree. For me this seems to be a waste of everyone's time and money in repeating these assessments. Employers are able to see which universities individuals have come from and will have a fairly good idea of the type of quality that comes from each institution. In a extremely competitive university marketplace where, as your report observes, there is a minimum of £27,000 up for grabs at each university, they all want to be the best. This means that any university that is not providing aspiring solicitors with the requisite skills or knowledge is failing its students and the dispute is with them rather than with the LPC or other training methods. Stage 2 provides another interesting debate. While I agree it would be useful to test people in their practical skills, I cannot help but feel this will benefit those who have secured training and work experience at larger firms. You have already noted that training contracts are illusive and are very hard to obtain which is one of the reasons why the LPC might be flawed. However, those who have training contracts with the large employers are going to have more chance to pass these exams compared to those who engage with smaller employers. This is because larger law firms can sacrifice the time (and absorb the cost) to allow trainees time to practice the required skills and develop them to a level which may far exceed that of an individual in a firm where they merely have to fill in TR1 forms all day. In addition, larger firms will be able to afford specific tutoring and training to help pass these exams for their prospective trainees which might not be available in a high street firm. The final issue I would like to raise is diversity. There are two arguments here. The first is that the potential structure of these exams may be indirectly discriminatory against those who are disabled from entering the profession (of which the last statistics I saw were about 0.6% representation). The second relates to the issue of ethics and diversity. I consider each of these in turn. In relation to disabled students I can see a number of issues with these exams. As a student with both a severe physical disability as well as a visual impairment I feel I am well placed to comment on this matter as it seems to have been somewhat neglected in the proposals. A key issue here is the length of the exams and provisions made for students with disabilities. For example, I get 25% extra time in my exams and have the option to leave the exam room to use the bathroom if needs be. But this would make the 3 hour exams almost 4 hours long which would be particularly exhausting for some people. Should it be the case that an individual who has a sound technical knowledge of their field be excluded through a physical limitation within the exam. The counter argument might be made however that if they cannot withstand a 3 or 4 hour exam then they may not be fit to practice as lawyers work similarly long hours. My response however is that

law firms are increasingly engaging with flexible working in order to get the best out of their employees. And as stated previously, an individual who might have a perfectly sound legal knowledge should not be ousted by an exam format. This, I feel, is the strongest argument against the stage 1 examination. I turn now to the stage two examination. Once again there is an issue with disability and how these exams would adapt. In particular I consider the role-play aspects of the examinations. Imagine for a moment that there is an individual with high functioning autism. They may be able to solve the most complex tax law problem in their head but might have difficulty articulating it to another person. Under these tests involving role-play they could therefore be put at a serious disadvantage. The same applies to those who have mental health problems who might suffer from crippling anxiety and thus fall far below the standard in an interview situation. In a large law firm the individual would still be useful due to their technical ability. But the failure to have one skill should not forbid a person from becoming a qualified solicitor. The second argument here relates to the issue of 'sound' ethical decisions. Ethics, for the most part, are generally considered to be subjective concepts forged through someone's background and experience. While I agree that there are a certain set of ethics that a lawyer must have when they are working, these will undoubtedly vary based on diversity. I offer the following example of an interview: Imagine an interview scenario involves obtaining information about a divorce between a same sex couple. This issue brings a number of ethical questions into play. Imagine that the person taking the exam is devoutly religious and therefore objects to this scenario (on religious grounds). In my opinion, it would be this aspiring lawyer's duty to politely declare a conflict of interests and assist the future client to find another, more suitable legal representative. However, I doubt that this would allow them to pass the particular exam if the exam is attempting to demonstrate skills. The conclusion here is that there needs to be exceptionally careful planning of the exams to allow people to pass them in a more natural way that is true to their real life practising future. To sum up: There has been some oversight of issues related to diversity and examinations in this proposal, particularly in relation to disabilities. Therefore more thought needs to go into the design of this process to suggest how it can promote much needed diversity within the profession rather than alienating parts of its potential intake.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** Having obtained a training contract I feel I may be in a somewhat biased position here. I personally think the scarcity of training contracts make it such that only those who are truly dedicated to the profession can join it. I am fond of the traditional structure of a training contract of requiring different practice areas as it forces you to consider what it is you enjoy doing and experience a wide range of different legal contexts. I also feel this requirement allows access to experiences which will help prepare for the stage 2 assessment as not all departments have the same level of client contact compared to others However I am hesitant about the period of qualification being wider. If an individual can qualify to be a lawyer without having been in a law firm for any extended period of time, it is difficult to say how likely their ability to get a job would be. There aren't currently many NQ jobs as most legal positions want those who have had experience. It might make finding NQ jobs even harder if there is no longer the promise that they have worked in a firm before.

##### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** I agree with the findings that 24 months is still an appropriate amount of time for professional work related training as it allows you to develop the skills and attitudes required to be a lawyer. A fast track option might also be a good way of getting people to qualification faster

#### 5.

##### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** I think it is a good idea to publish data about training providers to help people pass their SQE (if it is implemented). However, as long as this does not transform into a price related index. This would mean that the best education costs the most money which makes it exclusive and elitist which seem to be some of the values that the profession would wish to remove itself from.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:** Having never been a solicitor I do not think I am in a position to comment on the skills required to be a lawyer. As long as the system remains fair and does not discriminate against me as a disabled student I have no qualms against it.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** I strongly agree that doing a qualifying law degree should exempt you from the stage 1 of qualification otherwise taking a LLB over any other degree subject becomes entirely pointless. It would be possible to choose a degree with less rigour and precision and still become a lawyer. I would not want to devalue the worth of the law degree as a stage in qualification as well as undermining the GDL and the 'other' skills it teaches (rather than just the law).

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:** I am pleased that the SRA has chosen to retain the old qualification route and a long stop in 2024 seems to be fair and reasonable for anyone who is starting an LPC and still waiting for a training contract. My worry is that firms may 'choose' for candidates which defeats the point of having a choice in the first place.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I have discussed elsewhere my response to the EDI issues with this type of qualification from my own experiences of being physically disabled. I apologise for not seeing this question earlier and putting all my responses in this box. If you wish to contact me regarding any disability related issues, please feel free to do so on my email address: [george.e.russell@hotmail.com](mailto:george.e.russell@hotmail.com)

# Consultation questionnaire

Response ID:205 Data

## 2. Your identity

### Surname

Mustafa

### Forename(s)

Ghulam

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Registered Foreign Lawyer

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** There should be some more exemptions for students who have many years experience in the legal sector.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** some students may find it harder to secure a place in law firm by just having a law degree and at the same time others may find it easier to find a place who have completed other professional courses, ie, OISC, CILEX etc

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** There is no need for Preparatory training.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** The current system is working efficiently and it should remain as it is and the new proposed system should be available for people who think it will suit their needs. so LPC should be available for those who wants to qualify under this route and new system should also be available for people to have

various choices.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** exemptions should be available for SQE stage 1 and 2 and if someone is able to satisfy the requirements without sitting in SQE then this option should be available for them.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:**

## RESPONSE FROM THE GOVERNMENT LEGAL SERVICE ON “A NEW ROUTE TO QUALIFICATION: THE SOLICITOR’S QUALIFYING EXAMINATION”

We wish to comment on the proposal in paragraph 62 on page 14 of the SRA’s consultation document “A new route to qualification: The Solicitor’s Qualifying Examination (SQE)” regarding the new SQE stage 2 (which in practice replaces the current LPC but to be taken after not before the period of work experience) and the practical assessments that it will involve.

“62. The assessments would be based in a range of practice contexts. Candidates could choose two practice contexts from the following list:

- Criminal Practice
- Dispute Resolution
- Property
- Wills and the Administration of Estates and Trusts
- Commercial and Corporate practice.”

Those training to be solicitors in Government Departments receive training in dispute resolution but not in crime, property, wills, or, in the sense that it is being tested in the SQE Draft Assessment Specification document, commercial and corporate practice.

Admittedly on page 14 the SRA states:

“65. We recognise that while most candidates will have work experience in at least two of these contexts, many will have experience in other contexts. As we have said, SQE stage 2 would not be assessing particular areas of practice, but broad competences to be a solicitor. So, we believe that work experience in wider contexts than those listed in paragraph 62 can prepare candidates for the stage 2 assessments. For example, a candidate who has had experience of client handling in a family or employment law practice could be well prepared for the client interviewing assessment, say, in a disputes or wills or crime context”.

So here the SRA is saying that a candidate with experience of client handling in, say, an employment law context could be well prepared for the client interviewing assessment in, say, a crime context.

Unfortunately this does seem to be at odds with the SQE Draft Assessment Specification document. According to pages 58 and 59 of that document, candidates are supposed to conduct an interview with a client and must provide **appropriate immediate legal advice**. How is the candidate with experience of employment (or closer to home for the Government, public law) but not crime to provide immediate legal advice on a criminal matter, other than to say that he or she has no practical experience and the client had better consult someone who has. It gets worse because under the practical exercise on advocacy/persuasive oral communication, a candidate who has chosen the criminal practice context has to do one of following:

- Apply for bail
- Resist an application for bail
- Make a submission of no case to answer or a closing speech in a simple case
- Make a submission at a Newton hearing
- Submit a plea in mitigation
- Apply to exclude or admit evidence

Again how is someone who has not been engaged in criminal practice during their period of pre-qualification legal work experience, as our trainees will not, sensibly going to do that? The SRA say at paragraph 67 that SQE Stage 2 is not an assessment of law but the Draft Assessment Specification does actually require candidates to give legal advice.

Presumably the fact that SQE 2 is now to be taken after the period of work experience rather than before it (as is the case with the LPC) more would normally be expected from candidates by way of application of the legal knowledge and experience gained during that period. However bearing in mind that candidates may not in fact have had any practical experience in that practice context at all, is the SRA going to state in terms that in advising on these matters at SQE 2, the candidate is required to have no more legal knowledge and experience than was gained as part of SQE 1?

We also note that the SRA are proposing a different course to that proposed by the Bar Standards Board for the training of barristers. We would have concerns if the training requirements for trainee solicitors and those for pupil barristers in employed practice differed markedly, as the GLS currently trains both types of lawyer within the same training scheme. Any increased difference would increase the costs of the scheme, which could potentially impact on the overall business case for having the scheme as a whole. Similar issues may arise for a number of public sector organisations.

These proposals if not amended are either going to put our trainees at a disadvantage or put the Department employing them to extra time and expense in training them in areas of practice that they are not going to engage in. If the Departments have to put their trainees through extra and unnecessary training then this not only could this potentially undercut the overall business case for having trainees but could also reduce the range of opportunities for trainees to experience the full range of the specialised work (for instance drafting secondary legislation) that government can provide. Access to such work is a key part of the Department's recruitment offer. I should add that the number of our solicitor trainees who leave the Government Legal Service and move into private practice is negligible.

A concession has been made to those engaged in commercial practice to include "commercial and corporate practice"; so we cannot understand why a similar concession is not being made to those aspiring solicitors in central and local government by including public and administrative law in the list. The SRA may say that they cannot expand the list of practice contexts ad infinitum. However by including public and administrative law as well as commercial and corporate in Stage 2, the SRA would simply be completing the process of bringing the Stage 2 practice contexts into line with the Legal Knowledge assessments in Stage 1. It is easy to see that Stage 1 and Stage 2 both refer to criminal practice, dispute resolution, property, and wills. The SRA has added commercial and corporate which is also in Stage 1 to Stage 2, so why not add public and administrative which is also in Stage 1 to Stage 2 as well?

Simon Harker

Head of Employment Group, Government Legal Department

One Kemble Street, London WC2B 4TS

9 January 2017

Dear Sirs,

I have read through the proposal of the SQE. I have a few questions:

1. What is referred to as 'work experience' between Stage 1 and Stage 2 – is that the equivalent of the current training contract/period of recognised training?
2. What is the reasoning behind completing stage 2 after the work experience?
3. You have stated that the "Training for Tomorrow programme is reviewing the education and training of solicitors to better assure their competence" – what part/s of the current system does not assure that competence the way the SQE will?

Although I have a great interest in Law, having graduated from Law School and I'm looking to start the LPC soon, I have not particularly liked the fact that I'm merely a Law graduate whilst someone like a Medicine student or a Dentistry student, upon graduation, becomes a doctor or a dentist. What I thought would have been a good proposal was to integrate the LPC or its equivalent to the end of the Law degree, making it 4 years instead of 3 for those who would like to pursue such a career. That way, they have gained those skills and are ready to go into the workplace upon graduation as opposed to worry about their future career whilst trying to make it through Law School.

If we refer to the 'education and training of solicitors' then really this refers to the current LPC and training contract, which if completed Full time then that is 3 years. If this is felt like this is not enough training or does not result in the required quality, then the education and training of solicitors should be done across the 4 years (above proposal) – that is, over the period of the Law degree and the additionally attached fourth year. That way, students have the training and mind-set of reaching their end goal of becoming a solicitor at the end of their Law degree which is consistent.

I understand that students may choose to complete the BPTC instead of the LPC. In that case, their fourth year should have the BPTC attached to the Law degree. However, the skills, training and education during the Law degree stays the same.

If some students do not want to go down the LPC and BPTC routes then they can complete the

Law degree and graduate after their third year.

In conclusion, I do not understand the separation between my Law degree and my postgraduate

study and why upon graduation I am only a 'graduate' with many job hunting years ahead of me.

Kind regards,

Zainab Hassan

# Consultation questionnaire

Response ID:350 Data

## 2. Your identity

### Surname

Joseph

### Forename(s)

Viola Elna

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Hogan Lovells International LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We feel that the revised SQE proposals do not provide a sufficient test of competence, particularly in respect of analytical and writing skills. As training for many solicitors will over time become limited to the level needed to pass the SQE, we feel that consumers will be put at risk and that the profession's reputation will be damaged domestically and internationally. This is particularly so for those solicitors without a law degree. The SQE1 research and writing test provides a basic test only, in preparation for a broad range of workplace experience to begin. The test duration (together with the nature and number of tasks that candidates are required to complete) suggests that candidates will not be expected to deal with complex areas of analysis (where the law is unclear or evolving). We feel this will be a thin way of testing the ability to apply analytical writing skills to legal knowledge in a factual context. This is the fundamental skill of a solicitor and requires rigorous testing. While the SQE2 will test writing and research skills at a higher level than SQE1\*, it will not focus on the detailed analysis and application of legal knowledge. The number and nature of the tasks in the allotted time again indicate that these assessments will not test the level of analytical writing needed for practice. The test will focus on writing for clients, which we agree is an important commercial skill, but this will not offer an opportunity for a rigorous test of legal analytical writing. We have concerns that the multiple choice tests of legal knowledge in SQE1 will necessarily need to focus on areas where the law is relatively clear, since a firm answer will be required. The proposal that the papers will typically comprise 120 questions to be completed in 180 minutes reinforces this impression. We do not feel that this can be an effective preparation for practice or an effective measure of competence. Lawyers need to be able to do more than identify a correct answer. They need to have the analytical skills to build a robust argument from nothing and then to test and challenge their own approach by considering case law and legislation. We do not see how lawyers who have been only 'trained to the test' for the SQE will have developed the necessary skills to provide this level of analysis competently (or perhaps even at all). We fear that the quality of legal advice for clients would fall significantly. We have no objection in principle to multiple choice tests as part of a suite of tests. However, we consider the balance is wrongly skewed to multiple choice. This is to be contrasted with many other jurisdictions which use multiple choice but also rigorous analytical writing tests, and always after a law degree. We remain concerned that the proposed SQE sets a significantly lower standard in these areas than the current GDL or law degree routes, both of which involve the study in a material level of detail of the core subjects and the development of skills in legal analysis, research and writing. The SQE model is still

closely based on the current QLTS, which was designed on the basis that candidates would already have obtained an overseas law degree, where lengthier analytical writing would have been required and assessed. We recognise the high marking costs involved in including rigorous testing of legal analytical writing skills within the SQE. We are mindful of the constraints on SQE costs and so, while we welcome the addition of the requirement of a degree in the revised proposals, we feel strongly that this should be an English law degree or the GDL (or equivalent, as now). We feel this to be the most cost-effective, practical and proportionate solution to protect consumers and the profession's standing. This would also address our on-going concern that the SQE could exacerbate the current difficulties in obtaining overseas work permits for solicitors who do not hold a law degree. As mentioned above, we note that a degree in law is required in the majority of overseas jurisdictions. Although the New York Bar examination includes a significant proportion of multiple choice testing, candidates are also required to have a degree in law and to undertake significant analytical writing. Requiring a law degree or GDL (or equivalent) is also in line with comparable requirements for the medical profession: doctors are similarly required to obtain a degree in medicine, either as a first degree or as postgraduate training. If major firms seek to bolster the SQE by requiring candidates also to have a law degree or the GDL (or equivalent), then this could be detrimental to diversity. Non-traditional candidates may not have access to that information prior to embarking on SQE training and so could waste time and costs before finding that they were unable to access workplace learning in major firms, despite having passed SQE1. Under the current proposals, we fear that the English law degree in its current form (QLD) will disappear or be offered only by the most traditional universities (which would also have a negative effect on diversity in firms). Some law schools have suggested that they would be keen to change their QLD courses into more general liberal arts courses, so as to appeal to a wider range of students. There is a danger that students will be concerned that a law degree is not suitable preparation for the SQE1 and so be less likely in future to apply to study for a law degree. The GDL similarly will be phased out. This could significantly disadvantage non-traditional candidates, have a negative impact on diversity within firms and have the effect that, over time, the profession will be accumulating members who have not studied law in anything like the depth of practitioners today. This can only be bad for the profession, its standing nationally and internationally and for consumers. We foresee a number of significant practical problems arising from the timing and structure set out in the current proposals, which could also have a negative effect on diversity. The current proposal is that the assessments will be run on only two occasions each year. We appreciate that this may be driven in part by the significant costs of creating fresh sets of examination questions. However, we feel this is likely to cause difficulties both for candidates and for firms. Even if a provider is able to run the assessment processes successfully for such large numbers, there will be bottlenecks and delays in the path to qualification as a result. This is because firms with large trainee intakes need to have their trainees trained at the same time and (in order to provide the best outcome) that training will need to be timed to run until the centrally-set SQE1 date. However, not all trainees will need the same duration of training. We envisage that trainees will need to join the training at different points, as the length of training required will differ for non-law graduates, law graduates with no SQE training and law graduates with some previous SQE training but who have not yet passed SQE1. This means that some or all students will not be able to join their SQE1 training immediately after completing their degrees and so will not be able to commence paid workplace experience at their firm as soon as possible. This could have a negative impact on non-traditional candidates in particular. In regard to the proposed number of SQE2 assessments, the impact on firms of running so few assessment periods will be considerable, in that whole trainee intakes will need to be away from practice at the same time, in order to attend training and then the SQE2 assessments. We fear that much of the benefit of the training seat in which SQE2 is assessed will be lost, as trainees will wish to focus on passing the SQE2. They will be distracted from their workplace learning by anxiety over the consequences of failing, not least because (under the proposals) failure would mean that they would not be able to take up any newly-qualified roles which, depending on when they sit SQE2, may have already been offered to them. Client and overseas secondments during the fourth seat may also prove to be impossible. Although the SQE2 assessments may be split across two sittings, with each covering a single context, this would necessitate attending the training twice (in order to prepare for the five skills in each context) and would still cause the same disruption to practices overall (as half of two trainee intakes would then be absent for each sitting). Although parallels have been drawn between the SQE2 and the

accountancy training model, the ability of law firms to accommodate day-release or other absences for training is not comparable. Audit work is predictable in both timing and duration and trainee resource and the skills required are readily transferable from one client matter to another. In contrast, legal work cannot be predicted months or years in advance and needs continuity of staffing, because it requires detailed knowledge of a client and matter, built up over time. In many instances, there are difficulties in releasing a trainee for training during the course of, for example, a transaction or the preparation for a Court application. Currently, we require all our trainees to undertake the Professional Skills Course as early as possible in their first seat while they are still settling in; but even this causes disruption with respect to the management of client work; the position will be materially worse if we have to release them later on during their training when they are much more useful and embedded into work. We also note that the QLTS School includes in its public advice to candidates that they should 'try to take the OSCE shortly after completing the MCT'. We read this to mean that the preparation for the OSCE (which is similar to SQE2) is significantly more onerous if it is not taken shortly after the MCT (similar to SQE1). Under the proposed SQE model, there may well be increased costs for self-funding students and sponsoring firms, due to the need to repeat previous training prior to SQE2. If (as alluded to above) the SRA permits and the training market responds to these pressures on firms by promoting SQE2 training and assessment much earlier during the period of workplace experience, there is a danger that the two-year minimum period of workplace experience will be undermined over time. Currently, our trainees begin their training contracts having studied (i) either a qualifying law degree or the GDL and (ii) the Accelerated LPC. The latter includes electives in business law and finance which are essential for a City practice. They begin their training contracts more or less "office ready" – although there is still much that they have to learn. But they at least have a good level of knowledge in matters such as debt and equity finance and corporate transactions. In contrast, if the SRA's proposals are implemented, trainees will begin at the office in a much lower state of readiness. If City firms are to bring their trainees up to the standard that is required, the effect of the proposals is that firms will have to provide and pay for an additional level of study (to be undertaken either before the training contract is begun or during the training contract). This adds expense, complexity in managing the timetabling of the training contract and, unless the entire substance of the current LPC is undertaken prior to commencing the training contract, the level of service that is delivered to clients is reduced. We have asked trainees how they would feel about beginning a training contract without having studied the LPC in the depth that they do; their reaction is one of serious apprehension; the widespread view is that the LPC prepares them well for work and that to start work without that depth of study is worrying. \* We note the shift to suggesting it would be feasible and permitted to take SQE2 before a period of workplace learning, i.e. immediately following SQE1. This raises concerns about the level of testing in SQE2.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** We strongly agree with the inclusion of a period of qualifying legal workplace experience and with the proposed minimum period of two years, particularly given the impact of SQE2 on time spent actually working which we have discussed above. While we recognise and strongly support efforts to open access to workplace experience, we have concerns that the proposed maximum number of organisations (four) is too high. If trainees are able to move among multiple different employers, firms may not be willing to sponsor the SQE or to maintain their current level of investment in training during workplace experience. This would have a significant impact on diversity and also on standards. We feel that the minimum period in each organisation should be six months and that no more than two (or at the very most three) organisations should be permitted. We have concerns that a period of three months is too short to be confident that problems over poor performance would be identified and addressed.

##### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We feel that a minimum two-year period is essential and should not be reduced, particularly in view of the potential impact of SQE2 (please see our response to Question 1). We already foresee difficulties in combining our very successful and highly valuable client and overseas secondments in the two year period while accommodating SQE2. Less than 2 years would likely mean losing this element. Further, the final six months of the two-year period enable trainees to consolidate and reflect on their workplace learning, to consider their choice of specialism and to prepare for the increased responsibilities of qualification. Even then, the step up to qualification (and the Level 3 Threshold Standard) is high. We feel that a specified period of two years is preferable to an exact number of days, which could cause logistical difficulties for firms with large trainee intakes.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** We feel that the proposed unregulated and untested route poses a risk to students, as well as to consumers and to the profession. (Non-traditional candidates, in particular, may be more likely to undertake the new SQE at its outset and will in effect provide much of the testing for the new system and for any sub-standard SQE training.) As mentioned above, we feel that a law degree or the GDL (or equivalent) should be required if the proposals in respect of regulation of preparatory training are otherwise to go ahead.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** Please see our responses to Questions 1 and 3. We feel that the SQE does not currently test all the requirements needed to become a solicitor, particularly in relation to analytical writing. We are concerned that the proposed model will not maintain current standards. In relation to the tests, we have concerns regarding both the content and processes. We have serious concerns regarding the proposed change to the weighting and importance of Contract and Tort. Under the existing QLD and GDL, each of Contract and Tort forms a distinct module and the assessment of each carries equal weighting with Criminal Law. The proposals for SQE1 diminish the weight of Contract and Tort so that they together only constitute a single module. Criminal Law remains a full module and so the results in that area will carry twice the weight of Contract or Tort results. We are concerned that this will significantly reduce the quality and depth of preparation for commercial practice. Moreover, the SQE1 will place equal weighting on procedural knowledge in respect of Criminal Litigation and Civil Litigation. This will remove the benefits of the existing model, which provides some flexibility for training providers and firms to ensure that the focus of training is more heavily weighted on the areas that will be most relevant for practice. In relation to ensuring that the test processes are robust and effective, we continue to have concerns as to the risks posed by having a single assessment organisation, particularly if that organisation is a private sector entity. We also have concerns as to the logistical difficulties for the appointed assessment organisation in delivering the proposed tests to the five thousand trainee solicitors each year. We are also concerned by the difficulties involved in any transition from the initially-appointed organisation, should it be replaced at some point by a new assessment provider. By way of comparison, the ICAEW approves a range of assessment and training providers to deliver its ACA assessments, which are taken by trainees from the large accountancy firms. The approved ACA assessors include both public and private providers (such as Kaplan, BPP, Pearson and some public universities). Although we agree that it should not be possible to take the SQE1 assessments over an unlimited number of sittings, we feel that the requirement that all the SQE1 assessments be taken at a single sitting will disadvantage part-time and some disabled students. In certain cases, the lack of any modularisation could prevent such students from being able to join the profession, thus reducing diversity. We do not believe that this concern can be addressed by the opportunity for re-taking failed assessments, in particular because re-takes involve additional costs and

may make it harder to distinguish capable students from those who are struggling.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** We fear that the proposed model of SQE1 as a combined assessment of substantive law and procedural knowledge will make exemptions too difficult to implement, resulting in unnecessary costs and wasted time for some candidates and firms. We therefore believe it should be amended to permit exemptions for those with a law degree and for those who have passed the GDL. We feel that some element of modularisation of SQE1 should be permitted (particularly for those studying part-time or requiring adjustments in respect of disabilities).

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** We agree that the transitional period should not be overlong. We feel the timing may perhaps be too tight for those studying part-time or for those who need deferrals for personal reasons, which could have a negative impact on non-traditional candidates.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** For the reasons set out in more detail above, we see negative EDI impacts in the following circumstances: • if there is inadequate information on pathways and expectations of firms for qualification; • if the SQE is not seen by firms as providing adequate intellectual preparation for workplace experience and practice, so that recruitment focuses more strongly on educational background i.e. A level results and university attended, taking on only "safe" trainees who firms will be confident will pass the SQE; • if there are sub-standard training providers (again, disadvantaging less-informed candidates); • if SQE assessments are held infrequently (twice each year), leading to delays and breaks in the pathway to qualification; • if all SQE1 assessments need to be taken at a single sitting by all candidates; • if, as anticipated, training will need to be undertaken to pass SQE assessments, this will lead to costs being incurred for training courses for SQE1 and SQE2 as well as the assessments. City firms will likely require additional training equivalent to the LPC electives with the strong likelihood that overall cost will equal or exceed existing costs. Additional costs, including of releasing trainees for study, may cause firms to take on fewer trainees; or • if workplace experience can be completed at multiple organisations, with the result that firms reduce their investment in workplace training and do not offer sponsorship for the SQE. Future employers may consider such piecemeal training as inadequate when recruiting qualified solicitors.

# Consultation questionnaire

Response ID:290 Data

## 2. Your identity

### Surname

Stephens

### Forename(s)

Toby

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Holman Fenwick Willan

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** Whilst we can appreciate the fundamental reasons behind the SRA's drive for consistency, we still have serious concerns about how the SQE is to be taught and examined. It is our opinion that whilst the SQE may achieve a basic level of consistency, it does not facilitate a high standard of learning nor does it - in itself - equip trainees with the skills and knowledge that they need to become competent practitioners capable of thriving in the modern legal world. In our response to the first consultation we suggested that the SRA would be better placed to consider making changes to the current system of qualification rather than proceeding with a complete overhaul – we are still of this view. 1. We remain unconvinced that the SQE 1 will cover the same breadth and depth of legal knowledge as the current LPC. We need our lawyers to be academically rigorous and we are deeply concerned that the proposed SQE exams do not include any form of essay based/ long answer questions. Critical reasoning and analysis (cognitive skills) are central to our profession. We therefore do not agree that the SQE will achieve the SRA's central aim to "make sure solicitors have high standards from when they first qualify". To us, the proposed MCQ exam style encourages surface level understanding rather than deep reflection. In order to add any value to our business - and in order for the individuals themselves to have a meaningful training experience with us - it is essential that our trainees understand the procedural side of the law (currently facilitated by the LPC) and not just academic theory. We cannot see that the MCQ questioning-style effectively tests analysis or understanding of legal procedure. The omission of elective subjects (currently studied on the LPC) which are of central relevance of our business is also a worry to us. 2. Other jurisdictions and professions that use MCQ style assessment do so alongside other assessment types – essays, self assessments and portfolios. We want the SRA to properly consider the international competition faced by the profession. Any drop in professional standards will afford other jurisdictions professional advantage. The SRA must consider the reputation risk involved in watering down or changing the existing system of qualification which is highly regarded internationally. The SQE will likely result in a generation of lawyers who have a narrower knowledge base than the current standard; this should not be overlooked. This is especially important post Brexit when it is important to safeguard the global pre-eminence of the English legal system. 3. Whilst we acknowledge that there will be some provision for skills training in the SQE 1 (legal research and writing skills) we do not feel that this will go far enough in making the candidates' "practice-ready", at least in the context of a City firm. There will be a marked difference between the ability of candidates coming to firms from a standard LPC, and those who join post SQE 1 – it is our view that individuals coming to practice post

SQE 1 will have a far lower level of competence compared to individuals who come to us post LPC, where the provision for skills' training is far higher. Firms like ourselves will almost certainly choose to invest in "top up" skills training before the trainees join us to ensure that they are valuable to the business, or we will need to reduce the rate that trainees are charged out at - reflective of their lower value- and pay the trainees a lower salary. (Lower salaries are not an issue with City firms that pay well above the minimum salary set by the SRA, but if smaller firms pay lower salaries this could become more of a EDI issue). In any event, we do not feel that the SQE 1 will produce trainees who are ready to take on the challenges of modern legal practice, not are we assured that trainees will have necessary basic skills. 4. If the burden for skills training is passed on to firms (as the SRA proposal suggests) then the training on offer by different firms will in itself vary in quality, eroding the consistency that the SRA are trying to achieve. Whilst City firms are well set up to provide quality training, trainees training at smaller firms who do not have the resources to train or pay for additional training courses, could suffer. We will likely see a two tier system of varying quality emerging – those individuals who study based on meeting the SRA's minimum competence and those who qualify into firms who provide a tailored and quality training experience. 5. It is difficult to see how all firms could offer individuals exposure to the 2 contexts currently required in SQE 2. Even accepting the premise that SQE 2 is not a test of technical knowledge, we feel it would be unfair for some candidates to be attempting a second context for the first time in the assessment. Again we would flag issues relating to consistency and fairness. As the SQE 2 is a "high stakes" assessment, it is likely that firms would want to pay for their trainees to undertake examination preparation courses: it is very unusual for anyone – regardless of their stage of education or profession - to take an exam without first receiving any preparatory guidance or tuition on what is going to be tested and how the exam will look. The SRA therefore need to be aware of the additional costs of preparatory courses – currently not factored into their proposal at all. Whilst we accept that the current LPC costs are unnecessarily high, we do not know the costs of SQE preparatory courses and how these compare. 6. It is crucial for firms that there is choice and variety in terms of where and when SQE 2 exams can be taken. It must be acknowledged that candidates will be taking exams whilst working (which in itself will be highly stressful), and there will be occasions where they cannot attend an exam because business takes precedent. Many firms also second trainees overseas (ourselves included) and this is another complicating factor if exams can only be taken in the UK. As a result that SRA should consider that firms may be forced to restrict the scope and quality of the tasks that trainees are given to undertake - especially if the trainees are going to be absent from the office for periods of time and/or required to attend test premises in the UK to take examinations. Quality of training could be negatively impacted. 7. Whilst we accept the justification for criterion-based standard setting methodologies, firms cannot wait long periods of time to receive exam results. We need our trainees to become qualified practitioners as soon as possible to maintain the pipeline of junior lawyers needed by our business. There is the added complicating factor of how to deal with an individual who fails the SQE 2 – we work hard on pipeline management, and the SQE will be severely disruptive to this. We encourage the SRA to consider the SQE from a law firms' perspective – it will add logistical complications to the training and management of trainee solicitors. Some firms may choose not to recruit trainees at all.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** We strongly advocate maintaining the current requirement for 24 months of qualifying legal work experience. It will take time for candidates to become SQE 2 "ready" and also time for results to be processed and released; we understand that it will take up to 3 months for SQE 2 results to be processed. With this in mind, only a 24 month period of qualifying legal experience (or longer) would allow for candidates to gain sufficient experience, to take the exams, and to receive their results. There is also the added dimension of possible resits to consider if a candidate fails an exam in the first sitting. Firms will need to build in time to account for this; it is not easy (currently) to see how this can be done. There is no way that 12 months is enough time to develop the appropriate level of experience and skills: Our 4th seat trainees are vastly different in technical competence, skills and confidence to our 2nd seat trainees. We worry about the impact of removing the requirement for trainees to gain contentious and non-contentious

experience in a range of contexts; this could result in a generation of one dimensional lawyers, rather than an increase in overall quality. We recognise that there is scope in SQE 2 for certain candidates to take exams in both transactional and contentious contexts but we do not feel that this goes far enough from a training perspective to ensure that all trainees have a rounded skills-set and broad range of training experiences. It is likely that we would continue to independently require our trainees to gain exposure in both contexts and in 3 different areas of law – which would be over and above the SRA minimum requirements. We note that there will be a variety of ways to obtain QWE – but there does need to be some further clarity and regulation of this to ensure consistency. We cannot see how asking firms to sign a declaration that a candidate has developed competencies set out in the Statement of Solicitor Competence is any different from the current method of regulation. We also struggle to see how pre SQE 1 experience can be equivalent to experienced gained post the SQE 1. We think it is unlikely that City and specialist firms will recruit NQs who have not experienced their practices before (especially as the SQE will necessitate firms investing more than ever in technical and skills training for their trainees), so despite opening up new paths to qualification the SQE may not boost diversity or equality at all. Instead it could open up a two tier system of individuals who have trained at City firms through a structured training contract, and those who qualify through a series of legal placements or at smaller firms.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** As well as the investment in getting our trainees SQE 2 ready, we will need to spend time training individuals in our core practices - areas which are currently covered by LPC electives. Because trainees will come to us with a lower base level of ability - having received no core legal skills' training, - their education will commence at a lower level than currently (i.e there will be a skills gap). This is a key reason why we feel 2 years is the most appropriate minimum requirement. We do not, in principle, have a problem with the SRA and firms continuing to authorise "time to count" to reduce the minimum period from 24 months to 18 in lieu of appropriate previous experience. However, we think this should continue to be assessed on a case by case basis - and it is not a reason to impose 18 months as a standard. As important as the time period, is quality. If the SRA no longer regulate the training period, how can you ensure consistency of experience? Clearly candidates who satisfy the time requirement with a series of disparate work experiences (e.g through a law clinic, and 2 – 3 different paralegal roles) will have received a less coherent training than individuals who follow a carefully planned rounded training programme with a firm that is invested in their long term future. Again we cannot see this opening access broadly – rather it will result in 2 tier system of unequal quality (as previously mentioned in q2), and even worse a reduction in the overall standard required to be deemed a "competent" practitioner.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** The aim of the SQE is to set and assure consistent high standards, but the presence of an unregulated market for preparatory training contradicts this. We think that the SRA have a duty to prescribe or at least regulate preparatory courses– from what we can see, your proposal is not to regulate (as implied in the wording of this question) but in fact to de-regulate. If the training market is deregulated cheap, low quality courses could arise. There is likely to be a proliferation of crammer style courses, undertaken primarily by students who are self funding and who want to pass the SQE as cheaply and quickly as possible. This represents a reputation risk to the legal industry and this also poses inherent risks to students in an already overcrowded job market (i.e some courses may be low quality, and students could be more/less employable than others as a result). We agree that deregulation would allow training providers flexibility to develop courses that would benefit the needs of individual firms and their students, and City firms are likely to continue to prescribe the path and provider that they require their trainees to take at least to some extent. However, this does not help those students who may be self funding SQE 1 and

gaining QWE in a variety of different environments – and these students need to be given clear information on the cost and quality of courses on offer so they are not disadvantaged and so that they can make educated choices. Passing a carefully regulated exam is only one part of ensuring a quality legal training in a holistic sense and the proposals around introducing the SQE seems to overlook this. In a deregulated market there will clearly be a difference in the quality and content of training offered by different providers. A will to drive down cost does not seem sufficient justification for this inconsistency. Publishing SQE pass rates tells a candidate nothing about the quality of the all round training provided by an institution – students can be taught to pass an exam, but becoming a rounded lawyer that is employable by a firm is the critical factor.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We agree that it is vitally important that there is consistency in the training of England and Wales solicitors and that this training is provided to a high standard. We also agree that law should be a graduate (or equivalent) entry profession, and that the character and suitability requirement for solicitors should remain. However, we reiterate that we do not feel that the SQE ensures a high standard, or a consistent approach due to: a. the nature of the exams (multiple choice so lacking in rigour); b. the mode of tuition (no requirement to attend any academic courses such as the LPC which are crucial in developing a holistic understanding of the law) - we think at the very least it is vital that a QLD or GDL should be a requirement for entry onto the SQE; c. the narrowing of the syllabus, in particular the loss of LPC elective modules which are often vital to firms' practices; d. and the open training market which could jeopardise quality. This is the biggest concern for our Learning & Development team. The SQE shifts the burden of effective skills training (e.g SQE 2 training) onto law firms, who are structured as businesses and not training schools. This could result in a two tier profession of individuals trained to pass the SQE 2 by large law firms with ample L&D resources, and those who pass the SQE without the same level of investment from their firms - i.e those who are exam ready, but lack wider skills development. We also have concerns about the (un)likelihood of all firms being able to give exposure to the 2 contexts required by SQE 2, leading to questions of fairness. The contexts of SQE 2 do not reflect our practices at HFW. We make the point again that trainees coming into our business post SQE 1 will have a lower level of legal knowledge and competence than trainees coming to us from the LPC, who have been trained in practice skills and elective modules. These individuals will, in all likelihood, be less competent at the point of qualification We cannot see how reducing the amount of training on offer to individuals before they enter a law firm, would not impact negatively on consumer experiences and satisfaction levels. It could in fact lead to a rise in negligence claims from competence issues (especially if the QWE is not regulated). The SRA want to reduce training (GDL/ LPC) costs - we understand this, but we have not yet seen any proposed SQE costs and we need further information on the costs to students and law firms. Non-law students will need to continue to take a GDL or equivalent course and the SRA do not acknowledge this in their proposals. For students who secure training contracts with large firms, we agree that it is likely that the up-front legal education costs (e.g LPC/ SQE1) will reduce. However, there will be an increased burden of costs on law firms to provide training to ensure that their NQs are competence, rounded professionals capable of passing SQE 2, so costs may not actually reduce on a net-basis- rather they will shift from the individual to the law firm.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** If the drive is for a single consistent standard then we do not think there should be any exemptions - from either SQE 1 or 2. However, this does miss certain nuances i.e if a student has studied a module at degree level which is equivalent to a module at SQE 1, then insisting that they take an additional exam will drive up costs. The key issue here seems to be about the value of the SQE. If the SQE is deemed

to be an essential quality control, then the logical deduction is that there should be no exceptions. We reiterate that we remain content with the current system of GDL/ LPC and training contract, and exemptions work well within this structure. It is not clear whether exceptions will be permitted in the context of the QLTS – this is a significant issue which needs to be addressed. In practice, we would support exceptions being permitted i.e for modules of law that individuals have already studied to a satisfactory and comparable level.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** The SRA need to communicate clearly with students to help them to understand the impact of the proposed SQE: time is of the essence. Current year 1 law undergraduates will be impacted by the SQE and may not know about it. A Level (or equivalent) students will need to make university choices, and again probably do not know about the SQE proposals. The SRA need to make decisions and publicise these, so that students can make educated choices. If some universities choose to integrate SQE 1 as part of their teaching (as the SRA are suggesting they will), then students need to know about this, and any associated cost implications. Otherwise there is a danger that only the students with links to the profession, or access to quality careers guidance, will be able to make informed choices. Others may be put off the profession entirely, or placed at a disadvantage. The first SQE assessment is proposed for 2019. To us this seems a very short a time frame to appoint a test provider and review and pilot the exams. Furthermore, firms will need to overhaul their training provisions, and the structure of their training offering. This will require careful thought and consultation, plus probably additional HR and L&D resources. We are already recruiting for 2019 and 2010 and we owe it to our future trainees to tell them what the legal education landscape might look like. We also need time to plan for the changes ourselves. The requirement for individuals who start a post graduate conversion course in September 2019 or after to take the SQE would, in theory, result in firms having to train their trainees under 2 different training regimes from 2020 onwards. GDL students will be forced to train under the SQE, whereas individuals who started a 3 law degree in 2019 will be able to train under the old route until 2022. In practice, it would be very difficult and impractical from a business perspective for firms to follow the existing regime and the SQE in parallel so we encourage the SRA to rethink this point. If the SQE is introduced (and we stress that we oppose this in its current format), a single long stop date of 2024 (or later) for law, non-law and overseas graduates would be much fairer and simpler to implement than a series of different dates for different groups of students.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** The biggest issue that we see is the rise of a 2 tier system: individuals who have passed the SQE and received a high level of quality training from their sponsor firms, and those individuals who have self funded the SQE and satisfied the requirement for QWE through a series of disparate experiences who will then seek an NQ employer. This will shift the bottleneck of candidates wanting a career in law from the LPC stage to the point of qualification. This will not improve EDI issues, instead it will result in more candidates having spent more time and money on their aspiration to be a solicitor, without any guarantee of employment. The SQE may open up new routes to qualification – but it will not change the fact that there are a finite number of solicitor jobs, and demand outstrips supply. It will simply change the position of the bottleneck. Plus the fact that that the SQE is less theoretical and practical than the LPC, will likely make firms less open to recruiting non-traditional candidates because the SQE will not be seen as a mark of quality in itself. We cannot see many City firms choosing to recruit non-City trained NQs – because of the increased onus there will be on firms to make up for the skills gap. By the time an individual has qualified they will therefore be one path of a clear two-track profession. This does not fit well with the SRA's aim to boost diversity. The SRA want to drive down costs, but at no point in the consultation document are the costs of preparatory courses mentioned. The SQE exams themselves may be cheaper than the LPC, but preparatory courses offered by providers may not. There will still be those candidates who cannot afford to

take the courses, or who take low quality-courses and who cannot afford multiple retakes. Students with dyslexia may struggle with the memory recall and MCQ context of SQE 1. This needs to be addressed by more than simply allotting extra time. We also worry about the implication of some universities choosing to incorporate SQE1 prep into their syllabus and others not. The route to qualification for individuals who study at institutions who do not provide SQE1 prep will be longer and costlier than for those who study SQE1 as part of their university curriculum. Unless SQE1 prep is provided by all universities some students will be advantaged/ disadvantaged both in terms of cost and also in relation to the time it takes to qualify. Pre university students will need to be provided with enough information to enable them to make educated choices. We do not see EDI as a sufficiently compelling justification for the introduction of the SQE.

# Consultation questionnaire

Response ID:313 Data

## 2. Your identity

### Surname

Stewart

### Forename(s)

Nathalie

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on behalf of a local law society**

Please enter the name of the society.: Hull Incorporated Law Society

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** We are concerned that SQE1 can be sat without any legal knowledge or background and sat as a multi choice exam rather than examination of knowledge and application of that knowledge in any more depth. Without the law degree or equivalent conversion pass required, we consider that it will not be a good measure of legal competence in place of that. SQE2 does appear to address the LPC style of examination and we do agree with the content of SQE2 to that extent although concerned about the absence of current PSC requirements

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** Qualifying legal work experience is essential but hand in hand with current education and guidance offered by the LPC. The SRA must regulate all providers of this training - this is an absolute must.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** It is absolutely essential that the SRA regulates the providers of legal training. Without regulation the concerns the SRA currently have about ad hoc courses and no consistency in approach will be lost and create a two tier profession with approved and non approved providers. In our view it is most appropriate to engage with the current providers of LPC training and regulate this for the preparatory training.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** A law degree or a conversion course with the qualifications obtained in this is essential in addition to further testing.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** There should not be exemptions. Depending on the cost there can be financial help offered and depending on disability there can be reasonable adjustments but the standard should remain the same and the point is that only people capable and who do pass qualifying exams should then qualify. There should be no need for exemptions

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

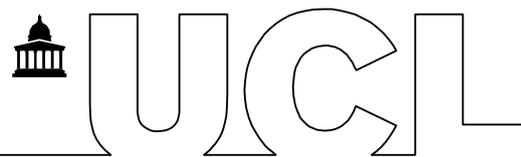
**Comments:** We do not have a specific comment to make on other than essential and detailed guidance would need to be provided by the SRA on this at any relevant time

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Please bear in mind that costing of the SQE has not been determined. Once costing information is provided then this may well deter certain socio economic groups from applying which can then impact on race etc.



24 October 2016

Dear Sir/Madam,

**Response to 'A new route to qualification:  
The Solicitors Qualifying Examination'**

I am a senior lecturer in the Faculty of Laws at University College London in which capacity I teach on both traditional academic law degrees (on which I have taught several of the subjects to be assessed in the proposed SQE Stage 1) and on a vocational qualification course for prospective notaries public. I previously taught at the University of Cambridge. I am also a member of the Notaries Qualification Board for England and Wales. This response is in my personal capacity, but draws on my experience of both academic and vocational education at institutions traditionally considered to be elite.

**1. Consultation Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

4 – disagree

I have various concerns:

*1.1 Stage 1 Assessment Methods in relation to the Draft Assessment Specification*

The SRA is clearly committed to a particular mode of assessment for Stage 1, one in which there are objectively correct answers. This does not appear to be reflected in the Draft Assessment Specification, which includes various ideas and concepts the meaning and nature of which are disputed. The uncertainty for those concepts may be exacerbated in the proposed mode of assessment in Stage 1 by the use of plausible distractors (outlined in para.[55] of the consultation). Where a concept is disputed, plausible distractors may represent what some people may regard as alternative points of view, rather than objectively 'incorrect' answers.

This is most obvious in the Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales assessment specification. Purely as an example (there are more), this states under Assessment Objectives C, that 'Candidates will be asked to:... 5. Demonstrate an understanding of what is meant by the rule of law'. Public lawyers and political scientists, even members of the judiciary, recognise that this is disputed. Does 'the rule of law' incorporate substantive norms (such as human rights) or is it purely procedural? The Draft Assessment Specification provides no guidance.

Under the current system this was relatively unproblematic. Candidates (at least in universities) were not assessed objectively, but were required to demonstrate understanding of various plausible models. It is not clear to me how objective assessment methods will reflect these areas of dispute which are incorporated into the assessment objectives. For an objective assessment of this issue, a position has to be taken as to the 'correct' understanding of the 'rule of law'. If the SRA has a view on these disputed issues, the answer which the SRA considers to be objective correct must be incorporated into the Assessment Specification or advised to all candidates in some other way. Similarly if the assessment organisation has a view on the disputed issues, that must be explained to candidates for the assessment in advance. If neither the SRA

nor the assessment organisation does take a position, it needs to be explained how this assessment objective can be 'objectively' assessed.

From the perspective of encouraging competition, it is also imperative that the SRA's/assessment organisation's understanding of these disputed areas is set out in advance. Training providers cannot easily teach for an assessment where key issues or terms are not sufficiently clear. Failing to do this might give an advantage to some organisations where staff members have privileged access to the assessment process (a particular concern of 1.3 below).

### *1.2 Draft Assessment Specifications Drafting and Content*

As they stand, the Draft Assessment Specifications are not sufficiently well-drafted to enable students to prepare for assessments, or potential training providers to ensure that their courses match the demands of the assessment. Ignoring the difficulty of objectivity for some of the assessment objectives, the specifications are simply too vague or imprecise in places. Under the current system this is addressed by those involved in teaching also being closely involved with assessment. As that will no longer be the case, any ambiguities or doubts must be resolved in the Assessment Objectives themselves.

I shall not attempt to identify all of the problems, but a non-exhaustive list taken from various parts of the Draft Assessment Specifications would include:

#### (a) Dispute Resolution in Contract or Tort – Assessment Objective A

'Candidates will be asked to...2. Identify the applicable law governing the dispute and available jurisdictions' (Annexe 1 p.18).

I am not certain whether this means that candidates will need to have an understanding of (English) private international law in relation to contract and tort to determine if it is English or foreign law which applies and an English/Welsh or foreign court; or if it means that the candidate must identify if the relevant law is the English law of contract or English law of tort and then the relevant court for a particular claim within England and Wales. Either interpretation is plausible on the text as it stands. Which interpretation is correct will make a very considerable difference to what needs to be learned by a student (and so taught by training providers).

#### (b) Property Law and Practice – Overview and Legal Knowledge

These state that 'candidates are expected to draw on and apply knowledge from...The core principles of trust law' (Annexe 1 pp.24 and 26). However, the practical tasks set out in the Overview A-G and all of the Assessment Objectives do not seem to contain any material which relates to the core principles of trusts. There will be a little trusts law relevant in co-ownership and interests in land, but this not what I, or many trusts lawyers, would recognise as 'core principles of trust law'. The more detailed statement of legal knowledge found at Annexe 1 pp.27-29 contain no mention of the law of trusts.

There appears to be disagreement with the stated overview/legal knowledge requirement and the assessment. Until this is clarified, it is not clear how much trusts law (or what parts of it) candidates are required to know and training providers to teach.

#### (c) Commercial and Corporate Law and Practice – Assessment Objectives

Assessment Objective B states that 'Candidates will be asked to:...3. Apply principles of contract law in the context of common commercial transactions' (Annexe 1 p.32). It is not clear what these 'common' transactions are, and a particular individual's own experience is likely to colour this. Setting out a specified range of commercial transactions which can be assessed would be clearer for all involved in training and assessment.

#### (d) Wills and the Administration of Estates and Trusts – Assessment Objectives

Assessment Objective E states ‘Apply the law and practice relating to Personal Representatives and Trustees to the administration of estates and any resulting trusts’. I assume that ‘resulting trusts’ here should not be interpreted to mean the technical concept of a resulting trust, but something like ‘and any ensuing trusts’. It would be sensible in an Assessment Specification for legal matters not to use a technical term in a non-technical way.

More importantly, the Legal Knowledge statement is not sufficiently precise to be helpful in determining what aspects of the law of trusts are required to be known by candidates.

To take two obvious issues:

- Annexe 1 p.42 lists the duties and liabilities of trustees as one of the aspects of trust law to be considered. Trustees are not permitted to make distributions of trust assets to unauthorised people. Does this mean that all the nuances of the beneficiary principle are to be assessed under this heading? I am not sure, but this is a difficult and intricate issue which will need to be taught carefully if it is required. If it is not to be assessed, this is a major change (reduction) in the scope of legal knowledge required for aspiring solicitors;
- Learning Objective E refers to the rights and remedies of beneficiaries. These are also mentioned on Annexe 1 p.42. Does this include the rights and remedies that beneficiaries have against third parties for breaches of trust and/or fiduciary duty? The Learning Objective more generally refers to ‘the law and practice relating to Personal Representatives and Trustees’, which suggests third parties are not covered. If that is so, it is once again a major change (reduction) in the scope of legal knowledge required for aspiring solicitors. Much depends on how contextual one’s reading of the relevant text is. A more precise statement of Learning Objectives and Legal Knowledge would be much more helpful.

### *1.3 The assessment organisation (paras.[72]-[75])*

The consultation does not set out any safeguards to ensure a robust separation between provision of assessment and provision of training. Would it be possible for the same organisation, or two organisations with the same parent organisation, to be both the assessment organisation and a training provider? Nothing seems to prevent this.

I have two concerns here:

(a) The consultation hints in para.[30] at a perceived current problem of over-preparation of students for assessments by some training providers. The proposed model as outlined would not prevent this if the assessment organisation were also connected to the provision of training, especially as the publication of assessment outcomes in relation to specific training providers would encourage acting in a way to achieve high pass rates for students from the training provider;

(b) The consultation has a clear concern about competition in the market for training. It seems likely that if the same organisation, or related organisations, could provide both assessment and training that this would be perceived by prospective students as an advantageous choice. The SRA’s choice of assessment organisation might therefore have anti-competitive effects. The proposed model does not consider this.

### *1.4 Assessment Reliability*

Para.[80] of the consultation states that ‘plagiarism...would be avoided because the SQE would include no assessments that were taken outside exam conditions’. I have encountered plagiarism in closed-book examinations. Candidates rote learn material for popular topics (based on past assessments) or on particular aspects of the syllabus. While a more practice-focused assessment will reduce the risk (as does the use of problem-based questions in academic examinations), it does not eliminate that risk. This is

especially problematic if the pass mark is low enough that answers which contain a certain amount of relevant material will pass.

The SRA needs to explain how plagiarism will be identified and addressed in the SQE. The current approach seems to assume that the problem will not exist at all, which is simply wishful thinking.

## **2. Consultation Question 2a: to what extent do you agree or disagree with our proposals for qualifying legal work experience?**

### **3 – some agreement, some disagreement**

#### *2.1 Where could qualifying legal work experience be gained? (paras.[106-110])*

A wider range of experience is acceptable. The SRA might consider if it is always essential for the experience to be in an SRA-regulated firm or under the supervision of a solicitor in a non-SRA regulated entity (para.[106]). Two examples:

(i) a student law clinic providing assistance with employment or welfare tribunals under the supervision of a barrister. This is advocacy experience. Advocacy in these tribunals can be undertaken by both barristers and solicitors.

(ii) conveyancing experience working in the office of a notary public undertaking conveyancing or wills and probate work. Both of these are regulated activities for notaries as for solicitors and the same level of qualification is required.

Why would supervision by a barrister not be suitable in (i) and by a notary public in (ii)? Both provide the same service and use the same skills in these contexts as solicitors.

A more suitable approach would be to consider the type of the activity and whether it is being undertaken by a lawyer regulated to provide that activity. That would seem to maximise flexibility and the opportunity for students to acquire experience.

#### *2.2 Duration of work experience*

The units in which the duration of work experience is calculated needs to be considered carefully. The current proposals (in Question 2b) use months and years. This is not helpful. If the SRA wishes to use time in student law clinics, this cannot easily be calculated using months/years – students are typically involved in these clinics while also undertaking other studies or activities. The same might apply to someone volunteering in a Citizens' Advice Bureau (under the supervision of a solicitor).

A simple month/year model struggles to accommodate such situations, even though they might be for considerable time. A possible situation in some universities is that a student spends ten hours a week for 20 weeks a year (most of the academic teaching year) for two years of his/her degree. The student would acquire 400 hours of experience, but never in a continuous month/year. How is this to be incorporated into the calculation? The calculation of duration of experience could assume a certain duration of working week and then a certain number of working weeks in a month, but that all needs to be made clear.

I suspect this is why the New York Bar uses a number of hours of work, rather than calendar months/years. Using hours rather than months/years would be more flexible and easier to apply in several contexts. The widespread use of time recording in legal practice should render this less problematic than might be thought.

#### *2.3 Maximum number of placements or minimum time period*

A system which simply uses a maximum number of placements could place some candidate at a disadvantage through no fault of their own. If a firm at which they begin ceases to trade, or if they are unfairly dismissed, these placements would count against the candidate. That should not be the case and might in some cases amount to discrimination by the SRA. For example if one of a candidate's placements were terminated following sexual harassment of the candidate and this meant a candidate could not acquire sufficient experience without exceeding the permitted number of placements, preventing the candidate using another placement to qualify might be discriminatory.

This suggests that a minimum time period should be used per placement. However, this should not be too long. The consultation notes at [108] that 'placements of a few months or weeks' are probably too short. The difficulty is that much of this is contextual. A month in a legal advice clinic providing urgent advice is likely to cause a candidate to develop skills quickly, whereas a month in a large firm might include the first week or two simply as an induction period. The minimum period should perhaps be set fairly low, but with the work experience provider having to certify in the candidate's record of experience how much of the period was actually relevant work experience. This is more cumbersome, but reflects the widely differing situations in which candidates might find themselves.

### **3. Consultation Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

4 – Disagree

#### *3.1 Date about training providers*

Para.[122] is currently concerning. It seems to assume that candidates will only experience one training provider before undertaking the SQE. However, this is not necessarily the case. Two examples:

(a) Candidates undertake a traditional academic law degree and then something like the LPC, at two different institutions, before sitting the assessment for SQE Stage 1. The Stage 1 assessment will incorporate material from both stages of education, presumably in the same questions. Will the performance statistics identify this candidate as only having attended the university, the LPC provider, or both? If it identifies both, will the university's statistics be broken down between candidates who attended different LPC providers? There is a risk of misrepresenting the performance of any individual training provider if training is provided at two different institutions.

(b) There is continuous pressure for higher education institutions to make their qualifications portable, such that students with some modules from one university can move to another university to complete their degree (this was part of the Bologna process within the EU). This is more prevalent in the USA than the UK, but may begin at some point. How would the statistics reflect a candidate who took half of their law modules at one university and half at another, perhaps then with an LPC at a third provider?

The statistics will need to be very nuanced to provide 'a more transparent and accountable market' enabling candidates to make informed judgments and there is no sign of this in the extremely sketchy proposals in the consultation.

### **4. Consultation Question 4: To what extent do you agree or disagree that our proposed model is a suitable test for the requirements needed to become a solicitor?**

5 – Disagree

The Draft Assessment Specification appears to omit various very important topics. Some are mentioned above especially in relation to property law and trusts (1.2(d)), but I was particularly concerned as a non-specialist to see no mention of sexual offences as a field of which knowledge should be expected. It strikes

me that this is a difficult area with which those intending to practice in criminal law should have expertise, particularly in relation to client interviewing and other practical skills.

More generally, I see very little in some areas of the Draft Assessment Specification for Stage 1 which suggest candidates will be required to understand what they are doing, rather than merely applying it. This is particularly obvious in Property Law and Practice, which appears to have become an assessment solely in basic conveyancing. There is very little law in it, such that I would be nervous using a solicitor who had only qualified under this model.

**5. Consultation Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**5 – Strongly Disagree**

Qualification should continue to require more in the way of academic knowledge, which is lacking in the SQE model, and this academic knowledge could be covered by exemptions for QLDs.

This proposal treats lawyers merely as technicians rather than a profession with a valuable normative role in wider society, something which consultees clearly wanted given their preference for solicitors to remain a graduate profession.

**6. Consultation Question 6: to what extent do you agree or disagree with our proposed transitional arrangements?**

**5 – Strongly Disagree**

The transitional arrangements seem to show a lack of understanding about the timescales involved for candidates, together with potential equality and diversity concerns (discussed under 7).

Para.[138] poses certain problems. Most obviously in the second bullet, which imposes a long-stop date for qualification under the old route as 2024. Some QLDs are four years long, especially those involving experience of another jurisdiction which many law firms consider desirable. Some are even dual qualification degrees. If a candidate were to begin such a four year degree in September 2018, it would be impossible to qualify as a solicitor using the old route (four year degree, one year LPC and two year training contract would lead to qualification in 2025), despite beginning well before the September 2019 bar on beginning a QLD. The proposed change will, in effect, remove the QLD status from these degrees.

This is particularly problematic as some of these candidates may already have applied for the QLD. The 2016-17 undergraduate admissions cycle via UCAS opened before October 2016 and Oxbridge admissions (including some four year QLDs) closed on 15 October 2016, before this consultation ends. Although most of these applicants will be for courses beginning in September 2017, there are a significant number of candidates who apply for admission to university intending to take a ‘gap year’. Any candidate who does so intend is often not able to change this after submitting their application and especially after a university has made its admission decision. These candidates will be disadvantaged by a change in qualification route which may not have even been advertised as a possibility at the time they submitted their application.

From the perspective of universities, their four year QLDs will also have been advertised as leading to qualification as QLDs before and during the UCAS admissions cycle. The SRA should not change its qualification route such that teenage students should be expected to keep up with the nuances of possible, but not certain, changes to professional regulation. The proposed change to qualification must permit all those who begin full-time QLDs before a particular start date to qualify under the old route. This will delay the universal application of the new route to qualification, but a radical change to a long-term process of qualification should expect to have a long run-in period.

**Consultation Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Yes**

There are various potential Equality and Diversity issues which the Consultation does not address. All of these appear quite obvious to someone who has worked in education for some time.

(1) Para.[82] 'Passing the SQE stage 1' – the consultation limits the number of attempts for passing the Stage 1 assessment to three. This is perfectly acceptable. However, the Consultation makes no mention of how this will be applied when a candidate might be affected by a particular health or other issue for a particular attempt.

For example, a candidate affected by a particular disability which occasionally displays more severe symptoms, those more severe symptoms manifest on the day of an assessment and there is medical evidence that such symptoms may have affected performance. Will the affected assessment count for purpose of the limited number of attempts? Counting the attempt would put the candidate with a disability at a disadvantage.

(2) Para.[87] 'Period of validity' – candidates will have a fixed number of years to pass all stage 1 and stage 2 assessments. Will any allowance be made for, e.g., periods of maternity leave or ill-health? Failing to provide any means to accommodate these situations may lead to claims of discrimination on the basis of sex/gender or disability.

(3) Para.[138] the 'long-stop' date for qualification under the old route as 2024. This long-stop seems to make no provision for candidates who began a QLD within the deadline but may not have completed all stages of training before 2024. If this delay is due to disability (such as students who withdraw from their degree for a year for health reasons and then return) this would be directly discriminatory. If a student did not complete their training contract by 2024 due to taking maternity leave, this would also be directly discriminatory.

If nothing else, these obvious points suggest that any changes need to incorporate some method for making reasonable adjustments for candidates who might otherwise experience discrimination as a result of the changes. There is nothing in the consultation to suggest that the SRA has even considered these possibilities, let alone made reasonable adjustments.

Yours faithfully,

Ian Williams

# Consultation questionnaire

Response ID:184 Data

## 2. Your identity

**Surname**

Murphy

**Forename(s)**

Jackie

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a student studying for a qualifying law degree or legal practice course**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** How is the SRA to guarantee that all students taking the SQE get the work experience needed to complete the course?

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:**

# Consultation questionnaire

Response ID:494 Data

## 2. Your identity

### Surname

Knox

### Forename(s)

Jenny Mary

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: On my own behalf as a law lecturer

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** Rationale for SQE In my view, I would disagree that evidence to support 'public appetite for a central assessment is also strong' (Page 2). The 'ComRes' survey methodology explains that an online survey was undertaken on 17 and 18 August 2016 and respondents were asked questions in the following manner: Q1. The next question is about solicitors. There are a number of different routes to becoming a solicitor, including apprenticeships, university degrees, work-based learning and international transfer schemes. Thinking about the training of solicitors, to what extent do you agree or disagree with each of the following statements? o As part of the process of qualifying as a solicitor, solicitors should have some training in the workplace o Everyone should pass the same final exam to become a solicitor, regardless of the type of training they do o I would have more confidence in solicitors if they all passed the same final exam. These questions could be characterised as leading as they appear to guide the respondents in a particular direction, to agree with the SRA's proposals on the introduction of the SQE. While respondents did have the options to 'neither agree or disagree', 'tend to disagree' or 'strongly disagree', the presence of an implied answer is undesirable. Without further context, the wording of these questions are likely to make it difficult for some people to answer that they are not in favour of solicitors undertaking the same final exams. It is noted that there is no evidence referred to in the consultation document that supports the assumption that candidates are gaming the system 'by selecting what might be perceived to be the easier assessment provider' (page 17). Part of whether the proposed SQE is an effective measure of competence would include whether it is cost effective, yet the SRA 'cannot know the exact cost of the SQE before the appointment of the assessment organisation' (page 17). It is noted that there are no projected costs included in the consultation documentation.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** Removing the requirement for candidates to secure qualifying legal work experience in contentious and non-contentious matters seems counter-intuitive (page 21). Even if candidates have no intention of practicing in a contentious area of law for example, practical awareness of how their non-contentious matters can become contentious is vital to demonstrating why accuracy in drafting is important

for example. Equally, future litigators develop drafting and negotiation skills from a period of time in a non-contentious area of law. In light of the need to secure substantial workplace experience, a requirement that it comprise no more than four separate placements in different employers with no placement being less than 3 months in duration may be suitable (page 22). However, the problem of access to workplace experience is acknowledged within the research the SRA commissioned for this consultation (Ching & Henderson report, page 11). Is there a risk that students that report difficulty securing one training contract or even informal workplace experience are placed in a position that they must go through this application process four times? Will the SRAs 'training contract bottleneck' (page 8) be merely replaced by a newly qualified solicitor bottleneck?

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** There was nothing in the materials that suggested a change to the current arrangements was either necessary or desirable.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** Lack of clarity for candidates- while it is noted that the SRA's rationale for the SQE includes allowing 'candidates to choose the training that best suits their circumstances' (page 6), the routes to qualification are increasingly complex for new entrants to the profession to understand which is undesirable in itself (page 25). High quality teaching- there seems to be a tension between the SRA's rationale for bringing in the SQE (to ensure that candidates pass the same examination to qualify) and what the SRA consider to be features of high quality teaching, an 'ability to innovate' (page 24). The current system is likely to offer training providers more ability to innovate, given they can try out new teaching methods and course materials, reflecting these in the assessments they set. There would be a risk under the proposed system that innovations in teaching would lead to a higher fail rate amongst candidates, given the training provider would have no control over the external assessment. Available data- if data is to be published in the manner suggested, information should be collected that would allow providers to calculate the 'value-added' to candidates by attending their institution (page 23). Training providers are not necessary providing high quality teaching because high performing Russell Group university graduates pass the SQE, for example.

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** Not linking the SQE to a particular academic standard, seems to go against the SRAs rationale that solicitors be degree level educated (page 25). The consultation states that while 'we can see merit in pinning the new assessment to a well-recognised academic qualification framework, we remain of the view that it would reinforce the misconception that the SQE is a test of the academic curriculum, rather than a test of professional competence' (page 26). A test that gives marks for the single best answer may not be a mindset that we wish to encourage amongst new entrants to the profession, given in practice there are often many suitable options available to progress a case on behalf of a client.

**7.**

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** The consultation states that the SQE 'is not assessing what is assessed in an academic law

degree and it is not appropriate to give exemptions to QLD or GDL students' (page 27). It is likely that legal education providers will modify their QLD and GDL courses in line with the SQE. If legal education providers do modify their courses in line with the SQE, then exemptions should be provided.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** Given the assessment organisation is not going to be appointed until summer 2017 (page 3), additional guidance to legal education providers is likely to be released less than two academic years before the courses roll out to students which is a challenging timeframe in which to redesign courses significantly and produce the accompanying high quality learning materials students expect, especially in preparation for an external examination.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Potential negative EDI impact- while the SRA has abolished the mandatory minimum trainee solicitor salary in favour of the national minimum wage, the Law Society has recommended minimum trainee solicitor salaries, calculated on the basis of the Living Wage and LPC repayments. The Law Society, on the basis of an equality and impact assessment, highlighted the removal of the mandatory minimum trainee solicitor salary would have a negative impact on entrants to the profession from poorer and ethnic minority backgrounds. If students can obtain periods of work experience through working in a student law clinic or through a placement as part of a sandwich degree, this could potentially mean that students are not paid at all while gaining workplace experience, losing even the guarantee of the national minimum wage. While this could lead to exploitation of candidates generally, losing this protective 'floor' would be undesirable for potential entrants to the profession from less affluent backgrounds in particular. Bodies like Intern Aware believe that 'unpaid internships are exploitative, exclusive and unfair. By asking people to work without pay, employers exclude those with talent, ambition and drive who cannot afford to work for free'. Potential negative EDI impact- if the SRA truly do not allow any assessment outside of exam conditions, this would have an adverse impact on a plethora of candidates with learning support needs that cannot sit assessments under exam conditions and need alternative arrangements to be put in place for take home assessments for example (page 18). Potential negative EDI impact- if all candidates have 'six years from attempting the first stage 1 assessment to the date they receive their final result for the stage 2 assessment', this could disadvantage part-time students who inevitably will not have the same amount of study time (page 18).

# Consultation questionnaire

Response ID:524 Data

## 2. Your identity

### Surname

Austen

### Forename(s)

Jessica Isabel

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Solicitor/Joint Director of Pro Bono, BPP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part

time work experience or just full time. Many students will not be able to afford to gain work experience unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career.

Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify: Hours not months

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

# Consultation questionnaire

Response ID:367 Data

## 2. Your identity

### Surname

Phillips

### Forename(s)

Jill

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as an academic**

Please enter the name of your institution.: BPP University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I don't agree that the proposed SQE is an effective measure of competence. The proposed style of assessment and the number of questions involved does not lend itself well to the suggested aims of the assessment. It may test surface level knowledge but with 1.5 minutes per question I cannot see how it will be able to test students rigorously enough. There seem to be a number of issues with the proposed syllabus and much more detail is required. It is also very difficult to give an opinion on whether a proposed assessment is robust and effective without sight of any sample questions or a sample assessment paper.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** I think the time frame of two years is suitable.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** I think it will lead to a reduction in training standards and a two tier system where law firms develop their own training courses and self-funding students focus on cost and the minimum standard required to pass.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** I don't think the SQE is at all suitable as a test of the requirements needed to become a solicitor. It will not test all of the skills and competencies required to be a solicitor. As there is no formal portfolio assessment built into the qualification process, it is not clear how it will be possible to know if qualifying solicitors have sufficiently developed the requisite skills. The proposed model seems to me to be a step backwards rather than forwards for the legal profession.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** Students should be given credit for prior assessments/qualifications where relevant - it doesn't make sense to require students to spend time and money repeating assessments.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** I don't agree with the differences in timing for overseas and domestic students.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** It is very difficult to comment on this without sight of an assessment. If reasonable adjustments are just to be dealt with by extensions of time this would appear unsatisfactory - alternative forms of assessment should be considered. I think there is a significant risk of negative EDI impacts as a result of the proposals.

# Consultation questionnaire

Response ID:46 Data

## 2. Your identity

### Surname

Halkier

### Forename(s)

Jodi Belinda

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
in another capacity**

Please specify: registered foreign lawyer

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:** I AM south African QUALIFIED AND WE WRITE A SOLICITOR ADMISSION EXAMINATION PROCESS WHICH IS VITALLY IMPORTANT

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** I don't know enough to comment

# Consultation questionnaire

Response ID:531 Data

## 2. Your identity

### Surname

McGlinchy

### Forename(s)

Amy

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**

**on behalf of a local law society**

Please enter the name of the society.:

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** Stage 1 – We believe that it is good to use a range of assessment methods. However, we are concerned there are no non-exam based methods i.e. research tasks/essays to be completed at home to reflect the fact that some people do not work to the best of their ability under exam conditions. We agree with one of the assessment methods being multiple choice questions for objective testing. Stage 2 – We understand the rationale for testing at the end of the period of work, but are concerned that this could be unfair on certain candidates if their firm does not train them up adequately. It will be the individual and not the firm that suffers, and may not be able to obtain a qualified job as a result. In this sense the system would simply be moving the bottle neck. We are also concerned that in stage 2 there are no non-exam based methods of testing students. This could raise concerns when it comes to issues of diversity as, for example, a parent undertaking the course may be able to fit in a home-based research task around their schedule, but may not be able to prepare for all exams to be taken at the same time. We are concerned that candidates with practical experience working in one of the 5 areas of law specified would be at an advantage when choosing their 2 topics. It would be fairer for each candidate to have their topics selected randomly as the topics shouldn't matter anyway if they're only having their skills tested. We agree that it isn't an assessment of the law and there's no need to have a huge number of topics as this would increase the costs of the course and risk reducing consistency. We would agree with simply giving candidates a 'pass' or 'fail' mark. We agree with not needing to be tested in both contentious and non-contentious areas as many young lawyers already know into which bracket they fall. We also agree with using a single assessment organization to deliver the SQE to provide consistency of standards. We are concerned that there is no clarity surrounding costs e.g. you say that you would expect Stage 1 to be 'relatively inexpensive'. What does this mean? Relative to what? The LPC? When you say that stage 2 will be more expensive, by how much and what sort of cost? We agree that candidates should not be allowed to re-sit to improve their pass marks. We also agree with having 6 years from attempting first stage 1 assessment to receiving their final result for the stage 2 assessment.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** We agree that pre-qualifying legal work experience is essential. We welcome that this could take place in a wide variety of ways e.g. the work experience undertaken during a sandwich degree, on vacation schemes or through paralegal work. We agree with not specifying at least 3 areas of law in contentious and non-contentious, as many candidates already know their preferred area of practice upon qualification. We would agree with specifying a minimum time period per placement of 3 or 4 months, as opposed to a maximum number of placements, as this could be limiting for a candidate who wishes to experience a number of different seats. Setting a minimum time frame would ensure that a candidate obtains enough experience in each seat. We have concerns that law firms would treat the period of work experience as an opportunity to exploit young lawyers and to pay them low salaries, with no necessary incentives to employ the candidate once they had completed stage 2. Alternatively, a concern re taking stage 2 at the end of the work placement is that should someone fail this exam, then presumably they are not employable in the legal market? This could be a problem in terms of diversity.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We would agree that a period of 24 months should be necessary, reduced to 18 months if the individual already has relevant prior experience e.g. working as a paralegal. We believe that this is an appropriate amount of time to give trainees relevant experience and skills whilst remaining under supervision.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** There does not seem to be any real regulation of the system, as the proposal relies on market forces to ensure competitiveness among the different providers to drive the levels of education and training upwards. We believe that this would heavily favour those training providers who take in students from the already high-achieving areas of the country e.g. London, Oxford, Cambridge, South East England. Regional training providers might struggle and fall by the wayside if it transpires that their results are worse than their other regional counterparts and, in turn, see a loss of students. The extreme outcome, regional training providers having to close down their courses due to a lack of students and/or funds to improve their courses, and prospective solicitors having to add to their own costs by travelling to complete their SQE studies somewhere not local to them. Therefore we would strongly disagree with this approach. Allowing applicants the access to the data is, in theory, a good thing. But it may legitimize the top-end training providers with the highest pass rates and the top quality teaching to start to charge extra based on their statistics. A possibility would be to have training centres for Oxbridge/London and then cheaper ones for everyone else, deemed less successful. These economic arguments go towards candidate feelings of superiority between institutions, which is already a problem within the profession. This also won't solve the problem of lack of consistency in training and teaching across the country. Furthermore, publishing data alone is not enough to regulate the industry. Indeed, this will simply encourage teaching how to pass an exam rather than encouraging learning and innovative thinking. We believe it to be of the utmost importance for the SRA to inspect institutions itself and to carry out visits, in order to conduct both a subjective and objective overview of the system.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** We would agree that new solicitors should be graduates or have equivalent means e.g. Apprenticeships and Legal Executives being able to cross-qualify. We would agree with the four requirements outlined.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** LLB/GDL exemption There is a strong argument that Stage 1 is either already covered, or could be incorporated very easily, onto the existing routes. All solicitors on the SQE route must have a degree or equivalent. Students on both the LLB and GDL routes will have completed lengthy research projects or dissertations on a novel topic of law. Their writing skills and legal knowledge will have been tested throughout their period of study. Stage 1 therefore assesses skills which are evidenced by the grade achieved on those courses. Procedural knowledge could certainly be incorporated in an elective module on the LLB course. The GDL could be adjusted to include procedural aspects, as the areas of legal knowledge assessed at Stage 1 mirror the GDL's eight compulsory modules. In the alternative, given that the majority of undergraduates have already completed a dissertation, the GDL's dissertation module could be replaced with a procedural knowledge module. The skills of writing and legal knowledge will be evidenced on the other 8 modules of the GDL. The advantage to incorporating Stage 1 into the LLB is that it maximises accessibility, allowing the cost of this tuition to be met by student loans and removing any cost barrier to entry. The advantage to incorporating Stage 1 into the GDL is that it means that postgraduates wishing to become solicitors will only have to pay for the GDL, as at present, and not the Stage 1 exam as well. QLD exemption We would disagree with refusing to exempt all lawyers qualified in other jurisdictions from sitting an exam which tests the basic skills and knowledge at Stage 1. It seems that many qualified lawyers will be able to evidence the necessary skills and knowledge of Stage 2. Therefore a blanket approach to this does not seem proportionate. In reality, this approach is likely to affect diversity within the profession, by discouraging overseas lawyers from practising within the UK. In light of the recent vote to leave the EU, it seems ill-advised to place unnecessary obstacles before experienced lawyers wishing to enhance the reputation of the legal profession in the UK.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** We would query the long-stop date for qualification under the existing system (LLB/GDL + LPC + PRT) of 2024. This does not reflect the ways in which a law qualification can be obtained. It is common, especially amongst older students and those with family, work or other health commitments, to study the LLB on a part-time basis. This takes 6 years. A student starting a full-time LLB in the September of 2013, 2014, 2015 or 2016 will graduate by June 2019, and have the option to commence the LPC in September 2019. They could then qualify under the old route. By contrast, a student starting a part-time LLB in the September of 2013, 2014, 2015 or 2016 will graduate after June 2019. This is beyond the cut-off point for starting the LPC and they will therefore have no option to qualify under the old route, despite commencing their studies earlier, or at the same time as, the full-time student. Indeed, they may have started studying before this proposal came into existence. The option to qualify under the old route is therefore in reality only open to full-time students who have commenced their studies by September 2016. Part-time students who commenced their studies as much as three years ago will not be able to take advantage. This is likely to disproportionately affect older students, or those with other commitments. This places a barrier of entry to the profession.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We believe that a possible positive impact would be that candidates would not need to pay for Stage 2 until they had secured a period of workplace experience, thus avoiding wasting money. However, we are concerned that the bottle neck would simply move from those seeking a period of recognised training to those seeking qualified jobs, and therefore a number of candidates would incur the costs of Stage 2 without necessarily obtaining a qualified job as a result. We have significant concerns about the

costs of the SQE, and the vagueness with which this is discussed in the consultation document e.g. 'We do not expect that the cost of the SQE and preparatory training would be greater or even equivalent to this sum' – with no evidence to back up this claim. We believe that there could be possible positive costs repercussions if stage 1 could be undertaken as part of an undergraduate law degree in order to reduce additional costs of further study. We agree with a candidate having only 3 attempts at passing the SQE and with stating the number of attempts on a candidate's transcripts in order to reduce the inherent unfairness of wealthy candidates being able to re-sit indefinitely in order to improve their mark. However, we would hope that the system would take into account an individual's extenuating circumstances. Overall we do not feel that the proposed SQE does anything to increase diversity or to drive social justice.

# **Response to the SRA consultation on "A New Route to Qualification: The Solicitors Qualifying Exam" on behalf of Kaplan**

## **1. Introduction**

Kaplan fully supports the introduction of a Solicitors Qualifying Exam (SQE). In our opinion, as a global test preparation and assessment leader, the introduction of a high quality assessment which is reliable, accurate and valid and which sets consistent and appropriate standards for admission as a solicitor is both realistic and achievable. In what follows we look in detail at various aspects of the proposals and suggest some modifications. However this should not be seen to detract from our overall support for this proposal.

## **2. Test Quality Issues**

Before looking at the proposals in the consultation in detail it would be helpful to look at two preliminary issues. The first relates to test quality issues. It is generally accepted that to be defensible professional high stakes assessments must reach generally recognised standards of reliability and accuracy.

### **2.1. Reliability**

Central to the notion of test reliability is replicability of results. An exam is reliable if its results are repeatable. If the same cohort of candidates took a similar paper, and the new paper ranked the candidates in the same order, the paper would be regarded as perfectly reliable.

What makes an exam reliable? One issue is that a large enough sample of the areas, competencies and contexts being examined needs to be chosen to reduce the role of chance in the result of the assessment. For example if you ask one question about the law you will be unable to tell reliably whether a candidate understands the law. The candidate may be lucky or unlucky. If you ask more questions the reliability of the judgement about whether or not the candidate understands the law will increase. Reliability is commonly measured statistically by Cronbach's alpha. This is in fact a measure of the internal consistency of a test. Other more demanding measures of reliability are available and have also been calculated in the Qualified Lawyers Transfer Scheme, such as "more honest" reliability, the co-efficient of stability and equivalence (COSE), which looks at test retest reliability. For present purposes we will look principally at reliability measured by Cronbach's alpha.

*In a high stakes professional exam an alpha co-efficient of more than .9 is commonly seen as a desirable target for a multiple choice exam, and an alpha co-efficient of more than .8 for a skills based assessment. There is not at present a generally received view of what COSE should be in a professional high stakes assessment but as COSE is more demanding than the alpha co-efficient it will generally be lower and may be considerably lower.*

### **2.2. Accuracy**

The accuracy of an exam is about the precision with which a candidate's mark is measured. Accuracy is measured statistically by the standard error of measurement (SEm).

*Whilst the literature regarding accuracy is less extensive than that regarding reliability, in a high stakes professional exam in practice psychometricians regard an SEM of around 3% as a desirable maximum in an MCT and one of 5% as a desirable maximum in a skills assessment.*

### 3. The Qualified Lawyers Transfer Scheme

The second preliminary issue that is worth noting is that the introduction of a Solicitors Qualifying Exam along the lines suggested is not a step into the unknown. A similar large scale exam already exists, the Qualified Lawyers Transfer Scheme (QLTS), which has been run by Kaplan on behalf of the SRA since 2011. Like the SQE, QLTS consists of a Stage 1 exam in the form of a multiple choice test (MCT) testing applied legal knowledge, and a Stage 2 exam testing law and skills (the OSCE).

Further, many of the techniques suggested for the SQE have already been used in QLTS, for instance the use of professional actors to play clients and the use of standard setting methods which relate the pass mark to the difficulty of the questions. Kaplan has shown that such exams can be run on a large scale and indeed internationally in the case of the MCT. With extensive work on training actors, assessors, question writers and markers and with appropriate legal and psychometric knowledge and support, the QLTS exams have achieved the levels of accuracy and reliability which would be expected of the SQE.

Table 1 below summarises the accuracy and reliability of the QLTS MCT and OSCE from 2014 (when the format of the exam changed) to 2016, giving the SEM, the alpha coefficient and also the more demanding measure of reliability, COSE.

<b>Table 1: Test Quality Statistics for the QLTS Assessments 2014-2016</b>				
<b>Assessment</b>	<b>Statistic</b>	<b>SEm (Accuracy)</b>	<b>Alpha co- efficient (Reliability)</b>	<b>COSE (‘Honest reliability’)</b>
MCT	Maximum	3.4%	0.94	0.89 (weighted average)
	Minimum	3.3%	0.92	
	Average	3.3%	0.93	
OSCE	Maximum	4.1%	0.86	0.83 (weighted average; also figure for the largest re- sitting group)
	Minimum	3.8%	0.82	
	Average	3.9%	0.84	

### 4. The Stage 1 Assessments

#### 4.1. **Objective Testing of Legal Knowledge**

Kaplan supports the proposal to assess applied legal knowledge through multiple choice questions (MCQs). Such a mechanism is used in other jurisdictions including in the US multistate bar exam. Further, our experience in running QLTS has shown that appropriately designed multiple choice questions can examine the content of the qualifying law degree accurately and reliably. (See *Eileen Fry, Jenny Crewe & Richard Wakeford (2013): Using multiple choice questions to examine the content of the qualifying law degree accurately and reliably: the experience of the Qualified Lawyers Transfer Scheme, The Law Teacher, 47:2, 234-242*). Kaplan also supports the intention

to extend the subjects examined beyond those covered by the QLTS MCT to include what are essentially the legal practice course subjects. And the suggested time allocated to each multiple choice question in the consultation is also appropriate, being similar to that in the US Multistate Bar exam and in the QLTS MCT.

However, while we fully support the general proposal, based on our experience in running QLTS, and also on our knowledge of practice in other exams such as medical exams in the UK and the US multistate bar exam, we would suggest a smaller number of exams each containing a larger number of questions.

Our reasons are as follows:

#### **4.1.1. Inefficiency**

It is not necessary to have the number of exams and questions proposed in the consultation to test the areas envisaged both accurately and reliably. QLTS tests the whole of undergraduate law degree/GDL plus some pervasive subjects from the LPC in 180 MCT questions and it does so reliably and accurately (see table 1 above). If it was not sampling adequately from the syllabus across all areas it would not be a reliable exam. Luck would play too big a role in the questions that came up. But as shown above it is an extremely reliable exam with an alpha coefficient consistently higher than .9.

Similarly the US Multistate Bar Exam uses 175 questions (+ 25 pilot questions) to test civil procedure, constitutional law, contract, criminal law and procedure, evidence, property and tort, and is also accurate and reliable.

#### **4.1.2. The exam should test fundamental legal principles**

The proposed 6 exams require 680 questions. Multiple choice exams aim to have three or four times the number of questions required for any one examination in the question bank. This means 2,000 - 2,720 items. In any event there must at least be a reserve paper available which means 1360 questions. A principle of central importance is that an exam for qualification as a solicitor should test the application of fundamental legal principles, not more abstract or esoteric areas. Drawing on our experience in drafting MCT questions for QLTS, we conclude that to reach the required number of questions it would indeed be necessary to add questions which test more esoteric areas or are unlikely to be of concern to a Day One Solicitor.

#### **4.1.3. Cost**

There is also the question of cost. In order to encourage diversity the exam should be as inexpensive as possible whilst maintaining standards. UK national medical testing boards estimate the full cost of development of a single MCT question (writing, refining, checking, pilot-testing, revising) as in the order of £600.

#### **4.1.4. The defensibility of pass/fail judgements**

By proposing 6 MCT exams the consultation appears to be offering a very rigorous and reliable test for admission as a solicitor of England and Wales. For candidates who proceed successfully through *all the assessments*, the calculated reliability of the assessment programme *as a whole* will undoubtedly be high. So the confidence that may be placed on the competence of a successful candidate will consequently also be high.

However candidates fail by failing a single MCT exam. Papers with 80 questions are unlikely to meet contemporary test quality requirements. A paper with 120 items may come closer to such requirements but is by no means certain to meet them.

How do we know this? We can predict the reliability of MCT papers of different lengths using the Spearman Brown prophecy formula, extrapolating from the QLTS MCT. Using

data from the last two MCTs and assuming questions of equal quality to those developed over 6 years for that test, the alpha co-efficient of an 80 question paper is predicted to be something in the order of .84 and of an 120 question paper in the order of .89.

We have also looked at whether the position would be any different if we were considering an exam on only a sub-section of the present QLTS MCT. In particular we looked at a sub-section combining A5 (contract) and A6 (tort) to approximate to the paper covering dispute resolution in contract and tort (although clearly the subject area covered is considerably more restricted); and A1 (English legal system and European law), A2 (Constitutional law) and A3 (professional conduct) to approximate to the paper covering principles of professional conduct, public and administrative law and the legal system of England and Wales. An MCT of 80 items covering A5 and A6 is predicted to have an alpha coefficient of around 0.83 and a similar 120 item MCT to have an alpha coefficient of approximately 0.88. An MCT of 80 items covering A1, A2 and A3 is predicted to have an alpha coefficient of 0.85 and a similar 120 item MCT to have an alpha coefficient of 0.90. And again this is assuming questions with equal quality to those in the current QLTS MCT and it must be anticipated that the quality of questions developed by any new provider would initially be lower than this.

How many questions should an SQE MCT exam have? We know from QLTS that MCQ exams of 180 questions can more than meet contemporary test quality requirements. And it seems reasonable to predict that an exam of 200 questions would meet contemporary test requirements even if initially the questions were of lower quality than those in the current QLTS.

One idea behind the structure of the SQE is that candidates should have to pass each assessment individually and that compensation between subject areas should not be allowed. This is seen as strengthening the rigour of the exam. Candidates will not for example be able to make up for not being good at business by being good at litigation. This sounds at first sight a good idea.

But the difficulty is that if you really want to ensure candidates cannot compensate, at the same time as having a sufficiently reliable and accurate exam to justify fail judgements, you might have to have (for example) an 18 station OSCE purely on litigation, or a 200 item MCT purely on litigation. This would clearly make the exam non-viable and extremely expensive.

The compromise that most exams adopt is to ensure that fail judgements are sufficiently reliable and accurate by combining subjects and tasks and sampling adequately across the whole range of them.

It is possible also to set minimum subject section passmarks but we would hesitate to recommend this because of the low reliability of sub-section marks. If they are to be adopted they would have to be set at a low level because of this lack of reliability.

#### Recommendation 1

*As regards the objective knowledge tests we would suggest a smaller number of exams containing a larger number of questions each, with a considerable reduction in the number of exams and overall in the number of questions. Our proposal is for an absolute maximum of 2 exams with 200 questions each. We believe however that piloting may well show that this is more than necessary.*

#### **4.2. The Stage 1 skills assessment**

We understand the desire of firms that candidates' skills should have been assessed before these candidates join the firms. However the Stage 1 Skills Assessment is not defensible as proposed. And this is for similar reasons relating to reliability and accuracy as those discussed in relation to the MCQ exams. In fact the situation is much more

acute in regard to the Stage 1 skills assessment than that regarding the MCT exams discussed above.

The Stage 1 skills assessment will have a maximum of three assessment points. It could be argued to have less than this since the three exercises are interrelated and may be marked by the same person. That aside, again extrapolating from the QLTS skills assessments (the OSCE) and using the Spearman Brown prophecy formula, such an assessment would have improbably low reliability. With three independent assessment points an alpha coefficient of something in the order of 0.5 could be expected. Candidates who pass the MCT but fail this skills assessment may well feel there is something unfair going on and if they seek expert advice this view may be confirmed.

It might be that the kind of skills assessment envisaged is better performed as part of the selection and interview process for firms as different firms will have very different standards and expectations in this regard and these may be beyond the minimum competence level which an SQE must assess. In addition for those who are doing their legal practice outside of the traditional firm environment, it may be that these are skills that can be learned later during their work experience. Requiring them at this stage may be a hindrance to diversity.

### Recommendation 2

*We recommend that the Stage 1 skills assessment is abandoned.*

*However, if this is not acceptable we suggest the following two options:*

- a) Expand the Stage 1 skills assessment to make it sufficiently reliable to justify pass/fail judgements.*
- b) Expand the Stage 1 skills assessment and grade the assessment so that employers can refer to it but do not make it a pass/fail assessment. Even on this basis however the assessment would have to be expanded considerably as even though it would not be pass/fail it would still have to be sufficiently reliable to justify it playing a part in important decisions which affect candidates' futures.*

## **5. The Stage 2 assessments**

Kaplan supports the idea of assessing skills. We also support the idea of the proposed new 'case and matter analysis' station. However overall we do not believe that the current design of the assessment works well.

### **5.1. Reliability and accuracy**

There are a number of reasons for this view and one of the key ones is again that the assessments will not be sufficiently reliable or accurate to justify fail judgements. The assessments envisaged are essentially single assessment points. In addition, the draft assessment specification states in relation to Stage 2 that "If candidates are not able to correctly identify and apply legal principles and ethical considerations, they will fail the assessment". So candidates can fail not only as a result of failing a single station but also by making an error of law or ethics within a single station even if their skills are excellent. Since Cronbach's alpha measures internal reliability it is not even possible to measure the alpha co-efficient of a single assessment point let alone of a single point of law or ethical consideration. And this means that it is also not possible to measure its accuracy.

Five key assessment points in each of the subject areas in Stage 2 are proposed. Even if they were combined into a single assessment with a single passmark, extrapolating from the QLTS OSCE and assuming scenarios and questions of equal quality to those developed over 6 years for that test, a five-station OSCE could be expected to have

quality statistics of alpha around 0.6 and SEM of 7-8%. Such poor quality would be unacceptable and could again readily invite challenge.

Looking at the structure of the five suggested assessments, some of them could potentially be expanded to achieve seven independent assessment points. But this would still be far too few to achieve acceptable quality. At present the proposal is that candidates are assessed in two subject areas. If all the stations across these two subject areas were combined into a single assessment there are potentially 14 assessment points which could be combined into a single exam with a single passmark.

Extrapolating from the QLTS OSCE, and assuming scenarios and questions of equal quality to those developed over 6 years for that test, 14 assessment points would result in an alpha co-efficient of a little under 0.8. If skills alone were assessed the alpha co-efficient of 14 assessment points would be similar but slightly higher. This is close to meeting contemporary test quality requirements. But with a new provider in the early days of the SQE, question and marker/assessor quality would very probably be lower than that of the current QLTS. 18 assessment points such as in the current QLTS OSCE would make a more robust and defensible exam.

If the number of assessment points is to be expanded will this make the exam very long and unwieldy? The answer is that the time allocated to each of the assessment points needs to be considerably reduced. The QLTS assessment of legal skills and law works well on very much shorter assessment points and there is no evidence that these assessments are too short.

One concern that has been raised is that the different assessments in Stage 2 are too disparate to form a single exam. We have shown in QLTS that this is not true. The evidence is the high internal reliability of the OSCE which has similar stations to those envisaged in Stage 2 of the SQE and is reported in Table 1 above.

### Recommendation 3

*Therefore we recommend a Stage 2 exam with more than 14 independent assessment points. 18 would be better. We have not outlined how these assessment points might be achieved since how this could be done depends on the response to other suggestions below.*

## **5.2. Skills or Law and Skills**

The Stage 2 assessments are said to be of skills rather than law with primary sources being provided. We agree that skills should be assessed but we think they should be assessed alongside law. The QLTS OSCE weights skills and law equally in candidates' overall marks.

Some of our disagreement with the proposal may be a semantic one. To clarify when we refer to the distinction between skills and law, by skills we mean something without legal content. It may be that this is not what is meant in the consultation. In what follows we take skills to mean something without legal content. Whether or not the difference is partly a semantic one, the consultation places greater weight on skills than we would consider appropriate since we consider skills and law should be weighted equally in the Stage 2 assessments.

We would argue that knowledge of the law and how to apply it is certainly as important (and arguably more important) than skills for a Day One solicitor. If it transpires that the assessment of skills disproportionately disadvantages candidates with characteristics protected under the Equality Act, placing too much weight on skills would then be difficult to justify in the light of the Equality Act and particularly its Public Sector Equality Duty.

There are also practical considerations against providing primary sources. Contemporary practice in such large scale assessments is to aim to make them paperless throughout, and providing large quantities of primary sources would make the assessment much harder to run.

The rationale for making this an assessment of skills, rather than skills and law, may be something to do with creating a level playing field for candidates who come from a wide range of practice areas. But in reality providing primary sources will not achieve this. Those who practice in the relevant area will be familiar with the primary sources and will have used them in practice. Those who practice in a different area will not have used them in practice and thus will be at a considerable disadvantage.

The Equality Act and its Public Sector Equality Duty also have implications for the way skills are assessed and particularly the skills criteria used. Assessing skills is something that needs a lot of thought in a multicultural society. The problem is magnified where there are single assessment points with single or very few assessors as allegations of bias may readily be made.

In addition, a lot of consideration is needed about assessing skills in the absence of a compulsory preparation course. We have considerable experience of these issues as a result of work done on QLTS but detailed further consideration is necessary.

#### Recommendation 4

*We recommend that the Stage 2 assessments should give equal weight to skills and law and serious consideration should be given to the way the skills are assessed.*

### **5.3. The number of practice areas**

The proposal is to assess candidates in two practice areas. The correlation between QLTS candidates' overall marks on the (three) different practice areas is typically around 0.6, suggesting only 36% ( $6^2/100$ ) of 'shared variance' between performance in different practice areas. Between skills in different practice areas the correlation is similar.

Competence in one or two practice areas cannot be taken to imply competence across all the reserved areas. The conclusion is that as long as the solicitors' qualification is a generic one, the qualifying exam needs to sample across the reserved areas since it entitles successful candidates to practice across these reserved areas. We do not consider the objection to this argument that if candidates practice in an area in which they are not competent they will be in breach of their professional duties to be sufficient. Taken to its logical extreme this argument would remove the need for a qualifying exam altogether.

#### Recommendation 5

*As long as the solicitor qualification is a generic qualification we recommend that the Stage 2 exam samples from across the reserved areas.*

## **6. QLTS candidates**

We welcome many of the proposals in this area particularly that to allow work experience in another jurisdiction.

We would however suggest some amendments to the consultation proposals as regards QLTS candidates i.e. those transferring from qualification in another jurisdiction. Most importantly we would suggest that qualification in a recognised jurisdiction should be an additional entry point for taking the SQE. A recognised jurisdiction is one where to qualify as a lawyer specific education and training at least equivalent to that of an

English and Welsh Bachelor's degree has been completed so this would fit in with the current requirements but would simplify the system for these candidates.

We would also suggest that as regards those qualified in another jurisdiction it would be difficult to justify a system of transfer which is significantly more onerous than the current QLTS since nothing has been shown to be wrong with QLTS. Indeed because of this a system which is significantly more onerous than QLTS might be subject to challenge on equality grounds. We suggest that this borne in mind in designing the SQE and that if a significantly more onerous system is arrived at, it may well be appropriate to keep QLTS separate.

#### Recommendation 6

*We recommend that qualification in another jurisdiction should be an additional entry point for taking the SQE. In addition if the SQE is significantly more onerous than QLTS we suggest that the existing QLTS system is maintained for those qualified in another jurisdiction.*

### **7. Exemptions**

We agree with the SQE proposals on exemptions. Exemptions from part of an exam undermine the reliability and accuracy of pass/fail judgements. A candidate's score on for instance a handful of MCQ items clearly has limited credibility and validity and in general using limited portions of the assessment will not normally be as reliable or accurate or as defensible as the complete test. Exemptions are also disproportionately expensive and time consuming to operate. If any exemptions are to be offered they need to be from a whole exam not from part of it.

### **8. Conclusion**

Kaplan fully supports the introduction of an SQE and endorses many of the proposals in the consultation although we have also made suggestions for change. With robust design, appropriate and detailed development of questions, detailed training of actors, assessors and markers, together with appropriate legal and psychometric expertise, the introduction of a high quality centralized assessment for admission of solicitors in England and Wales is both achievable and realistic. Indeed we have shown in QLTS that it is possible to create similar exams to Stage 1 and Stage 2 of the SQE catering for large numbers and of a very high standard.

22.12.2016

# Consultation questionnaire

Response ID:458 Data

## 2. Your identity

### Surname

Jukes

### Forename(s)

Katie

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: BPP University College

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** The draft specification for SQE1 does not reflect or include the existing required level of competence for a student to pass the academic and vocational stage of training up to LPC. For example, assessment by way of MCQ/best short answers does not assess a student's ability to analyse and evaluate a legal problem in a meaningful way. Realistically, this method of assessment is best suited to measuring knowledge and understanding. This is not a robust and effective measure of competence for a solicitor entering work-based training. The draft specification is not sufficiently clear or detailed to enable institutions to prepare a curriculum that aligns to the assessments. This creates an unacceptable and unreasonable level of uncertainty in the profession. The main rationale for change, which is to achieve consistency, is undermined by the lack of recognition of existing methods of ensuring consistency - through robust academic and vocational regulation. All GDL, CPE and LPC providers are regulated, including by the SRA competency framework.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** The requirement for work-based training does not include a robust system for ensuring students are provided with an appropriate, properly supervised and assessed period of recognised training. A much more robust system needs to be introduced to achieve what the SRA seeks to achieve with these changes.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** The existing model of a two year training contract is fit for purpose, particularly in conjunction with the existing alternative recognition of equivalent means for those students who achieve competence through workplace learning through an alternative route. This increases access to the profession to those students who have not completed a training contract.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** I do not agree with the proposal to 'de-couple' regulation of the assessment with regulation of the training providers. Surely this will result in a huge variation in quality and type of training provider, and as a result, an unfair lack of clarity and transparency for students. At the moment, it is relatively straightforward for prospective students to obtain facts and figures about the training providers. What is the evidential basis for the assertion at paragraph 24 of the Consultation that 'competitive pressures could raise standards and reduce cost.' Surely it is equally possible, if not more likely, that it could reduce standards and increase cost.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** Please see my comments above. There is no publicly available evidence to support the nature or extent of the SRA proposals, on the contrary, the evidence from the consultation seems to be that these proposals would be detrimental to students and in particular may create new barriers to accessing the profession. The SRA appears to rely on public opinion - '4 out of 5 adults' etc. This information was not accessible when I tried to access the link to check its veracity. I would like more information on this survey, if it is being given the apparent weight it appears to be given by the SRA. I question whether the SRA is giving the wrong weight to the factors it is taking into account in these proposals.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** The SRA has not provided any rationale for refusing to provide exemptions to students have accredited prior learning and qualifications in the relevant areas. This is inconsistent with other professions and unreasonable.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** The transitional arrangements do not take account of students who may require longer than five years from the starting point of their studies to qualification. This discriminates against part-time students and students with good reasons to interrupt their studies, often due to health factors.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Please see comments above. I have discussed with law firms the likelihood that they will be reluctant to employ students who have passed SQE1 because they will not have the skills 'to hit the ground running,' in the way that a current LPC graduate does. This will adversely affect (and possibly exclude) very many students who start their career with paralegal or legal executive jobs and do not have the funds to supplement their training. I also foresee a two-tier system arising in training provider (as a result of the lack of regulation over providers), which will effectively risk creating a first and second class rank of legal professionals, with different opportunities and different salary prospects.

# Consultation questionnaire

Response ID:74 Data

## 2. Your identity

### Surname

Fantoni

### Forename(s)

Kayleigh Ann

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**  
**on my own behalf as a solicitor in private practice**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** The proposed SQE appears to cover all the aspects of the LPC. However, it is unclear as to how much of the GDL material it will cover.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** Experience gained through a student law clinic is concerning as they are often insufficiently supervised and the student often has little time to properly prepare for client interviews and responses, meaning that they do not have the chance to fully understand the law surrounding the issue they are advising on.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** The proposals are scant at best! The proposed lack of structure to preparing for SQE1 will create a huge gap between law and non-law graduates.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:**

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** The proposal to restructure access to the profession is sufficient. There should be no exemptions.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** The option to choose the route should only apply to those who have started CPE, LPC or Training Contract. Undergraduate law students should only have a choice if they have already completed their second year of their law degree. I.e. training contracts cannot be offered to first year law students anyway and so they will not be affected. However, some 2nd year students may have already been offered training contracts.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

**Response from Kent Law Society to the SRA's Consultation: A new route to qualification: The Solicitors Qualifying Examination (SQE)**

**Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

In principle, the SQE – both parts 1 and part 2: – does appear to be a robust and effective measure of competence and it certainly appears to be comprehensive (subject to some observations we make below).

The SRA states fairly that it cannot know from the current system whether all candidates are assessed at the same consistent standard because of the large number of universities and other colleges testing them out; on the other hand, most candidates have to pass the professional skills course before they qualify and so this does provide a degree of standardised central assessment – although we accept that this will not be the case in relation to candidates qualifying via the QLTS, apprenticeships or equivalent means.

Our main concern is over the period of “preparation”. The SRA states that there will need to be a period of preparation before candidates can take SQE stage 1. The difficulty is that the SRA appears not to have addressed at all – let alone comprehensively – the question of how much preparation will be required, how long that preparation will take, when that preparation will be carried out and what that preparation will cost.

For example, the chart at the top of page 25 of the consultation document gives the example of a law student taking a law degree. The SRA states that it would take that candidate five years to qualify – which clearly means three years for the law degree and two years work experience: a total of five years. This obviously envisages that the preparation period will be very short. Presumably the SRA takes this view because a candidate with a law degree would not need very much preparation. The difficulty is that the draft assessment specification which the SRA has supplied envisages that candidates would be examined on a large number of topics which a law degree certainly does not cover. These topics include:

- Ethics, the Code of Conduct and the SRA handbook
- Money laundering
- Regulation of Financial Services
- Confidentiality, data protection and file destruction
- Reserved and non-reserved legal activities
- Solicitors accounts
- Civil procedure (including issuing proceedings, disclosure, case management, pleadings and applications)
- Costs budgeting in civil litigation
- Serving proceedings out of the jurisdiction
- Enforcement of judgments
- Pre-action protocols
- Practice directions
- Conveyancing procedure including pre-contract searches and exchange
- Company filing requirements
- Disclosure in criminal proceedings

These are only examples. They are all areas which are not covered on the legal practice course but after the candidate starts work. How are candidates to be examined on all these subjects when they will not have covered them as part of their academic training (in the case of a law student, rather than a candidate who has already had significant work experience)?

It is clear that there is considerable confusion about this, as we have seen reports that universities have asked for law students to be exempted from SQE stage 1. On the basis of the SRA's draft assessment specification for the exam, however, it is clear that everyone, including law students, would not only need to take SQE stage 1 but would need a considerable amount of preparation for it. The SRA has failed to provide for this, nor taken account of the very considerable expense of the necessary training. The SRA's clear intention with the SQE is to avoid the need for the legal practice course which costs up to £15,000 in terms of fees alone. On the basis of SRA's proposals, however, it is far from clear that there would be any saving at all and certainly nothing like the saving which the SRA suggests.

In relation to the format of SQE stage 1, it is not clear exactly what this would be. The draft assessment specification suggests that there would be single best answer questions, extended matching questions, a research task and writing tasks. The consultation document however, suggests that SQE stage 1 could be limited to multiple choice. While multiple choice can be a satisfactory test if it is sufficiently rigorous, we consider that multiple choice only would not be sufficient and that candidates should be tested out on their writing skills in particular, bearing in mind that this is a key requirement of being a practising solicitor.

The SRA proposes that SQE stage 1 would test out skills in dispute resolution either in contract or tort. In our view, these are such important subjects that both contract and tort should be tested out in the context of dispute resolution.

The SRA states that it is concerned that, in relation to pure essay based examinations, some candidates could be lucky in preparing for only a small number of topics and finding that those came up in the exams. This is possible, but very unlikely – gambling on topics in exams is usually disastrous. The SRA should explain how there would be a balance between essay type examinations and eg multiple choice examinations. The SRA recognises that computer based testing does not test out communication skills and the SRA needs to clarify how communication skills will be tested out in SQE stage 1 – or would they be tested out only in SQE stage 2?

In relation to SQE stage 2, we accept that the role play exercise suggested seems rigorous. We are not, however, content with the proposal that the candidate would only have to choose two practice contexts out of five. We believe that it should be three as at present, with at least one contentious and one non-contentious. We also believe that there is much to be said for adding family law and employment law as a context for the assessments under SQE stage 2. The SRA argues that this isn't necessary as it is not a test of law at this stage – it is test of skill only. Nonetheless, these are such important areas of law that we believe that they should be included.

We agree with the SRA's proposal that assessment providers would have to have a very high degree of fraud deterrence, as fraud is widespread in other forms of examination.

The proposal to have a single assessment organisation to deliver the SQE seems sensible.

The overall time limit of six years between passing stage 1 and stage 2 is acceptable.

The proposal to publish anonymised results seems fair. We agree that record keeping is essential.

The SRA proposes that Ofsted style inspections will not be necessary. We do not agree. There is a risk here that candidates finish up by having training from establishments which do not provide adequate courses or qualification of sufficient quality. The risk therefore is that candidates could find themselves inadequately prepared for the SQE. Consequently, the SRA should carry out monitoring of training establishments, for the protection of candidates – particularly vulnerable ones who may not have access to the most expensive courses.

Level of agreement: 4

**Question 2 (a): To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

We agree entirely that workplace experience is necessary and we welcome the SRA's change of heart from their previous consultation in March 2016. In our view, the starting point should be that 24 months work experience is necessary.

The SRA envisages that legal experience could be obtained either from a firm of regulated solicitors or at a non-regulated entity but under the supervision of a solicitor. This would include working in a student law clinic or as an apprentice or a paralegal as part of a sandwich degree. The problem with this is that it is likely to lead to a wide divergence in terms of work experience. The SRA's response to this is that, if the workplace training was inadequate, that will be exposed through SQE stage 2. That may well be the case, but it would mean that many candidates would fall victim to inadequate training, particularly those without access to the best preparation for the SQE stage 2.

We agree with the SRA that there is a risk that a large number of work placements during the 24 month period is undesirable and likely to lead to candidates not being properly prepared for the SQE stage 2. This could disadvantage in particular candidates without access to the best training. In our view, the number of periods of workplace experience during the 24 month period should be no more than four and ideally no more than two or three. Clearly, it would be unacceptable for candidates to simply obtain monthly periods of work experience and present that as being adequate workplace experience.

There is, in connection with the issue of the number of workplace assessments, no clarity as to who would sign candidates off. At present, this is done at the end of the training contract. If a candidate had three or four periods of work experience with different employers, who would sign the candidate off? Would it just be the last provider of work experience or the other providers of work experience as well? Furthermore, how would the last provider of work experience be able to sign a candidate off without knowing about the previous periods of work experience?

The SRA's response to this seems to be that signing candidates off is not particularly important and it points out (perhaps fairly) that at present, candidates are generally signed off as a matter of routine after their training contract before qualifying as a solicitor. The SRA's point seems to be that signing off doesn't matter because the real test will be the SRA's stage 2 exam and, if a candidate hasn't had satisfactory

work experience, they won't be able to pass that. That point is accepted but we still believe that the SRA needs to address the issue as to who would be responsible for finally signing the candidate off at the end of their workplace experience and what the significance of that would be (if any).

Level of agreement: 2

**Question 2 (b): What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Twenty-four months – see answer to 2 (a) above. We should add that we accept that a degree of flexibility would be desirable in the amount of workplace experience and that a candidate with a significant amount of previous workplace experience could be allowed to qualify early. If so, we suggest that the minimum period of workplace experience after the SQE stage 1 should be 18 months.

Level of agreement: 2

**Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

We have already set out above our concerns in relation to the period of preparation: in particular, that the SRA appears to have not thought through the amount of preparatory training which would be required. Even for a student with a law degree, the amount of preparatory training would have to be very considerable.

On the question of regulation, the SRA stated that it is not proposing to monitor courses at all. We do not agree with this and believe the SRA needs to provide regulation of training, not least to prevent vulnerable candidates from having entirely inadequate training because they do not have access to the best and most expensive courses. We think therefore that it is not sufficient for the SRA to simply publish results – indeed, the SRA admits in the consultation document that it doesn't know why candidates' performance on the LPC varies so much from one institution to the other. Clearly, the SRA needs to be find out why this is the case and it certainly needs to regulate and monitor course providers.

Clearly, good providers of training will charge more and presumably it will be the same training providers as those at present. The SRA proposes to publish the pass and fail mark, together with a percentage mark for individual modules. We suggest that the SRA should also include the name of the training provider, to enable differing standards to be observed and monitored.

Level of agreement: 4

**Question 4: To what extent do agree or disagree that our proposed models are a suitable test of the requirements needed to become a solicitor?**

As we have stated above, we agree in principle with the SRA's proposals and agree that the draft assessment specification (subject to the points we have made above in relation to additional contexts for assessment under SQE stage 2) are satisfactory. We repeat, however, our point that the SRA appears not to have thought through the issue of the preparatory training necessary for candidates to take SQE stage 1. As we have stated above, it appears to us that a very considerable amount of training would be required and that the SRA's worked examples of different types of candidates (i.e. those with law degrees, paralegals, those without law degrees etc)

are fundamentally flawed because they assume a very short and inexpensive period of preparatory training. It is quite clear that preparatory training will need to be protracted and expensive. The problem with this of course is that it undermines the entire purpose of the SQE in the first place. One of the SRA's key objectives is to do away with the need for the legal practice course and the very considerable expense which that entails and how that puts candidates off from trying to enter the profession. It appears to us that in practice the SRA's proposals will not result in the saving of time and money which the SRA envisages.

It is agreed that the present tests for the character and suitability of solicitors should not be changed.

Level of agreement: 4

**Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

As we have indicated above, we are aware that universities for example have asked for those with law degrees to be exempt from SQE stage 1. As we have indicated above, we cannot see how this can be possible, given the extent of knowledge required by SQE stage 1 and in particular the very extensive requirements for knowledge of subjects which are not covered by law degrees. We cannot, therefore, see that anyone can be exempted from SQE stage 1.

As a key objective of the SRA is to ensure one single gateway into the profession for all, we also cannot see how there can be any exemptions from SQE stage 2.

In relation to foreign law students, we accept that Britain's forthcoming departure from the EU obviously creates great uncertainty about EU candidates and we accept that no decisions can be made at this stage until the position becomes clearer.

Level of agreement: 3

**Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

We agree with the SRA's transitional arrangements. We did have some concerns about the transitional arrangements proposed in relation to the previous consultation over the SQE in March 2016, but these appear to have been addressed and additional time allowed.

Level of agreement: 2

**Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

We are concerned at the cost of courses. The key objective of the SRA, as we have pointed out above, is to reduce the costs of training which are perceived as a barrier to entry to the profession. The difficulty is that, given the apparent rigour of the SQE stage 1 exam, a considerable amount of preparatory training will be necessary and we are concerned that the cost of this could be just as high as the current LPC. It is this area about which we are most concerned and which the SRA needs to address, as it has entirely failed to do so in the consultation paper. Would the SRA limit the fees which colleges could charge?

Level of agreement: 4

6 January 2017

# Consultation questionnaire

Response ID:17 Data

## 2. Your identity

**Surname**

Gamez

**Forename(s)**

Kimberly

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Attribute my/our response and publish my/our name.

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as a member of the public**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Six months

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:**

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Neutral

**Comments:**

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

No

**Comments:**

# Consultation questionnaire

Response ID:62 Data

## 2. Your identity

**Surname**

Gamez

**Forename(s)**

Kimberly

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a member of the public**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

No minimum

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:**

SRA Consultation - 'A new route to qualification: the Solicitors Qualifying Examination'

Date: 9 January 2017

Dear Sir/Madam

Re: SRA Consultation - 'A new route to qualification: the Solicitors Qualifying Examination'

I am writing in connection with the above SRA Consultation.

I begin by declaring an interest. I am an Assistant Professor in the School of Law of the Cyprus Campus of the University of Central Lancashire, a role I have held since 2015. I currently teach on a variety of undergraduate LLB Degree modules, including Public Law and three modules devoted to Lawyers' Skills. From 2004 until 2015, I was a Senior Lecturer in the School of Law of the University of Hertfordshire where I taught on various undergraduate modules plus the Legal Practice Course. From 2003 until 2007, I practised as a solicitor in private practice in London. For the past ten years or so, I have served on the Executive Committee of the West London Law Society; from 2010 until 2011, I served as its elected President.

All that being said, the comments which follow are purely personal and they should not be interpreted as the views of any organisation which I have or have had a relationship. I have composed these comments with the aim of giving the SRA an insight from somebody who has more than 10 years of experience of teaching law 'at the coalface' of the LLB and LPC.

1. In my submission, the SRA's proposed overhaul of legal education is fundamentally misconceived, contrary to the traditional ethos of legal education and, as is the case with all radical root-and-branch reforms, potentially dangerous as well. Accordingly, the existing LLB, GDL and LPC programmes, or more rigorous versions thereof, must remain as the essential bedrocks of legal education. In other words, subject to the availability of

alternative routes for legal executives and certain other categories of persons to become solicitors, the LLB or GDL and LPC must stay as the normal stepping stones into the solicitors' branch of the legal profession. The logic of this is self-evident. On the one hand, the LLB (in common with the GDL) provides students with the essential foundations of the English legal system, critical thinking skills and appropriate knowledge and understanding of at least seven core compulsory legal modules (namely Contract Law, Criminal Law, Equity and Trusts, European Union Law, Land Law, Public Law and Tort) plus various elective modules. On the other hand, the LPC introduces graduate students to the nitty-gritty realities of legal practice including the structures, systems, documents and skills of legal practice. What the SRA is proposing seems to be founded on a radically different philosophical premise. Indeed, it is difficult to understand the philosophical foundations of the proposed reforms.

2. If one looks at the detail of what the SRA is proposing, one is perplexed and rather worried by what one finds. For example, the SRA appears to be proposing to do away with the concept of the qualifying law degree and, thus, the seven core compulsory topics as they currently exist. As everybody in legal practice would no doubt agree, these seven topics provide the essential foundations of legal practice irrespective of a solicitor's specialisation. However, the proposed 'Solicitors Qualifying Examination' rests on an altogether different philosophical premise. Furthermore, it appears to marginalise some of the seven compulsory core topics.

3. From what I can ascertain from 'A new route to qualification: The Solicitors Qualifying Examination (SQE)' published by the SRA in October 2016, it is proposed that the seven existing compulsory core topics should be replaced by '[t]he first stage of the SQE' which 'would assess candidates' functioning legal knowledge through six modular assessments'. These assessments would assess six topics named by the SRA as follows:

- \* Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales
- \* Dispute Resolution in Contract or Tort
- \* Property Law and Practice
- \* Commercial and Corporate Law and Practice

\* Wills and the Administration of Estates and Trusts

\* Criminal Law and Practice.'

4. To begin with, the above list seems to muddle up some LLB topics with some LPC topics. At present, for example, Property Law and Practice is an LPC module which logically rests on the foundations formed by the separate and earlier LLB or GDL Land Law module. However, the SRA's approach does not seem to follow this logical sequence. In addition, EU law is missing from the above list. Notwithstanding the prospect of 'Brexit', EU law must surely remain a compulsory stand-alone topic if aspiring solicitors of the future are to understand English law as it existed from accession to the then EEC on 1 January 1973 until 'Brexit Day' whenever the latter takes place. Knowledge of EU law is also necessary for other reasons, for example, in the event of a client's case having an EU dimension.

5. As for the reference to 'Dispute Resolution in Contract or Tort', why is the word 'or' there? Besides, will aspiring solicitors require a grounding in the substantive principles of contract law and tort, as distinct from dispute resolution in relation to just one of these?

6. The SRA goes on to propose that the above six 'first stage' topics should be supplemented by five 'second stage' topics which appear to resemble some of the modules on the LPC. The five are named as:

\* Client Interviewing

\* Advocacy/Persuasive Oral Communication

\* Case and Matter Analysis

\* Legal Research and Written Advice

\* Legal Drafting.

7. Unless I am mistaken, therefore, the above list of names do not expressly include Civil Litigation, Criminal Litigation, Revenue Law, Business Accounts and Solicitors' Accounts all of which have traditionally been compulsory LPC modules and with good reason.

8. It is implicit in the SRA proposals that the SRA will no longer oblige students to undertake any elective LPC modules which enable LPC students to go

into detail on their chosen topics. When I was an LPC student, one of my own LPC electives was Advanced Civil Litigation. This elective module built upon the compulsory Civil Litigation LPC module. As such, it gave me extra knowledge, extra confidence and extra skills to engage in civil litigation as a trainee and thereafter as a practising solicitor. Students of the future may be deprived of such opportunities if elective LPC modules are not available to the extent that they are at present.

9. When I was a trainee and happened to encounter a legal problem, I would always ask myself which one or more LLB and LPC modules were engaged by the problem at hand. I would then try to research the issue, in part, with the help on my LLB or LPC notes. In other words, the LLB and LPC modules provide a sensible intellectual and practical framework for any trainee to approach any legal problem. That intellectual and practical framework may be lost as a result of the radical overhaul proposed by the SRA.

10. The English legal education system is tried and tested. However, I acknowledge it is open to improvement. For example, much more needs to be done to assist students from less advantaged backgrounds to enter the legal profession and to gain the skills necessary to achieve that goal. If the SRA wishes to improve the legal education system and promote diversity, perhaps it can take note of the following matters, among others:

10.1 The SRA should call for substantial improvements in the primary and secondary school systems in England. In my experience, some students arrive at university from schools in England without an adequate grasp of, for instance, the English language, British history and European history. Others lack basic skills, such as writing letters and speaking in public. Quite often, it is the students from disadvantaged backgrounds who struggle at university because of the shortcomings of the education which they received at school. This can hinder their studies at university and have an adverse effect on their prospects of entering the legal profession.

10.2 The SRA should do more to encourage universities to do even more to help students from disadvantaged backgrounds once they have arrived at university. In my experience, the emphasis on encouraging students from disadvantaged backgrounds to go to university has eclipsed the need to help them once they

have arrived at university. For example, the SRA could encourage universities to do even more to help students enhance their writing skills, their networking skills, their social skills and their overall professionalism. Universities have already taken considerable steps in this direction, but more could be done.

10.3 The SRA should encourage universities to deepen their existing ties with local courts, as well as local law societies, barristers' chambers and firms of solicitors. In that way, the legal education of students can be further enriched by the insights and experiences of those involved the administration of justice and the provision of legal advice.

I hope that the above personal thoughts give you an insight into what I consider to be the defects, deficiencies and dangers which are inherent in the SRA's proposals. I also hope they offer the SRA some food for thought as the future unfolds.

Yours faithfully

Klearchos A. Kyriakides  
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# Consultation questionnaire

Response ID:364 Data

## 2. Your identity

### Surname

Richards

### Forename(s)

Laura

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part time work experience or just full time. Many students will not be able to afford to gain work experience

unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career.

Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

#### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify: Please see comments below

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

#### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:**

6.

#### **To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

# Consultation questionnaire

Response ID:146 Data

## 2. Your identity

### Surname

Van Buren

### Forename(s)

Lauren

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Trainee Legal Executive

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** A degree is a strong test of competency Time in the workplace is a strong test of competency Additional exams require additional learning time - I am not sure that these proposals do very much at all of accessibility within the profession

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** Previous experience, excellent appraisals etc could all go towards a minimal 'discount' on time required before qualification

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** The additional exams, on subjects already previously examined is both an inefficient use of a trainee & trainers time and creates an incredibly stressful situation for those who already battle through numerous exams with their degree. To not pay any credit to these achievements is disappointing and again reaches out to those more privileged

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** I agree that some practical experience is necessary as law in practice differs so greatly from black letter law learned in a lecture theatre. That said, clients do not present to us with multiple choice questions, they require thinking outside of the box, they require comments from academics or judges or lecturers or newstories, they require influence from society. To some extent this is targeted with part 2, however, I am intrigued to know how the SRA can fairly examine all trainee lawyers within a set examination period. The opportunity for plagiarism, cheating and putting some students in a disadvantageous position is rife.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** Denying long standing members of the legal profession or those with degrees any opportunity to reflect their experience and knowledge goes against everything that the common law system on which we rely teaches us. We need to apply things differently, we need to consider and to discuss alternative routes around the cause of a problem, we need to encourage a diverse profession, we need clients to be in the hands of the best lawyer - not the person who can recite from books alone

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** I think far more consideration needs to be placed on the workings of examinations in reality. University courses will need huge adjustments, workplaces will need trainers not just mentors, the SRA needs to increase funding to assist those less fortunate, the

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:**



## **Response to SRA Consultation on**

### **A new route to qualification: Solicitors Qualifying Examination**

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#### **Overview**

1. The Law Centres Network is the membership body for Law Centres in England, Wales and Northern Ireland, each of which is a not-for-profit legal practice providing legal help and advice in civil law, with a particular focus on social welfare law. Law Centres support the rule of law and, as part of it, universal access to justice. In particular, they target their services at the most disadvantaged and vulnerable people and groups in society, helping make their rights a reality and aiming to tackle the root causes of their poverty or disadvantage.
2. Law Centres are embedded in local communities and run by committees of elected local people drawn from community, legal sector and health sector organisations. The Law Centres Network ('LCN', the trading name of the Law Centres Federation) has coordinated and represented Law Centres collectively since 1978. There are currently 44 Law Centres across the UK represented by the Network. They are primarily funded by a mix of civil legal aid contracts, local authority grants or contracts and fixed-term project grants from charitable trusts and foundations.
3. LCN members work with clients who are vulnerable, often because of social, cultural and/ or economic disadvantage. A good training for those involved in assessing improper or unprofessional activities must include understanding the context within which clients can be vulnerable when involved in a legal action.
4. No less important is to understand the complexities that solicitors face in managing not only the action but also the needs, expectations, behaviours and responses of a vulnerable client. This can result in cases taking longer, needing more careful attention and producing high degrees of pressure for the solicitor requiring practical experience of consumer interaction as well as academic attainment.
5. The resources of LCN are limited and thus the time that can be spent on the several regulatory consultations over this period is restricted. With that limitation, we aim to focus our Response on those aspects where we consider we can offer the most knowledge and experience.

## **Comments**

### **Pre-SQE routes**

6. The LCN welcomes the proposals for broader scope to the routes to qualification and agrees the principle that equivalent alternative routes should be allowed to the formal qualifications of a degree or Solicitor Apprentice. Examples given in the consultation are the Legal Executive qualification route and a level 6 or 7 professional qualification. Law Centre members have for many years had to work through a labyrinth of detail to understand what would constitute equivalence in the training of future solicitors, and work experience exemptions. We know that it would be more encouraging for those with non-traditional academic and work experience backgrounds and would result in increasing diversity in the profession if greater clarity of eligibility criteria and other examples of equivalent routes was provided in SRA guidance.

### **Period of pre-qualification legal work experience**

7. We agree with the proposal to remove the requirement for three 'casework areas'. Whilst that may continue to work for many practices that specialise in traditionally defined areas, for example, criminal or professional negligence practice, other legal practice has developed so that it is now 'across casework'. Examples are in Law Centres where delivery of services to identified groups of people who regularly present with complex multiple legal needs, may cut across housing, immigration, community care and welfare benefits and in differing amount of casework. It can produce a false artifice to then put casework labels on the trainees' experience.
8. We have seen no arguments, evidence or commentary that a reduction to 18 months' experience will better produce the competencies required and we recommend continuing with 24 months, and with the flexibility referred to in proposals as to how this can be gained.
9. We would propose more clarity in the proposals/future guidance as to the relationship between the time when that workplace experience is gained, and meeting the requirements of the SQE. This concerns us because of the potential for work experience to be far removed in time and currency. An example of this concern would be a workplace experience in a student law clinic over some months in one setting, is gained perhaps ten years before any formal education in legal practice, ethics and consumer care, and no legal work content in the ensuing ten years. We cannot see that would be sufficient and related enough experience for these purposes, particularly where experience is gained from non-legal work employment. We suggest further consideration of the timing of pre-

training legal work experience that qualifies, when related to the SQE training component.

10. The gear shift from a trainee solicitor one day to a qualified solicitor the next is significant and experience is required to understand and provide the required care for the consumer interest from day one of a newly qualified solicitor. We endorse proposals for a minimum number of three, and recommend maximum number of five separate workplace settings for the period of training. We recommend six months as a minimum in the majority of the placements for the following reasons.
11. Having all workplace settings that could be aggregated from a few weeks or months could result in far too limited work experience and the ability to progress transactions over time, or to see the consequences of actions and casework. That latitude lends itself to trainees being used to fill short term gaps in staff shortages or in service provision, and not advancing skills. Six months in each setting is a reasonable measure to ensure candidates have had sufficient opportunity to develop legal skills in a stable continuing setting. Whereas to require a minimum six months in the majority but not all placements, encourages flexibility in the final training placement which could enable work experience, for example, within one or two short intensive specialist or niche settings.

## **Law Centres Network**

For further contact:

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Solicitors Regulation and Pro Bono Development Lead  
Law Centres Network  
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# Consultation questionnaire

Response ID:507 Data

## 2. Your identity

### Surname

Burton

### Forename(s)

Jane

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on behalf of a representative group**

Please enter the name of the group.: Lawyers with Disabilities Division of the Law Society of England and Wales

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** It is essential to the reputation of the SRA in particular and to the profession in general, both domestically and abroad, that the SQE assessments are both reliable and valid, and do what they set out to do. The data generated to show the reliability of the assessments should be published, analysed and evaluated to determine the success of the SQE. The SRA should publish indicators for success against which these evaluations can be measured and the process must be open and transparent to ensure the trust and understanding of the profession. This will then aid the SRA in using the SQE to achieve the aims for aiding diversity in the profession that they set out at the beginning of this process. Assuring to the satisfaction of all stakeholders that standards of entry to the profession and further diversity within and access to the profession by demonstrating that the same standards can be achieved through differing routes. The consultation states that an evaluation will take place after the introduction of the SQE but data gained in the testing period would provide useful assurance to stakeholders about the quality of the process as the SQE is launched. A timetable for the evaluation and details regarding the measures for success and how these will be evaluated would be welcomed. There are many stakeholders, particularly those with involvement in the early stages of legal education, who are uneasy about the introduction of a multiple choice assessment in SQE 1, which may struggle to adequately assess these complexities. The introduction of these assessments must not result in a reductive assessment as this could have the unintended consequence of adding pressure to those teaching to reduce their curriculum to what is covered in the assessments. Concerns have been raised by some stakeholders regarding the contexts for the SQE 2 assessments, that candidates will not be required to be assessed in both contentious and non-contentious practice areas. The Law Society understands the reasoning given by the SRA, that firms have struggled to provide workplace experience in both contexts, that solicitors rarely move between contexts once they have finished their training and that some of this will have been covered by the SQE 1 assessments. However, it is important to recognise that solicitors have rights of audience awarded at point of qualification. 4 There is clearly a tension between pragmatism and the need to adequately assess the skills that a solicitor must be able to demonstrate but the Law Society encourages the SRA to look again at this issue as the current proposals fall short of the ideal.

## 4.

## To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Agree

**Comments:** The Law Society supports the requirement for a fixed term two years of work-place experience prior to qualification and welcomes the agreement from the SRA that this is "an essential part of becoming a solicitor". Two years training is key to ensuring that solicitors are of an adequate standard when they enter the profession. With the removal of the legal practice course (LPC) it is likely that trainees will be less well prepared when they commence their training than they currently are. Therefore the two years will be doing all it currently does, as well as making up the expected shortfall in skills for future trainees. It is important to maintain the involvement of a supervising solicitor. Requiring the supervising solicitor to attest to having provided adequate and appropriate opportunities for their trainee to have acquired certain competencies goes some way towards ensuring the quality of the placement, although the Society would prefer to see a duty placed upon the employer to provide adequate training in preparation for the SQE 2 assessments. This will also provide some assurance to trainees that they will not simply be used as a form of cheap labour, without any duty to be adequately trained. Providing a toolkit for employers will also enable providers of the work-place experience to see what must be done and in what way, without much of the current ambiguity that exists around the training period and what 'good' training looks like. A flexible approach to gaining two years of work-place experience is, in principle, a positive step as it enables applicants to seek diverse and varied learning opportunities as well as giving employers the flexibility to offer shorter periods of training without concern that they will not be able to cover all of the competencies within their practice. It remains to be seen how this will work in practice and how willing employers will be to take applicants on for shorter periods of time as there would inevitably be a settling in period with any new employer which may impact on the usefulness of shorter placements. The proposals to limit the number and the minimum length of placements are essential. The Society supports a minimum length of three months for any placement and a maximum of four placements overall. These requirements provide some flexibility, whilst ensuring that a trainee has completed at least one substantial period of work-place experience in a stable environment under one supervising solicitor. The SRA should be able to apply flexibility in enforcing this requirement so that training placements which fall a few days short can still be counted where they are of value, or where the period has been over a longer period but not consecutive days, such as experience gained in a law clinic whilst studying. Work experience must be at the right level to enable trainees to gain the necessary experience to achieve the competencies. Guidelines as to what constitutes appropriate training should be produced to ensure that organisations are able to meet the standard that will benefit their students and trainees. A longer period in one place will enable a trainee to gain in-depth experience that is more likely to ensure this. The SRA's guidance should clearly set out that work-place experience is essential preparation for the SQE 2 assessments and that the majority of the required experience should be completed prior to sitting these assessments. If this is not the case then the SQE 2 may be judged as having failed in its aim of being an assessment of the skills learnt during this period.

## What length of time do you think would be the most appropriate minimum requirement for workplace experience?

Two years

**Comments:** The Law Society supports retaining a two year period of work-based learning, as is currently required. The Global Competitiveness Report<sup>1</sup> carried out by the Society in 2015 showed that this substantial period was valued domestically and one of the key reasons for the good reputation of England and Wales solicitors internationally. Compared to overseas jurisdictions, England and Wales already has shorter formal education and training requirements. It is essential to ensure that newly qualified solicitors are familiar with the workings of the business of law, the work environment and relationships with other professionals, as well as having had ample time to develop and demonstrate their competence at the range of skills required. The two years' training contributes to assuring that this is the case, especially as candidates will most likely no longer undertake the Legal Practice Course. The two years training is particularly important if the SRA follows through on the proposal to alter Rule 12, contained in their consultation this year on 'Looking to the Future: Flexibility and public protection'. In that consultation, the

SRA proposed changes that could potentially allow a newly qualified solicitor to set up in business as a sole practitioner, rather than requiring them to have, effectively, 3 years postqualification experience (PQE), during which period they have continued to be supervised by a solicitor. Although not the subject of this consultation, the Society remains opposed to the proposed change in Rule 12 as does the Junior Lawyers Division (JLD). The threshold day one standard as set out in the Competence Statement for Solicitors is appropriate under the current requirements, which assume that a solicitor will continue to be supervised post-qualification. If solicitors are to be allowed to practice independently straight after qualification then the threshold standard would need to be higher.

## 5.

### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** It is hard to make a judgement on the facts provided, which is why we have scored a neutral response. It may be helpful to split data on SQE preparation courses into various sets, according to the different types of education and training provider they relate to. This would ensure basic fairness between different types of provider. These can of course then be compared against each other while also making clear that there are different types of providers. It may also be worth noting whether those providers have entry requirements, and what those entry requirements are, as it should be assumed that if a provider requires a higher bar for entry they should see that reflected in a higher rate of SQE passes. LDD are particularly concerned to know what arrangements would be in place to monitor the provision of Reasonable Adjustments for students with disabilities by legal education providers.

## 6.

### **To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:** The redeveloped proposals do not differ significantly, apart from the introduction of the SQE, from the current system which meets the needs of the profession well. The inclusion of a degree level qualification and a substantial and supervised period of work experience in a legal environment are welcomed and offer enormous reassurances regarding the robustness of the education and training which underpin the SQE assessments. The SQE assessments should offer the assurance that all pathways to qualification will meet the same minimum standard. Where new pathways are developed the SQE should ensure that these new pathways can build up a reputation within the profession as being as valid as the more traditionally recognised routes. Consistent standards for entry to the profession, alongside reassurances about the comparability of the routes, allows employers to be confident in widening their recruitment pools, which in turn should have a positive effect on diversity within the profession. As the Society stated in response to the SRA Handbook consultation, the content of the SRA's character and suitability test for potential solicitors is fair and discharging the burden of the suitability test is straightforward in administrative terms. However, the timing of the test, just prior to beginning the period of training, raises concerns about client protection. As the pathways to entry will be even more flexible with the introduction of the SQE, it becomes even more important that this issue is addressed. The timing of the test should also be carefully considered, especially where students may carry out some of their qualifying workplace experience as part of a sandwich course, or through an apprenticeship, where they will be in contact with clients and expected to carry out work at an appropriately high level. The SRA will no longer be able to rely on Legal Practice Course providers to brief students about the requirements. There is also the issue of data collection and how the SRA will be able to monitor the equality and diversity impacts of the new system if data is not being systematically collected at different stages. Clear and appropriate information regarding the suitability test should be made available to students at an early stage in order to make it obvious where previous conduct may prevent them from joining the profession and to give them a clear idea of the conduct they will be expected to demonstrate over the ensuing years if they wish to join the profession.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** The Society supports the SRA's general position on exemptions, having considered the issue against the key aim of the SQE assessments - to ensure that solicitors are competent to practise. It seems appropriate to recognise the difference between the academic studies completed, through a law degree or equivalent, and the requirements for demonstrating competence as a solicitor, which must include the practical application and understanding of this knowledge. The SQE assessments are therefore not simply a re-examining of the academic stage of legal education but an assessment of the way in which a student can demonstrate that they can apply that academic knowledge in practice. When the SRA looks at the way in which the SQE could recognise other professions though, it should consider the LSB's 2014 Statutory guidance on legal education and training, which tasks regulators with minimising barriers between different parts of the legal profession, and not just in England and Wales but also for Irish and Scottish practitioners. The SQE will introduce additional assessments for students, on top of pre-existing academic and work experience requirements. It will be important to ensure that the timing of these assessments does not result in students becoming overloaded. In addition, none of these students should be impeded from beginning the next stage of training at an appropriate point in the year. The SRA should engage with firms and universities to find an appropriate point for the sitting, and if necessary, re-sitting, of these SQE 1 assessments.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** The Law Society would urge the SRA to take the necessary time to ensure that the SQE assessments are right, reliable and well tested. If there is a risk that the timetable outlined in the consultation document does not give sufficient time for this, the timetable should be extended. It would be damaging to the profession as a whole, as well as to the SRA itself, if these assessments were to be seen as a failure. Sufficient time should be given for the assessment providers to fully pilot the assessments and build up a sizeable bank of suitable questions. The timeline should allow the providers of legal education and training to develop courses to support these assessments, which would require them to have sight of the assessment materials. The SRA could consider sharing further information updates regarding the processes of appointing, testing and evaluating the actual assessments as they develop. The transitional arrangements outlined in the consultation document and the time span outlined for students to complete their existing pathways seem achievable but the SRA needs to be certain. On the basis that the overall timetable is workable, the arrangements to ensure that those engaged on part-time study courses can qualify under the existing system seem fair. The LDD has concerns for students whose studies have been interrupted by illness or disability and who might require extra time also this could apply to those with unforeseen caring obligations. We would need to know that arrangements are made for those who are caught because of no fault of their own between the two systems.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** As mentioned in the introduction and the response to question 6 above, the Law Society and LDD have grave concerns regarding the availability of funding for any necessary or desirable SQE preparation courses and assessments. This concern was raised in response to the SRA's first consultation and is one of the few areas that have not yet been addressed, which is disappointing given the significant risk of disadvantaging those from poorer backgrounds. The Society and LDD appreciates that the SRA sees the SQE as a leveller of standards and that all routes to the SQE are to be of equal value, but students should be able to choose the route which they feel will suit their style of learning and future career ambitions the best. They should not have to choose one route simply because it is their only affordable

option. Unless all routes have credible funding arrangements which do not require a student to provide up-front capital, there will be a risk to diversity within the legal profession. It would be completely unacceptable to introduce the SQE without ensuring that it is affordable for students from all backgrounds. There are two aspects to the question of affordability: 1) The courses and assessments must be priced in a way that represents value for money; 2) Up-front funding (e.g. graduate loans) must be available for students who do not have access to capital. We acknowledge that the question of affordability is not solely within the SRA's control. The price of the courses and assessments will be determined by training providers, but the SRA has an important role in ensuring that they provide clear information to providers to encourage a competitive market for training that will result in prices that deliver good value for students. On the availability of funding point, it is critical that the move to the SQE does not leave students from less affluent backgrounds unable to study. Currently, students can access graduate loans (backed by the Government) to study the LPC. The SRA should ensure that any new courses or assessments meet the criteria for receiving funding. If these changes are introduced without funding being secured, then there would be negative impacts on the diversity and social mobility of the solicitor profession. It may be that the government's Professional and Career Development Loans could provide a funding option, and further investigation into this should be carried out by the SRA. The SRA should ensure that their proposals meet the criteria to enable students to apply for this funding. The Law Society would be happy to help approach the government to determine whether this funding can be made available. Concerns have also been raised about the accessibility of the type of testing that is implemented. The increase in online testing rather than written exam style answers poses particular problems and adds to the burden of students with various disabilities. Online tests are often speed tests and if the student has visual impairments and has to work through a scribe or speech software this increases the challenge. Extra time is arbitrary if the design of the testing is wrong for the end user. Students with arm mobility issues can also have problems in the accuracy of placing a tick in a box. Dyslexic students are also challenged by this type of testing. The SRA should ensure that they consider these factors when developing assessments, rather than attempting to adapt assessments which have been designed for those without disabilities. The comments in the AlphaPlus report ( "AlphaPlus: A technical evaluation of a new approach to the assessment of competence of intending solicitors" 6.9.2 Reasonable Adjustments The Equality Act 2010 requires an awarding organisation to make reasonable adjustments where a disabled person would be at a substantial disadvantage in undertaking an assessment. A reasonable adjustment for a particular person may be unique to that individual and may not be included in any published list of available Access Arrangements. How reasonable the adjustment is will depend on a number of factors including the needs of the disabled candidate. An adjustment may not be considered reasonable if it involves unreasonable costs, timeframes or affects the security or integrity of the assessment<sup>30</sup> . It is essential for SRA to adopt approaches that comply with the requirements of the Equality Act, insofar as the SoSC and SoLK represent the minimal range and standard of performance for a qualifying solicitor, and so derogation would effectively compromise the profession. Providing candidates with reasonable alternative means to demonstrate professional competence, so long as the demonstration of competence as set out in the frameworks is achieved, is a legal necessity. There is nothing inherent in the assessments proposal that presents as impossible to make reasonable adjustment for candidates undertaking the assessments; for example use of large screen monitors for candidates with minor sight issues in computer-based tests, or extra time allowed for candidates with disabilities etc. A detailed consideration of the reasonable adjustments available for the less common oral assessments proposed for Part 2 will be necessary, along with an initial view as to how this would be handled administratively (e.g. lengthy pre-notification), including the requirement to consider each case on its merits (rather than taking a stock approach). It would be important to note that adjustments might need to vary from one task to the next. The approach to policy and procedure for reasonable adjustment varies by organisation, and there is extensive practice to draw on. There is some evidence from the world of academic school qualifications that additional time (a very common adjustment for a variety of disabilities) can provide unfair advantage. This is particularly likely where assessments have a strong element of „timedness“ (i.e. candidates are expected to work swiftly in order to complete the assessment). There is also evidence from other contexts that weaker candidates tend to make proportionately more requests for adjustment (and especially in the case of re-sitting). It seems likely that efforts to increase diversity in candidature are likely to lead to an increase in weaker candidates,

and so it may be that requests for special arrangements grow disproportionately. This will require careful monitoring, as will the performance of candidates who are awarded reasonable adjustments. In all cases there is a presumption of reasonableness and this presumption should form the basis of the policy for the proposed new assessment system. Best practice would suggest that any policy be audited as part of the External Examiner Annual Report. Recommendation 25: 30 Joint Council Qualifications 2015. Page 63 of 97 Commercial-in-Confidence 03 December 2015 We recommend that the assessment organisation is required to make reasonable adjustments for disabled candidates who may otherwise not be able to access the assessments, where this does not impact on the overall judgement that the candidate has demonstrated the necessary competences. Requests for special considerations and the response made to them should be audited by the SRA appointed External Examiner.") were found by LDD members to be quite objectionable and showed limited understanding of the equality requirements of candidates with disabilities. LDD would strongly object to the majority of knowledge being tested by the use of online testing. The examination with written answers as is the present system seems a much better way of testing knowledge which has a practical use and doesn't obviously offer itself to this proposed method of assessment. LDD feels that if a rigorous system of moderation by the SRA were to be introduced into the current system, then this would overcome the need for an awful lot of the changes proposed in this consultation.

## SRA – Solicitors Qualifying Examination

- consultation response from the LEAPS (Legal Education and Professional Skills) research group, Northumbria University Law School.

LEAPS is an inclusive collegiate group intended to provide support, promote and enhance legal education at Northumbria LEAPS held a series of consultation meetings with academic staff from Northumbria but also including practitioners from local law firms to gain a range of views before collating this response.

Northumbria University is home to the world leading law clinic, the Student Law Office, and was awarded the Queens Anniversary Prize for the achievements in offering a unique experience and access to justice for the local community. Students integrate learning from experience with development of academic knowledge and research skills, all of which is heightened by the live client experience in which the motivation, reality and necessity of client service creates a powerful learning environment. Students from the exempting law degree and a free standing LPC can take part in the law clinic as part of their studies.

### **1. To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence? - Score 5 (strongly disagree )**

We do not consider that the SRA has made a sufficiently strong case on which to base these changes. There is no clear evidence that the existing system is failing in terms of quality or protection for the public. The SRA's reference to the level of indemnity claims and complaints to the Legal Ombudsman cannot be linked directly to the current system of training, as many claims and complaints can be attributed to solicitors who qualified under a previous training regime, such as the old Law Society Finals, which was a system similar in many ways to the current SRA proposal. We can see no evidence that these proposals will reduce the level of claims or complaints.

Although we are pleased to see that the SRA has taken note of criticism that it faced in response to the previous consultation we continue to have concerns about the proposed framework for legal education, and some of our concerns are noted below.

Is **consistency being confused with quality**? In a professional context, a more perceptive approach is needed for meaningful assessment of professional skills, competence but also to nurture the development of an ethical framework.

Using Miller's competency pyramid, assessment should move beyond 'knows' and 'knows how' to the higher levels, 'shows how' and finally 'does'. The types of testing proposed seem unlikely to achieve this, appearing to focus on the ability to memorise information and answer written questions. These essentially were the reasons for abandoning the previous Law Society 'finals'; "What was the point of memorising laws which were neither relevant nor likely to be extant for more than 5-10 years of practice?...rather than know great tracts of law , it is more important that they are equipped with the ability to research the law, to understand their clients' needs, to draft legal documents, to negotiate on behalf of their clients, and to advocate their clients' cases." (Sherr,

A (1992). Professional Legal Training. *Journal of Law and Society*, 19(1), 163–173. <http://doi.org/10.2307/1410035>)

We note that the centralised assessments that were developed for students on the Bar Professional Training Course have been controversial. The questions themselves have been challenged by institutions and external examiners, and our own external examiners have stated that the assessments do not replicate practice. **We would oppose any assumption that the use of centralised multiple choice questions creates a standardisation that makes them in any way more valid than the existing methods of assessment.** In the field of assessment of medical training, there is a widely accepted body of research arguing that **reliability and validity are not conditional on objectivity and standardisation**; “We should not be deluded into thinking that as long as we see to it that our assessment toolbox exclusively contains structured and standardised instruments, the reliability of our measurements will automatically be guaranteed.”(Van der Vleuten, C et al, (2005) Assessing Professional Competence, *Medical Education* 39: 309-317)

In our experience, authentic learning environments are popular with both students and employers because they better replicate practice. Stakeholders, including students, would not welcome less sophisticated end point assessments.

**Proposed 120 questions-this is too many questions, and encouraging surface learning.** We understand that the BSB is using 75 questions in 3 hours. There is a risk that people who can retain knowledge can pass the test- but is this what is required for 21<sup>st</sup> century lawyers, where access to information is available at your fingertips- it is the application, critical thinking skills and development of judgement which is more important. Here there appears to be little application, a lack of depth, all in order to standardise the assessment. This could lead to students being unprepared for their work experience.

In terms of the use of multiple choice questions, and the use of single best answer, the more complex scenarios in legal terms do not always lend themselves to single best answer solutions, as unless these are more simple factual questions (which would be unsuitable at this level) there can be ambiguity, and differing views.

**In terms of the stage 2 assessments**, we are concerned at the **impact particularly on access to justice**, with a lack of emphasis on areas such as family law, welfare benefits, employment. We understand the emphasis on reserved activities, but see the emphasis on commercial and corporate law on the basis that there are large numbers practising in these areas risks this becoming a self-fulfilling prophecy, if students have little opportunity to include other areas, which are currently very popular options within their university studies. The consultation document states that students with experience of handling family or employment ‘could be well prepared for the client interviewing assessment in, say, disputes in a wills or crime context’, however, we anticipate that students will perceive themselves to be at a disadvantage, and are **likely to seek out work experience which aligns more closely to the assessed areas.**

**As there is only ‘pass/fail’ and no grading** students are likely to take a tactical approach, in that they only need to pass, as opposed to the current system of assessment, where excellent achievement is recognised. In our view, this is not a good way to prepare for practice.

**Costs-** we understand that one of the drivers for these changes is to reduce the cost, with the LPC being criticised as too costly. However, without more detailed costings for these new proposals, there is no assurance that this reduction in costs will take place. In particular, the SQE 2 requires 10

practical skills assessments with 20 hours of testing, presumably requiring trained standardised clients, and experienced legal practitioners to be appointed as assessors. Will students be required to travel to exam centres? If so, this appears to be a further retrograde step, as currently they are able to attend relatively locally, with a range of LPC providers available.

There will also be the costs of assessment awards board using expert panels. Presumably, the single assessment organisation will be run on a profit basis?

## **2a. To what extent do you agree or disagree with our proposals for qualifying legal work experience? Score 4 (disagree)**

We support the more flexible approach to work experience, and the recognition that participation by students in university law clinics and pro bono activities could form a valuable part of the work experience for students. We seek clarification that this work experience can be obtained prior to SQE 1, as that is the time period when most candidates would be involved in these activities.

We agree that the range of organisations providing work experience should be broad, to give students the chance to gain this experience. However, without a requirement of any kind in relation to competence, or regulation of the nature of the work experience, there is a risk of exploitation, with no incentive for the work experience providers to offer a quality experience. Without any kind of controls, this work experience could have serious gaps in terms of competence and skills, for example, not providing any direct client contact. The premise is that this is unimportant, as it is the SQE2 which will assess competence. In these proposals, any effort to assess the work experience component has been abandoned on the premise that 'it is difficult to assess work experience on a consistent basis'. As a group dedicated to research into legal education, and the teaching of professional skills, we accept that this can be challenging, but this is not sufficient reason to abandon any form of assessment or quality control, which means there is effectively no link between the work experience and SQE2- indeed it appears that the work experience can be gained after taking SQE 2. This puts the test as paramount- and in consequence, will devalue the importance of the work experience element.

We are concerned by the requirement only that the employer or supervisor sign off that the person had the opportunity to develop a competence, whatever the performance of the candidate in that area. Is the SRA comfortable with a situation in which a supervisor may have grave concerns about that person's suitability for the profession but there is no requirement that they comment upon this issue?

We also question whether the aim of breaking the perceived 'log jam' in obtaining a training contract will be achieved and suspect that the log jam will simply move to newly qualified posts, to create an oversupply of newly qualified solicitors, many of whom will not be able to secure employment as a solicitor, and we will have a greater number of non practising solicitors.

### **Recommendation-**

- ***We recommend that the SRA specify a minimum range of experience in terms of skills and knowledge utilised prior to full qualification***
- ***We recommend that the SRA consider requiring students to present a portfolio showing where they have had experience with alignment to the minimum range of experience – there is a mention of keeping a diary of experiences but nothing hangs on that.***

- *We recommend that any person signing off an element of work experience be required to sign off that the student has experienced that which is stated in the portfolio and that consideration be given to a situation in which such a supervisor may have witnessed performance which gives cause for concern.*
- *We recommend that the SRA consider some form of quality control of the work experience, to avoid exploitation and maintain standards.*

### **2b. What length of time do you think would be the most appropriate minimum requirement for workplace experience? - 2 years**

We favour a period of no more than 2 years or part time equivalent.

We also seek clarification on how far back work experience can be counted, to avoid out of date experience being included.

In terms of how many work placements can be included, we agree with the contention in para 108 that too many short placements are likely to be of little value, and suggest something like a maximum of 4. Also, is a sign off required at the end of each placement?

We suggest the development of a measurement (i.e. by days or hours) to allow different forms including clinic to be 'counted'.

More than 50% of law schools now run clinics and pro bono activities in various forms – many would be in a position to actually provide relevant work experience- we need more clarity particularly in terms of confirming that the work experience gained prior to taking the SQE1 can count, which would be key for those students seeking to participate in university clinic/pro bono activities.

#### **Recommendation**

**Work experience should be in blocks of time to ensure it is meaningful – so the SRA should not allow, for example, single days from different placements to be accrued. We further recommend that the SRA put a maximum limit on the number of different placements.**

**The SRA should consult with law clinics to identify what work can be credited and to allow for it within the regime.**

### **3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE? Score 5 – strongly disagree**

There is too much emphasis on assessment in exam conditions with too little information on the preparation required for SQE 1 and 2. Lack of regulation of the work experience phase – see above.

Whilst advocating standardisation and demanding consistency, there is little really detailed guidance from the SRA on what the tests will entail, to enable providers to provide a quality service. Far too much importance is placed on the tests as being a measure of competence. This was a similar system to previous, now abandoned systems, such as the Law Society Final examinations.

There appears to be little protection for the candidates. Without assurance or quality monitoring, and a reliance on market forces, candidates who have little experience in selecting providers may be

driven by price, and, for example, by a need to stay closer to home . Because feedback on course results is likely to lag behind, this will not provide sufficient protection against ‘rogue’ providers. Our experience of the Bar Standards Board is of a delay of 3 years in publishing providers results. What evidence does the SRA have of other professions in which market forces alone regulate the provision of professional courses and the success of this approach? We have concerns that a market forces solution could lead to litigation by students against poor course providers which will diminish the profession and the justice system in the eyes of the public.

#### **4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor? Score 4 - disagree**

We agree that the introduction of the SQE may free up the law degree in terms of content and may liberalise content.

However, it **may polarise provision**: The removal of the Qualifying Law Degree is likely to result in some providers redesigning programmes to deliver preparation for SQE1. Given the extent of the SULKS this is likely to result in **Law Degrees becoming more standard in delivery and content** and may devalue the law degrees a delivering this as vocational training. If this is the predominant form of delivery, students wishing to study law as a general degree will be lost.

**For those degrees that do not deliver SQE 1 preparation the content of the degree may become devoid of practitioner input** - something that has been a feature of law degrees throughout the last 50 years and does nothing to help prepare students for practice, as recognised in the ACLEC report which led to changes to legal training during the 1990’s.

Because of the above **it will be harder to deliver integrated models of UG study** (e.g Northumbria exempting programmes). These have been widely acclaimed in reviews but will be pushed out given the constraints of SQE 1 which will compartmentalise subject knowledge. Although we can integrate knowledge with practice in legal education given the fact that SQE 1 must be taken in a single block the curriculum will probably have to lose some capstone modules (e.g. dissertations and real extended casework clinic modules) to accommodate SQE preparation - **important intellectual and analytical skills are likely to be lost.**

The comparison made to the US system is not helpful. Legal training in US is typically a three year postgraduate JD. Very different from UG provisions here. The proposals do not acknowledge the importance of the QAA benchmark for law degrees. The benchmark places emphasis on academic, intellectual and practical skills- if non- law graduates enter the profession through crammer courses geared towards the SQE they will not develop these important skills which are important for the profession. The SQE does nothing to replicate the requirements of the current GDL in relation to developing these skills in the legal context. We doubt that legal knowledge tested in this way constitutes the functioning legal knowledge required for practice.

**It’s not clear how the SQE can develop ethical standards required for practice- this is a cultural and pervading requirement for practice and can’t be adequately tested in MCQs.**

If provision of programmes to prepare students for the SQE 1 is entirely market driven there will be different quality and costing for programmes- bargain basement crammers are not going to spend time on the ethical and cultural issues of professional practice.

**The effect on the law degree is likely to make it harder for students to choose which if any branch of the profession they want to go into.** Students considering the Bar route may have to select a particular provider which covers the BSB academic training requirements. Students studying on a programme geared towards delivering SQE preparation may feel they are constrained in their choices of career. This will be confusing for students. Students will be making decision about their career earlier in the process – flexibility may be lost for those having to choose between different types of law degrees.

**5. To what extent do you agree/disagree that exemptions should be offered from SQE stage 1 or 2? Score 1 – strongly agree**

Many of the above comments relate to this proposal – the main concern was that with no exemptions at any stage and the costs of the SQE on top of UG tuition fees, students would be driven by success rates in SQE 1 exams. This would affect the coherence of the degree. It also added unnecessary expense given that there are to be no exemptions it is difficult to see how the SQE 1 and preparation programmes for it will be cost neutral against LPCs when the additional cost of the tests are taken into account.

We are concerned that the SQEs could not really deliver or guarantee legal knowledge, procedure and academic/ intellectual skills through the assessment processes suggested by the SRA. The range and variety of assessment methods in a degree could better ensure the development of these skills in conjunction with legal knowledge.

We are further concerned that **the six year period** to complete SQE1 and SQE2 and the necessary work based experience needed to prepare students for SQE2 is **probably too short a time scale**.

**6. Do you agree with the proposed transitional arrangements? – Score 2 - agree**

Domestic candidates who have started a QLD, CPE, LPC or PRT before September 2019 would be able to choose whether to use the old route or the SQE and we can see that this may be necessary to protect the interests of these students, but it is unlikely to be viable for providers to continue to offer the LPC beyond 2019 on the likely diminishing numbers.

**7. Do you foresee any positive or negative EDI (equality diversity and inclusivity) impacts arising from our proposals? Yes**

We cannot see how the SQE is concomitant with the second objective of enabling people to enter the profession in more and diverse ways. **There are currently a number of ways in which a person can qualify as a solicitor.** The SRA's proposals would take these options away and replace them with a single method of entry (the SQE).

Furthermore, in relation to objective 2, we **query the SRA's contention that the SQE will be a cheaper option.** A degree or equivalent is still a requirement under these proposals, and as employers are likely to prefer a degree, there is no saving here. It is unlikely that a law degree will contain all of the knowledge and practical elements that will be tested by Part 1 and Part 2 of the SQE. If it were to do so, this would significantly restrict student choice and prevent assessment of the wider outcomes that are enshrined in the QAA Subject Benchmark Statement for Law. If a law degree did not contain training for all elements of the SQE, a candidate would have to undertake and pay for a law degree, followed by training to prepare them for the SQE, plus pay for the SQE itself. If unsuccessful in an element of the SQE, a candidate will presumably have to pay to re-sit that

element (whereas a law student currently has the opportunity to re-sit a limited number of times included in their fees). It is difficult to imagine that this will be any cheaper than the current requirement of a degree followed by an LPC.

The reality will be that most students (especially those from EDI backgrounds) will require assistance in passing the test – costing further money. Those from upper income bracket backgrounds will still get jobs with the bigger employers who will subsidise or pay for all of this. Those from EDI backgrounds will have to fund themselves.

The SQE could benefit someone who has gained skills and experience in other ways, but someone in this position could be accommodated within the current system by, for example, the equivalent means provisions or the CILEX route to qualification.

Universities currently have complex **provisions to deal with student disability and personal extenuating circumstances**, to ensure they are treated fairly – how will these issues be dealt with in this new system?

**In terms of the stage 2 assessments**, we are concerned at the **impact particularly on access to justice**, with a lack of emphasis on areas such as family law, welfare benefits, and employment-areas of social need.

Where is the evidence that these proposals will impact positively on EDI? In particular, what change will occur in employer behaviour in relation to recruitment from EDI groups as a result of this process and what evidence has been gathered to assure the SRA that the barriers to EDI arise from the qualification process as opposed to employer behaviour or other factors?



## **Leeds Law School response to the SRA's second consultation.**

Leeds Law School welcomes the opportunity to respond to the Solicitors Regulation Authority's second consultation on its proposals to introduce a new, centrally assessed process for qualification as a solicitor, the SQE. We have had the opportunity to see a draft response from the Committee of University Law Schools which we support and which we have, for the most part, adopted in our response. We have added additional responses to Question 7 in particular.

Leeds Law School sits in the heart of the great city of Leeds, the most important legal centre outside London and home to over 180 law firms employing in excess of 8,000 professionals. It is perfectly placed to ensure all our undergraduate, postgraduate, full and part-time students are able to mine the wealth of practical experience and employment opportunities available on our doorstep. We offer a broad variety of courses including our LLB, LLM Legal Practice (incorporating the LPC), LLM Qualifying Law Degree (incorporating the GDL) and LLM International Business Law, and each aims to give our graduates the enthusiasm, sharpness of mind and practical tools to thrive in competitive and fast-paced professional environments. We believe our programmes prepare our graduates well for general and specialised legal practice and other careers and will continue to offer programmes which meet those aims. Leeds Law School has an intake of between 250-300 undergraduate students per year and approximately 200 postgraduate students including 100 LPC students.

We would state at the outset that we have no objection in principle to the SRA seeking to introduce a centralised assessment, and recognise the SRA's right as a regulatory body to regulate training for and entry to the profession in whatever way it wishes. However, we have general and specific concerns about the proposed assessment as detailed in the consultation paper. These concerns include:

- Assertions have been made about the lack of consistency and rigour in the current qualification process, (for example, in the diagram on page 9 of the consultation paper) but no objective evidence appears to have been provided for these assertions, that we can evaluate. We have not yet been convinced that there is a problem which needs to be fixed in the manner outlined.
- The consultation paper suggests, at paragraphs 36 - 37, that there may be some correlation between the current method of qualification and indemnity insurance claims / complaints about solicitors, but admits that no causal link can be proved. The evidence presented only relates to recent years, and to be meaningful as an indication of deteriorating standards would need to be set against comparable information from the period before the introduction of the LPC when there was a centralised assessment.
- There appear to be assertions being made about the rigour of the proposed SQE which it is impossible to evaluate, as no assessments have yet been devised and so cannot be scrutinised.
- The assessment as outlined runs the risk of 'dumbing down' the depth of knowledge required to become a solicitor, and this could result in loss of public confidence in the solicitors' profession.

- The English and Welsh solicitor is a brand which is highly respected internationally and we would be disappointed if that respect were to be diminished, for the same reason.
- We remain less than confident that the new process will result in any cost savings, thus doing little to widen participation. We are also concerned that those from wealthier backgrounds will be more prepared to take the risk of an assessment for which there will be no regulated preparation or training, and we do not wish to see the development of a two-tier profession.
- We are concerned that young people will feel obliged to make career choices at an even earlier age than at present.
- We would like to see evidence of the SRA's experience in the procurement of an assessment process at this level and on this scale and are concerned that the procurement process could fail to deliver a useable assessment.
- The proposed timescale does not seem to us sufficient to create sufficient banks of both practice and assessment questions.

Our broad responses to the questions in the consultation are set out below.

***Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?***

Strongly disagree (5)

We have asserted that we believe that the solicitors' profession should be one of graduate entry. This does not necessarily mean that would-be solicitors must have a law degree, but we cannot envisage a person who does not possess a degree level qualification or equivalent having the intellectual depth or high level cognitive function being able to cope with the rigours of solicitors' practice. We are therefore pleased to see that the SRA has now said that graduate level education (or apprenticeship, which we assume means at level 6 or 7) will be a pre-requisite.

However, at present we do NOT have confidence that the proposed SQE will be a robust and effective measure of competence. Without seeing examples of the proposed assessments at both levels, it is impossible for us to comment in detail, but we have concerns that:

The proposed methods of testing for SQE 1 are too superficial and, unlike a law degree plus LPC (or degree plus GDL plus LPC), will not permit the testing of a wide range of degree level skills. SQE 1 may provide an adequate test of knowledge (but as mentioned above, we would need to see some examples to be sure), but not of the types of competence needed for a practicing solicitor, such as the ability to analyse situations, to evaluate evidence and make judgements. Paragraph 54 of the consultation paper asserts that computer based testing is successfully used in other professions such as medicine and pharmacy; but this comparison is disingenuous, as the assessments mentioned in those other professions are taken in conjunction with mandatory degree or postgraduate level education.

The consultation paper suggests that candidates may take SQE 1 before completing their work based learning, with SQE 2 being taken at the end of the work based learning period. It is stated that SQE would include a test of legal research and a writing test. At present, it is

normally not possible to commence a training contract without completing a law degree or equivalent and the LPC. Many firms require this level of qualification even for paralegal roles. It is therefore unrealistic to expect that firms will want to take on employees who are even less well educated and trained than at present.

We are concerned that SQE 2 may be too narrow; the removal of electives will mean that successful SQE completers may not have the breadth of knowledge and skills needed for practice. Those wishing to practice in, for example, Family, Consumer, Employment, and Immigration law, to name but a few, will be put to greater expense in paying for additional training in order to gain employment.

Given that there are various 'reserved' areas of work which are the province of solicitors, we are confused as to why the SRA considers it appropriate that a person could become a solicitor with no testing whatsoever of their practical ability to conduct work in all of those reserved areas. As currently proposed, a candidate could pass SQE 2 having taken assessments only in non-contentious areas, and the next day appear in court for a client. One of the reasons for the introduction of the LPC was to ensure that students had practical competence in all the reserved areas, and we are concerned for consumer safety if the proposal for only two areas of practice is implemented.

***Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?***

In principle, we welcome the concept of widening the number of contexts in which work based learning can be experienced and in principle this is something which would benefit our students. However, we are concerned that it appears that there will be no monitoring of qualifying legal work experience (QLWE). There are criticisms that the current training contract is insufficiently supervised or monitored by the SRA but we are not sure that the removal of almost all regulation is the way to improve this situation. We are unsure as to the value of making an entirely unsupervised and unregulated period of QLWE part of the qualification process, and it is our view that the proposals as currently set out do nothing to promote consistency or quality of experience.

It is common ground that there currently is a mismatch between the number of training contracts available and the number of LPC graduates. Allowing would-be solicitors to gain QLWE in other contexts may seem at first glance to be a positive move which would widen access to the profession. However, our experience is that one of the reasons why firms do not offer training contracts is that they require considerable investment from the firm in terms of time spent in supervision and training. Lack of regulation of QLWE could encourage firms and other bodies to take on 'trainees' with no real commitment to their training and development.

***Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?***

We believe that the current requirement of 24 months is about right. However, we need further clarification as to when the SQE stages 1 and 2 could / should be taken - for example, we assume from the paper that a candidate could take SQE 1 before any QLWE is undertaken; could that person then take SQE 2 after, say, six months of QLWE, and, if so, would this mean that person became a qualified solicitor immediately after passing the assessment, thus bypassing the QLWE requirement?

***Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?***

Whilst we can understand why the SRA takes the view that deregulation of the training process may allow for greater innovation in training offered, we have serious concerns that the market could become taken over by unscrupulous training providers with an eye only to profit and with little regard for the quality or appropriateness of the training provided. Anecdotal evidence suggests there is, for example, already some concern about the variability of the currently unregulated QLTS training, and of course the SQE would be a much bigger market. It would also potentially be a very different market than that for QLTS training which is by definition only offered to qualified lawyers; SQE training may conceivably be offered to relatively inexperienced or vulnerable 18 year olds.

We believe that one of the SRA's aims is to make the profession more accessible to people of all backgrounds, and arguably reducing the cost of qualifying will contribute to this. However, we do not believe that the cost of the SQE and preparatory training will result in any significant saving - in fact the process could become more expensive. Lack of regulation of training could exacerbate this problem. While we would hope to offer opportunities for our students to prepare for the SQE through SQE ready degree programmes or through other training, we are concerned about the potential cost to students and whether or not this offers our students genuine opportunities (see further our answer to Question 7).

***Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?***

We strongly disagree (5) that the proposed model is a suitable test of the requirements needed to become a solicitor for all the reasons set out above.

***Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?***

Whilst we can to an extent see the logic of not offering exemptions, we have concerns that this will result in additional and unnecessary costs to potential solicitors. Education to degree level is a pre-requisite for the SQE, and if that degree happens to be in law, we see no logic in expecting those who have already taken and passed relevant assessments having to take more assessments.

There are also individuals qualified to appropriate levels by recognised and rigorous routes for whom it seems illogical to expect them to take very comparable assessments to those they have already passed; for example, barristers, CILEx fellows, and licensed conveyancers.

***Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?***

We are concerned that the proposed timescale for change remains very challenging. Many individuals have already embarked on their route to qualification and it is very important that none of the expense and effort that they have already incurred should be in vain, so our main concern about transitional arrangements is that they are both very clearly set out and very clearly communicated to current students. Significant effort will also need to be devoted to designing preparatory training and this can only be done once further details of the test are available.

***Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?***

Whilst the proposal for widening the scope of QLWE could be (cautiously) welcomed subject to the concerns expressed above, we are concerned that there could also be negative EDI effects to these proposals, as follows:

- We are not convinced that the cost of the new scheme will be significantly less than the current regime and we are concerned that lack of regulation of preparatory training could push costs up.
- The varying pathways to qualification as a solicitor will not be of equal value. A non-law degree plus SQE, or even an intensively SQE-focused law degree, is unlikely to increase access to the profession for non-traditional applicants, since firms are unlikely to want to take on employees who are less well educated when they are competing with applicants with academic law degrees. To the extent that those taking the new pathways are attractive to employers, it will be because they offer the possibility of cheaper labour. The creation of a de facto two-tier structure as envisaged above is likely to operate to the disadvantage of less well-off and non-traditional entrants who do not possess the resources and/or the social and cultural capital to position themselves at the elite end of the profession.
- Whilst very highly qualified students from the traditional universities may continue to be employed by the larger city firms, who will continue to provide good, bespoke training, the widening of the scope of QLWE might encourage less diligent employers to take on employees without providing appropriate training, to the detriment of those employees, who may well be from less advantaged backgrounds in the first place.
- There is nothing in the proposals to suggest access to the legal profession overall will be widened and they are actually more likely to further intensify the divisions within the profession. We are concerned that many of our students who are often from less well off (in economic and in cultural terms) backgrounds will be pushed into pursuing 'safer' low-risk, cheaper options in terms of preparation for the SQE (for example through SQE ready degrees) which lead to commoditised work. The elite firms will remain as elusive to them as they are now

- The proposed lack of exemptions might disadvantage those wishing to enter the profession from non-traditional backgrounds - for example, those lawyers who have qualified as mature students through the CILEx route and now wish to bring their usually considerable experience to the solicitors profession.

## **LEEDS LAW SOCIETY**

### **RESPONSE TO "A NEW ROUTE TO QUALIFICATION: THE SQE"**

This consultation response is submitted on behalf of the members of Leeds Law Society (LLS) and is intended to be reviewed alongside our first consultation response, which was compiled using supporting survey data. The responses in this consultation are based on a workshop held by LLS, which was attended by representatives of various firms in Leeds and legal education providers.

#### **SRA QUESTIONS AND RESPONSES**

**Please state your level of agreement with each proposal on a scale of 1 (strongly agree) to 5 (strongly disagree)**

#### **Question 1**

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

There is currently insufficient information available to us to grade the answer to this question. Whilst the new consultation provides considerably more information about the SQE than was available prior to the first consultation, there are still a number of questions that are unanswered. The concerns we would like to highlight include:

1. There is no indication of the likely cost of taking Part 1 and Part 2 of the SQE;
2. It is more than likely that there will be a number of preparatory courses of varying lengths (including crammer courses) created and the costs of attending such courses are not adequately factored in;
3. There will be an impact on solicitors firms' recruitment strategies, talent management and retention programmes;
4. The equality and diversity impact has not been sufficiently considered and taken into account;
5. It is unclear how assessors will be selected;
6. It is unclear how objectivity of the assessors of the Part 2 exam will be dealt with;
7. We are unsure how enough banks of questions will be created so that there is sufficient variety in the examinations to ensure a robust and effective assessment;
8. How can it be ensured that there will be a sufficiently diverse range of questions to support two examinations a year without repetition, rendering questions predictable, easy to anticipate and therefore to prepare for;
9. The focus of the examinations appears to be on commercial rather than high street areas;
10. The suggestion that certain practice arrears (i.e. specialist child law and employment) can be assessed through questions on wills and probate (and other such suggestions) is concerning and seems to show a lack of awareness for how solicitors undertake their work;
11. The suggestions for how the work placed learning would be undertaken and the proposed structure of Part 2 means that it is more likely that early specialism will become more prevalent. This results in poorly prepared/trained solicitors as they do not have the relevant background to make them fully rounded qualified solicitors;
12. There is a risk that candidates will learn how to pass the exams, rather than to have a breadth of knowledge, in particular the requirement for candidates to answer multiple choice questions will lead to courses that will help them with

- exam technique (and give those that can afford this an advantage over others - thereby effecting diversity);
13. Students may be forced to choose to become a solicitor or barrister very early on in their legal education if SQE compliant degrees develop in a way that is not easily compatible with the BSB's proposals;
  14. Paralegals may move around to try and obtain the relevant experience to enable them to take the SQE. Firms may find themselves with employees demanding certain types of work, or comprehensive sign offs, with the time and level of supervision this requires to enable this. There is a risk firms will specifically exclude the time spent as a paralegal from being used as time towards work placed learning as a term of employment, which leaves paralegals in a worse position than they currently are in;
  15. Skills such as interviewing and advising will not be taught before a trainee commences their work based training, which the firms represented felt was a disadvantage for them and the trainee as it reduces their effectiveness to do client related work ;
  16. The knowledge that trainees have prior to commencing their period of work experience could be far reduced in comparison to those from previous years, which may require firms to provide further additional training before the work placement commences (with a resultant cost to the firm);
  17. The cost of training may be pushed onto firms, both in monetary terms and in terms of time spent. Many are ill able to afford to do this in these difficult and changing times for law firms. Whilst larger firms are able to prepare comprehensive programmes, smaller firms, who may only take on one trainee per annum, will be unable to do this and may choose not to hire any trainees at all due to the extra costs and time required;
  18. There is a risk that firms will decide not to take on trainees and instead focus on taking on NQs – potentially with extended probation periods as they will be unsure what skills the NQ has as a result of the new training programme;
  19. It is likely that the bottleneck will move from training contract stage to NQ stage, causing an oversupply in the market and depressing wages at the NQ level in some firms and practice areas. This should be considered alongside studies which indicate that fewer solicitors are likely to be needed in the future;
  20. There is a risk that smaller firms who specialise in areas not covered in the SQE in detail (immigration, child law) will be deterred from taking on trainees until they have qualified, as they are unable to undertake client work without further training;
  21. Students may study to pass the SQE rather than to expand their knowledge of the law, resulting in less rounded solicitors;
  22. Trainees will be out of the office for extended periods of time to prepare for and sit Part 2, which is likely to cause substantial problems for employers. For example, in a large corporate firm dealing with a big completion or piece of litigation this may lead to employers balancing their desire to have work completed and meet clients' requirements, against a trainee passing the exam. This may force the trainee to defer, or not allow them to have time off to prepare for the exams. Smaller firms who also rely on trainees as valuable fee earners may be unable to spare the time and loss of income from a trainee being absent, and therefore limit study time. This would have the obvious affect that trainees who are ready and capable of passing Part 2 are unable to do so due to pressures of work;
  23. Firms may find it difficult to ensure that trainees obtain the relevant experience to pass Part 2. For example, larger firms will have a focus on corporate and commercial property, and the demand for those seats will go up as trainees who wish to qualify into a separate, but potentially related role such as tax or pensions, will be forced to compete for those seats to ensure that they get the relevant experience to pass Part 2. Whereas at present, trainees focus on getting the experience for the job they want to do on qualification, leading to better

skilled and rounded solicitors, smaller firms will struggle if they do not have sufficient departments that deal with the areas on the SQE, which may lead to departments with a relevant focus having a high demand from trainees, even if the business needs are not there;

24. Trainees (and the firms who hire them) who fail Part 2, but have secured an NQ job will be left in a difficult position. The trainee will need to retake the exam six months later, delaying qualification and the firm will have accounted for a fee earner who is no longer available to undertake the work budgeted for;
25. A large majority of firms will simply not cover the range of areas tested by the Part 2. The questions will therefore need to take into account, for example, that a trainee at a large firm may never obtain any experience in private client, particularly if they are a commercial/corporate focused trainee, and trainees in smaller firms may never experience commercial litigation if the firm is family/immigration focused;
26. The SQE does not recognise the reality of law firms today. Law firms are commercially focused and trainees are hired to provide assistance and help with the planning for the firm's future. If there is not the business need for a trainee in a certain department then, regardless of the SQE, it is very unlikely a trainee will be placed there. Again, a trainee may not be released for preparation for the SQE if a firm's business needs dictate that they are better placed in the office doing work. Whilst the majority of firms will do everything they can to ensure trainees get the best experience and qualify, they are not training institutions there only to fulfil the needs of trainees, but commercial bodies focused on meeting client expectations.

There are many concerns about the SQE that are yet to be adequately considered or addressed. The time frame for introducing the SQE is very short, and as such limits the amount of time firms and candidates have to consider and prepare for any introduction of fundamentally different training arrangements.

## **Question 2a**

### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Grading 5 – for the reasons set out in the answer to Question 2b. It should also be considered in light of the SRA's proposal of changes for the Handbook which proposes allowing solicitors to practice alone immediately on qualification.

The proposals also need to be considered alongside the ongoing reviews and changes to the Court system in light of the removal of Legal Aid and the growing body of unqualified advisors and litigants in person. LLS notes in particular the proposals of the Master of the Rolls, Sir Terence Etherington (<https://www.lawgazette.co.uk/law/let-graduates-represent-litigants-in-person--master-of-the-rolls/5059089.article>) where he suggests that university and LPC graduates provide advice, assistance and representation to litigants unable to afford a solicitor. If degrees are changed to reflect the requirements of the SQE, it is likely that students will not be exposed to practical application of the law, or Court skills, until they commence their period of workplace experience. This may lead to inexperienced students undertaking legal work for which they are not prepared. LLS are also concerned that candidates may try and claim this time as a part of their qualifying legal experience, which is not appropriate given the lack of supervision and lack of transparency regarding what work may be undertaken.

LLS is also concerned that supervisor sign off of a formal portfolio is not required. There appears to be no way for the SRA to verify the work undertaken, or to ensure that the trainee was adequately supervised.

## **Question 2b**

### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We consider that the current requirements for a minimum of two years' experience, is appropriate. This is sufficient time for a trainee to explore various different areas of law in practice, and learn the appropriate skills for assisting and advising clients.

Extensive workplace experience, along with the appropriate supervision, is the best way to prepare a trainee solicitor for a legal career in a controlled environment. This experience will ensure that solicitors are well placed to assist clients and provide appropriate and measured legal advice. This also protects the public by ensuring that solicitors on qualification have had the best possible preparation for practice.

However, LLS are concerned about the removal of a requirement to undertake work in both contentious and non-contentious areas. The current requirement results in solicitors with a breadth of experience in different areas of the law and an understanding of how other areas of law work, which is crucial to ensure that trainees will become more effective solicitors (who will be best placed to provide the best service for clients).

LLS considers that the workplace experience should be regulated in terms of both minimum time period (we recommend that two years is retained) and number of placements (placements meaning practice area rather than firm). Each candidate should be required to undertake at least four placements for a minimum of four months in each placement, with a maximum of six placements with no more than three employers.

Students may undertake work in a disparate and inconsistent manner to try and obtain all the skills necessary. This may lead to them undertaking a number of paralegal jobs where they obtain limited experience, with minimal supervision.

## **Question 3**

### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

The SRA have rightly raised concerns about the cost and content of the LPC, and this has been given as a reason for the removal of it as a qualification requirement. It is therefore surprising that the SRA does not intend to regulate providers and is simply going to provide pass rate data.

Larger firms are likely to be able to create or buy in a programme for their trainees, which will cover the necessary bases and ensure (where possible, subject to earlier comments) that the trainees pass the SQE. This is likely to mean that their trainees are better trained. Smaller firms will struggle with this, and it is likely that trainees will have to self fund, placing them at a disadvantage.

Pass rate data is useful, but is no replacement for regulation of both content and cost. There should be some assessment by the SRA to ensure that the training is appropriate, relevant and properly costed. The necessary education and training for the SQE should be available to all, and not limited to those who can most easily afford it, whether independently or via funding from their firms.

It has been indicated to LLS that employers are very unlikely to rely on SQE results, and will instead look at A levels, degree and relevant work experience as a reliable and

known system for recruitment.

The SQE data is only likely to be useful for recruitment at Part 1, if at all, as firms will continue to have to hire NQs, based on the work undertaken during the period of recognised training. However, if a solicitor fails Part 2 it is likely any NQ job offer will be rescinded.

#### **Question 4**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

The SQE is a blunt tool. Students currently learn a lot over the six plus years spent working toward qualification (including during the very important on the job training) and it is not possible to assess all this within two exams in the form that is being proposed.

#### **Question 5**

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

We agree that there should be as few exemptions as possible to the SQE Part 2. The reason given by the SRA for introducing the SQE is to standardise qualification in England and Wales, so any suggestion that there should be exemptions will undermine the SQE in its entirety.

However, it may be appropriate for the SRA to consider the content and appropriateness of a qualifying law degree course and whether that could satisfy the requirements of the SQE Part 1. If so, it seems appropriate to incorporate this into degree examinations. Centralised marking could be considered for this but this would be problematic given the numbers of undergraduates taking some form of law degree across England and Wales (more than 17,000 starting courses per annum) and it could impinge on the autonomy of the individual universities. However, there was concern amongst the participants at the workshop that this might limit the currently wider learning that students are currently exposed to when reading law at university and might put non law students at a disadvantage.

If the SQE content and assessment is a test of professional competence, and therefore very different to what is currently covered on undergraduate law degrees, then the broad principle of exemptions could be justified. The exam could, of course, be designed differently to permit partial exemptions, but this does not seem to be supported by the SRA.

However, costs savings will only be achieved if the SQE preparation is incorporated into the degree – as "SQE compliant law degrees". If this happens, this would have a negative impact on the quality of the degrees offered, the breadth of subjects studied, and a number of equality and diversity implications (such a degree is unlikely to be valued by elite recruiters, but students from less privileged backgrounds, lacking advice and guidance may adopt for such degrees as a cheaper more direct route).

Notwithstanding, the problems associated with a SQE compliant law degree, it is difficult to justify not permitting exemptions from such a degree. Otherwise, there is additional costs involved and over-assessment of students.

## **Question 6**

### **To what extent do you agree or disagree with our proposed transitional arrangements?**

It is evident that if the SRA are determined to go ahead with this change then there must be a transitional period. However if the SQE must be introduced, it should be only when all the exams have been prepared and then there should be a limited overlap period with other students still taking the LPC. If this is not done then there is a concern that there will be a "two tier" profession. It is not clear what will happen to the thousands of students who have taken the LPC (which has not been time limited for a few years) and are still seeking a training contract. If those students have to take Part 1 and Part 2 then that will increase their personal cost of trying to qualify. If the decision is made the date and transitional arrangements must be announced quickly so that students have a choice whether to continue with the LPC or to wait for the SQE. Certainty is required for students, trainees and employers alike.

The LLS have concerns about the speed with which it is proposed that this major change will be implemented. Students commencing university in the last couple of years will be caught in limbo, as universities and law schools are unable to adapt to the SQE in time for them to have a genuine choice regarding whether or not to undertake the SQE. If, as we fear, courses are adapted to help students pass Part 1 of the SQE, students who have taken the more traditional law degrees will be at a disadvantage.

There are also issues for law firms, a large proportion of which generally recruit two years in advance (and four years before the trainee will become qualified). Firms will shortly be opening applications for trainees to commence their contracts in September 2019 and have not had the opportunity to consider how the proposed SQE would fit into their recruitment schemes and the overall growth strategy of the firm.

## **Question 7**

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

Whilst LLS acknowledges that the SQE is intended to increase EDI within the legal profession, it foresees the following issues from the current proposals:

1. It is not clear how the SQE will reduce costs, beyond the removal of the LPC. LLS have discussed the high likelihood of companies creating crammer courses before each stage of the SQE (and in the case of Part 1, probably courses which would last at least an academic year, and longer for non law graduates), which will inevitably increase costs and may result in a higher cost than the current LPC. At this stage, it is not possible to say what the costs will be but it is also something that the SRA do not appear to be addressing.

Given that candidates will want to have the best possible chance of passing the SQE (Part 1 and Part 2), most are likely to want to take a crammer course, irrespective of previous study (particular if exemptions are not permitted, and the SQE is to be taken in one sitting). Students who cannot afford to take the crammer courses will be at a distinct disadvantage.

2. As discussed above, LLS considers it likely that the SQE will further reinforce reliance on A Levels and degrees, particularly in the short term, as employers look to familiar grade structures that they understand and trust. This will lead to

grades and the university attended by the prospective trainee as attaining even more relevance, which tends to work against diversity.

It has been established, through various studies, that students from minority ethnic backgrounds, and/or lower socio-economic backgrounds, tend to not receive adequate careers advice or are unable to leave the family home and as such, may attend lesser ranked universities in the belief that it will not make a difference due to the introduction of the SQE. They could find themselves excluded from certain firms. The SQE will not change this, and may in fact further entrench previously held prejudices. This was raised by the Legal Education Training Review.

3. LLS consider that it is possible that some of the lesser ranking universities may offer students SQE focused courses, which may encourage students from lower socio-economic backgrounds to choose to attend these institutions in place of better ranked universities, in the belief that this will help them obtain a job or that they will be able to avoid crammer courses. However, LLS consider that the focus on university rankings is only likely to increase in the eyes of a number of employers and as such, the shift to SQE may in fact exclude a section of society from larger commercial and/or international firms.
4. It is very important that questions are properly designed and at this stage there is no information about what the SRA proposes the questions would look like and who might be asked to tender to provide the assessments.
5. This consultation paper has not made it clear how a part-time route will work. At present, the LPC can be studied part time at various times, whilst the student undertakes other tasks, such as working. LLS knows that many solicitors have only been able to qualify due to the flexibility of the LPC allowing them to work, or care for family members etc, whilst undertaking the LPC. The part time LPC allows exams to be taken over a longer period of time, to reflect the part time nature of the course.

Given the proposed structure of the SQE, it is difficult to see how it can be studied for part time. For example, all of Part 1 is to be taken at once, and if a student has been preparing part time, LLS cannot see how the candidate can be expected to recall in the level of detail necessary the volume of information needed when study has been over a substantial period of time. This ties into points made about the costs of crammer courses, which may be even more necessary for part time students to ensure their knowledge is refreshed.

6. There is no detail on how the SQE and any study courses will be funded. At present, students may be able to obtain graduate loans for the LPC. These loans may not be available for the SQE, further restricting access. The firms consulted by LLS were concerned that the cost of the SQE will be higher than the LPC and be passed onto them.
7. It appears that the costs of preparing for the SQE, and in particular Part 1, may be passed to students. This will have an impact on students from lower income households, or those working in firms that pay minimum wage.
8. Candidates may have to undertake unpaid work/internships in an attempt to get the relevant experience to take Part 2 and qualify (which may not be possible for all).
9. Students/trainees may undertake work at little to no pay, whilst self-funding, to

then qualify to find out that there are no NQ jobs available to them as the work they have done is not appropriate or acceptable to firms. This is more likely to happen to candidates with no contacts in the law and those without appropriate support from their education providers.

10. The bottle neck will move from training contract stage to NQ stage, whilst moving more of the cost onto the student. This is likely to have EDI consequences as some of the students struggling to obtain training contracts are those from poorer backgrounds, or BME backgrounds, that have not been properly advised on the best way to enter the legal profession. The SQE could in many ways exacerbate this issue as students are led to believe that doing well in the SQE is sufficient when, in reality, firms will continue to focus on academic and extra curricular achievements as they do currently.

## **OVERALL THOUGHTS**

LLS welcomes the additional detail provided by the SRA in this new consultation.

However, we remain concerned that insufficient research has been undertaken into how the SQE will be implemented, the impact on EDI and the way that law firms recruit and train trainees. It is likely that new crammer courses will inevitably be introduced, and will be of a similar cost to the LPC, if not higher, given that there will be two assessments to pass. Firms are likely to continue recruiting based on A levels and degrees as these are well established and relatively simple ways to consider candidates. Until the SQE is established as a good measure of a law student and future employee, it will not replace this filter.

There are also concerns that this will lead to a devaluing of the academic element of a legal education, with the focus shifting to the SQE even from an undergraduate level. Academic rigor is something that the legal profession has always prized itself on, and the move of focus from academic study to study to pass an exam would represent a disappointing change.

The proposals are likely to move the bottle neck from training contract stage to NQ stage. There is no evidence to show that these proposals will do anything to deal with the causes of the bottle neck in a time where there is a declining need for solicitors and more people are undertaking law degrees in the belief that the law represents a secure and profitable profession. The focus should be on educating students about the reality of pursuing a career in law, and the difficulties that come when a student does not have good academic qualifications or relevant experience.

LLS are also concerned about how this consultation will interact with the proposals to alter the SRA Handbook (particularly in relation to the proposal that newly qualified solicitors can set up on their own, instead of having a three year qualification period which is currently the case). No detail has been provided on this within the consultation.

The proposals from the judiciary (regarding students assisting litigants in person at court) also need to be considered. If practical training is not going to be undertaken for a considerable period of time, then students will be unable to undertake this work competently and represent a risk to the public and the reputation of solicitors.

Firms need time to consider how the SQE will impact on their talent strategy, and ongoing NQ recruitment. There is a risk that a trainee could fail Part 2 for a number of reasons, despite being judged by the firm to be fit for the job, and be unable to commence working in the NQ position that has been created for them.

Firms will need to consider whether they can adequately prepare trainees for the SQE Part 2, given the business needs and the scope of the work that can be offered. Trainees do not undertake work in neat parcels as expected by the SQE. For example a trainee in litigation may be involved in a large scale construction dispute that moves slowly but takes up the bulk of their time. This experience will be invaluable in working life, but is likely to be of little use for the Part 2 examination.

Conversely, firms also need to consider the possibility that paralegals within the firm may undertake the SQE independently, leaving the firm with a number of employees who are qualified as solicitors but for whom there is no solicitor role. If more people qualify as solicitors it will move the "log jam" that has been created at student to trainee level to NQ level (where it is likely there will be insufficient jobs).

Firms may also be unwilling to shoulder the responsibility for trainees passing the SQE and the time off and additional training this will require. As discussed above, law firms are commercial bodies focused on their clients' best interests in accordance with professional conduct rules. It may be in a client's interest for a trainee involved in a matter for a substantial period of time to remain involved in a case at the expense of preparing for the SQE. There may also be commercial considerations of firms who may be unable to release trainees for an appropriate period of time to prepare for Part 2 when they are in a busy period or involved in a large matter.

Some have asked what might be an obvious question - why can't the current LPC be adapted to deal with the perceived issues? This would involve centralising the examination of LPC students (through a central test and marking in a similar way to GCSEs and A levels), the pass rates should be gauged against a standard and the peer group (like the Law Society Finals were) so that the numbers that pass are controlled year on year. This was not one of the various 'reforms' to the current system discussed by the SRA in its consultation. We would also suggest ensuring all LPC students have to take a qualifying test before being allowed to undertake the LPC.

It does appear that the SRA, having created new routes to the profession (including apprenticeships), are now trying to work out how to change the qualification of all solicitors to fit in with this. Caution is needed and consideration needs to be given as to whether all these people should be qualifying as solicitors (as opposed to legal executives or paralegals). Firms have different requirements for the level of fee earners within the business and currently the numbers of solicitors are growing rapidly. In an era where: the PI legal industry is under huge pressure; there are issues about the future of litigation and clinical negligence work and how profitable that will be; the proposed introduction of fixed fees; and the suggestion of an online court (with no need for solicitors) it is likely that the demand for solicitors will decrease. As a result there will be continuing pressure on firms in terms of recruitment and the level of fee earners required. Solicitors' firms have faced a lot of change since the introduction of LASPO in April 2013, and still the full enormity of this and Brexit has to be felt and assessed.

In the context of this it is not the time to reform the way solicitors qualify, particularly as it is likely to result in there being more qualified solicitors, year on year, than currently is the case (which generally seems to meet supply and demand requirements). This will lead to saturation of the market with NQs who have qualified in a variety of ways, and will be an unknown quantity for several years, at a time when firms need to focus on protecting their business and ensuring stability in an uncertain market.

**LEEDS LAW SOCIETY**

**6 January 2017**

## SQE CONSULTATION 2016-17 – LETG RESPONSE

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### Introduction

The Legal Education & Training Group (LETG) is a membership organisation which brings together people involved with learning and development in the legal sector. Our members range from Directors of Learning at large global law firms to training administrators in regional firms, from technical legal trainers to managers of non-legal staff training, from L&D Managers to Graduate recruitment and organisational development specialists.

This response therefore represents the collective thoughts of people who are closely involved in the development of future and qualified solicitors and those that work with them. In contrast, perhaps, to individual firm responses, the LETG submission has particular emphasis from those at the sharp end of organising and managing the recruitment, development and qualification process from the law firm side.

The response is submitted by the LETG in its own right and does not purport to represent the view of any one of our members or member firms. Its content represents information gathered at two specific meetings and also throughout the year at various LETG events and forums at which the SRA's new qualification proposals were discussed. The draft response was then sent round to members asking for comments before being submitted. Where different views were expressed, they have been incorporated.

If you want any further clarity on this submission then please email [letg.coordinator@gmail.com](mailto:letg.coordinator@gmail.com)

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### (1) To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

This question goes to the heart of the debate about the new proposals; the distinction between the SQE as a measure of competence, and the SQE as a means of ensuring solicitors qualify with the skills and knowledge to do the job to the right (high) standard. This is not the same thing.

LETG member firms views range from Disagree to Strongly Disagree on this question, in part dependant on how it is interpreted. Those who read it as the catch-all (i.e. does it do what firms need it to do to train qualified solicitors) then the response tended to 'Strongly Disagree'. Those who read it in the narrow sense (i.e. the SQE as a measure of competence) tended more to 'Disagree'. Fundamentally though, no LETG member firms we spoke to believe the current proposed SQE is adequate.

### SQE1

The common view was that the proposed SQE1 assessment does not adequately replace the rigour and depth of the QLD or GDL in developing legal knowledge and its application in preparation for a career as a solicitor. There is some debate about the effectiveness of MCQs (it's difficult to judge as no sample questions have been published), but even those who believe that an MCQ can assess depth of knowledge and application effectively, share concerns that it doesn't replace the lack of prescribed period of study of the law.

If introduced, we believe England & Wales would become the only jurisdiction in which the process of qualification does not prescribe any period of study of the law. This would hugely impact the value of the 'brand' of solicitor as well as negatively affect the recognition of the qualification internationally.

#### *LPC-lite*

There was also some concern that SQE1 combined elements of the QLD/GDL and the LPC without adequately replacing either. This was especially relevant to Grad Recruitment professionals needing to understand what level their 'trainees' would be at before starting their Qualifying Work Experience (QWE). The LPC, for all its flaws, is seen as a crucial stepping stone from the academic to the practical, both in its content and the time it gives students to mature professionally before entering the workplace. Those who have taught GDL and LPC courses testify to the lack of preparedness of first week LPC students to enter the workplace in marked contrast to those near the end of that course.

It was widely agreed that larger firms would seek to develop their own LPC-type course before trainees start QWE with them. These would replace these lost elements and also the crucial LPC electives which go a long way towards preparing students for the specific needs of the firm they will be working for. This will inevitably lead to a two-tier system where those 'privileged' solicitors who had been through intensive courses will have a different status in the job market than those who haven't. Both will wear the 'badge' solicitor, but one will be much more highly trained. This will also increase the cost and push the burden onto firms undermining, among other things, the consistency which the SRA seeks.

#### **SQE2**

Concerns were raised by members regarding SQE2 as an effective measure of competence before qualifying as a solicitor. The skills areas are thought to be broadly correct, but the key question remains whether skills can adequately be judged by assessment alone, with no observations of performance in the workplace.

#### *Timing*

One problem is the lack of prescription as to when SQE2 will be taken. If taken before the period of QWE, then long and expensive prep courses would be required. This will still be the preferred option of some member firms. If taken during or after QWE, this will cause severe disruption to firms and to the 'trainees' themselves. Some prescription, or at least guidance, on timing would therefore be welcome.

#### *Disruption to QWE*

Firms were clear that the disruption for trainees preparing for SQE2 during QWE would be considerable. The SRA vision of a single weekend prep course was seen as totally unrealistic considering the importance of the assessment. Even with the greater experience of time spent during QWE, a proper course of study and reasonable period of preparation would need to be given equally to each person.

Many firms said they would want SQE2 results in before decisions on qualification were made. That would typically be 4-5 months before qualification. If it would take 3 months to get results back, that would mean 'trainees' sitting SQE2 about 8-9 months before qualification.

Whenever SQE2 is sat during or at the end of QWE, an equal and reasonable period of preparation would be needed, especially if they have not had the opportunity to work in some of the 'context'

areas. For smaller firms who rely heavily on trainees, this would be a burden which might conceivably discourage them from taking them on at all. For larger firms who also have trainees on client and overseas secondments, this might prove administratively very difficult and expensive.

It should also be noted the concerns member firms had for the stress SQE2 will add to trainees, already under pressure during their two-year 'job interview'.

### Contexts

SQE2 is purported to be a test of skills within two particular contexts. However, only 5 alternative contexts will be offered. If taken after or near the end of the QWE the limited number of possible contexts leaves those on the verge of qualification potentially having to choose being assessed in areas in which they have had limited practical experience or in which they are not intending to practice after qualification. The SRA argument that this shouldn't matter as a test of skill shouldn't be influenced by the context was not accepted by the overwhelming majority of member firms. If SQE2 is to be at qualification-level as required (i.e. considerably above Level 7/LPC) then application of detailed and complex law and fact to the skills will be a critical element.

It was the overwhelming view that the number of context options for SQE2 should be increased, to include areas such as Finance, Employment, Family and possibly others. The option to have 'blind' contexts was rejected, not least because it would create additional stress on those taking the exam.

A few members felt that testing in one context only (chosen from this expanded selection) would suffice.

### Logistics

Finally, the SRA have not yet fully explained the assessment logistics for SQE 1 and 2. Firms need to know more about this to make a judgment. For example; who will the assessors be? How many will be needed? What level of qualification will be required to be an SRA assessor? If the assessment is going to be so fundamental to the setting of standards, firms need much more detail on how it will all be set up.

## **(2) (a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

There was total agreement from member firms that a period of QWE is critical to the qualification process. Allowing experience from different periods and in different environments to count is also to be welcomed subject to sufficient oversight.

There was considerable concern, however, about how the QWE proposals fit into the overall picture. For example, a worry about the value of shorter periods of time being added up to make the whole. Eight 3-month QWEs, for example, would not be equivalent to 12 or 24 months in the same firm, learning systems and precedents, and developing over time.

There was also concern about the idea that QWE could be incorporated into a degree course. A 19-year old second year law student in the workplace would have a very different experience to a 23-year old with post-graduate courses of study behind them. Not that age should be a factor, maturity is the key and that varies from person-to-person, but the point is illustrative.

There was also some concern that the only requirement of the provider of QWE would be to sign a declaration that trainees had “*had the opportunity to develop some or all of the competencies in the Statement of Solicitor Competence*”. This is very vague. LETG member firms, who by the very fact of their membership have an interest in learning, and have people in relevant roles, will no doubt still provide excellent training for their trainees. The mechanism for monitoring this will have disappeared however.

The SRA wants to create uniformity of standards through these new proposals. The virtually unregulated QWE has the potential to create variances in experience even greater than may exist now. Once again, these proposals may lead to a two-tier system and create a lower average standard on qualification.

**(2) (b) What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

No Min     6m     1y     18m     2y     2y+     Flex     Other

The majority of member firms thought 24 months was the right length. Some, but a small minority, thought 18 months would be OK, however. Questions were raised by Grad Recruitment teams about the challenges of giving people adequate experience in an 18 month QWE. Arranging seat changes to satisfy both firm and trainee was already a challenge.

**(3) To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree     Disagree     Neutral     Agree     Strongly agree

The SRA is not proposing to regulate preparatory training for the SQE at all. It is assumed that the detailed assessment specifications will result in courses developed by the market which will be of a high standard and replace or enhance the current QLD/GDL/LPC/PSC courses. This is quite a large assumption at the very centre of the new proposals.

Member firms agreed that this would probably not be a problem for them, because they would come together to create courses of a high standard. But that this may not be the case for smaller firms. Once again, the prospect of a two-tier system emerges as well funded students with places at bigger firms attend high quality courses with others left to choose courses, possibly based on price.

One member summed it up well saying that whilst it’s understandable the SRA doesn’t want to regulate every course in detail, “*to be leaving the field altogether is a step too far*”.

**(4) To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree     Disagree     Neutral     Agree     Strongly agree

There is a very fundamental principle being tested here, the idea that competence can be measured by assessment alone. The view of LETG members is that it cannot.

Assessment is one measure of competence but cannot be the only one. Assessment sitting alongside periods of specified study and work experience conforming to certain criteria and under specified supervision is the only true measure of professional competence. The QWE is a crucial part of the new proposals and this is welcomed, but it is stated that it will not be “judged” as competence would be tested by SQE2.

The SRA has quoted its research with the public. I’m sure if the public were asked in a survey whether a compulsory and regulated period of study should be a requirement to become a solicitor, they would answer overwhelmingly in the affirmative. The public would no doubt say the same if asked whether work experience should be regulated and overseen.

However rigorous the assessment criteria, assessments are designed to be passed or failed. The current proposals ignore the benefit of the study of law over 1, 2 or 3 years, on courses in which the criteria is agreed and regulated, even if only at a high level. It also ignores the crucial period of time, maturity and development that the LPC provides before students enter the legal workplace.

The proposed model will lead to well-funded firms producing qualified lawyers of an entirely different training and standard to the rest. They will have passed SQE1 and SQE2 and done their QWE, but very little else about their qualifying experience will be common.

The view of LETG members, therefore, is that the proposed model is not a suitable test of the requirements to become a solicitor. There are good elements within it, but the overall model is not sufficient.

**(5) To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

There was some divergence on this question. Most members agreed that, in principle, if one is creating a single system for qualification, then no exemptions should be allowed.

However, practicalities mean that this may be too burdensome for some, for example barristers wishing to cross-qualify or overseas lawyers.

**(6) To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

Members felt that the timescales were too tight. Firms were already recruiting for 2019. We still have the final consultation due later this year which would leave less than two years to develop and implement the entire new system.

Members’ views, subject to the comments above, was that an additional 1 or 2 years was needed to make the changes. Also, more piloting should be done in that time to identify areas of weakness and plug gaps/correct errors.

**(7) Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes  No

There is overwhelming belief that the new proposals will have a significantly negative impact on EDI.

Most clearly, as set out in various places above, members are of the view that the proposals will lead to an informal two-tier system and two 'levels' of solicitor. To give a crude illustration, these would be:

- Sol+ ; put through expensive, rigorous and high quality training courses by their sponsor firm, including courses going well beyond the scope of the SQE, and given complex, relevant and highly supervised work experience; and
- Sol- ; doing the quickest and cheapest prep course(s) to get through the SQE, no additional courses, and cobbling together bits and pieces of QWE with minimal supervision and poor quality paralegal-level work.

In addition, non-law students may be at a significant disadvantage to law students in having to attend a long and expensive course to prep for SQE1. The proposals may preclude students with less access to finance from studying degrees that do not include SQE1 prep. This information may be available but less understood by students from disadvantaged backgrounds.

Also, firms felt that the new proposals would likely be more expensive than the current system. The SQE1 prep course for a non-law graduate will be at least the equivalent on a GDL/LPC and possibly more expensive due to the additional content. Certain firms may also not fund the cost of SQE2 prep courses and exams.

Fundamentally, the system will increase the advantage for those with early access to funds, information, and contacts in big firms, leaving the rest potentially stranded with a 'Tier 2 CV' but not understanding why they are struggling to get jobs until it's too late.

Sent by email only to [consultation@sra.org.uk](mailto:consultation@sra.org.uk)

The logo for the Legal Services Consumer Panel is located in the top right corner. It consists of a blue circular shape on the left and a white rectangular area on the right. The text "LEGAL SERVICES CONSUMER PANEL" is written in blue, uppercase letters within the white area.

LEGAL  
SERVICES  
CONSUMER  
PANEL

Dear Sir/Madam

## **A new route to qualification: The Solicitors Qualifying Examination (SQE)**

The Legal Services Consumer Panel welcomes the opportunity to respond to the SRA's consultation on the Solicitors Qualifying Examination (SQE).

In March 2016, the Consumer Panel responded to the SRA's initial consultation on the same subject. In that response, we were critical of the appropriateness of publishing a consultation document with little supportive evidence or analysis. The Panel recognises the extensive stakeholder engagement that has occurred, and the SRA has gone some way to ease our concerns in this second consultation. It has referenced more evidence and undertaken better analysis. These improvements mean that the Panel can agree in principle to a centralized qualifying examination. However, concerns remain around flexibility and diversity, funding and timings for implementation.

### **Diversity and Flexibility**

In March 2016 we highlighted that the Legal Education and Training Review (LETR) report<sup>1</sup> found that there is a need for flexibility in routes to qualifying. These proposals do not address those concerns. Indeed aside from the introduction of the SQE nothing has changed with regards to the routes to qualification, we consider this to be a missed opportunity.

We note and welcome the SRA's proposal to recognise solicitors' apprenticeship. However, one criticism of the current system is the lack of clarity and transparency around how those without a degree can apply for exemptions. We are disappointed that this consultation has not seized the opportunity to clarify this issue, by offering examples that go beyond the traditional Legal Executive route (or Level 6/7 professional qualification). The range of what would be acceptable prior-attainment equivalent to the degree / apprentice route is important not just for clarity, but for flexibility. We would therefore recommend that the SRA develops this area further by establishing and publishing the process for assessment.

### **Funding**

A key argument for the introduction of the SQE is the high cost of the current Legal Practice Course (LPC), as well as the lack of standardisation or benchmarking amongst providers. The Panel accepts these arguments, but notes that the SRA has not outlined or estimated how much the SQE is

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<sup>1</sup> The Future of Legal Services Education and Training Regulation in England and Wales, June 2013

likely to cost at stages 1 and 2. We are concerned that the cost of the SQE may be prohibitive for some students', just as much as the LPC is. We say this as there is no explanation as to why the SRA does not expect that the cost of the SQE and preparatory training would be greater or even equivalent to this sum.

We know that graduate loans exist to support or cover the costs of the LPC, but the SRA is silent on the sources of funding which might be available to potential candidates, especially those from low income families. We are also worried that the funding situation may be exacerbated if the LPC continues to exist with exclusive funding routes. Although the SRA states that the LPC will no longer be a regulatory requirement, it is not certain that employers will not continue to require it as a prerequisite for obtaining a training contract, especially if they opt to pay for it, thus potentially setting up a two tier layer of opportunity.

### **Transitional arrangements**

The Panel is worried that the timescales for implementation is overly ambitious. The SRA proposes to start the SQE assessment in September 2019. This leaves little time for testing, evaluating and refining the assessments and setting up equivalent funding opportunities. We would urge the SRA to reconsider this timescale.

### **Standardisation across the profession**

We are aware that the Bar Standards Board is also carrying out consultation on education and training. It will continue to be important for the Approved Regulators to work together on the detail of the proposals, as well as its communication. Regulatory changes to training and education might impact students choices very early on in their academic career, particularly if decisions made could limit their ability to move within the profession. Close and Joint working between the SRA and the BSB and indeed with any other legal regulator embarking on similar considerations would be important for overall standards across the professions.

### **Qualifying work experience**

It is right not to underestimate the experience required of a newly qualified solicitor to understand and provide the required service to consumers. We have seen no arguments, evidence or commentary to suggest that 18 months' experience will produce the competencies required and recommend continuing with 24 months with flexibility as to where this can be gained.

# Consultation questionnaire

Response ID:515 Data

## 2. Your identity

### Surname

Beresford

### Forename(s)

Katy

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Linklaters

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We fundamentally disagree that the proposed SQE is a robust and effective measure of competence. The SRA has taken no notice of multiple law firms' responses that the best outcome would be a system that facilitates solicitors having the relevant knowledge, skills and training needed for the area(s) in which they will practise, rather than one that attempts to ensure every solicitor has the same training regardless of their ultimate career. The ability since 2007 for future trainees to take elective subjects during the LPC has allowed them to gain relevant specialist knowledge prior to commencing work, accurately reflecting the reality that our profession is much more specialised than it used to be. In our opinion, this is a positive development. The refusal to have an element of flexibility in the proposed SQE Stage 1 such that students can take optional topics relevant for their careers means that it will be necessary for them to study these topics separately before they begin work. This additional period of training will delay the date on which students start to practise. Unless all firms insist upon such additional period of training – which cannot be guaranteed – this will have a negative impact on the recruitment of those firms that wish to provide detailed, rounded training pertinent to trainees' ultimate careers, because students will be understandably concerned about taking longer to qualify. We disagree with the SRA's proposal to design and to issue guidance about having SQE Stage 2 at the end of workplace based learning, testing skills competence at the point of qualification. We believe students should receive skills training before beginning their work experience. Under the SRA's proposed model, there is a genuine danger that trainees could start at firms with no foundation or training in the core business skills at all, which ultimately is to the detriment of the consumer. The SRA should require that SQE Stage 2 be at the start of qualifying legal work experience and design it to test skills competence at the point of the start of employment. This would in turn force training providers to provide earlier training in the core business skills that SQE Stage 2 tests, and would ensure that our future solicitors underwent such training and started at the firm with a strong foundation in such skills. There then could be an additional robust assessment of the intending solicitors' competences at the point of qualification, undertaken by individual firms. Feedback from our associates who have undertaken the OSCE part of the QLTS whilst at work is that they experienced a significant amount of additional pressure in trying to balance preparation for the OSCE with the continuing demands of work. We expect this situation would be exacerbated with our 110 trainees on an annual basis. Aside from work/life balance, we also think the need to take study leave would affect the quality of a trainee's experience of work, preventing them from seeing transactions or disputes through to conclusion.

Our experience is that taking the few associates doing the QLTS away from ongoing matters has had a detrimental effect on our teams, client demands and matters. This will only be exacerbated if large numbers of trainees are regularly taken out of work to prepare for and undertake SQE Stage 2, this will have an even more serious adverse impact on our firm's ability to meet client demands, especially with respect to our smaller practice groups. The significance of this point is not limited to City firms. Smaller law firms will face a disproportionate difficulty if their trainees are out of the office for a length of time prior to qualification. There will be a time lag between newly qualified positions being offered by law firms and trainees receiving the results of their SQE Stage 2, thus obtaining confirmation that they will be admitted to practice. This introduces increased uncertainty to the qualification process – both for the firm and for the trainee. A newly qualified vacancy that is available at one point in time will not necessarily be available six months later if the trainee intended for that vacancy failed their SQE Stage 2 and needed to resit. Again, this burden is likely to fall disproportionately on smaller firms. The ultimate result of the above difficulties may well be a reduction in the number of firms that choose to offer solicitors qualifying legal work experience, hence reducing access to the profession, with negative EDI impacts. We and other law firms have spoken to a range of universities and it has become clear that not every university will be incorporating teaching of the more vocational aspects of SQE Stage 1 into or after their existing law degree programme, contrary to the SRA's expectations. In addition, discussions with the Bar Standards Board have also made it clear that they have no intention of getting rid of their requirement for a Qualifying Law Degree. This situation has a detrimental impact on students because they will be forced to make the choice much earlier on which branch of the legal profession they wish to enter (i.e. solicitor, barrister, legal academic, other) – essentially, when they apply for university. If they decide aged 17 that they do not want to be a solicitor, choose a law degree programme that does not integrate SQE Stage 1, and then change their minds, they will face the additional unplanned cost of an SQE Stage 1 preparatory course (as described above), and be disadvantaged timing-wise compared to their peers who chose a different programme. This fundamentally undermines the SRA's stated diversity objective in introducing the SQE, and decreases social mobility. Conversely, if students decide aged 17 that they want to be a solicitor, choose a non-Qualifying Law Degree programme that integrates SQE Stage 1, and subsequently decide to become a barrister or a legal academic, they will (a) not be able to go to the Bar and (b) have wasted time studying irrelevant courses and will likely have a less rigorous foundation education, disadvantaging them in becoming an academic. Finally, when students aged 17 from less privileged socio-economic backgrounds look at the range of degrees on offer and realise that a law degree programme that integrates SQE Stage 1 does not equip them well for other vocations (or life in general), and does not have the current safety net of a clear-cut recruitment value to other sectors; they will not choose that degree and a potential cohort of students who could have added diversity to the solicitor profession will be lost. The SRA should seriously evaluate this diversity risk of losing talented would-be solicitors based on the choices that arise from socio-economic background. From our point of view as an employer, our planning for when our future trainees will arrive will be thrown into uncertainty – some students will be able to sit SQE Stage 1 at the end of their degree programme, whilst other, equally capable, students will have to attend a separate course post-university that covers the more vocational aspects of SQE Stage 1. We are against requiring all candidates to take the SQE Stage 2 assessments in any of all five contexts on an unseen basis. In addition, we still maintain that the SQE Stage 2 should offer a broader number of contexts for candidates to choose from. The model needs to retain a strong element of candidate and firm choice. It is irrelevant for a would-be solicitor to be tested in contexts in which they will never go on to practise. Furthermore, if the assessment contexts would be on an unseen basis, firms cannot always offer experience in each of the five contexts. For example, our firm only has space for 88 trainees (out of an approximate cohort of 220 trainees over 2 years) to experience 6 months in our Dispute Resolution department over the course of a 2-year training contract. Having only five contexts fails to recognise the reality that many solicitors specialise from the point of qualification in a wider range of practice areas than the SRA has listed. The contexts specified ignore the way in which the legal profession has changed in past decades. Whilst some breadth of experience will always be important, we consider that intending solicitors should be able to prove competence in the context of those areas in which they will actually be practising post-qualification. We also believe that this flexibility will allow a wider range of law firms to offer training to intending solicitors, thereby opening up the profession and increasing diversity. We are of the strong opinion that offering a broader number of contexts

will enhance the quality of the qualification process and this justifies the additional cost and regulatory burden on the SRA. Alternatively, the SRA could centrally assess these five contexts but allow current LPC providers to assess the additional contexts, similar to the way the Bar Standard Board handles its BPTC centralised assessments but permits course providers to assess all other BPTC assessments (skills areas and options). If there is no mandatory contentious element in SQE Stage 2, it is conceivable that at some stage in the future, the Ministry of Justice might decide to remove solicitors' rights of audience at the qualification stage. This could undermine the attractiveness of the profession as a whole.

**PRACTICAL ISSUES** We have fundamental concerns with the practical issues in administering the SQE Stage 1 and Stage 2. The SRA should seriously reconsider the use of computers for SQE Stage 1. The SRA envisages two sittings per year for SQE Stage 1 and has done its modelling on the basis of 10,000 students per year. The New York Bar Exam – which the SRA is consistently using as the SQE's comparator – similarly has two sittings per year and on average 14,000 students per year. However, the cost and number of practical problems that arise with the New York Bar Exam are both low because students handwrite all aspects of the exam and do not use computers. (There is a laptop programme that students can opt into in advance, but a minority of students choose to do this.). Computer testing also adds to the burden of students with various disabilities – e.g. students with dyslexia, visual impairments, or finger mobility issues. Finally, handwriting means that it is easier to find venues for such a large number of students; otherwise one would need to source venues that are able to hold 5000 students as well as 5000 computers with their accompanying equipment. In addition, the SRA should consider five or more sittings per year for SQE Stage 2. Assuming 10,000 students sit the SQE Stage 2 per year, the logistics of getting sufficient time, examiners and role players to allow 10,000 students to be tested in all five skills in two different practice contexts in the space of two weeks each year are not just challenging, but impossible. Our experience of the OSCE part of the QLTS is that there are insufficient examiners available, which leads to an infrequent amount of exam dates available and delays in our associates being able to take the exams. We do not want this to happen on a regular basis with our large cohort of trainees.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Notwithstanding our response to Question 2a and 2b that follows, we would like to make it clear that we still fundamentally disagree that the proposed SQE is a robust and effective measure of competence for the reasons that we have elaborated on throughout this document. We do not see value in qualifying legal work experience being with multiple employers. It is greatly to the detriment of the student, because trainees are currently assured of two years' certain employment and a greater chance to secure a position on qualification; in the future the student will have much more uncertain employment prospects and could be in a state of perpetual stressful job-hunting as he/she comes to the end of each placement with an employer. There would also be a lesser chance of securing a position on qualification, as each employer may have experienced the individual for a shorter period than the current two years. It is worthwhile pointing out that a student who heads down the "multiple employer" route would be unlikely to obtain a short placement with us and other large law firms, because graduate recruitment number decisions in such big organisations are made relatively far in advance and we would already have hired and would be at capacity in terms of the number of trainees we need. We also perceive a risk with the SRA's proposals – that students with connections to people within the legal profession could rely on these to fulfil their qualifying legal work experience requirement, thus seriously undermining the SRA's objective of increasing social mobility. We would like more detail and more reassurance from the SRA that it is going to carefully regulate and control the wider range of qualifying legal work experience that is different from the traditional training contract. We do recognise that there are limited circumstances in which it may be beneficial to allow qualifying work experience to be done with more than one employer, for example in the case of firm insolvency. If the SRA insists on permitting qualifying legal work experience to be done with multiple employers, despite our reservations set out above, we ask that there should be at least one period of 12 months' continuous experience with a single employer, and we agree with the option that the SRA should require the total work experience to comprise no more than four separate placements with different

employers. Having too short periods of work experience affects both the quality of experience of the consumer as well as the would-be solicitor; it produces lawyers who are neither “office-ready”, nor capable of being legal advisors to consumers at a high standard. We would like the SRA to clarify certain points about the employer’s declaration that a candidate had the opportunity to develop some or all of the competences in the Statement of Solicitor Competence through the required period of workplace experience: (a) Where the workplace experience has been with different employers, would the employer only be required to specify the particular competences the candidate had the opportunity to develop with that employer; then the declarations from the multiple employers would be forwarded to the SRA to fulfil the requirement of qualifying legal work experience? (b) Where, in the opinion of the employer, the candidate has not had the opportunity to develop some or all of the competences during the workplace experience, but the candidate disagrees, what measures will the SRA make available to the candidate to resolve this difficulty?

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We strongly urge the SRA to require a mandatory length of time for workplace experience, rather than merely suggesting or recommending a length of time. If the SRA does not specify this, we expect pressure may increase on firms to reduce the required period for workplace experience as a competitive recruitment tool, which will negatively affect overall standards of qualified solicitors. We already know that some City firms intend to reduce their required period for workplace experience from the present 24 month-period should this become possible. This is therefore a real concern. We would be in favour of a mandatory requirement of 24 months for qualifying legal work experience. This is an effective length of time of appropriate supervision of individuals early in their career. In our experience, when our trainees have had relevant experience such that they could discount their 24-month training contract with us, they have not always wanted to do so, recognising the benefits of the experience that they will gain during the full period. In our opinion, 24 months is the appropriate amount of time for an intending solicitor to: (a) gain the experience they need especially given that busyness can vary in seats, (b) gain the required level of confidence and competence in the necessary range of legal skills and knowledge, (c) be able to make a considered decision as to their preferred qualification specialism, and (d) gain know-how to relate their learning from one practice area to another. There is a big difference between the standard of our trainees at day one of their training contract and that at their admission date (and in most cases a discernible difference between trainees at the end of their third six-month seat and at the end of their final seat). We believe that this is as a result of the full 24 months of dedicated training and supervision which allows trainee solicitors to develop their skills in a 'safe' and appropriately supervised environment.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** We reiterate that the publication of information regarding the SQE pass rates and performance of training providers would enable training providers with higher pass rates to increase their fees, which would lead to negative EDI impacts. We understand that the SRA hopes that such publication would create competitive pressure and lead training providers with lower grades to improve their standards. We would like to point out that both outcomes are not mutually exclusive, and indeed, the former is very likely to happen whether or not the latter occurs. In addition, these published results would only be pass rates and not grades. Students would not be able to distinguish between a provider with a high number of low-grade passes and a provider with a high number of high-grade passes. This would lead to the SRA’s above expectation backfiring and multiple providers with a high number of low-grade passes (thus worse-quality providers) being able to charge higher fees due to market forces. Moreover, the proposals for the publication of information will incentivise some providers to focus only on “teaching to the test” in order to increase their pass levels, rather than ensuring the courses cover a full legal education. This risk is

exacerbated given the current proposed narrowness of the SQE. This poses a further risk to the quality of England and Wales solicitors and cannot be what the SRA intends. Finally, different institutions will also have different focuses. For example, a university teaching a law degree – some but not all of whose students go on to take the SQE – will have a different focus from a specialist provider whose course is aimed only at enabling students to pass the SQE. This raises a question about the value of comparing SQE pass-rates from students at both types of institution. We are of the firm opinion that instead of its proposals, the SRA should fulfil its role as regulator by regulating the preparatory courses for the SQE or, more ideally, regulating the LPC. The introduction of a system of quality assurance or accreditation that regulates such training would ensure that England and Wales had robust and effective training for individuals to become solicitors. The SRA could prevent unsatisfactory institutions from providing training. This would also help protect students from studying at institutions that the SRA considered did not provide training of an adequate standard. The SRA also has powers under Regulation 9.3 to inspect both Authorised Education Providers and Approved Education Providers and could utilise these to introduce a system of inspection and monitoring, under which the SRA could assess the quality of the results achieved as well as the quality of the teaching offered. The judgments of such inspectors will be as objective as the judgments of the examiners for SQE Stage 2. Objectivity can be ensured in an identical manner. Course specification would not be required from the SRA. The SRA appears to be loath to undertake such regulation of preparatory training without clear and compelling reasons. Due to the significant negative EDI impacts of publishing data about training providers' performance on the SQE, we think that the SRA should regulate training to ensure it is robust and effective.

## 6.

### **To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We fundamentally disagree. The centralised assessment of other international jurisdictions generally includes 50% essay-based questions and not merely multiple-choice questions. The SRA should pay attention to the multiple responses to its last consultation paper setting out cogent arguments against multiple-choice testing, and make SQE Stage 1 consist of (at most) 50% multiple-choice questions and 50% essay-based questions. A single practical legal assessment testing Legal Research and Writing is insufficient. Essay-based questions examine (1) students' critical reasoning skills, (2) their ability to analyse and assimilate information, (3) their ability to recall information unprompted, and (4) their ability to construct an argument and present the issues and solutions they have identified in a coherent, convincing and consumer-friendly form. Put simply, a multiple choice assessment alone cannot assess a candidate's suitability to practise as a solicitor. We, and many other law firms in England and Wales, made the point in the first consultation that any system of solicitor qualification should ensure high quality standards at the point of entry to the profession. Failure to do so would decrease the confidence the consumer has in the quality of solicitors and damage the brand of solicitor of England and Wales in the international marketplace, where multiple other countries (e.g. USA, Canada) have a post-graduate law degree as one of the requirements for entry to the profession – rather than an undergraduate non-law or law degree. To that end, it appears to us to be counter-intuitive that the depth and breadth of the proposed content of the Functioning Legal Knowledge Assessments in SQE Stage 1 is not only narrower than that of a typical England and Wales undergraduate law degree syllabus, but also narrower than the SRA's own Statement of Legal Knowledge. To give some examples: - There is a disproportionately large amount on civil procedure in the assessment "Dispute Resolution in Contract or Tort" and very little on Contract and Tort. More importantly, the idea that a candidate would walk into that exam and only be tested on either Contract or Tort and not both subjects, is fundamentally objectionable. Tort claims and obligations form the basis of most significant corporate and commercial litigation. Contract Law is the bedrock of English private law and its principles and case development are the main reason why England and Wales remains the most popular jurisdiction of choice for agreements. It is the foundation of virtually every single practice area practised by firms, ranging from small high street firms to large international firms. Specific aspects of the Statement of Legal Knowledge not covered by the proposed syllabus include promissory estoppel, the tort

of defamation, and the tort of trespass to the person. - Public and Administrative Law has now essentially been relegated to one-third of an assessment that includes Professional Conduct and the English Legal System, which does not reflect its importance within the Statement of Legal Knowledge. The three topics do not even sit naturally together. On a comparison with the Statement of Legal Knowledge, the proposed SQE 1 assessment does not cover the nature, status and procedure for passing primary and delegated legislation and government accountability. - There is very little on the (present) core subject of Equity and Trusts which is relevant both in a high street context, but also in relation to our trusts and funds practices. We think there is a significant risk that the assessment can be passed with only a limited understanding of the way in which trusts can be created outside a will. This creates a serious gap in the knowledge of students who may go on to advise consumers on the creation and operation of trusts that arise outside a will – for example, in family law, employment law, corporate finance, mergers and acquisitions, tax law, pensions law, and conveyancing. We are clear that SQE Stage 1 is not meant to assess what is assessed on a law degree and that it “assesses the candidates’ ability to use their legal knowledge in practical contexts through assessments which integrate substantive and procedural law.” However, we feel strongly that the substantive law aspects of SQE Stage 1 should be comprehensive and in depth, to ensure the high quality standards of our solicitor qualification. The SRA should have 10 Functioning Legal Knowledge Assessments broadly reflecting its Statement of Legal Knowledge as follows: 1. Ethics, professional conduct and regulation, including money laundering and solicitors accounts; and legal system of England and Wales 2. Wills and administration of estates; trusts and equitable wrongs 3. Taxation 4. Law of organisations 5. Property 6. Torts 7. Criminal law and evidence; and criminal litigation 8. Contract law 9. Constitutional law and EU law (including human rights) 10. Civil litigation The New York Bar Exam currently tests on 19 different subjects and the California Bar Exam currently tests on 13 different subjects, so the proposed SQE Stage 1 assessments are hardly comparable.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** We maintain that there should be exemptions from the academic aspects of the SQE Stage 1 for students who have completed a Qualifying Law Degree (QLD). An advantage of completing a law degree rather than a non-law degree, from a student's point of view, is that it offers a full exemption from the academic stage of legal education and training. It therefore recognises the valuable foundation that a QLD provides to a future solicitor in terms of an academic and intellectually-vigorous knowledge of the law. If exemptions are not allowed for those who have a QLD, there is a risk that students will see no discernible value in completing a law degree rather than a non-law degree. The SRA should also offer an exemption from the SQE Stage 1 and Stage 2 for barristers. This firm has highly successful solicitors (including partners) who were initially barristers and we think the SRA needs to seriously engage with the issue of ease of transfer between the professions. Finally, we think that lawyers from other jurisdictions should be exempted from SQE Stage 2 if they have undertaken equivalent-length work experience, especially given that the SRA has emphasised that SQE Stage 2 is not designed to test recall of England and Wales legal knowledge and is not an assessment of England and Wales law or a particular practice area. As the SRA itself states, such lawyers’ experience of practice in a regulated, overseas jurisdiction should already provide the opportunity for them to develop the practical legal skills that the SRA would expect domestic solicitors to have at the point of qualification. We can see clearly the rationale for lawyers from other jurisdictions doing SQE Stage 1, but not SQE Stage 2.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** Despite the slight postponement of dates, we still think that the SRA has proposed an aggressive and unachievable timetable. The earlier long-stop date of 2024 is too soon given the extent of disruption that the new regime will introduce. We think there should be a one-year extension to the cut-off date to 2025. In addition, we think it is fairer that the option of continuing under the existing qualification

framework should be extended to all individuals who have – at the time of the introduction of the SQE – accepted an offer of workplace experience under the existing framework. We agree with and reiterate the response of the City of London Law Society Training Committee to this question. There also is not adequate time built in for firms and other legal employers with few internal resources to make significant decisions and change their internal processes in response to the possible changes. Our experience from helping a provider to design a bespoke LPC course (including piloting and amendments to take into account feedback) suggests to us that the size of this exercise is not to be underestimated. There is insufficient time for the chosen assessment provider to fully and effectively pilot the SQE and build up an adequately large and suitable bank of questions. The SRA should not introduce a new system that has not been thoroughly vetted and tested, both to protect the reputation of the profession and to prevent unnecessary stress and inconvenience to those first sitting the exams. Finally, during the transition period, providers will be continuing to provide support for candidates pursuing qualifications under the current system whilst designing new courses for the new regime. The timetable does not make sufficient provision for the time needed to take these difficulties into account.

## 9.

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** At Paragraph 149 of the consultation paper, the SRA asserts that “We do not expect that the cost of the SQE and preparatory training would be greater or even equivalent to [the current LPC and PSC fees].” Similar assertions were also made in the first consultation paper. We would like the SRA to provide the modelling evidence on which it bases these assertions as an appendix in their next consultation paper. There are many universities that offer an undergraduate law degree but not the LPC. We have spoken to several of such universities and all of them say that because they do not have LPC tutors or any infrastructure to support the teaching of the LPC, there will be a huge upfront cost for them to incorporate SQE 1 prep into or at the end of their degree programme. This upfront cost would be passed on to law students in the form of increased university fees. Law graduates who go to a university that does not incorporate SQE 1 prep would also still face additional costs of an external SQE 1 prep course. Such courses will not be eligible for student loan or graduate loans, and will need to be self-funded or funded via commercial loans. A qualification process that is more expensive fundamentally undermines the SRA’s diversity objective in introducing the SQE and decreases social mobility. We reiterate that the publication of information regarding the SQE pass rates and performance of training providers would enable training providers with higher pass rates to increase their fees, which would lead to negative EDI impacts. We understand that the SRA hopes that such publication would create competitive pressure and lead training providers with lower grades to improve their standards. We would like to point out that both outcomes are not mutually exclusive, and indeed, the former is very likely to happen whether or not the latter occurs. As mentioned above, smaller firms will face a disproportionate difficulty if their intending solicitors are out of the office for regular periods of time prior to qualification, in order to take the SQE Stage 2 assessments. The fees for SQE 2 will also cost firms a substantial amount of money and may deter smaller firms from hiring trainees as they would then feel obliged to pay their SQE Stage 2 fees. In the meetings we have had, a number of smaller firms have already said they envisage that they would no longer recruit trainees but would instead rely on recruiting qualified laterals. Hence, the proposed SQE increases the difficulties and the cost to prepare would-be solicitors ready for qualification, which will result in a reduction in the number of firms that choose to train solicitors, reducing the number of training contracts and thus reducing access to the profession – with serious negative consequences for diversity. We are of the opinion that the SRA’s consistent focus on adding additional hurdles to the existing qualification system, rather than improving the present playing field, will put off many students of all backgrounds from choosing to be a solicitor. The current situation is that many students and even school careers advisers do not have good knowledge of the legal sector and do not have good sources of information regarding ways into the profession. The SRA’s proposals need to correct this state of affairs in order to achieve its objective of increasing social mobility and providing more inclusive access. The SRA has failed to demonstrate how its proposals do this, and indeed, in meetings where concerns have been raised that their proposals will challenge those without

connections and knowledge of the legal sector, the SRA has brushed these off and responded that “this is already the case”. The point is that although this is already the case, it should not continue to be the case under their proposals. The proposals ought to fulfil the SRA’s original objective to provide more inclusive access to the solicitor profession. We would like to see a comprehensive communications plan and separate timetable from the SRA as to how they intend to make these changes clear and accessible to potential entrants. The students and intending solicitors who are affected will require clear guidance and communication about the new regime prior to making their choices in relation to higher education. The SRA has mentioned that many firms can continue doing what they are doing and the SQE will simply be an added layer on top. This will increase the complexity for existing students as they will have to consider the different training that is required by each different law firm.

# Consultation questionnaire

Response ID:581 Data

## 2. Your identity

### Surname

Fargher

### Forename(s)

Fiona

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: Liverpool John Moores University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** SQE 1 The proposal to include one assessment at this stage covering legal research and writing is a welcome, albeit somewhat limited, development. However, the continued proposal to use computerised multiple choice as the sole method of assessing “functioning legal knowledge” remains a major departure from current practice. It is difficult to see how this method alone can be effective in achieving a satisfactory assessment of functioning legal knowledge. Analysis of legal problems often involves considering the merits or otherwise of a range of possibilities, no single one of which constitute the “right” or even the “best” answer. Furthermore, legal knowledge involves being able to identify solutions without the benefit of a pre-selected set of options to choose from. As with the previous consultation, the literature relied on to support the contention that this is an effective method of assessment does not in reality do this: • Case & Swanson (2001), referred to at para 54, is a manual designed to assist with constructing written test questions for the “Basic and Clinical Sciences”. It is designed for those who are teaching undergraduate medical students in basic science courses and clinical clerkships. It does not, as suggested, provide any evidential basis for asserting that “computer-based testing can assess a range of higher order cognitive skills” in any subject area, let alone legal knowledge. • Case & Donahue (2008), footnoted at para 56, is a journal article concerned with “Developing High-Quality Multiple Choice Questions for Assessment in Legal Education”. The article acknowledges that, despite the use of multiple choice testing in the Multistate Bar Examination, [USA] law schools view MCQs as “less intellectually rigorous than essay questions and less realistic in their relationship to the actual practice of law”. It refers to comparative research on this method of testing carried out in the field of professional medicine, but not in law. The main focus of the article is on how to construct MCQs. In this respect, the article makes clear that creating effective MCQs is by no means a straightforward task. The above are the only texts referred to in the consultation document which are concerned with the use of multiple choice testing. Neither of them provide any empirical evidence for the effectiveness of this method in testing legal knowledge (or any other area), nor do they purport to do so. It seems surprising that such a radical change is proposed without any clear evidential basis for its effectiveness as a method of assessment. -----

Reference is made to the use of multiple choice testing in other professions such as medicine and accountancy. However, these involve scientific and mathematical skills to which this method of testing may be better suited. Reference is also made to the use of multiple choice testing in respect of entry to the legal profession in other jurisdictions, such as New York and California. While it is true that both these

jurisdictions use the Multistate Bar Exam (a 6 hour exam consisting of 200 MCQs), they also both require obtaining a law degree with a minimum period of legal education (or equivalent) as a condition of eligibility, and performance and essay exams to be passed in addition to the Multistate Bar Exam. (See <http://www.nybarexam.org/TheBar/NYBarExamInformationGuide.pdf>, <http://admissions.calbar.ca.gov/Requirements.aspx> and [http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXDescriptGrade\\_R.pdf](http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXDescriptGrade_R.pdf)). None of those additional features are evident in the SRA proposals for assessment of functioning legal knowledge. -----

----- The Draft Assessment Specification annexed to the Consultation document contains extensive objectives for each of the 6 proposed assessments of functioning legal knowledge. It also contains proposals for the number of questions and broadly how they will be allotted between the different subject areas covered by each exam. Surprisingly, despite this level of detail, no specimen examinations or even specimen questions have been supplied. Leaving aside the foregoing concerns, this makes it extremely difficult to form a view as to whether the intended objectives can possibly be achieved by the proposed assessments. It is suggested that 5 of the exams will each last 3 hours and consist of 120 questions and the other exam will be 2 hours in duration consisting of 80 questions. This allows, on average, 90 seconds for each question to be read, considered and answered. It is hard to see how this can do anything other than test knowledge at a very superficial level. The limited extent to which it is proposed that some areas of legal knowledge are to be examined is also of some concern. For instance: • It is suggested that constitutional law and EU law would comprise just 15% of the assessment of the “Principles of Professional Conduct, Public and Administrative Law and the Legal Systems of England and Wales”. This is equivalent to 18 multiple choice questions on these topics to be undertaken in less than 30 mins. • It is suggested that the principles of the law of contract and tort would comprise 30% of the assessment of “Dispute Resolution in Contract or Tort”. This is equivalent to 36 multiple choice questions on these topics to be undertaken in less than an hour. This is a massive reduction in the extent to which these fundamental legal subjects are examined as compared with any of the current routes to qualification. -----

----- Given the radical nature of the proposed changes to the method of assessment of functioning legal knowledge, it would make sense to conduct pilot trials in a limited number of subject areas for an initial period. This would provide an opportunity to analyse the effectiveness of the proposed changes, and act to remedy any unforeseen problems. In this way we could avoid the possibility of the changes having a detrimental impact on the experience of students, the legal profession and the reputation of the profession. It would also allow legal education providers a greater opportunity to adjust to the changes.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** We disagree with the total abrogation by the SRA of responsibility to regulate qualifying legal work experience. We would suggest that there must be required minimum standards and content to ensure parity of experience for trainees and to emphasise the obligation on the profession to provide the opportunity for the development and practice of a range of legal skills as well as the acquisition of knowledge. We are also concerned at the move away from requiring experience in a minimum of three areas of legal practice. It must be recognised that many students who are currently undertaking the LPC are employed as fee earning paralegals within legal practice but have very limited experience as they work in one area and often their work is structured by automated processes. This is not an environment that provides the opportunity to develop the required professional competence. The new system would offer no incentive to employers to take the time to retrain these paralegals in other areas and give them opportunities to broaden their experience. The threshold standard requires trainees to use their experience to form judgements and requires that they appreciate the significance of their actions in the context of the objectives for the transaction or strategy for the case. The very limited range of work experience afforded by the majority of paralegal roles would never provide the opportunity for candidates to develop those threshold standard behaviours. We further disagree that the experience need not be gained in paid employment. The protection afforded trainees by prescribed content and the mandatory salary has already

been significantly eroded. Historically articulated clerks were required to pay for the opportunity to qualify, are you seriously proposing a system wherein current trainees could be expected to work without pay in order to qualify? How does this enhance diversity when the vast majority of trainees could never afford to do this? There must be a requirement that legal work experience can only be gained whilst employed and enjoying the legal protection afforded to employees. Of course we recognise the great value of student experience working in pro-bono clinics and on a voluntary basis within the community and it may be that a student with such experience could be granted an exemption from some part of the legal work experience. However pro-bono clinics contribute a fraction of the learning experience for students who are studying many other subjects at the same time, so can never simulate the demands of working in legal practice. Finally we are concerned that the time limit for qualification will include the period of work experience. The current five year period applies only to completion of the LPC and this is in the hands of the student. There are ample places available to sit the LPC so there is no question of a student being unable to take the course. The relative scarcity of training contracts can result in students waiting a number of years after completing the LPC to start what was the training contract. Imposing a time limit on finding and completing legal work experience is unfair given that the opportunity to find such experience is dictated by a volatile job market within a shrinking profession at a time when record numbers of law firms are closing.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We agree with the proposal of a two year period with the possibility of a reduction of a maximum of 6 months to reflect prior experience (which may be paid or unpaid). We feel that it is crucial that there is a lengthy period of consistent experience which affords trainees the opportunity to reflect on experience in order to enhance their competence. For this reason we feel that it is important that the main period of legal work experience takes place with one employer. We agree that a series of short placements would not afford adequate opportunity for reflection and development.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** Regulation of preparatory training by setting minimum standards and validating providers or courses is an essential means to safeguard students as consumers. League tables are a snapshot comparison and by the time those league tables are published a large number of students will have spent their money and had the experience of the training. The CPE and LPC requirements reflected the notion that a minimum level of engagement in terms of teaching was essential. If there is no minimum content or level of engagement students will have no way of assessing the relative value of different courses and may be driven by price towards fast-track courses which will not equip them to take either assessment. Providing significant amounts of student contact is costly and so courses based on sound educational principles with a view to encouraging more than mere surface learning will be more expensive. Again it will be the case that wealthy students can enjoy a superior experience.

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We are concerned that the scheme as proposed can never replace the experience of thorough vocational education provided by the current system. How can there be sufficient emphasis on professional conduct and ethical considerations which should be embedded within all legal education when there is no prescribed minimum content for preparatory training? We share the concern of many legal educators that the depth and breadth of legal knowledge, the intellectual skills, the value of qualifying legal work experience and the level of professional practice skills required to pass the SQE will be significantly

less than is required at present.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** We disagree with the proposal that students who have undertaken a degree in law should not enjoy some exemptions from SQE1 assessment of functioning legal knowledge.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** We disagree with the timing in that any provider of preparatory training will need sight of sample assessments in order to design courses that are effective in preparing candidates for the new style of assessment. That new model of assessment must be rigorously tested before it is introduced and time must then be allowed for the creation of learning materials and the development of courses by institutions. We do accept that it is important that transitional arrangements be certain and that students know the 'cut off' date but the timescales need to be extended. We would suggest that the only way to ensure that the new scheme operates to protect all stakeholders, students, the legal profession and the public assessment would be to operate as a pilot project covering all aspects of SQE1,2 and the new unregulated work experience for a cohort of students. At the conclusion of that pilot project there should be a period of consultation involving the legal profession who can assess how well the students qualifying via the new system are prepared for work in legal practice, as compared with those who qualified via the current route. This is such a significant change it would seem foolhardy to impose it without thorough and rigorous testing.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** There is little information on cost at present but all estimates suggest that the cost will be considerable and if that is the case it is difficult to see how access to the profession will be widened. There must also be consistency in making appropriate reasonable adjustments for all assessments for students declaring a disability

# Consultation questionnaire

Response ID:159 Data

## 2. Your identity

### Surname

Murphy

### Forename(s)

Ann

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of a local law society**

Please enter the name of the society.: Liverpool Law Society

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** We agree that the intention is to create a robust and effective measure of competence. LLS were pleased to see that the SRA has maintained the requirements that candidates must be qualified to degree standard or equivalent and complete a period of workplace experience. However, until the quality of stages 1 and 2 of the SQE is tested and the toolkit is available for the workplace training it is not possible to say whether that objective will be attained.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** We were concerned that the SRA was seemingly prepared to do away with workplace experience as a pre-cursor to qualification. The proposal that allows candidates to undertake workplace experience prior to sitting stage 2 of the SQE is sensible and will ensure that candidates are not required to commit to the expense of stage 2 without knowing if it could lead to qualification if they passed.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:** We have taken into account the arguments in favour of having a flexible approach to the prescribed period of workplace experience. However, we consider that the opportunity to practise what has been learnt in the classroom in the real world is such a fundamental part of qualification that the period of workplace learning ought to be not less than 18 months.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** We are in favour of a single assessment centre to deliver the SQE as this will ensure consistency. We also support the proposal that an assessment award board staffed by expert academics

and professionals will set the standard for each assessment.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** The model is aligned to the Statement of Competence.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** We believe that anyone wishing to become a solicitor must pass the SQE. The only exemption that should be countenance is where on proper enquiry an individual can demonstrate qualification equivalent or superior to the SQE.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** We are concerned about the timescale, more particularly the commencement date of August 2019. Currently those expecting to embark on a career as a solicitor are undertaking the degree stage on that process potentially wholly unaware of the new route to qualification. It would be fairer if the regulation commenced no sooner than 3 years after the proposal are finalised and publicised.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

[www.lccsa.org.uk](http://www.lccsa.org.uk)

27 February 2017

**LCCSA RESPONSE TO SRA CONSULTATION  
ON A NEW ROUTE TO QUALIFICATION: THE  
SOLICITORS QUALIFYING EXAMINATION**

The London Criminal Courts Solicitors' Association (LCCSA) represents the interests of specialist criminal lawyers in the London area. Founded in 1948, it now has almost 750 members including lawyers in private practice, Crown prosecutors, freelance advocates and many honorary members who are circuit and district judges.

The objectives of the LCCSA are to encourage and maintain the highest standards of advocacy and practice in the criminal courts in and around London, to participate in discussions on developments in the criminal process, to represent and further the interest of the members on any matters which may affect solicitors who practice in the criminal courts and to improve, develop and maintain the education and knowledge of those actively concerned with the criminal courts including those who are in the course of their training.

The LCCSA has decided to only respond to those points which are pertinent and within the ambit of knowledge and concerns.

If you have any queries regarding this consultation please contact:

**Diana Payne**

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**Response by the London Criminal Court Solicitors Association to the Solicitors Regulation Authority consultation – ‘A new route to qualification: The Solicitors Qualifying Examination’.**

**Question 1**

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

The proposal now that there be a degree level qualification improves the effectiveness of the qualification over the previous proposal. Similarly, the limit now placed on the number of retakes enhances the robustness of the scheme.

We query the multiple choice nature of some of the questions and as to whether this is a sufficient test of the intellectual rigours necessary for a legal career.

The fact that the assessments will be awarded a pass or fail is more straightforward in addressing competence. However, it is queried as to whether this will be meaningful to those recruiting who are likely to request of the candidate their individual scores.

It is noted that the assessments now allow for specialising in either contentious or non-contentious areas. It is recognised that legal practice is becoming increasingly specialised but it is queried whether, once again, it is a true test of a candidate’s needed intellectual legal skills to be able to embrace other legal areas. It may be thought to be too limiting a discipline at such an early stage of a career perhaps as yet undecided.

**Question 2(a)**

**To what extent do you agree with our proposals for qualifying legal work experience?**

It is agreed that the skill set needed in practice takes time to acquire.

It is further agreed that SQE2 should not be attempted before almost the entirety of the qualifying work experience be undertaken.

A greater onus will fall on supervising firms to ensure that those bases are covered that are required for SQE2. Clear guidance will therefore need to be made available so that there is proper structure to the training which allows progress therein. The suggestion of a toolkit for supervisors would be most desirable.

In order to assist such a structure, there should be a supervising solicitor assuming responsibility for the training. Likewise, to assist structure, there should be a minimum period of time in various disciplines so that there be stability to provide the best platform for learning and to allow the benefits of mentoring by a supervising solicitor. A suggested minimum period would be three months.

The need for guidance and structure is emphasised so that the trainee has a proper learning opportunity and does not simply become a hired help.

### **Question 2(b)**

**What length of time would be the most appropriate minimum requirement for the workplace experience?**

It is agreed that the skill set needed in practice takes time to acquire.

The proposed two year period is therefore appropriate however, we would equally agree that a reduction to 18 months could be appropriate for trainees who demonstrate particular ability and are therefore capable of attaining SQE2.

### **Question 3**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

It is sensible to allow universities to determine their courses to accommodate the preparatory element of training. Some establishments however will not incorporate this element into the degree level learning and it should therefore be crystal clear to prospective candidates as to what each establishment offers.

The candidate should be able to distinguish easily between establishments upon areas such as what the courses offer, what entry requirements may be and the statistics of success.

Comparisons should be as easy as possible. It is a significant financial commitment made by candidates in their path to qualification and they need to be clear as to how they are expending their monies and in return for what.

### **Question 4**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to be a solicitor?**

The proposed system is akin to that already in place which serves its purpose.

It is noted that there are new entry opportunities to the profession being opened. This should facilitate better diversity. However where entry to the profession is not by degree, it must be assured that a proper standard is attained if it is not to be considered inferior and therefore unattractive to those recruiting.

Two points arise regarding the suitability test: Candidates should be made aware of the requirements at the earliest opportunity so that they may assure themselves that they will not expend monies only to discover later that they may not be deemed suitable.

The timing of the test should also be appropriate so that no-one ultimately deemed unsuitable could prejudice the interests of the public in the interim.

## **Question 5**

### **To what extent do you agree or disagree that we should offer any exemptions from the SQE Stage 1 or 2?**

In order for the profession to retain its standards of practice, there needs to be a careful maintaining of the entry requirements. The SQE assesses candidates on skills specific to practice as a solicitor in England and Wales. It does not follow therefore, that those applicants holding possible exempting qualifications will automatically meet the requirements or standards.

There would have to be careful consideration and comparison given to this.

## **Question 6**

### **To what extent do you agree or disagree with our proposed transitional arrangements?**

The intended introduction date of August 2019 seems ambitious. There needs to be sufficient time allowed to ensure that the courses are properly prepared and tested as suitable. Candidates need to be aware of the expectations of the assessments.

The consequence of untested expedition in introduction is twofold.

If the assessments are rushed in and proved to be not fit for purpose, the gravitas of the profession is prejudiced.

Conversely, from a candidate's point of view, a good deal of money is expended upon their learning for qualification. They should not be guinea pigged in the process and they should have a reasonable expectation that they can prepare adequately and succeed for assessments that are being well planned.

Subject to the above, the transitional arrangements appear practical.

## **Question 7**

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

In order to increase diversity within the profession, it is important that the SQE be truly accessible to all.

Funding is critical. They should be reasonable in its cost and underpinned by acknowledged funding schemes. Funding availability should not predetermine the route of qualification.

Online assessments should also have regard for those with disabilities who would be disadvantaged by a computer based assessment. The assessment format must be user friendly to all.

# Consultation questionnaire

Response ID:493 Data

## 2. Your identity

### Surname

Unger

### Forename(s)

Andy

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: London South Bank University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We accept the SRA's responsibility to ensure consistent and high standards of competence at the point of qualification. However, we doubt that these proposals will ensure as high standards of competence as the current qualification regime. Furthermore, we note that you have not been able to provide any evidence to establish that variable pass rates at the different LPC provider institutions are attributable to variable standards or that the current qualification regime is responsible for high levels of client complaints and professional negligence claims as you speculate (Paras 29, 30 and 38). SQE 1 does not appear to assess or require the development of the higher intellectual skills required by the QAA Law benchmark: It does not appear to address: • viii ability to recognise ambiguity and deal with uncertainty in law • ix ability to produce a synthesis of relevant doctrinal and policy issues, presentation of a reasoned choice between alternative solutions and critical judgement of the merits of particular arguments These skills are also required by the SRA Statement of Solicitor Competence A4(c) and A5(a)-(e): A4 Draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively, including a. Identifying relevant legal principles b. Applying legal principles to factual issues, so as to produce a solution which best addresses a client's needs and reflects the client's commercial or personal circumstances c. Spotting issues that are outside their expertise and taking appropriate action, using both an awareness of a broad base of legal knowledge<sup>1</sup> (insofar as relevant to their practice area) and detailed knowledge of their practice area A5 Apply understanding, critical thinking and analysis to solve problems, including a. Assessing information to identify key issues and risks b. Recognising inconsistencies and gaps in information c. Evaluating the quality and reliability of information d. Using multiple sources of information to make effective judgements e. Reaching reasoned decisions supported by relevant evidence It is not clear from the Statement of Legal Knowledge and the Draft Assessment Criteria how much legal knowledge is required to pass the SQE 1. Although the SoLK is broad and deep in its requirements, a large part of the Draft Assessment Criteria for Dispute Resolution in Contract or Tort, for example, are taken up by the assessment of procedure. Dispute Resolution in Contract or Tort - Legal Knowledge In this assessment candidates are expected to draw on and apply knowledge from the following areas of law to civil dispute scenarios regularly encountered in practice: • The core principles of contract law • The core principles of tort • The principles, procedures and processes involved in dispute resolution and the Rules of Civil Procedure. The depth and breadth of legal knowledge required of candidates is that of 'functioning legal knowledge'. This means that a candidate should be able to: • identify

relevant core legal principles or rules – whether derived from cases, statutes or regulatory sources • apply them appropriately and effectively to client-based and ethical problems and situations encountered in practice. Candidates are not required to recall specific case names or cite statutory or other regulatory authorities except where specified. Candidates are required to demonstrate an ability to navigate their way round the Civil Procedure Rules so as to be able to identify relevant provisions and apply them to the conduct of a civil dispute. The effect is likely to encourage students to focus on the application of straightforward principles of law in everyday practice situations without sufficient regard to complexity and ambiguity as required by the QAA Law Benchmark and the SRA Statement of Solicitor Competence. Students qualifying without having taken a law degree will be less prepared for practice at the highest standard of competence and students who qualify with a law degree are likely to have engaged in additional time and expense. This is likely to impact on professional standards or diversity or both. It is not clear that legal complexity and ambiguity can be assessed by questions that take an average of 90 seconds to answer (Para 52) This problem is compounded by the fact that the SQE 2, which is taken at the point of qualification, does not purport (despite some ambiguity) to assess legal knowledge at all. • The assessments are set in a range of practice contexts to provide a platform for the assessment of competence. They assess the core competences required for effective practice, including ethical and professional conduct, but do not assess legal knowledge. • Primary legal resources will be provided to candidates. Although the stage 2 assessments are assessing skills, the candidate cannot be competent in a skill area if they misconceive the law. If candidates are not able to correctly identify and apply legal principles or ethical considerations, they will fail the assessment. Nor will SQE 2 necessarily assess candidates in the context of the law they intend to practice (Family Law, Employment Law, etc.) and which they may wish to practice in the period of their Qualifying Legal Experience. Finally, the benefits of qualifying legal experience are undermined by the proposal to delay any assessment of skills until after the legal experience is taken. The proposals give no consideration to how and when skills will be taught, learnt and developed and only require the practice supervisor to • to sign a declaration that a candidate had had the opportunity to develop the competences in the Statement of Solicitor Competence through the required period of workplace experience. There is a real danger that intending solicitors will undertake qualifying legal experience without preparation and without supervision and feedback and so gain considerably less benefit from work experience than currently under the Training Contract. While we have doubts about the case for reform and whether the proposed changes will be better than the current qualification regime, we are confident that we can develop exciting and challenging courses that are appropriate for students intending to take the SQE and qualify as Solicitors whilst also being appropriate for students intending to qualify as Barristers or Legal Executives, work as paralegals, enter other professions or who are currently undecided. To this end, we would urge the SRA to co-ordinate and co-operate with the Bar Standards Board and CILEx as much as possible in finalising their proposals, as recommended by the Legal Education & Training Review (recommendation 4), to ensure the maximum of consistency, overlap and flexibility between the different qualification routes. We urgently need to see example assessments and model answers so that we can develop teaching and learning and assessment resources to prepare our students for the SQE – whether as part of an LLB, or a LLM or dedicated short course. As discussed, the actual scope of the SQE in terms of knowledge and skills is not clear from simply reading the SoLK and DAC. Students will also need access to exemplar assessments and model answers in order to be able to prepare for the SQE. It is wrong to think that any assessment can be undertaken successfully without any prior knowledge or experience of how it operates in practice.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** While we welcome the enhanced flexibility, as discussed above the benefits of qualifying legal experience are undermined by the failure to give any consideration to how and when skills will be taught, learnt and developed and to only require the practice supervisor • to sign a declaration that a candidate had had the opportunity to develop the competences in the Statement of Solicitor Competence through the required period of workplace experience. As discussed above (Consultation Question 1), there is a real

danger that intending solicitors will undertake qualifying legal experience without preparation and without supervision and feedback and so gain considerably less benefit from work experience than currently under the Training Contract. We note that your consultants, AlphaPlus, in their Final Report appended to the first consultation (Appendix 1) recommended workplace assessment for SoSC A2, A3, D1, D2 & D3 as they felt these could not be fully assessed within the proposed SQE parts 1 & 2 (Final Report, para 6.3.3). We believe that the training supervisor should be a solicitor and should retain a responsibility for the development of the trainee solicitor's professional skills in terms of structure, supervision and feedback, not just for providing an opportunity to develop competence and to ensure their competence for their role. The difference is the provision of legal work experience beyond the trainee's competence in a structured and supervised way that develops their competence. (Paras 100, 115 & 116). This could perhaps be achieved by a requirement for the supervising solicitor to sign off the training record proposed (paras 113 & 114). This requirement would supplement rather than undermine the SQE proposal. We think it particularly worrying that you are separately considering the removal of the requirement of 3 years Post Qualification Experience before a Solicitor can become a sole practitioner (Para 14)

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** 2 years seems appropriate. We are interested in the possibility of our students being able to get credit for the voluntary and clinic work that they do with us as part of that time period (Para 106). This should be flexible as it may be acquired one day a week rather than in a single block of time and may not amount to the equivalent of 3 months in every case.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** We think that this proposal is unworkable. You are proposing to publish market data about training providers' performance when there will be no SQE course (Paras 112 – 114). Different candidates will prepare in many different ways, attending different and various institutions, combined with self study. We are concerned that if the market data is unreliable / uninformative and there is no regulation or supervision of training providers you will open the door to unscrupulous providers who will offer alternative or supplemental courses that do properly prepare candidates for practice and the SQE and do not represent good value for money.

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** For the reasons given above, we are concerned that the depth and breadth of legal knowledge, the intellectual skills, the value of qualifying legal work experience and the level of professional practice skills required to pass the SQE will be less than required at present. We do not share your confidence that the proposed SQE will bear the weight you intend to place upon it and we note that no example assessments and model answers have been produced to date. We note that your consultants to the first consultation, AlphaPlus, recommended the proposed MCT / objective tests could be relied upon as an element of assessment of the SoLK rather than exclusively (Final Report, para 6.3.1).

**7.**

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** We disagree with your proposal to offer no exemptions because of the duplication of effort and

costs the proposal entails for applicants and because of the negative impact the SQE is likely to have on legal education and training.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** We are concerned that you will not be able to produce a sufficient body of exemplar / practice assessments in time for institutions to design appropriate courses and for students to have a sufficient opportunity to prepare for the first offerings of the SQE in 2019.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We are concerned that the SQE will be no less expensive than the current LPC regime (Para 75) Extrapolating from the Qualified Lawyers Transfer Scheme assessments, we estimate that the SQE will cost £6,339 (see below). This does not take account of any study costs and assumes that all assessments will be passed at the first sitting. QLTS MCT costs £678 (5.5 hours = £123 ph) Estimate SQE Stage 1 will cost £2,214 (18 hours x £123 ph) QLTS OSCE costs £3,510 (12.75 hours x £275) Estimate SQE Stage 2 will cost £4125 (15 hours x £275) TOTAL: £6,339 We are concerned that the very high costs of the assessments will have a negative impact on diversity. We are concerned that the narrowness of the assessment regime will have a negative impact on diversity. We are concerned that the duplication of study and assessment between degree level study and the various courses that are likely to be offered to prepare for the SQE will unduly favour those who can afford to pay fees for multiple courses and that this will have a negative impact on diversity.

# Consultation questionnaire

Response ID:398 Data

## 2. Your identity

### Surname

Burrows

### Forename(s)

Lucy

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part time work experience or just full time. Many students will not be able to afford to gain work experience

unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career.

Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:**

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

# Consultation questionnaire

Response ID:539 Data

## 2. Your identity

**Surname**

Hirst

**Forename(s)**

Hollie

**Your SRA ID number (if applicable)**

**Name of the firm or organisation where you work**

Manchester Law Society

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**Please identify the capacity in which you are submitting a response. I am submitting a response...**

**on behalf of a local law society**

Please enter the name of the society.: Manchester Law Society

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:** It is our considered view that the proposed SQE is not fit for its expressed purpose of being a robust and effective measure of competence. In brief, our reasons for arriving at this conclusion are as follows:  
1.1 Competence is measured by reference to the Statement of Solicitor Competence and many of the competences identified in there are not covered by either SQE1 or 2. Conversely, those competences are covered in full under the current regime. Under the proposed SQE, there is an emphasis on knowledge and lower order thinking and cognitive skills, with less opportunity to appropriately assess the higher level skills and the complex thought processes that a competent solicitor has to undertake. 1.2 The professional and personal skills required are barely examined, if at all, until SQE2 which is far too late in the process for most firms employing graduates with a view to their becoming a qualified solicitor. Law firms need their graduates to hit the ground running, which in some firms means being able to conduct a basic client interview from the very earliest stage of their working lives, or in others being able to draft basic documents on day 1. Under these proposals candidates are unlikely to be equipped to do this without either some significant on the job learning or additional training bridging the gaps left by the proposed system. This is unacceptable to a wide range of MLS members. They will either cease to employ 'trainees', on the basis that the cost of training them will be too great and will simply be in the market for NQs, or the cost of the additional training will need to be recovered in some way, probably through lowering the wages of these graduates, or requiring them to spend a period of time on a lower pay-grade as a paralegal before being able to move onto a 'trainee' role. 1.3 Even taking into account just the knowledge elements, the areas of law on which candidates are to be examined seems to have been reduced to an unacceptable level – eg. no mention of homicide offences or fraud in the criminal law and practice paper. 1.4 There is also a notable and significant reduction in knowledge of practice by removing the requirement to have studied three

elective areas of practice. It is therefore quite possible for someone to qualify as a solicitor into an Employment team, or Intellectual Property, Family or Corporate Finance (as four examples – there are many more) having never studied or been assessed in the basic rules of practice and procedure and having never undertaken or evidenced competence in basic skills pertaining to their chosen practice area. 1.5 The combined effect of 1.3 and 1.4 above seems to us to be a significant ‘dumbing down’ of the requirements of solicitors to qualify and a threat to the standards of our profession. 1.6 At the same time, the extent of the areas to be assessed in the one SQE1 assessment window seems to us to be unwieldy and that applicants will suffer a great deal of stress trying to prepare for and sit such wide-ranging assessments in the one sitting. Additionally, the rate of failure is likely to be high. This does not make it aspirational but crushing and seems particularly harsh on certain students with specific learning needs or disabilities (see response to consultation question 7 below). 1.7 It is also not representative of the way in which a solicitor thinks or works – no solicitor needs all those facts in their head at any one time in order to function effectively as a solicitor. In reality, their practice areas are likely to be quite narrow, focusing on one or perhaps at most two areas of underpinning law. It therefore seems to be an assessment method that is neither fair nor fit for purpose. 1.8 We would query the proposed methodology of using MCQs in SQE1 to the exclusion of other forms of testing. MCQs are not representative of how a solicitor thinks and works. They may be able to test simple knowledge recall but the thinking skills of a solicitor are so much more complex than that. We acknowledge that MCQs are both cheap to assess and eliminate marker bias or error but their disadvantages, when used exclusively, more than outweigh their advantages. If they are to be used at all, we would urge the SRA to intersperse them with long-form answers which allow for a much wider range of skills to be tested and deeper, higher-order critical thinking. 1.9 We would also question the wisdom of the number of MCQs being proposed, allowing the student only an average 1.5 minutes per question. This cannot be sufficient time to answer complex questions requiring analysis and thought. Either the questions are rigorous, in which case more time is needed to process and answer them, or they are simple and superficial. The time scale being suggested implies that they will be the latter and this is not therefore a robust and effective measure of competence. For our views on the efficacy of SQE2, please see our response to consultation question 4 below.

#### 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** We are firmly of the view that there must be a period of qualifying work experience prior to qualification as a solicitor. We strongly believe that 2 years should be the minimum period. We believe that much more work needs to be done to define the word ‘qualifying’ so that there is transparency for all, including employers and prospective entrants to the profession, setting out what requirements there are of employers from the outset of employment and what restrictions there may be on entrants counting certain types of work. It is recognized that some graduates are working as paralegals and are carrying out work equivalent to that of trainees in many firms, so liberalizing the period of work based learning carries certain benefits to the graduate in such a situation. But many other paralegal positions are not equivalent to that of a trainee and the work consists of repetitive low-level tasks. Account of this needs to be taken in the system, otherwise it risks the two years merely being a tick box exercise. The quality of work being undertaken should be equivalent to that of a trainee, and growing in variety and complexity during the period, and there should be adequate supervision and guidance throughout to enable the candidate to develop their skills and competences. If the candidate needs to evidence this work, then clear and detailed specification of the form of evidence needs to be given. The current absence of detail poses risk both for an employer, who may be expected by an applicant to sign them off as having been exposed to certain opportunities when they were not planning on doing so and had not kept adequate records to enable them to do so, and for an applicant who may be misled into believing that an employer would do so when in fact, two years down the line, they refuse. Firms currently recruit trainees broadly in the expectation that there will be an NQ position available to them at the end of the two years. The proposed changes seem to envisage there being a sudden and large increase in the number of NQ on the market. These proposals do not address the issue of what the market will do with those additional solicitors.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

**Comments:**

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** The consequence of the SRA moving to a system of only regulating the assessment and not the training is that a two tier system is likely to emerge. The firms that currently sponsor the LPC will want the same quality of training of their graduates before they start work and many are likely to pay for that additional training, even though the proposed assessments may not require it. For them, the SQE will become an incidental – a means to an end of qualification, but not valued in itself. Self-funding students who are costs-sensitive may simply choose the cheapest crammer course on offer to 'get them through' the assessments, but their skills and competencies will fall well short of those of a current LPC graduate. Meanwhile, self-funding students with access to funding (parents, loans) will choose training which is equivalent to that which they see their sponsored peers getting, on the basis that it will put them in the better position to secure a route to qualification with those kinds of firms during the next recruitment round. The costs-sensitive students are therefore less likely to be able to secure the kind of employment that will lead to a route to qualification. MLS firms agree that the effect of this is likely to mean that they will need to be increasingly forensic when recruiting. Instead of being able to rely on a certain level of skill and competence by virtue of an applicant having an LPC, they will need to enquire what kind of training the applicant had along the way, and the self-funders who have chosen the cheaper options may find it increasingly difficult to compete against those who have chosen quality training options. Inevitably, this has EDI consequences (see consultation question 7 below).

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We disagree that the model is a suitable test of the requirements. There are certain competencies which are integral to the role of solicitor that will not and cannot be tested through SQE1 and SQE2, such as team work and self-management. These can be tested during the period of work-based learning but as there is no formal mechanism for examining achievement of them the proposed model has a significant hole in it. We feel strongly there is a need for a level of academic ability in a solicitor and that the current route has a certain amount of rigour and testing of legal concepts and reasoning which the proposal lacks. Whilst we note that the SRA is now proposing that applicants should be graduates, a law degree or GDL is not specified and we consider this to be wholly wrong. We believe that thorough academic testing of basic legal underpinning concepts and reasoning skills should be either in the context of a QLD or a GDL. MLS members have stated that they are very unlikely to take on a graduate with a view to putting them onto a path to qualification if they neither have a QLD nor GDL. The proposed timing of the testing is also of significant concern to MLS members. Although the SRA are not prescribing routes to qualification, it is clear that their intention is for SQE2 to be taken towards the end of the period of recognized training and that they themselves doubt that anyone would have had adequate exposure to the skills of a solicitor if they were to attempt to take it any earlier than 12 months in. This causes a real and significant set of issues for our members, including: 4.1 Concern that this will wreak havoc in the NQ process. Larger firms tend to start their NQ process 9-12 months before qualification, and most firms have at least started the process several months prior to qualification, but if at that stage we will not even know if our 'trainees' have passed the SQE or not, we will not be able to make any informed decisions. This is an issue both for firms and for the individuals concerned. 4.2 There is a great deal of uncertainty still around the timing and processing of SQE2 assessments, but it seems likely that some results will only come through beyond the point at which an applicant ought otherwise to have qualified. 4.3 We may not even be

able to control when our trainees take their SQE2 assessments. How will the assessment organization be able to process several thousand applicants at one time? Will the situation arise whereby some of our trainees will therefore qualify ahead of others, simply due to the organization of the process of the assessment? This would be unacceptable. 4.4 SQE2 is predicated on all firms developing all the assessed skills in much the same way across various practice areas. We know this not to be the case. 4.5 SQE2 is to be undertaken in two of five possible practice areas. Even if the requirement is reduced to one such area, this is impractical. Not all applicants will have had experience in two/one of those five areas. Even if they have, their experience may have been 12-18 months prior to sitting the test. How could they be assessed consistently and fairly against someone who has substantial practice experience in one of the five areas? 4.6 The SRA seems to think that the skills being tested in SQE2 can be largely divorced from experience in those practice areas and are suggesting that applicants who lack experience could rely on a short 'fact sheet' to bring them up to speed. Either the test is rigorous, in which case a crib sheet would help no one, or it is not rigorous, in which case it begs the question – what is the point of the assessment? 4.7 The SRA seems to think that applicants will sit SQE2 without having any specific training for it. In our view this does not reflect the reality of students faced with high-stakes assessments and in fact there will be demand for training, mock assessments, feedback and so on. This will add to the cost of qualification. 4.8 SQE2 assessments alone will require several days out of the office and if training is to be available also, this could run to several weeks. This will lose our member firms valuable fee earning time from their 'trainees'. 4.9 There is no clear guidance from the SRA of the likely cost of SQE2 assessments, but even conservative guesses run to several thousand pounds. If a self-funding SQE1 graduate is employed as a 'trainee', will the expectation be that the firm will pick up this cost? It is not a cost currently borne by firms which do not sponsor the LPC and is not a cost which those firms have the business model or resourcing to be able to fund. This will be a further reason to dissuade such firms from investing in 'trainees' and to simply be in the market for NQs. It is our belief that, to properly test the requirements to become a solicitor, the model should consist of: QLD/GDL – LPC type of prep (with some degree of regulation of the programme) including electives – LPC centralized assessment – 2 years qualifying work experience during which time the applicant has to complete a proper portfolio with reflection, with either some form of viva voce for all (preferred) or random spot check for some on completion of the portfolio (appreciating the need for cost minimization – although even the full viva voce proposed is likely to cost considerably less than the proposed SQE2).

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** We do not support the requirement to re-examine students in areas of law in respect of which they have already been awarded a degree (or degree equivalent, eg GDL). It can only increase the costs of a student going through the process to qualification to do so, when one of the stated objectives of the SRA is to reduce costs. Subsequent vocational training must take basic legal knowledge and test it in a practical context, but the LPC already does this. However, if the decision is taken to go ahead with this new regime then, if graduates are to be re-examined, so too should every other applicant (eg CILEx-qualified). There can be no justification in re-examining one sub-group of applicants if all are not re-examined. As there may be restrictions on this in law (eg. those qualified in other jurisdictions) then all applicants should benefit from this.

## 8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** We are pleased to note that there will be transitional arrangements but we are concerned about the detail and about the timescales. For instance, the long-stop date of 2024 does not seem to take into account those students who may have started a wholly part-time route to qualification by 2019 so unfairly prejudices them. At the same time, firms who are recruiting in the summer of 2017 for trainees to start with them in September 2019 may want to make the decision to switch them from the LPC + TC route

to an SQE route and will need clear guidance from the SRA about the detail and availability of assessments before June 2017 so that they can in turn inform their candidates of this.

## 9.

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:** Response of Manchester Law Society: Your scoring matrix is inappropriate for this question. We are surprised that the SRA has not yet undertaken any formal investigation into potential equality diversity and inclusion impacts of these proposals and would expect a full report to be made and published prior to any final decision being taken. There are still many questions yet to be answered about the final detail of the assessments which would help to inform views on possible EDI impacts. However, on the basis of what is known, we make the following observations: 7.10 The proposal is that 6 x SQE1 assessments and 5 x SQE2 assessments will take place within one assessment window for each. Although not specifying it as such, the SRA states that it is working on the basis that most will sit SQE1 before starting the bulk of their period of work based learning and SQE2 will be sat towards the end of that period. The SRA has not yet defined the duration of each 'assessment window' but it is understood that a window is likely to mean a period of weeks rather than either days or months. Allowing for absences from the curriculum as noted previously, SQE1 basically consists of testing on the foundation subjects of a QLD/GDL and on the core curriculum of Stage 1 of the LPC. This represents a significant volume of information on which an applicant would be tested within a (likely) relatively short assessment window and will put enormous pressure on the applicants, with likely exaggerated adverse effects on students with protected characteristics, particularly those with learning support/disability/ mental health needs. 7.11 This is exacerbated when considering the proposals for the assessments themselves. SQE1 consists of MCQ testing, which is a very narrow and specific form of assessment. A wide diet of assessment types is likely to give a much fairer reading of a particular applicant's capabilities, taking into account a wider range of learning styles and preferences. In particular, it is likely to prejudice certain candidates with specific learning needs such as autism and dyslexia. 7.12 The number of questions being posed in SQE1 is also cause for concern from an EDI perspective. 7.13 SQE2, being placed at the end of a very long journey for the candidate, may also represent an unfair level of pressure for candidates, with disproportionate adverse effects on certain applicants, as set out in 7.1 above. 7.14 If we are going to be recruiting graduates with far fewer capabilities than our current LPC graduates have, then we will have to bring them in on paralegal rates and give them lower level work to do as they will be less capable, and clients will not pay for people being less capable at the same rates and will not pay for training. From an EDI perspective, it will make it more difficult to change careers – it is hard enough to do so on a trainee salary, impossible to do so on a paralegal one. 7.15 NQ rates will not remain the same either. It could take years before the candidate catches up on lost earnings, if ever. 7.16 The lack of regulation of training could have adverse consequences for those students from socio-economic backgrounds who have fewer funding options than others. They may opt for the cheapest crammer course available and miss out on wider training which would make them more attractive to firms looking for graduate trainees (see consultation response 3 above). 7.17 MLS members who regularly recruit self-funded LPC graduates who have perhaps paralegalled for a year or more since graduation have stated that they will be less likely to invest in 'trainees' if they are simply arriving with an SQE1 under their belts. This could be a significant EDI issue.

# Consultation questionnaire

Response ID:377 Data

## 2. Your identity

### Surname

Newton

### Forename(s)

Kathryn

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: For and on behalf of the Manchester Law School, Manchester Metropolitan University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** - Given the 2019 implementation date there is a worrying lack of detail about the assessment process. If it exists, it should have been supplied, if it does not, then although the methodology proposed is suitable, and the proposed SQE has the potential to be robust and effective as a measure of competence, for an informed response to this question, sample papers indicating breadth, depth and level should have been provided. There is also insufficient information on the assessment regime: for example, what are the plans for the security of the assessment processes? Will candidates be able to enter themselves for the SQE or must entry be made via an institution? - We remain concerned that the range of subjects in the SQE is too narrow. The loss of elective subjects under the proposed SQE will have an adverse effect on equality and diversity in the profession. We say more on this in answer to Question 7, but, for example, we wonder whether it might be difficult for a newly admitted solicitor to obtain employment in firms offering private client services, such as Family, Immigration or Employment, where traditionally many trainees will have undertaken electives in those subjects and therefore be in a position to do fee paying work from day 1 of their training contact (albeit under supervision). Please explain the anticipated impact of these proposals on the provision of legal services in these (essential) areas of practice. The methodology proposed for the SQE is very modern but the assessment areas are not. - How will the SQE deliver the protection envisaged for the public when it will not regulate the firms employing paralegal staff some of whom have had only 'on the job' training without any regulation of the quality and standard of the training or services offered by such practices/organisations.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** We agree that workplace training should still form part of the qualifying process and we welcome the innovative ideas such as allowing training to be done through law clinics. However, we are concerned about the lack of information supplied on how developing safe skills for practice would be achieved. Without such information this laudable objective is little more than window dressing. - We support the idea of introducing a period of workplace training before attempting Skills assessments. However, there is no detail about the nexus between workplace training and the s2 SQE assessments. It is

not stated explicitly whether or how workplace training should contribute to the acquisition of Stage 2 competencies and without this the training period arguably serves no measurable purpose and yet could act as an additional barrier to the least advantaged students. - The proposed content of SQE has a narrower range of subjects than the current LPC; this potentially has negative EDI impacts: it may make students less attractive to employers whose legal services do not operate within these fields; employers willing to take offer workplace training will not be obliged to pay students - a reduction of workplace training opportunities coupled with fewer students being able to support themselves financially whilst doing workplace training will create a negative impact on diversity and equality in the profession. - There is no detail about the quantity or measurement of supervision which leaves open the poor practice currently found in some areas such as conveyancing and personal injury work. This risks enabling a two tier system where some will get good quality training (both for Stage 2 and for practice) and others will not. - Is the intention to create a system akin to that of supervising and assessing apprentices?

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify: see comments below

**Comments:** It is impossible to answer this question with the amount of information provided. More information is needed about the quality, content and level of preparation needed for workplace training.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** - We are concerned that allowing the market to regulate demand based on performance will have a significant impact on quality of provision of courses and on equality and diversity in the profession. - There is no information on how a candidate can enter for the SQE – will a candidate be able to enter themselves for the SQE or must the entry be made via an institution? - No information is given about how the data will be presented, the frequency of the publication of information or the date on which the first set of data will be available - The lack of regulation of workplace training and consequent possibility of low quality workplace training may lead to poor performance in Stage 2 SQE assessments. - The publication of information about protected characteristics sounds much like the notion of ‘added value’ provided by schools. Whilst this is likely to demonstrate that some institutions achieve very good pass rates for students with certain protected characteristics, whether students will make this the basis of their choice of provider is much less certain not least if unadjusted data is used inappropriately in advertising by some providers. If reducing provider numbers is an aim it should be clearly stated and justified, however consideration should also be given to the EDI impact of removing such providers from the “marketplace”. .. There is a risk that small, regulated providers will not be able to compete, yet new, unregulated providers with no track record of quality will be able to offer courses. This does nothing to protect students as consumers of legal education with a risk that inadequate provision will hamper those students’ life chances especially whilst the market settles and data is incomplete or open to misinterpretation. - There is no information about the commitment of the SRA to continue to collect and compile this data. Given the recent trend towards passing administrative burdens to education providers we are concerned that there will be an expectation that providers will collect, compile and present this data with a potential risks to objectivity/impartiality.

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** - We strongly support the aim of applicants to the profession having to demonstrate competency and that this can only be achieved through robust and rigorous qualifying procedures, but we need more information on what is being proposed before commenting on whether the SQE is a suitable test to measure those requirements. - We are concerned that the model will in fact devalue the ‘brand’ of

being a solicitor and its market value in the job market. Changing the method of qualification will not increase the number of solicitor roles available and so many newly admitted solicitor entrants to the job market will compete for an entry level position in place of existing paralegals. Eventually this may cause the number of applicants to the profession to fall however it risks being a hard lesson for a generation of students. - The requirements needed to become a solicitor differ from practice area to practice area and there may be less incentive for firms to take on newly admitted solicitors from the proposed model than under the current regime; the proposed model simply risks shifting the 'bottleneck' to post admission rather than where it is now.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** - The proposals are unclear as to what exemptions will be available. We do agree however that there is a significant difference between the QAA benchmarks for a Law Degree and assessing competence to use legal knowledge in a practical context which the aim of professional qualifications.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** - We cannot agree that August 2019 is a reasonable start date unless we know the detail of the new regime with enough certainty to be able to apply for institutional approval to run any required course. The administrative procedures for many academic providers require a substantial lead time. We cannot agree with the proposed implementation date without knowing what it is that will have to be implemented. - We do agree that those who are partway through qualification should be given choice as to how to complete their pathway to qualifying. However, many education providers (other than the "national" providers with economies of scale) may no longer be willing or able to offer the existing routes and the availability of LPC courses (and indeed training contracts) may well contract. This will obviously adversely affect those caught in the transition period as the choice on paper would not be available in the reality of the market. - The suggestion in para 140 that there should be a post-implementation evaluation of the SQE begs the question as to why it is not piloted before implementation of wholesale reform.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We foresee the risk of negative EDI impacts arising from the proposals: - The proposals make no reference to paid workplace training. This will have significant negative EDI implications: many will not be able to afford to do such training without payment. - There is no mention of consequences for paralegals in the proposals. Many employed in paralegal positions are people who have successfully completed their LPC but unable to find a training contract. At present the possibility at least of completing their qualification remains. After the end of the transitional period there will be no scope for that unless they also attempt the SQE. There will be little incentive for them to do so, other than using the title 'solicitor'; their value on the job market would be determined by the work experience rather than their qualification. - The proposals are likely to result in downward pressure on newly qualified solicitors salaries; they will have the title solicitor but have less experience than those who have had training contracts. - The suggestion that costs will be reduced is fallacious; preparatory training for the SQE will be required and providers will want to compete but not at the expense of reputation. The experience of the last few years in relation to undergraduate tuition fees refutes the idea that the market is slow to respond in terms of reducing fees among established providers of education. - On the other hand the proposal will enable untested unregulated providers to flourish at the risk of exploiting the consumer of the education without necessarily protecting the public. - The SRA purports to be working closely with the BSB on proposals for change yet the BSB rejects more centralised assessments (their Option C) citing that where you get your degree will remain the basis for

getting pupillage and BAME less likely to pass current BSB centralised assessments which is likely to be worse if Option C were implemented. The SRA's position is that SQE won't make wider issues of social justice and fair access worse and it might provide significant benefits. Paragraph 146 of this consultation refers to an Equality Impact Assessment being published. This begs again the question of why the SQE is not piloted before being implemented wholesale.

# Consultation questionnaire

Response ID:317 Data

## 2. Your identity

**Surname**

Roper

**Forename(s)**

Marcos

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a student studying for a qualifying law degree or legal practice course**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** This will further disadvantage students without an informal network to partners or recruiters. Making this a requirement will saturate law firms who will be receiving even more applications by people who don't necessarily care or want the work experience and just want to tick a box which will saturate the market even more for students with genuine motivation.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

No minimum

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** There is little point in doing a law degree if you have to go through another year of legal theory added on to 3 years of LLB opposed to the masses of GDL students who study a third of legal modules than LLB students though. This is unfair and more expensive and time consuming for people who are determined from day 1 of uni to become solicitors.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** Well there might be good intentions. Imposing more barriers to jump over this will make the process harder for LLB graduates without money to spare to satisfy all the requirements and the uncertainty regarding length of time of exam preparation and cost. Saying that it's probably an improvement to the LPC. I'm in my second year after my exams in January (2nd year starts in May 17) but this also leaves me in limbo as I have no idea how I will qualify and through what route.

# Consultation questionnaire

Response ID:566 Data

## 2. Your identity

### Surname

Pearce

### Forename(s)

Jonathan

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Marriott Harrison LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** As a general comment on these proposals, the desire for consistency in examination and for openness of the profession are clearly good. The danger is that they may be being considered to be the prime objectives and may be being pursued at the expense of lower standards (e.g. over-reliance on computer based exams, fragmented or lower grade work experience, a narrow curriculum ). The more specific responses follow by reference to the individual questions. The paragraph numbers here and in the other answers correspond to the paragraph numbers in the consultation document. Para 52 There seems to be too much emphasis on computer based questions. The current proposal is that over 80% of the marks will be on this basis. It is also stated that there will be 120 questions in 180 minutes on all but one of them; which is 90 seconds per question. Some will no doubt require more than others so some inevitably will be given even less. We do not believe this is an appropriate way of testing the knowledge required. The risk is that the desire for consistency seems to be being put above the substance of the examination. 54 The comparison with other disciplines or jurisdictions does not explain the extent to which the computer based system is used in these compared with the current proposal so it is not persuasive. Nor does it follow that the law is equally suited to this form of examination as science based subjects such as medicine. 58 We would not let a newly qualified solicitor act unsupervised so the premise seems to us to be flawed. 62 It seems that the suggestion is that the period of work based experience would only need to cover two of these topics. The choice is too narrow. There is a need to maintain a broad education of young lawyers. For us, any corporate lawyer (i.e. one who has already joined that department post qualification) should have a good understanding of at least three areas of practice. This wider knowledge makes them better corporate lawyers. Generally a training contract at our firm is made up of four seats of six months. The narrowness seems to be driven by only addressing the reserved activities. The law is much more varied and greater choice should be a feature of this system. If there is greater choice then the practice contexts can have more relevance to what the candidate wants to do and indeed the breadth of choice gives them a better view of the options available for areas of practice they may wish to pursue. Surely to do this is consistent with the stated objectives in para 11, particularly as to flexibility. 65 The idea that the same skills are tested for interviewing clients in a criminal law practice are interchangeable with someone drawing up a will seems unrealistic. The candidates are likely to feel quite uneasy at the prospect of being examined by reference to a discipline they will never experience. 67 The idea that the contexts are examined on an unseen basis seems unreasonable. The law firms would be at greater risk of an employee failing and the

consequent loss of the investment in that individual for the randomness of failing a test on, for example, a criminal or wills and probate context in a firm like ours which does not cover those practice areas. If the training system is not one which the firms support then there must be a risk that some firms will not trust the process and may resort to using paralegals instead of trainees and then recruiting newly qualified lawyers from elsewhere instead of developing their own. That would be a terrible shame but firms will not want to invest in a trainee if they think that person may not qualify for failing a test which is irrelevant to the firm's practice.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** 97 There are dangers in allowing various different kinds of work experience to be taken into account on the same basis. The work given to paralegals can tend to be more limited than that given to a trainee, the difference being that a firm is not investing in the future of a paralegal as it is in the future of a trainee. Consequently the tasks given to a paralegal would not normally be with a view to qualification and beyond but with an eye to income generation on work that would not be given to more senior people. You would take a trainee to a client meeting even if the trainee would not be able to contribute and even if you could not charge for it, for educational reasons and for the trainee to start to build relationships with clients. The same is by no means the case with paralegals. This should be given serious consideration as it would not be right to equate the two. Paralegals do not do 'seats' so their work experience will be more limited and allowing too long a time in any one discipline as a paralegal (or a trainee) is unsatisfactory and should be avoided. 102 In practice reducing this period is also likely to result in a reduction in the period of experience required for establishing a sole practice. This would reduce the period of experience of the individual and hence would increase the risk to the public. It is illogical to have a flexible term. The decision as to the competence of individuals made by law firms would be arbitrary. The one thing which it is impossible to examine is experience and yet increasingly, as the practice of law becomes more dominated by process rather than advice, this is the prized attribute. The principal value of a 24 month period is that it allows for a reasonable period during which experience can be gained. Even if someone were coached so as to pass Stages 1 and 2 within a few weeks they would not be fit to qualify as a solicitor because they simply would not have enough experience. 106 There are dangers in allowing different sorts of work experience to count equally. As mentioned above they are very different. The experience should be after all parts of Stage 1 have been passed otherwise it is of very doubtful value. There is, for instance, no value in working on contracts without any knowledge of contract law – this would be practice in a substantive vacuum (cf the diagram between paras 35 and 36). To allow this would be a serious reduction in the current standards. We also have reservations about paralegal experience unless the nature of the experience is given some parameters as mentioned above. 110 There should be a maximum of three placements and a minimum of six months per placement. Even this carries serious risks however if moving between placements becomes normal rather than exceptional. Moving from one placement to another involves an element of re-starting. It is almost inevitable that a continuous period of 24 months would be superior to two or three separate periods which make up the 24 months. It would probably be too difficult to require an extension of time for a change in placement, but there is an inevitable loss of momentum and it is therefore very likely to be second best. It would be unfortunate if the new system positively advocated something which is second best. 112 Obtaining a training contract is supposedly an obstacle. The danger in abandoning the current system is the same point as made before. If a firm is prepared to invest in the future of an individual then the end product will be a better educated lawyer. If the market becomes one of shifting between different kinds of work experience, that experience will be less good. It implies a 'here today gone tomorrow' approach to the relationship between the trainee and the employer and one in which the employers will therefore not invest to the same degree. The value of a two year period in the same firm includes intangible, unexaminable aspects. These include the personal benefit of working with colleagues over that period of time, winning the trust of others, making friendships and growing in confidence. These benefits go towards making better lawyers. These are all at risk of dilution if the trainee is able to move from one place to another. The point you make at the outset is that the public should be protected and given the

best service. If this is the case, and the work experience given by an employer who wishes to invest in the future of the individual gives the best experience, then the current system will prove to be superior from the point of view of the clients. Your proposals are favourable to aspirant lawyers. At the same time however, by not only permitting but also promoting the fragmentation of the process of qualification, the proposals carry the risk of a drop in standards which is against the interest of the public and the profession. Some change of placement should be allowed but if it becomes commonplace it is likely to be second best and risks creating a second tier.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** The period should be 24 months. Much of the comment against the previous question applies here too. Protection of the public is the first of the regulatory objectives you cite (paragraph 11). Reducing the period will reduce the public's protection.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** From our point of view we would most likely still be taking people with a law degree or a non law degree and SQE 1 from a reputable institution. To maintain standards the SRA should regulate the course providers.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** A number of the points in response to Question 1 also apply here. The syllabus seems very limited in the particular respects which we would consider to be the most important to our firm, namely contract and tort. Those subjects are only taught in the context of dispute resolution which seems to us odd, but worse it reduces the amount of time dedicated to them. The content includes EU law which seems unnecessary as part of the mandatory requirement for solicitors as we are leaving the EU. Perhaps this element was overtaken by events since the process began. There should be greater emphasis on business law in the whole curriculum. Some thought should be given to the extent to which items on the curriculum are likely to be automated and ultimately fall outside the likely area of work for solicitors - although this is possibly a point for the future.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:129 Data

## 2. Your identity

### Surname

Bonsor

### Forename(s)

Mary

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: director of F-LEX and solicitor

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:** I strongly agree with the SQE being an effective measurement of competence. It has two stages to test legal knowledge and practical skills and would be far more effective than the LPC.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:** Legal work experience is the best way of learning. Rather than being taught how to fill out the form, you are filling out the form and being supervised and shown where you went wrong. In all other professions (accountancy / training as a doctor), the importance of getting on hands experience is imperative and it should play more of a role in qualifying as a lawyer. I disagree that there should be set periods of legal work experience to count. Any work experience (and it should be on an individual basis to decide) could be invaluable. For example, doing a vac scheme and sitting in a firm for 2 weeks having talks by the partners would not count for qualifying work experience, however a day assisting with drafting a licence, could. It should be down to the individual to decide whether they think it was valuable experience and to keep a record of this, they should then apply to do the SQE when they feel competent and confident that they have the skills to pass. If you let the individual decide, I imagine you would find that most individuals will actually wait longer when they know they feel competent and ready than applying too early giving you more qualified solicitors.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** Putting the choice on an individual by letting them do their SQE Part 2 when they feel competent and ready will ensure that quality is maintained and checked before qualification, however individuals will feel ready to qualify at different times and therefore perhaps having a minimum number of hours prior to doing the SQE would ensure there are not thousands of applications by under prepared students, however giving flexibility allows individuals to begin to assess themselves (as they will have to do with their statement of competence) and put themselves forward when they believe they are ready, after which the SRA's chosen body can test their competence.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:** Having gone through law school not that long ago, I would highlight the importance of getting more work experience and testing the more practical side is a far more suitable test than purely academic side (such as the LPC). There are so many skills involved in practice which are hardly tested during the LPC, such as client interviewing, understanding the case and drafting which are skimmed across in the LPC and are important parts when you qualify. All these can be learnt far quicker in practise when a supervisor scribbles all over your particulars of claim and returns it to you in a real situation rather than in the classroom. The model testing the legal knowledge is not that different to the GDL courses but the practical side really needs improving to be more realistic to when you are a solicitor therefore I agree that the proposed model is far more suitable test.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** The problem with giving exemptions will mean that it is hard to achieve a set standard of qualification and to be sure that this has been met as people may be exempt for different reasons e.g doing a law undergrad or qualifying abroad are two very different standards. Universities may want to offer the SQE1 as part of their curriculum if they feel that law students undergrads should pass the SQE automatically, however if the SRA would like to ensure there is a clear qualification mark, it will be important to make everyone do both SQE1 and SQE2.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly agree

**Comments:** This is giving a long enough opportunity for those to still take LPC now and gives the option of students to choose which path to take before the SQE comes into play fully or who may be part of the way through.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** If the SRA allow a more flexible approach to the work placement learning, those who do work experience in pro bono areas, or other placements could count. This will help increase equality and allow for anyone to apply to do the SQE2 therefore reducing barriers allowing those to take paths other than within a traditional training contract (which are incredibly competitive to obtain). Removing the LPC will also reduce the barrier to those who can not afford the course which currently is too expensive and law schools allow students with no prospect of a career in law (with grades such as D,D,E at A-Level) to still go to law school. If anything, allowing work experience to count and build up, will help those with not such good grades, to prove themselves through work placements before they do their SQE as they could potentially still learn good practical skills.

# Consultation questionnaire

Response ID:576 Data

## 2. Your identity

**Surname**

Wilding

**Forename(s)**

Nicola

**Your SRA ID number (if applicable)**

**Name of the firm or organisation where you work**

**Your email address**

nicola.wilding@dlapiper.com

**Would you like to receive email alerts about Solicitors Regulation Authority consultations?**

Yes

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

I/we have a specific confidentiality requirement as follows.: Please publish the response as being from the MJLD and not me personally.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**

**on behalf of a local law society**

Please enter the name of the society.: Merseyside Junior Lawyers Division

## 3. (untitled)

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:**

## 4. (untitled)

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** Our members gave a range of answers between 18 months to 3 years depending on how varied the training the individual had experienced. For example, if the individual trained at a niche litigation firm and so was very competent in that area of law then 18 months would be acceptable.

## 5. (untitled)

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:**

6. (untitled)

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Disagree

**Comments:**

7. (untitled)

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Agree

**Comments:**

8. (untitled)

To what extent do you agree or disagree with our proposed transitional arrangements?

Disagree

**Comments:**

9. (untitled)

Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

**Comments:**

10. More about you

**Your sex**

Female

**Your age**

25-34

The Disability Discrimination Act 1995 defines a disability as "a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities". Do you consider yourself to be disabled as set out under the Disability Discrimination Act 1995?

No

Please indicate your type(s) of impairment. You may select more than one option below.

**Your ethnicity**

White

**More about your White ethnic background**

British

**More about your Black or Black British ethnic background**

**More about your Asian or Asian British ethnic background**

**More about your Mixed ethnic background**

**More about your Chinese or other ethnic background**

**Where did you hear about this consultation?**

National JLD

# Consultation questionnaire

Response ID:125 Data

## 2. Your identity

**Surname**

Awala

**Forename(s)**

Michael

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:**

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Agree

Comments:

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Comments:

# Consultation questionnaire

Response ID:462 Data

## 2. Your identity

### Surname

Jefferson

### Forename(s)

Michael

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: University of Sheffield

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** SRA Consultation: question 1 (robust and effective measure of competence) One of our colleagues at the University of Sheffield, Michael Jefferson, wishes to comment specifically on the some matters concerned with assessment methods. He has broad and longstanding experience of centrally set and centrally assessed Law examinations. He marked on the Law Society Finals including re-marking borderline scripts until the replacement of the LSF by the LPC; he is currently 'scrutiniser' for the Chartered Institute of Legal Executives on one of the FHEQ Level 6 exams; he was on the appeal panel for the Bar Standards Board's central appeal panel, which dealt with appeals in relation to the BPTC's three centralised exams, Civil Litigation, Criminal Litigation, and Professional Ethics, until the panel's replacement this year by a 'Visitor'. He was one of the three markers on the Chartered Institute of Personnel and Development's (CIPD) Professional Development Scheme and was subsequently the External Examiner for the CIPD's Advanced Certificate in Employment Law. All involve/involved centrally set and centrally examined assessment. He is in favour of centrally set and centrally examined assessment but recognises that others (e.g. some in the Russell Group of universities such as Oxford and Cambridge may disagree). His action research on centrally set and to some degree centrally examined undergraduate assessments was cited approvingly by the LETR. He has read the comments, with which he agrees, of the University of Law, the University of Sheffield, and the Association of Law Teachers (of which he is the Hon. Secretary but writes here in a personal capacity). From his experience he suggests the following. 1. SQE 1 and probably SQE 2 will lead to surface-learning i.e. learning for the exam. followed by what is nowadays called a 'mind dump' immediately afterwards. SQE is not fit for purpose. The medical exams are incidentally not necessarily an apposite comparison for the reasons stated in other submissions. 2. His experience is that attempts at reducing costs can be counter-productive, as perhaps can be seen by litigants in person in the courts as a result of cuts to legal aid. Marking single best answers exams. even by computer is not cost-free and the cost of hiring exam. venues may be almost prohibitive. For example, for the QLTS the venue is in London and the costs of travel and accommodation are transferred from the provider to the candidates. Venues so far unnamed across England & Wales and overseas for say the current numbers on the LPC will be expensive for all involved. This has effects also on EDI (see question 7). A panoply of exam. setters, English/Welsh legal translators, scrutineers, those dealing appeals etc. will need to be established from scratch, and such people are expensive and indeed so busy that they may not wish to serve. It is uncertain if the SRA could attract such people. If the work is outsourced e.g. to Kaplan or

Pearson, it is again uncertain if people of the right calibre will be attracted. 3. He recommends the use of 'scaling' for MCQs/best single answer questions and notes that this issue may very well come up post-exam. The work at the BSB on the BPTC of Prof. Mike Molan including his (exemplary) biannual reports on the centralised BPTC exams. demonstrates the need for scaling even in this assessment method. The reports are published on the BSB's website. 4. The LETR work mentioned above shows that there is a need for strong moderation of assessments. This is so despite the use of MCQs and computer marking by e.g. optical readers. 5. He continues to stress that the functioning legal knowledge part is far too vast to be examined in one go. Furthermore, he strongly endorses the third paragraph of the ALT's reply (which is excerpted here for ease of reference): We also acknowledge that developments in assessment practice have resulted in the development of sophisticated assessment tools using multiple choice and similar questions which lend themselves to automated assessment and rigorous statistical analysis. However, we have grave reservations as to whether such methods are suitable as the almost exclusive mechanism for assessing ability to advise and undertake legal transactions or dispute resolution procedures. In the great majority of cases, solicitors will not be advising "against the clock", nor will they be doing so by breaking down transactions into tiny elements and providing a specific answer in respect of each. We consider that a problem-based learning and assessment approach is inherently preferable. In the absence of any sight of samples of the proposed assessment materials, it is impossible to be confident that they will be robust enough to assess the relevant attributes, skills and competences. A three-hour computer-based examination requiring candidates to answer a large number of questions will place a high premium on surface learning for instant recall. This does not replicate practice in any meaningful sense. It also has important equality implications since there is strong evidence that certain personality types perform much better under time constrained conditions, and that this has little to do with their ability to do their job under normal conditions. There is a grave danger that an assessment heavily reliant on this type of assessment tool will exclude many perfectly competent individuals who are simply not good at the very artificial task of answering multiple choice questions against the clock. An effective assessment regime would include a range of assessments, which might include for certain purposes an element of multiple-choice or similar computer-based assessment, but should also include problem-based exercises, a range of research and drafting exercises and possibly other elements. We appreciate that some of these cannot be as easily administered and verified, and may well cause further increases in the cost of the assessment, but a greater degree of variation is essential if the assessment is to be not only reliable but also valid.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** What is it!?

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:**

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Please see a small part of the response to Q. 1

Date: 9 January 2017

Dear Sir/Madam

Re: SRA Consultation - 'A new route to qualification: the Solicitors Qualifying Examination'

I am writing in connection with the above SRA Consultation.

I have been qualified as a Solicitor since 1968, but have been non-practising since 2014. From

1968 until 2014, I practised as a solicitor in private practice in London. For the past 15 years or

so, I have served on the Executive Committee of the West London Law Society (WLLS), including a term as its elected President. I am currently one of two WLLS nominated members

to the Council of The Law Society.

My comments which follow are purely personal and they should not be interpreted as the views

of WLLS, the Law Society or any organisation with which I have or have had a relationship.

I have read the response to the Consultation from Dr Klearchos Kyriakides, another long-standing member of the WLLS Executive Committee, who has more than 10 years of experience

of teaching law in relation to the LLB and LPC.

I endorse the response from Dr Kyriakides, and adopt this as my own personal response which,

for ease of reference, I set out below:

"1. In my submission, the SRA's proposed overhaul of legal education is fundamentally misconceived, contrary to the traditional ethos of legal education and, as is the case with all radical root-and-branch reforms, potentially dangerous as well. Accordingly, the existing LLB,

GDL and LPC programmes, or more rigorous versions thereof, must remain as the essential

bedrocks of legal education. In other words, subject to the availability of alternative routes for

legal executives and certain other categories of persons to become solicitors, the LLB or GDL

and LPC must stay as the normal stepping stones into the solicitors' branch of the legal profession. The logic of this is self-evident. On the one hand, the LLB (in common with the GDL) provides students with the essential foundations of the English legal system, critical thinking skills and appropriate knowledge and understanding of at least seven core compulsory

legal modules (namely Contract Law, Criminal Law, Equity and Trusts, European Union Law, Land Law, Public Law and Tort) plus various elective modules. On the other hand, the LPC introduces graduate students to the nitty-gritty realities of legal practice including the structures,

systems, documents and skills of legal practice. What the SRA is proposing seems to be founded

on a radically different philosophical premise. Indeed, it is difficult to understand the philosophical foundations of the proposed reforms.

2. If one looks at the detail of what the SRA is proposing, one is perplexed and rather worried

by what one finds. For example, the SRA appears to be proposing to do away with the concept

of the qualifying law degree and, thus, the seven core compulsory topics as they currently exist.

As everybody in legal practice would no doubt agree, these seven topics provide the essential

foundations of legal practice irrespective of a solicitor's specialisation. However, the proposed

'Solicitors Qualifying Examination' rests on an altogether different philosophical premise.

Furthermore, it appears to marginalise some of the seven compulsory core topics.

3. From what I can ascertain from 'A new route to qualification: The Solicitors Qualifying Examination (SQE)' published by the SRA in October 2016, it is proposed that the seven existing

compulsory core topics should be replaced by '[t]he first stage of the SQE' which 'would assess

candidates' functioning legal knowledge through six modular assessments'. These assessments

would assess six topics named by the SRA as follows:

\* Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of

England and Wales

- \* Dispute Resolution in Contract or Tort
- \* Property Law and Practice
- \* Commercial and Corporate Law and Practice
- \* Wills and the Administration of Estates and Trusts
- \* Criminal Law and Practice.'

4. To begin with, the above list seems to muddle up some LLB topics with some LPC topics. At

present, for example, Property Law and Practice is an LPC module which logically rests on the

foundations formed by the separate and earlier LLB or GDL Land Law module. However, the

SRA's approach does not seem to follow this logical sequence. In addition, EU law is missing

from the above list. Notwithstanding the prospect of 'Brexit', EU law must surely remain a compulsory stand-alone topic if aspiring solicitors of the future are to understand English law as

it existed from accession to the then EEC on 1 January 1973 until 'Brexit Day' whenever the latter takes place. Knowledge of EU law is also necessary for other reasons, for example, in the

event of a client's case having an EU dimension.

5. As for the reference to 'Dispute Resolution in Contract or Tort', why is the word 'or' there?

Besides, will aspiring solicitors require a grounding in the substantive principles of contract law

and tort, as distinct from dispute resolution in relation to just one of these?

6. The SRA goes on to propose that the above six 'first stage' topics should be supplemented by

five 'second stage' topics which appear to resemble some of the modules on the LPC. The five

are named as:

- \* Client Interviewing
- \* Advocacy/Persuasive Oral Communication
- \* Case and Matter Analysis
- \* Legal Research and Written Advice
- \* Legal Drafting.

7. Unless I am mistaken, therefore, the above list of names do not expressly include Civil Litigation, Criminal Litigation, Revenue Law, Business Accounts and Solicitors' Accounts all of

which have traditionally been compulsory LPC modules and with good reason.

8. It is implicit in the SRA proposals that the SRA will no longer oblige students to undertake any elective LPC modules which enable LPC students to go into detail on their chosen topics.

When I was an LPC student, one of my own LPC electives was Advanced Civil Litigation.

This elective module built upon the compulsory Civil Litigation LPC module. As such, it gave me extra knowledge, extra confidence and extra skills to engage in civil litigation as a trainee and

thereafter as a practising solicitor. Students of the future may be deprived of such opportunities

if elective LPC modules are not available to the extent that they are at present.

9. When I was a trainee and happened to encounter a legal problem, I would always ask myself

which one or more LLB and LPC modules were engaged by the problem at hand. I would then

try to research the issue, in part, with the help on my LLB or LPC notes. In other words, the LLB and LPC modules provide a sensible intellectual and practical framework for any trainee to

approach any legal problem. That intellectual and practical framework may be lost as a result of

the radical overhaul proposed by the SRA.

10. The English legal education system is tried and tested. However, I acknowledge it is open

to improvement. For example, much more needs to be done to assist students from less advantaged backgrounds to enter the legal profession and to gain the skills necessary to achieve

that goal. If the SRA wishes to improve the legal education system and promote diversity, perhaps it can take note of the following matters, among others:

10.1 The SRA should call for substantial improvements in the primary and secondary school systems in England. In my experience, some students arrive at university from schools in England without an adequate grasp of, for instance, the English language, British history and European history. Others lack basic skills, such as writing letters and speaking in public. Quite

often, it is the students from disadvantaged backgrounds who struggle at university because of

the shortcomings of the education which they received at school. This can hinder their studies at

university and have an adverse effect on their prospects of entering the legal profession.

10.2 The SRA should do more to encourage universities to do even more to help students from

disadvantaged backgrounds once they have arrived at university. In my experience, the emphasis

on encouraging students from disadvantaged backgrounds to go to university has eclipsed the

need to help them once they have arrived at university. For example, the SRA could encourage

universities to do even more, for instance, to help students enhance their writing skills, their networking skills, their social skills and their overall professionalism. Universities have already

taken considerable steps in this direction, but more could be done.

10.3 The SRA should encourage universities to deepen their existing ties with local courts, as

well as local law societies, barristers' chambers and firms of solicitors. In that way, the legal education can be further enriched by the insights and experiences of those involved the administration of justice and the provision of legal advice.

I hope that the above personal thoughts give you an insight into what I consider to be the defects, deficiencies and dangers which are inherent in the SRA's proposals. I also hope they

offer the SRA some food for thought as the future unfolds."

Yours faithfully

Michael Nathan

Solicitor (non-practising)

# Consultation questionnaire

Response ID:353 Data

## 2. Your identity

### Surname

Rutstein

### Forename(s)

Michael

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as another legal professional**

Please specify:: law tutor

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** By way of background, I qualified in 1989 and was in practise for 26 years, most of which were spent at the firm that is now called Dentons and more recently, Jones Day. I was a partner for seven years at each firm. At both firms, I was actively involved in graduate recruitment, vacation schemes and training for trainees and newly qualified solicitors. I left private practice in August 2015 and have since September 2015, worked as a tutor at BPP teaching business law and practice (core module) and private acquisitions (elective module). In responding to the consultation exercise, I think it likely that I have a unique perspective from most respondents in that I have first hand experience as a senior lawyer of what large commercial firms require and expect from their trainees and the educational value of the current LPC course. I make two other preliminary points. First, most of my comments on the SRA's proposal will be restricted to question 1. Secondly, I and many others I have spoken to are dismayed that the SRA has largely ignored the responses given to the first consultation and the impression that it is giving to those in the legal profession and working in legal education is that it is not consulting in any meaningful sense and that it has made its mind up and nothing will change it and indeed it is engaged in a war of attrition by seeking to ignore criticism and exhaust those who feel very unhappy with the proposals and force them into submission. It is astonishing that despite the depth and scale of criticism given in the first consultation, very little of substance has now changed in round two of the SRA's proposals and comments and criticisms have been brushed aside. Please consider what effect this hard headed and obstinate approach has on those who are asked to give their comments which they do in good faith and because they care very much about the standard of legal education. I urge the SRA to listen and take stock this time round and actively to listen, absorb, reflect and act on comments. Failing to do this for a second time will lead many to the view that the current consultation process is one in name only and that people such as myself are not being treated with respect or due consideration. This can only cause consternation, bewilderment and resentment. I now comment on the question substantively. I fundamentally disagree that the new SQE1 will be robust or effective to measure competencies. The purpose of the post law qualification for solicitors has been, so I have always understood, to act as a bridge between academic study and life in the work place. Those who start as trainees must be able to draw on a range of skills other than pure legal knowledge. In particular, they must know how to think, analyse and communicate (among many others skills). Coupled with that, lawyers represent their clients through words. Their verbal and analytical skills are therefore paramount. This is what clients pay for. I do not consider that exams based on MCQs can be a good test of

these skills. In real office life, client questions are not answered by selecting a single option. Advice has to be nuanced and analytical and communicated in a clear and concise way and this in my view is best tested by long form questions in which students demonstrate their ability to express themselves in an ordered and logical way. The SQE does not test this type of approach and is more suitable for cases there is a right or/wrong answer. I imagine that a MCQ approach is more suitable for subjects such as medicine and pharmacy but it is not suitable for law where many issues in practice do not boil down to a right or wrong course of action. Trainees will find the legal issues and problems that await them in the office will be very different from the type of questions that the SQE proposes and will therefore SQ1 will be a poor and dangerous preparation for life in the working world. The SQE is also a "one size fits all" exam which does not cater for the many disciplines that the LPC currently provides through the elective subjects. It therefore does not reflect the diversity of students or of firms. The SQE 1 will not test writing, organisational, analytical or problem solving skills. In addition, lawyers need to be able to look at both sides of the argument and anticipate the arguments that one's opponent will bring. None of this seems to me to be catered by the SQE. I understand that the SRA proposals will abolish the GDL and that all graduates, whatever their degree subject, will take the same course and exam. This is very troubling and it is difficult to see how someone with a history or English degree should or can be treated in the same way as someone with a law degree in that they are expected to take the same course and exam. If the legal knowledge each is expected to learn for the exam is the same, the conclusion to be drawn is that level of knowledge is very low indeed. I foresee that law firms which have the resources to do so may well provide in house training and set their own exams once the SQE has been taken as they will not have faith that the SQE will prepare them for life as a solicitor and the SQE will be widely ignored as an indicator of legal skills and knowledge. I foresee that several tiers of tests and exams will be developed by law firms and the SQE will not carry weight among law firms and therefore the public. As for SQE2, the main problem I see here in relation to the timing of the exam is the logistical side of things. Many firms plan their recruitment two or three years in advance. They want to know that their trainees have their exam behind them before they start work. For students to take the SQE 2 after firms have made substantial investment in them but then fail the SQE 2 could play havoc with law firm's recruitment needs. I also have first hand experience of students studying their LPC at the same time as they are undergoing their training contract. The feedback I receive is generally negative. They often are unable to attend sessions or prepare for them because of work commitments and they find the experience stressful and do not enjoy the learning experience. The theory of doing the learning at the same time as working in the office does not match the practice. Doing both at the same time for those in busy practices simply does not work. In short, I do not consider the SQE1 is a proper test for those entering the legal profession to take and will not instil confidence in the public. I do not consider that SQE2 is feasible from a logistical point of view.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** To the extent that this question relates to whether trainees should be required to work for two years in a law firm before qualifying, I agree with it.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**Comments:** This question is beyond my expertise and I cannot answer it.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** My reply to question 1 applies to this question. In addition, I would add that I think all prospective trainees should have a minimum standard of legal knowledge and experience with reading cases and legal texts, digesting them and working through hypothetical case studies and advising fictional clients on the issues thrown up by the case study. I believe that the SQE will eschew this approach in a way which I think ill prepares them for the workplace and does nothing to give confidence to the public that our future lawyers are well rounded in their legal knowledge and skills.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** As stated in my earlier replies, I foresee a many tiered system developing with law firms where those with resources to do so will train up their trainees to fill gaps left open with the new exam and those who do not receive that additional training will be regarded as second class citizens by both law firms and the public.

# Consultation questionnaire

Response ID:95 Data

## 2. Your identity

**Surname**

RAYNOTT

**Forename(s)**

RYAN

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: MILLER WARWICK AND PARTNERS LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** I THINK THE OPPORTUNITY SHOULD BE THERE FOR STUDENTS TO BECOME EXEMPT FROM SITTING SQE STAGE 1 OR 2 SHOULD THEY HAVE ALREADY COMPLETED A SIMILAR ASSESSMENT OR HAVE RELEVANT WORK EXPERIENCE WHICH IS MORE RELIABLE THAN A STANDARDISED ASSESSMENT.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** WE AGREE WITH THE TRANSITIONAL ARRANGEMENTS PROPOSED HOWEVER WE THINK IT IS UNFAIR TO SAY THAT STUDENTS WHO ARE ALREADY PART WAY THROUGH THEIR QUALIFICATION TO BECOME A SOLICITOR CAN ONLY CONTINUE WITH THE OLD SYSTEM (SUBJECT TO AVAILABILITY). IT WOULD BE LUDICROUS TO ASK A STUDENT TO RESIT SOMETHING SIMILAR TO WHAT THEY HAVE ALREADY DONE. IT NEEDS TO BE ENSURED THAT SOMETHING IS IN PLACE TO ACCOMMODATE CURRENT STUDENTS PART WAY THROUGH THEIR QUALIFICATION.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** WE BELIEVE THAT SOME STUDENTS MAY DECIDE NOT TO STUDY LAW DUE TO THE LENGTH OF TIME IT TAKES AND LACK OF AVAILABLE FUNDING FOR THEM TO AFFORD THE WHOLE NEW QUALIFICATION PROCESS.

## **The Monmouthshire Incorporated Law Society's response to SRA Consultation – 'A new route to qualification: The Solicitors Qualifying Examination (SQE), October 2016'**

The Monmouthshire Incorporated Law Society was established in 1888 and represents solicitors and other providers of legal services over an area stretching across South East Wales.

### **Introductory/general comments**

In our response to the previous consultation, previous in March 2016, we were critical of many aspects of the proposals. We welcome the fact that the SRA has listened to some of the responses, and that some important changes have been made. In particular the SRA has acknowledged that –

- (1) a period of recognised work training is essential,
- (2) new entrants into the profession should be graduates (or hold an equivalent qualification),
- (3) Stage 1 of the SQE (the knowledge tests) are now a more substantial set of assessments than previously,
- (4) the ability for students to 'cherry pick' assessments has been removed by requirements to sit all assessments in a given assessment window,
- (5) that unlimited resit opportunities have been removed..

We continue to have some concerns and reservations about the SRA's proposals, but fewer than we had with the previous consultation.

However, we are concerned that there appears to be little thought given to the procedure for passing legislation in Wales and the law in Wales generally.

### **Question 1 – To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

It is fair to say that opinion is divided on whether there is a need for a new centralised assessment.

Many solicitors see no inherent problems of quality of trainee under the current system of LLB (or another degree plus GDL) followed by an LPC.

There are widely held concerns about the nature of the proposed Stage 1 assessments. In particular, Practitioners simply do not consider that a series of multiple choice questions, single best answer questions and extended matching questions are an appropriate means of assessing future solicitors. Very little is black or white in the law, they really need to be a suite of question types which include extended written answers (as currently happens on the LPC), giving candidates the opportunity to show their reasoning and ability to argue a point whilst displaying their legal knowledge.

There is therefore a grave danger that the method of assessing Stage 1 will lack sufficient rigour and lead to a dumbing down of the assessment of potential solicitors, particularly compared to the core elements of the LPC, which is the place where most of the SQE Stage 1 proposed content is currently assessed. We are not convinced by the SRA's arguments on quality and appropriateness of the forms of question being proposed for Stage 1.

Regarding Stage 2 we can envisage a situation where firms will be reluctant to take 'trainees' who have not yet passed Stage 2, as they (a) would not wish to engage someone who then subsequently failed Stage 2 and (b) would resent the considerable time out of the office needed both to sit the Stage 2 assessments and to attend preparatory courses for Stage 2. We think it likely that market forces will mean that students will seek to sit Stage 2 before beginning their period of work based training, mirroring the current situation of the LPC preceding the training contract.

Firms will want to be assured that there is a consistent means of judging the marks obtained by candidates, so this needs greater explanation so that firms can have confidence in the method.

Candidates should be able to identify the nature of and procedure for passing primary legislation in England but also the work of the National Assembly in Wales. Candidates should also demonstrate an understanding of the growing divergence of law between England and Wales. They should also demonstrate an awareness of the sources of the law of England and the law of Wales.

**Question 2a – To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

We are pleased that the SRA has recognised that a substantial period of work experience is required.

However, we have concerns about the proposal that the work experience need no longer include three areas of practice, and that it need not contain both contentious and non-contentious work.

The loss of the current LPC electives (and the possible loss of optional content in the LLB), this will narrow the knowledge and understanding of a newly qualified solicitor dangerously. This will diminish and devalue the qualification of solicitor, and lose the essence of what makes solicitors stand out from other legal practitioners.

We are also concerned by the proposed declaration that a supervising solicitor must make in respect of the candidate. The supervising solicitor will be required to declare that a candidate had 'had the opportunity to develop *some or all* of the competences in the Statement of Solicitor Competence'. This is too vague so that it becomes almost meaningless, and is not a substitute for assessing whether a candidate has met competences during the work experience.

Provided it is properly regulated, we agree that qualifying work experience could be obtained outside a formal training contract. We agree that the person should be regulated by a solicitor, but we have concerns (related to the recent SRA consultation on the Code of Conduct) that this might be supervision by a comparatively junior solicitor operating in an unregulated body.

We agree with the SRA that work placements outside a formal training contract should be of a minimum length to qualify as part of the period of work based training. We think there should be both a minimum length for the work placement to be counted, and there should be a maximum number of work placements that could be counted. It should be possible to count periods of (say) three months or more, but with (say) a maximum of four placements, so that the average time on a placement would have to be six months.

We agree with the flexibility allowed by the rule that the completion of work-based learning would be required by the point of admission, not as condition of eligibility to sit Stage 2.

We agree with the proposal that candidates should maintain a record of their qualifying legal work experience.

However, a major concern is that relaxing the rules on how and where legal work experience can be gained, will lead to a far greater number of solicitors qualifying. The SRA has rightly noted there is a bottleneck for potential entrants to the profession currently. However, changing the rules to include a wider range of work experience will lead to more students qualifying and simply shift the bottleneck to newly qualified posts.

We also agree with the Law Society of England and Wales response that providing a toolkit for employers will also enable providers of the work-place experience to see what must be done and in what way, without much of the current ambiguity that exists around the training period and what 'good' training looks like.

It must be remembered that young solicitors often go on to become managers, partners or directors of legal practices and a broad spectrum of training of different areas of law, contentious and non-contentious is essential for them to be able to fulfil that role appropriately in terms of their own business but also the public.

**Question 2b – What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We consider that a minimum fixed period of two years' work experience is appropriate, as is currently the case.

**Question 3 – To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

We recognise that if the SRA implements the proposed changes it will be very difficult to regulate any preparatory training for the SQE, as the modes and timing of available training courses will vary widely, unless the SRA imposes a model, as is the case with the LPC.

However, there will be a difference, in that currently the LLB, GDL and LPC is subject to regulatory oversight, by the SRA and due to QAA requirements. This regulatory oversight will be absent if the SRA is content to leave it all to the market, and it is possible that quality will suffer as a result. There will be no mechanism (other than published data on pass rates) to identify poor course provision, and some candidates will enrol on and pay for sub-standard courses, with minimal regulatory protection.

We agree with the Law Society of England and Wales suggestion that the SRA to issue guidance on the Competence Statement for Solicitors and SQE materials to providers who wish to provide SQE preparatory elements. It may also be useful to have a timetable for when and in what form these materials will be made available, in order to allow providers to develop appropriate courses.

We are particularly concerned over the route for a 3 year non-law graduate – the proposals refer to "extended prep", which would presumably replace the GDL, however it provides no detail on this. Preparatory training should be essential in these circumstances to sit the SQE and guidance given on the extent of the required training.

**Question 4 – To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

We are pleased that the SRA considers that candidates must have a degree "or equivalent", subject to clarification of what an "equivalent" means.

However, within our answers to questions 1-3 above, we have expressed our reservations that the proposed SQE and the concern that it may not be a sufficiently robust test., the preparatory training is not of the level of an LPC and the failure to specify two contentious and one non-contentious seats threatens to devalue the brand of solicitor. We also emphasise our point that that young solicitors often go on to become managers, partners or directors of legal practices and to do so they need a broad spectrum of training of different areas of law, contentious and non-contentious. Also we have expressed our concerns and the need for a Toolkit for employers and guidance for preparatory training, particularly for the “extended prep” a 3 year non-law degree.

We also repeat our comments about the need for candidates to understand the law and procedure in Wales and the divergence of laws between England and Wales.

**Question 5 – To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

We recognise that it will be very difficult to provide exemptions from the SQE Stage 1 and 2, and to do so would undermine the system proposed by the SRA. We have concerns, though, about the possibility that EU candidates (even post-Brexit) may be granted exemptions from the SQE, when domestic candidates and other international candidates will not be allowed exemptions. We see no reason for preferential treatment of EU candidates in this regard. Will the SRA engage with the UK Government on this issue?

**Question 6 – To what extent do you agree or disagree with our proposed transitional arrangements?**

We welcome the flexibility for students to complete the process of qualification under the current system if they have already started the process before a certain date. The main concern with the transitional arrangements is that it may be too ambitious of the SRA to introduce the SQE in September 2019. We doubt that the revised timetable proposed by the SRA is realistic.

**Question 7 – Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes, although we are pleased that the SRA is not now proposing that candidates can have unlimited attempts at the SQE, or that they can spread their assessments over several assessment periods.

Concern persists that a two tier market will arise, with more privileged students still doing a full ‘liberal’ law degree, followed by an LPC style course, followed by a two year training contract. Less privileged students may do a degree at a less prestigious university that includes SQE preparatory content, be less prepared for the SQE, may need several resits, and will be undertaking paralegal work limited to one area. Come the point of qualification, there will be a (quite probably accurate) perception of difference between the one qualified solicitor and the other.

Another concern is that the new system of qualifying may prove more expensive than the current system thus limiting those who can afford to qualify into the profession.

When the cost of the SQE itself and SQE preparatory courses are compared with the LPC, and especially when the SQE is compared with what is currently Stage 1 of the LPC (the core subjects). There is no elective content in the SQE (what is now Stage 2 of the LPC). The cost of Stage 1 of the LPC is only a proportion (around 70%) of the current cost of the LPC. If, instead of introducing the SQE, the SRA simply removed the elective content from the LPC, the cost of qualification under the current system would reduce considerably, and would almost certainly be cheaper than the SQE and any attendant preparatory courses.

We believe it is a flawed assumption of the SRA that the cost of qualifying would be reduced by taking out the LPC or to assume that firms will pay the Stage 2 costs.

We once also repeat our comments about the need for candidates to understand the law and procedure in Wales and the divergence of laws between England and Wales. A failure to reflect this within the examinations and training may place those practicing in wales at a disadvantage.

# Consultation questionnaire

Response ID:280 Data

## 2. Your identity

**Surname**

Scholey

**Forename(s)**

Paul

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Morrish Solicitors LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We think the existing system works well. This seems to us to be make-work for the SRA. In reality those providing expensive training for the LPC will end up providing expensive training for the SQE. Our experience of the existing system is that it produces reasonable trainees. We see a significant difference between e.g. paralegals with the LPC, and those without. We worry that moving away from the existing system will reduce the quality of the trainees available to us. The changes you propose since your last - strikingly recent - consultation are not sufficient to persuade us that the proposed new system is

necessary or appropriate.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** Our position is that the SQE is a mistake.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** Our position is that the SQE is a mistake.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:182 Data

## 2. Your identity

### Surname

Bondarets

### Forename(s)

Nataliya

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: I worked as a senior paralegal in a solicitor's firm for over a year in 2015/2016. I completed my LPC in 2014

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:** I think that an necessity to secure a training contract was a real barrier to qualify as a solicitor. With the current proposal this is not your only way to qualify anymore. You can find a work placement in any size firm with good solicitors, massive and complex caseload where you will learn a lot. With the proposed SQE you will not depend on the firm's wish or procedures to give or not to give you a training contract. You work as you go and when you feel or your supervisors feels that you are ready, after a required minimum period of time of course, you just go and sit your exam. I paid £14,000 for my LPC, but it did not help me to secure training contract. I personally prefer to work in smaller firm where you learn a lot and have more responsibilities. However, it is difficult to get a training contract with those firms. I can work for five years as a paralegal/senior paralegal/caseworker, be much competent than my fellow colleagues in other big firms after having completed two years of training contract, but still not be able to qualify.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Agree

**Comments:**

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Neutral

**Comments:**

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Neutral

**Comments:**

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

**Comments:**

# Consultation questionnaire

Response ID:505 Data

## 2. Your identity

### Surname

Chanoch

### Forename(s)

Nir

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: QLTS School

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** The SQE, being modeled on the QLTS, is a rigorous and effective assessment scheme. Some elements in the proposed SQE and the Assessment Specification may still need further development and clarification.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** While work-based experience is needed, it is not entirely clear how the SRA will be able to verify the information provided by foreign qualified lawyers about their legal background.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:** Foreign lawyers should be able to complete the work-based experience in their home jurisdiction, not necessarily in English law. Pre and post qualification work experience or training should counts towards the workplace period.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** The training market in other jurisdictions with a centralised entry assessment is not regulated (e.g. New York State) yet is very competitive and dynamic. Publishing the results of training providers is a very difficult task and may distort the results if not done properly. Collating of reliable data is questionable. The training provider with the best result may increase prices while at the same time candidates will opt their programmes. This could cause a monopoly.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** The tests combines substantive and procedural law, and skills assessments. The SRA should consider test procedural and practical law in stage 2 like in the QLTS OSCE. Candidates develop their practical skills in the workplace so it is not clear why procedural aspects are now tested in stage 1.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** Exemptions should not be granted unless the SRA must comply with EU law.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** It's going to be challenging to be ready in September 2019 given the scope of materials that needs to be prepared.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:41 Data

## 2. Your identity

**Surname**

Miah

**Forename(s)**

Noor

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**  
on my own behalf as a solicitor in private practice

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Longer than two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Not having the required knowledge or experience. 'Watering down' the value of the profession thus effectung public confidence. The LPC should remain to ensure effective minimum skills are inherent in future lawyers. Any proposed reforms will need to be of an effective standard perhaps consider looking at other common law jurisdictions such as the New York Bar Course. This is a tough exam but ensures only able and effectively trained persons are admitted to practice.

# Consultation questionnaire

Response ID:298 Data

## 2. Your identity

### Surname

boyd

### Forename(s)

richard charles

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: north yorkshire law

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:**

# Nottingham Law School

## **A new route to qualification: the Solicitors Qualifying Examination**

**Response Document : Second Consultation**

**6<sup>th</sup> January 2017**

**1) To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

As with any assessment it is impossible to answer this question until the assessment has been seen. In principle we accept that properly designed multiple choice questions can assess functioning legal knowledge. We are pleased to see that different question formats have been introduced to ensure a full range of cognitive abilities are tested. The proposed coverage of the syllabus is thorough and the number of questions substantial. Thus, insofar as SQE 1 is concerned the tests have the potential adequately to gauge competence. Much will depend however, on the design of individual questions. In addition, as commented on in our response to the 'training for tomorrow' consultation, the type of assessment being proposed by the SRA, even in its amended form, will only assess candidates on a given day; it will be a snapshot of competency to pass an assessment, not a consideration and assessment of competency. If the common assessment is the sole gateway to qualification, then the talent will be to pass the assessment not necessarily prove the SRA's competencies in other ways.

SQE 2 appears to assess a wide range of legal skills across an appropriate range of practice contexts, but again, the detail of the assessment will determine its robustness and effectiveness. Of the alternative models proposed in paragraph 67, we support the assessment of a minimum of two practice areas (chosen by students) from within the range set out in paragraph 62 across a number of different scenarios.

**2a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Generally, we support the concept of increasing the flexibility of qualifying work experience. We do, however, observe that the emphasis needs to be on the quality of the training rather than on the duration. We would note that the SRA needs to be in a position to monitor these legal work experiences and ensure the student experience is of the necessary high standard. Furthermore, the SRA must be in a position to intervene if there is evidence to suggest that a workplace training provider is not facilitating an adequate learning experience otherwise the reputation of the profession could be severely questioned. Interventions can only take place if there is a clear framework by which the quality (or lack thereof) of the training can be defined and measured.

**2b) What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We do not necessarily consider it appropriate to set a pre-determined length as, if SQE2 functions as intended, the presence or absence of competencies will be assessed that way. Giving firms the flexibility to reduce the period of time necessary if a trainee is performing well may incentivise firms to improve the quality of their training. Whilst it may be desirable to issue guidance on the suggested duration of workplace experience, the period of such experience before a trainee should be permitted to take SQE 2 should be determined by the training organisation and trainee.

It may be that the profession feels that it is necessary to set a minimum duration and we would not seek to disagree with their judgment in this matter.

### **3) To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Whilst we agree that any additional regulation is likely to increase costs, the difficulty with reliance on market forces is that it is retrospective and unsuitable for a process which has a lasting effect on the career of an individual. Once deregulation of preparatory training is introduced there is the risk that unregulated and inexperienced providers enter the market; such organisations may well be able to undercut experienced providers on cost (by cutting corners in terms of quality assurance). In the long term, when SQE results are known, these providers may fall away – but not until students (particularly those from non-traditional and low income backgrounds) have paid fees for a poor quality educational experience which damages their long term career prospects and irreparably damages the reputation of the education market and the profession.

Students who cannot afford training courses, or who are otherwise ambition-rich but time-poor due to family responsibilities, are likely to be disadvantaged. Students effected in this way tend to be non-majority students. If non-majority candidates fail the SQE and/or fail to retake this will potentially have a negative effect on clients as non-majority lawyers tend to service non-majority clients therefore denying these clients access to justice. Historically underrepresented communities need lawyers who, in culturally sensitive ways, can provide access to justice.

### **4) To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

We repeat our observations above that we cannot answer this definitively without having sight of the assessment. Whilst we agree that candidates who have the attributes to become a solicitor will pass this assessment, we do not (for the reasons stated in our response to question 1) agree that passing these exams will of itself demonstrate any more than preparation for an exam on a fixed date.

### **5) To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Under the current proposed legislative and regulatory regime we can see no justification for exemptions. The purpose of the SQE is to ensure assurance of a common standard of competence and this will be wholly undermined if exemptions are being granted on a piecemeal basis.

We would add the caveat that if other legal regulators introduce their own form of common qualifying assessment there should be close dialogue on the content of these assessments. If such assessments demonstrate possession of the same level of competence and knowledge as the SQE consideration should be given to allowing partial exemptions to those parts of the SQE where knowledge and competence has already been proven.

### **6) To what extent do you agree or disagree with our proposed transitional arrangements?**

We hope that any final timeline will give sufficient time to both assessment and training providers to ensure that any potential problems have been identified and addressed. Problems caused by the over hasty implementation of a scheme can substantially effect the student experience and long term career prospects as well as undermining the reputation of the profession. The emphasis in any

transitional period should be on ensuring a smooth implementation rather than a quick implementation.

In respect of the run out date, sufficient provision needs to be made to ensure that those who have not completed the course due to extraneous features beyond their control are not discriminated against.

**7) Do you foresee any positive or negative EDI impacts arising from our proposals?**

We note that the number of attempts is limited to three. We would observe that, although we agree it is proper to have a system to prevent students from being able to take the assessment on numerous occasions, we are concerned about the lack of detail in respect of mechanisms by which attempts can be discounted. A student who is taken ill or who has difficulties in the middle of SQE1 would, if they were taking an assessment in a university, be able to re-sit that assessment without penalty. There seems to be no mechanism to provide for that type of contingency within these rules. This is likely adversely to affect those from under-represented groups (in particular those with disabilities and caring responsibilities) who may perform poorly in assessments through no fault of their own and have no opportunity to retake the assessment without it being counted towards their 'three strikes'.

We have not seen any costings and therefore we can neither agree nor disagree with the proposition that this scheme will reduce costs overall. In particular, we have seen no guidance on who will bear the cost of SQE 2 and the cost of this may adversely effect either lower income students or smaller firms. We also observe that students who have undertaken a three year law degree may feel under pressure to undertake a SQE preparation course, which may result in their overall educational costs remaining the same as under the current system or indeed increasing.

We would comment that any proposals should be subject to a full equality and diversity impact assessment.

**Professor J.E. Griffiths-Baker, Dean, Helen Hudson, Head of Legal Development and Matthew J. Homewood, Acting Head of Post Graduate Programmes**

**on behalf of Nottingham Law School.**

# Consultation questionnaire

Response ID:585 Data

## 2. Your identity

### Surname

Pinkney

### Forename(s)

Laura

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of a local law society**

Please enter the name of the society.: Nottinghamshire Law Society (NLS). NLS represents over 1,300 solicitors and barristers who work in the city and county of Nottinghamshire.

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** Introduction: Nottinghamshire Law Society is a representative body for over 1300 solicitors and barristers practising in the City and County of Nottingham. The Nottinghamshire Law Society has seen the responses of both the National Law Society and the Junior Lawyers Division (JLD) and wishes to formally record its support for those responses and endorses the comments therein. Question 1: We are pleased that the SRA have made significant changes to the original proposal regarding the SQE and has taken on board a number of concerns raised both within this Society's response and other responses to the initial consultation. In particular we are pleased to note the following: (i) That the SRA will now retain the requirement that to qualify as a solicitor you need to be educated to degree or equivalent standard; (ii) That the SRA have recognised that there still needs to be a significant period of work based learning; and (iii) That a limit has been placed on the number of times a candidate can re-take the SQE. As stated in our original response, we are not opposed to a centralised assessment and we are supportive of measures to improve consistency and to improve consumer confidence by ensuring high standards of entry and high standards of legal education and training. We do question whether the sole use of multiple choice questions (MCQs) as part of SQE1 is sufficiently robust. Whilst we acknowledge the SRA's concerns that essay-based questions typically assess a small number of topics and that this runs the risk of candidates not knowing the full curriculum but rather 'question-spotting', this Society would support a number of short answer questions that attract smaller marks. Short answer questions allow for the candidate to be tested on the full curriculum without the associated risks of MCQ formats that provide prompts. We could not find any reference to the proposed length of the assessment 'windows'. In respect of SQE 1 in particular, we would suggest a two week period would be sufficient as anything shorter than that strikes us as overly onerous and may lead to some candidates failing based not on lack of legal knowledge but based on not having the skills to perform to a high standard during typical exam conditions. This is particularly pertinent where candidates will need to retain extensive amounts of information spanning numerous topics, becoming more of a test of memory and stress resistance than an assessment of legal knowledge. The consultation states that an evaluation will take place after the introduction of the SQE but data gained in the testing period would provide useful assurance to stakeholders about the quality of the process as the SQE is launched. Data from the testing stage may also be usefully employed inform future consultation papers that would provide stakeholders with more detailed information.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** This Society strongly agrees with the proposal that a substantial period of work based learning is necessary in order to qualify as a solicitor and is vital to upholding the reputation of the profession. We also strongly agree that this should be undertaken in a suitably regulated legal environment and properly supervised by a solicitor. However, we have stated our position as 'neutral' as we strongly disagree with the proposal to remove the requirement for aspiring solicitors to undertake work experience in different areas of law. It is extremely important that aspiring solicitors are afforded the opportunity to gain experience in a number of different practise areas. We would suggest that a minimum of three different practise areas would be appropriate. This would help aspiring solicitors improve their employability prospects upon qualification and prevent employers from taking advantage to suit their own business needs. We accept that this does not promote increased flexibility and, as such, would suggest that there is an opportunity for the aspiring solicitor to apply for an exemption from this requirement but that such an exemption only be granted where it is in the best interests of the aspiring solicitor and consumers as opposed to the interest of an employer. For example, we envisage the scenario where someone has been a successful paralegal in a particular area for a number of years and wishes to qualify into that area. For completeness, we confirm that we do not advocate a return to the specification that experience needs to be gained in a contentious and non-contentious but we reiterate that we do strongly believe that experience in different practise areas allows greater development of the skills needed to be a competent solicitor by reference to real life scenario's instead of controlled scenario's created within an assessment environment. It also provides an important opportunity to allow aspiring solicitors make a more informed decision about what practise area and/or organisation they would like to qualify into. We agree that a minimum of 3 months consistently in each role would be appropriate. We also agree that there should be a maximum number of placements. Whilst we see merit in limiting the number of placements to four we take the point made by the JLD in their response advocating a maximum of six and would support a maximum number of between four and six. We do not think the number of placements should exceed six. Employers should be properly supported and given clear guidance and resources so that they know what is expected of them and what constitutes appropriate training to qualify as a recognised period. They should have access to standardised templates and appraisal documentation and be given clear information on who they can contact to access additional support. Employers providing such training should be properly authorised and regulated to ensure that they are providing a high standard of work based training. In view of the proposed removal of the requirement of employers to 'sign off' as to the competency of trainee solicitors we would still like to see a mechanism that would allow an employer or supervisor to report any concerns to the SRA. This would ensure the "character and suitability" requirements are appropriately robust. We share the concerns of the Junior Lawyers Division (JLD) regarding the risk of exploitation of aspiring solicitors. The JLD have stated that they are concerned that a number of work experience placements will be more widely available as employers become aware that work experience is a requirement to qualify. At present all routes to qualification ensure that aspiring solicitors are at least paid the national minimum wage. This Society echoes the request of the JLD for the SRA to provide details of how they intend to restrict employers ultimately exploiting aspiring solicitors for free or cheap labour. We note that no information has been provided in relation to the expiration date for the work experience element and ask the SRA to confirm the proposed position in respect of this.

##### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** The two years training is particularly important if the SRA follows through on the proposal to alter Rule 12, contained in their consultation this year on 'Looking to the Future: Flexibility and public protection'. In that consultation, the SRA proposed changes that could potentially allow a newly qualified solicitor to set up in business as a sole practitioner, rather than requiring them to have, effectively, 3 years post-qualification experience (PQE), during which period they have continued to be supervised by a

solicitor. Although not the subject of this consultation, this Society as per the National Law Society and JLD remains opposed to the proposed change in Rule 12.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** At paragraph 122 it is stated that high quality legal education and training can be achieved by publication of performance data of providers as opposed to being achieved by regulation. Whilst we note that this would assist candidates to make a more informed choice going forward, this will not help the first intake of students opting for SQE preparatory courses. Nor will it allow for any prior vetting of potential unsuitable or unscrupulous providers and/or those that may publish misleading promotional material. In addition, the proposed lack of regulation could mean that those from a less financially privileged background may be forced to choose the lowest cost option and then find that money has been wasted as they are not adequately prepared for the SQE and/or for qualification. These students will therefore be disadvantaged and there will be no recourse available to them if they have received substandard training. They may also find it difficult to obtain employment, even having passed a SQE, as employers may still require or prefer education and training to have been given by particular institutions as a pre-requisite to any offer of employment. Less well informed, advised and/or less affluent students are at risk of being severely disadvantaged. The consultation paper assumes that the SQE 2 will only be undertaken following the qualifying work experience (paragraph 42 refers), if the SRA do not intend to regulate either the training providers of SQE preparation courses nor the period of qualified work experience then it is difficult to understand at this stage how the SRA can give assurance that the period of work based learning will be sufficient. If it is not sufficient, then it is likely that SQE 2 preparation courses will also become the norm and this would inevitably increase the cost of qualification thus further impacting those from a less financially privileged background.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:** This Society broadly agrees that the proposed model is a suitable test as we agree that it is important that all of the following requirements are met: • To be educated to degree standard or equivalent; • To have completed a substantial period of work based learning; • To have passed assessments testing both legal knowledge and legal skills; • To have satisfied character and suitability requirements. As per our comments to the other questions of this response, we have concerns over the possible negative impacts on equality, diversity and social mobility. We are also concerned about the proposed lack of regulation of education and training providers. We would require further information and reassurance before we can fully assess suitability of the proposed model.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** There is currently insufficient information to give a full response on this issue. To ensure consistency of standards and in view of the reasons given by the SRA as to why a centralised assessment is the only way to achieve this, it seems difficult to envisage what exemptions could be offered under this model however, we would ask for further information and examples so that we can provide full comments.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** It is the view of this Society that the proposed introductory date can be best described as optimistic. The consultation process is still on-going and there is still a lot of information to be confirmed, most notably the cost of both the SQE 1 and 2 and the cost of preparatory courses for the same. Therefore, the date that the SQE comes into effect should not be confirmed until the consultation process is complete and, only at that point, should a realistic implementation timetable be proposed. In particular, education and training providers need to be given sufficient time to draft and implement their courses. The SRA has confirmed that preparatory courses will be widely available however, this is unlikely to be accurate if insufficient time is given to allow for the design and implementation of such courses. In addition, there may be training providers that may prefer to wait until further information is known and/or to see what other providers bring to the market first. Therefore there may be a lag before the market catches up with the new proposed regime thus potentially limiting choice at the beginning of the transition. We would also like further information about the SRA's proposals for candidates that already satisfy the work experience element at the time the SQE is introduced (currently proposed for 2019). Any proposals must take into consideration absences as a result of long-term illnesses and maternity leave.

## 9.

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** It is the view of this Society that a full EDI assessment cannot be undertaken nor can the consultation process be completed until the SRA and its stakeholders have an understanding of the likely cost of both the SQE examinations and the preparatory courses, including whether there will be any Student Finance available for such assessments and courses. It cannot be correct that any new scheme would or could be more expensive as this would defeat one of the main motivating factors of this proposal, namely to improve social diversity within the profession. We remain unconvinced that the revised route to qualification will be cheaper than the present route. Under the proposed format, aspiring solicitors would need to undertake a degree (or equivalent), a SQE1 preparatory course (which may or may not form part of a degree) and, potentially (and most likely), a SQE 2 preparatory course. There is also the concern that that aspiring solicitors will be exploited during the work experience element as presenting trainee solicitors have a fixed term of employment, whereas under the proposed route aspiring solicitors may undertake lengthy work experience for no pay and/or that work experience placements will not be a viable option to those from a less financially privileged background. In addition, as referred to in our first consultation response, it is likely, and indeed has been identified by SRA research, that some employers will still require that aspiring solicitors follow the traditional route of degree and LPC (up until any such time as to when the LPC is withdrawn from the market) and/or that some employers would require to undertake SQE preparation with particular providers that may be significantly more expensive. This risks creating a two tier system where only the more affluent candidates will be able to afford the 'gold standard' route and, as such, would have an increased chance of (1) passing the SQE, (2) of obtaining work based learning opportunities and (3) of achieving employment on qualification and/or better paid positions. We echo the concern raised by the National Law Society in respect of apprenticeships in view of the fact that not all apprenticeships are set at degree level (albeit that many providers will include one in their courses), which could lead to these route as less valued and/or candidates may not appreciate that they will need to undertake an apprenticeship to graduate level in order to qualify. Whilst we understand that this is not a matter for the SRA alone, we would urge the SRA to work with Government to ensure, and robustly demonstrate to candidates and employers, that apprenticeships are at least equivalent to degrees. Otherwise there is a real risk that the solicitor apprenticeship route could be undermined. Finally, at paragraph 34, the consultation talks about the 'training contract bottleneck. Whilst this is currently undoubtedly the case, the introduction of the SQE could transform this into a 'newly qualified bottleneck' as we are not convinced that the majority of aspiring solicitors will complete the qualifying work experience prior to undertaking the SQE 2 (paragraph 42 refers). The number of training contracts on offer is largely reflective of the legal economy and forecasts, the issue here lies with the economic benefit by legal education and training providers in 'selling' the SQE2 prior to completion of the work based learning and/or driven by recruitment in that employers may prefer to only take on an aspiring solicitor after they have

completed SQE1 and 2 so that they are not investing in training aspiring solicitors with the risk that they may ultimately fail the SQE 2. This also impacts on less financially privileged candidates and we note that solving one issue to create another does very little in achieving the aims of this exercise.

# Consultation questionnaire

Response ID:355 Data

## 2. Your identity

### Surname

Davies

### Forename(s)

Anne

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: on behalf of the Faculty of Law, University of Oxford

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We strongly support the SRA's commitment to improving access to, and diversity in, the profession. We also accept that it is appropriate for the SRA to seek to ensure that entrants to the profession meet a minimum standard of legal knowledge and professional competence that is set at a high enough level to guarantee effective practice. However, we remain concerned about the suitability of the SQE for these purposes and we are surprised that, given the overwhelmingly negative response to the original proposals, the SRA seems determined to press ahead with a change that few support. We welcome the SRA's decision that candidates for the profession of solicitor should normally hold a degree. We think that law firms and their clients will continue to value the skills that students develop during their degree, including analytical reasoning and effective written and oral communication. This requirement is important in order to maintain public confidence in the profession. We recognise that the SQE Part 1 assessment as now proposed is more elaborate than that contained in the original proposal, involving as it does a more developed syllabus and a series of six examinations. We accept that multiple-choice tests may be appropriate for the assessment of basic knowledge of legal rules where the law is clear. But multiple-choice testing is of no value in determining whether an individual would be able to give competent advice in situations in which the law is unclear. In these situations, the individual needs to be able to analyse the legal problem from different angles using a range of legal tools, and to work out the best strategy for meeting the client's needs. A candidate's ability to do this cannot be judged through multiple-choice testing. It can only be judged through more sophisticated forms of testing in which the candidate is permitted to explore the problem at length in writing. We also think that some elements of the proposed syllabus are problematic. For example, the inclusion of public and administrative law in the first module together with professional conduct and the legal system is muddled and tends to imply that public and administrative law are not important subject areas in their own right.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** No comment

**What length of time do you think would be the most appropriate minimum requirement for workplace**

experience?

Other, please specify: No comment

**Comments:** No comment

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** No comment

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We welcome the SRA's decision to require candidates to have a degree or equivalent qualification, but our concerns about the proposed approach are outlined in our answers to Questions 1 and 5.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** It should remain possible for candidates with a law degree to obtain exemption from those aspects of the SQE (primarily in Part 1) that they have covered during their degree. Of course there is some variation in standards between different universities but this does not justify the SRA's apparent assumption that holding a law degree is of no value at all as an indicator of an individual's legal ability.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** No comment

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We accept the SRA's concerns about access to the profession but we would argue that these are best resolved by improving access to degrees and, in particular, to good law degrees. This is a key focus of our activities at Oxford and we have been and continue to be strongly supported by the professions in our endeavours. We agree that the LPC is too expensive but we are concerned that preparation for the SQE may not be any cheaper. A further period of SQE preparation may still be required after university because it will not be practical for universities which are not already LPC providers to incorporate Part 1 preparation into the law degree, given the more vocational focus of the SQE and the need to offer degree programmes that cater for all undergraduates, not just those seeking to become solicitors in England and Wales. This SQE preparation may still be expensive for students and thus deter some candidates from seeking to qualify.

# Consultation questionnaire

Response ID:423 Data

## 2. Your identity

### Surname

Catley

### Forename(s)

Paul

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: Open University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** Without specimen SQE papers / assessments it is impossible to assess whether the SQE is a robust and effective measure of competence. The SRA is proposing a leap into the dark, abandoning its previous approach which whilst it has failings is essentially fit for purpose and embarking on a scheme which is not only untested but which does not appear to have gone much further than a very preliminary outline as to its structure. This is a very high risk strategy. It risks failing to produce a robust and effective measure of competence. Such an outcome would risk damaging public confidence in the profession. It would risk damaging firms' confidence in those who satisfy the SQE requirements. It would risk damaging the employment prospects of those who successfully complete the SQE. It would risk damaging the reputation of English and Welsh law firms in the eyes of existing and potential international clients and by association it could damage the reputation of other parts of the legal profession across the United Kingdom. The requirement for entrants to have a degree or equivalent is appropriate and is a significant improvement on the previous proposal. It should be ensured that the apprenticeship route also satisfies this requirement. At a time when more and more professions are graduate entry the idea that the solicitors' profession should not be graduate entry was ill conceived and had the potential to at best reduce the profession in the perception of the public and prospective entrants and at worst would have held the profession up to ridicule. Without examples of SQE1 papers the concern exists that the test will be superficial. The ability of those being examined to tackle a lot of questions in a short space of time looks unlikely to be the best way to test candidates' ability to analyse complex situations, evaluate potentially conflicting evidence and make informed well-reasoned judgments. The ability in SQE2 for students to focus on just two areas and yet on successful completion of the test to be deemed competent in all areas of practice is misguided and dangerous. The idea of specialising is not in itself a mistake. It may well be that it would be preferable to say that a solicitor was qualified to practice in those areas in which s/he had passed SQE2. Such a move would probably be very desirable and could be expanded beyond those envisaged. Prospective solicitors could then qualify in an area in a manner similar to doctors qualifying in a specialism. This should improve public confidence if they know that someone holding themselves out as an advisor in for example employment law or housing law was qualified in that area. The present proposal lamentable fails in this regard. The existing system also failed in this regard, but not as badly as clients at least knew that their solicitor had been adjudged competent over a wide, though not exhaustive range of areas.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** The widening of the number of ways in which candidates can gain work based learning experience is to be welcomed. There is no clear evidence as to whether or not the current system works. Replacing the current system with an unregulated system is risky. If the SRA were promising to monitor or to set up a system of monitoring, then there could be more confidence that there would be a minimum level of quality of experience. However, in the absence of such oversight serious doubts must exist as to the likely quality of some (possibly many) work experience opportunities.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** There do not appear to be any compelling arguments to change from the current two-year work experience requirement. Retaining the two-year requirement would still potentially enable candidates to qualify more quickly than currently. Currently the quickest qualification period would be five years: two-year law degree, one year LPC, two years as a trainee. In future, the qualification period could realistically be reduced to four years: two-year law degree including SQE1 preparation, SQE1 + two years' work experience. This route is unlikely to become commonplace, at least in the short term, and would not necessarily be undesirable - though it does raise the issue that teaching to the SQE1 assessment within the law degree would reduce space for other material and is likely to reduce the breadth of a candidate's legal knowledge as against students who currently complete a law degree and an LPC. It is worth noting that such students would still be likely to have a greater breadth of legal knowledge than those who take the current GDL + LPC route.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** Allowing organisations to prepare students how they choose appears to be in line with an unfettered free market approach which I am not clear is necessarily desirable. If the SRA are concerned about the experience of those seeking to enter the profession, then it appears woefully misguided. If the SRA do not care about the experience of those seeking to enter the profession, then it appears that the proposal will not cost the SRA any money as it will effectively be washing its hands of any regulatory role in the training stage for the SQE. This is not necessarily a bad thing and is in line with the philosophy of not caring how someone becomes competent, but simply wishing to focus on whether or not someone is competent. The idea that non-regulated organisations will produce transparent and accurate data on the pass rates of those they train is wonderfully naïve.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** As stated earlier, in the absence of any specimen assessments for SQE1 or SQE2 there is no evidence on which to have any confidence that the proposed model will be a suitable test of the requirements to become a solicitor. The number of questions proposed in SQE1 suggest that the testing in this part of the assessment will be of superficial knowledge and of low level cognitive skills. The approach of focusing on narrow areas in SQE2 and then be deemed competent in areas which have not been tested is misguided and dangerous.

7.

## To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Neutral

**Comments:** Without examples of SQE1 and SQE2 it is hard to assess what prior qualifications would be comparable. Requiring candidates who have already qualified as barristers or as CILEx fellows to take the qualification may seem contentious. If SQE1 and SQE2 are unique qualifications then one could see that successfully satisfying other training requirements may not be relevant. If SQE1 and SQE2 are genuinely massive improvements on the old LPC / LSF qualifications then an argument exists to require all current practicing solicitors to be tested and not to be allowed to continue in practice unless they satisfy the new requirements. There is a value in a national exam - assuming that the national exam is robust and fit for purpose. At present there is no means of knowing whether SQE1 and 2 will prove robust and fit for purpose. If they are, then there is a strong argument that everyone practicing as a solicitor should have to pass the test. At various stages in the consultation document the number of claims against solicitors is cited as a reason for change. No evidence is provided linking poor training to these claims or even that the assessments will focus on those areas which lead to most claims. However, if there is a link between poor training and claims made against solicitors then it would seem that SQE1 and 2 should cover these areas and should be required of all who practice as solicitors.

8.

## To what extent do you agree or disagree with our proposed transitional arrangements?

Strongly disagree

**Comments:** It is good that the SRA have recognised the need for transition arrangements. However, those proposed do not go far enough. Currently students with special circumstances can gain extensions which allow them to complete in over six years. This is of particular relevance to part-time students who are typically going to take six years to complete their degrees if everything goes well. As the Head of the Open University Law School I am particularly concerned about the position of part-time students. Most of our students are part-time students. They are therefore generally seeking to complete their degree in six years assuming that everything goes well. Many work full-time whilst studying, a disproportionate number have caring responsibilities, a disproportionate number are registered disabled. In terms of opening up the profession more widely our students are typically just the sort of people who could address some of the equal opportunity imbalances exhibited in the current make up of the profession. We are also not talking about a small number of affected students. The Open University Law school is the largest UK law school in terms of undergraduate numbers - therefore the impact on our students should not be discounted. The proposed change could adversely affect many of our students. Allowing individual exceptions for those students who have because of health or similar circumstances have to extend their studies beyond six years is unlikely to provide a solution. LPC providers are unlikely to continue offering LPC courses after the six year transition period has come to an end - therefore it is likely that some students who embarked on a programme of study envisaging that a six year part-time degree + two-year part-time LPC could lead to a training contract and entry into the legal profession will instead find that the route has changed after they started on that route. In designing transition arrangements, the SRA should be aware that university prospectuses are typically produced 18 months in advance of a student's likely start date. A part-time student could expect to take six years to complete his/her degree and then a further two years to complete the LPC. This means that to have the correct information in a prospectus for such a student the university needs 9.5 years warning of any change which might affect the student's study decisions.

9.

## Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

**Comments:** As stated in response to the question on transition arrangements, I believe that the transition arrangements will adversely affect students with disabilities, students with caring responsibilities and mature students who are more likely to be attempting to combine study with full-time work. In the absence of any pilot running of the SQE1 and SQE2 assessments, it is impossible to assess whether they will lead to positive or negative EDI impacts. Introducing assessments without a pilot appears a very high risk strategy.

Evidence of EDI impacts is likely to have a very bad impact on public perceptions of the profession and are likely to reinforce existing perception of the profession as drawing primarily from a pool of white, middle/upper class Oxbridge and private school educated candidates. The changes could have a positive impact if (1) SQE1 and 2 prove to be robust, fit for purpose and free from bias and (2) recruitment decisions were made on performance in SQE1 and 2. At present many law firms, particularly larger law firms, recruit prior to degree completion - they therefore have little data on which to make recruitment decisions. As a result many focus on Oxbridge for their pool of potential applicants - thereby perpetuating the inequalities within the system. Those who go wider and include a few Russell Group universities in their recruitment pool equally do little to challenge these inequalities. If law firms were prevented from making offers until after SQE1 then the playing field would be more level - particularly if SQE1 was assessed not on a pass / fail basis, but on the basis that the actual marks of those who passed were published. Such a system would not be equal, students from rich backgrounds might still benefit from personal coaching and from freedom from paid employment whilst preparing for the assessments, but the system would provide a better opportunity for the most competent to shine.

# Consultation questionnaire

Response ID:232 Data

## 2. Your identity

### Surname

Kidd

### Forename(s)

Paul Garforth

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**  
**on my own behalf as a solicitor in private practice**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** There is no requirement to have any knowledge of family law, which is a core legal area.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** I doubt that there could be sufficient length and breadth of experience or monitoring of students working in a student law clinic or as part of a sandwich course.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** I do not believe them to be extensive enough or rigorous enough. I am concerned that only one independent supplier would be appointed as this will restrict competition.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** I do not believe it to be extensive enough or rigorous enough

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:245 Data

## 2. Your identity

### Surname

Downing

### Forename(s)

Paul Nicholas

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as another legal professional**

Please specify:: non-practicing solicitor

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Thinly route should be working in a law firm

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:40 Data

## 2. Your identity

**Surname**

Collier

**Forename(s)**

Peter Gordon

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...**  
on my own behalf as a solicitor in private practice

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** The period of such experience should be formally structured, as is the case with the existing training contract, to ensure that trainees have experience of both contentious and non-contentious work, and a sufficient number of seats to ensure a breadth of experience of different areas of practise under supervision. To do otherwise would leave open the possibility of applicants claiming sufficient work experience, whilst being employed as paralegals in only one area of law.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:** I do not know what EDI stands for.

# Consultation questionnaire

Response ID:379 Data

## 2. Your identity

### Surname

JORDAN

### Forename(s)

PETER WILLIAM

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: As a current SRA Training Contract Monitor and Equivalent Means Assessor and as a former local Law Society President and Staffordshire University Principal Lecturer

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:** I refer generally to my response to the previous consultation. Whilst some aspects have been addressed I have ongoing concerns as to the rationale for the change or that it will be able to deliver a cheaper and better system. I endorse many of the comments made by the Law Society in their response. I have particular concerns in respect of the proposals in para 21 not to require assessment in both contentious and non contentious practice areas and the timing of assessments. Further concerns relating to the WBL period are covered in Question 2a. I would also add that the rationale for the approach is to an extent flawed as consistency and robustness could equally have been achieved within the present structures had the SRA not chosen to withdraw from QA mechanisms for LPC, Degree and GDL providers and effective withdrawal from monitoring of WBL within Training establishments. I would also observe that the current proposal is in effect a return to the days of the Solicitors' Finals (Part 1 and Part 2) and LSF which were considered to be too narrow in approach as they failed to recognise the importance of 'developmental learning' in skills based vocational education and training. Unless the WBL period is properly monitored I fear that the proposed approach will lead to narrowly based 'pass the test' approach. I am also uncertain that the proposed approach will provide the desired consistency, be cheaper and enable more people to qualify. I also fear that 'market opinion' will require trainees to follow a traditional pattern further enforcing a two tier profession.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** I again endorse the Law Society response save in respect of the requirement 'to maintain the involvement of a supervising solicitor.' Within the current framework it is recognised that others such as FILEX can equally provide the necessary guidance and support. I would suggest wording similar to that for 'trainee supervisors' based on experience rather than qualification. Further if the term 'involvement of a supervising solicitor' is to be utilised it is misleading and in my opinion requires the addition of the word 'direct' to be of any value. I am pleased to note that the SRA consider 'pre-qualification work experience as an essential part...' (para98) but as such am surprised at the absence of any proposals for effective

monitoring of this period. I am also concerned as to the current absence of the proposed guidance. If it is perceived as 'an essential part.' in preparation for the SQE 2 assessments (presumably the developmental learning part) I would have expected true SRA to be concerned that as such a consistency of approach was also essential and wish to ensure that such periods were properly monitored. This would assist 'trainees' and firms knowing exactly what was expected, would ensure that it was delivered and enable the SRA to be certain that the desired consistency was achieved. An examination alone is insufficient to achieve this and was the main reason for the changes from the Solicitors' Finals to the LSF and then to the LPC. I agree the proposed period of 24 months and assume the absence of 'Recognised Work Based Learning' being due to the ability to recognise any appropriate learning. I also agree the proposed minimum 3 month period but it is unclear whether short placements of 3 months are required to be in a single practice area. Otherwise I envisage a piecemeal approach whereby an applicant seeks to combine shorter multiple practice areas in Firm A with periods in the same areas with other firms. This would be undesirable for the reasons set out in para 108 and which para 109 seeks to avoid. This also demonstrates the need to ensure a consistent method of recording and appraising such training across firms requiring default guidance models. I also note that it is not made explicit that such periods are Full Time Equivalents and there appears to be no recognition of the current requirements for such work to be regularly appraised. These as you will be aware are recurring issues in respect of both Recognised Periods of Learning and Equivalent Means. Finally it is noted that other issues such as what constitutes a 'distinct' area of work and the need for both contentious and non-contentious experience are neatly sidestepped by no longer requiring such matters. I find the justifications provided unconvincing and reiterate the views of the Law Society and other responders in this respect.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** See comments above

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** I again endorse the Law Society approach. I foresee difficulties for students and providers during the transitional stages and until the new qualification is bedded in to make informed choices. The SRA should ensure that clear guidance and information is available well in advance of the changes taking place.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** I again endorse the view of the Law Society

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** The requirement for Stage 1 differs from all previous approaches (LPC, LSF and Solicitors' Finals) and imposes an unnecessary additional burden on Degree applicants. I doubt that the new Stage 1 will provide a more robust assessment than the current degree courses and is an unnecessary and expensive duplication which will be particularly harsh on disadvantaged students (see Section 7)

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** I again endorse the Law Society view. See also general comments under previous sections and in particular the need to ensure that sufficient time and advance information is available for students, training providers and firms to prepare properly

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I again endorse the Law Society view and particularly in respect of the availability of funding and accessibility.

# Consultation questionnaire

Response ID:29 Data

## 2. Your identity

**Surname**

TAN

**Forename(s)**

PHOEBE SHI YI

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: as a professional in the finance industry looking to specialise in finance law

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly agree

**Comments:** SQE is a change which would be welcomed by students and potential students alike (professionals in other industries looking to make a career switch). It paints a realistic picture of what it means to qualify to be a lawyer -rather than the current biased process which involves an expensive (often too expensive, making it inaccessible to many students who fund themselves with scant financial support from the government or private institutions) LPC and a training contract after that which vets candidates based upon requirements imposed by individual law firms, that again, after based on the LPC. Given that the cost of the LPC already presents the first barrier of entry into the legal industry, the second barrier -the training contract vetting process -poses an even bigger barrier, one criticised by many as ineffective and as a system based on cronyism. Whilst the old system (LPC + Training Contract) is effective in shielding existing solicitors from competition (caused by new entrants) -this effectively allows quality to stagnate as the lack of transparency and competition means a lack of desire to improve the provision legal services in general. The proposed SQE not only allows individuals to be judged on their own merit, but also encourages healthy competition in applications to law firms for work experience as law firms will be unable to turn away an applicant just because they lack the finances to fund their own LPC.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** Qualifying legal work experience has long been used by various legal industries around the world the basic requirement for a candidate to qualify as a solicitor. However, it would be better to adopt a more flexible approach -such as welcoming legal related work experience in other industries (as surely, law firms are not the only ones to recruit law graduates) such as banking and accounting (where taxation law is often used). As the workforce becomes highly specialised and as the level of education across the younger generation increases steadily, it is always better to specialise rather than hope to be recruited to work for a law firm (which often is restricted in specialization -mostly only realistically focused in one or two area with the other areas being worked on by the same solicitors)

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Six months

**Comments:** I would prefer a 6 month intensive work experience placement or internship, given the reluctance of law firms to take on new candidates for the roles available (often creating additional barriers such as a requirement for work experience for paralegal roles (which is strange given that graduates have barely any work experience unless they have a family member who owns a law firm)). Again this requirement should be flexible -tailored according to various circumstances and roles. A paralegal who works in Personal Injury alone will only be able to gain so much experience in 18 months in comparison to a Legal Assistant who has assisted with cases across various ranges of specialism (e.g PI, Commercial Law, Tax Law) in 6-8 months. I highly commend the need for candidates to have legal work experience, however to simply impose a flat requirement with no regard for the content of the experience acquired will again present barriers to bright and talented candidates with limited resources of their own (hence they would actually more than likely be pressured to take on less related roles in order to support themselves financially -which is what happened to most of my peers who have graduated from law school).

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly agree

**Comments:** Preparatory training is essential in order to be able to sit for the SQE and pass the exam, as it means candidates have access to a pool of resources whilst they prepare for the exam. However, this should never come with a high price tag -as it would simply defeat the purpose of replacing the antiquated system of the LPC (which only favours candidates with deep pockets).

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly agree

**Comments:**

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** With every rule, there is an exemption. Literal application of a rule would sometimes resort in unfair bias rather than serve the purpose for which it is created. Hence there should be a form of exemption for solicitors who have already undertaken similar training through European or non-European Institutions and would therefore only need to 'convert' their legal practice licence.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly agree

**Comments:** I agree with the transitional arrangements, however I believe that the SQE should be implemented with minimal delay to candidates waiting for its implementation (due to not being able to take the LPC due to its unfairly high costs).

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

**Note of the Solicitors Regulation Authority Board meeting  
held on held on 8 March 2017 at 09.00  
at The St David's Hotel, Havannah Street, Cardiff, CF10 5SD**

Present: Enid Rowlands (Chair), Julia Black, Sharon Darcy , Jane Furniss, David Heath, Geoff Nicholas, Paul Marsh, Barry Matthews, Dame Denise Platt, Chris Randall, Deep Sagar, Shamit Saggarr, Tony Williams, David Willis.  
Apologies - Elaine Williams

In attendance: Paul Philip, Richard Collins, Robert Loughlin, Jane Malcolm, David Middleton, Juliet Oliver, Crispin Passmore, Julie Brannan (for SQE), Rachel Pillinger (for Independent Reviewer Annual Report

- 1 Enid Rowlands welcomed Board members to what was the SRA Board's first meeting held in Wales. She noted that the reception and dinner the previous evening for stakeholders in Wales had gone well with positive feedback from those attending. This was part of a programme of enhanced direct Board engagement with the public and the profession and the Board would be meeting in Manchester in September.
- 2 The Chair noted that engagement recent activity included a successful Industry and Parliament Trust event on access to the profession, and sessions with the City of London Law Society members and law firms in Boston, Lincolnshire.
- 3 The Board, meeting in seminar session, considered and discussed an early analysis of the responses to the second consultation on the Solicitors Qualifying Examination. Further proposals would come to the Board later in the year.
- 4 The CEO reported to the Board that work was underway to prepare for the next Financial Action Task Force on Money Laundering (FATF) Mutual Evaluation Report for the UK which would take place in March 2018. The Board also noted that we had given evidence to the European Parliament's Committee of Inquiry into Money Laundering, tax Evasion and Tax Evasion (PANA), The Committee was looking at the role of lawyers, accountants and bankers in the Panama Papers, on 10 February 2017. He highlighted the publication of independent research on Family law undertaken by Ecorys.
- 5 The CEO report also included an update on our KPIs, three of which we have committed to publishing. The results for these for January:
  - 93% of conduct matters closed within 12 months of receipt - this was achieved in January at 93%.
  - 90% of Compensation Fund claims closed within 12 months - this was achieved in January at 91%.

- 90% of medium / high risk applications closed within 3 months in Firm Based Authorisation - this was achieved in January at 99%. We achieved all of our KPIs in Authorisation in January.
- 6 The Board considered the 2015/16 annual report from the Independent Reviewer of corporate complaints, Ombudsman Services. This service considers complaints when a complainant was not satisfied after internal review. The report had been shared with the press in advance and was published immediately after the Board meeting and can be [found here](#). The Board looked at the current Strategic Risk Register which identified the key risks for the organisation and the arrangements that are in place to mitigate them.
  - 7 The Board looked at a draft of a new SRA Annual Review which would be published as part of enhanced reporting arrangements. The review covers a range of regulatory and performance data, as well as a look back on activity in 2015/16 and a look ahead to 2016/17. The review will be published in the next few weeks.
  - 8 The Board considered responses to a consultation on proposals to change our Professional Indemnity Insurance arrangements to remove a barrier to firms that wished to leave SRA regulation to switch to another regulator. A document summarising those responses and further detailed work with approved regulators to explore the options will be published once finalised .
  - 9 The Board received updates from the Chairs of its four committees (Policy, Equality, Diversity and Inclusion, Finance and Audit and People Strategy).
  - 10 Enid Rowlands noted that the next meeting would be the annual away day which would take place in London on 11 and 12 April 2017.

# Consultation questionnaire

Response ID:484 Data

## 2. Your identity

### Surname

Hickey

### Forename(s)

Robin

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: School of Law, Queen's University Belfast

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** We agree that the solicitors' profession should be one of graduate entry, or equivalent. This does not necessarily mean that would-be solicitors must have a law degree, and we have no objection in principle to the proposed SQE being available to graduates of other disciplines; but we cannot envisage a person who does not possess a degree level qualification or equivalent having the intellectual depth or high level cognitive function being able to cope with the rigours of solicitors' practice. We are therefore pleased to see that the SRA has now said that graduate level education (or apprenticeship, which we assume means at level 6 or 7) will be a pre-requisite. However, at present we do NOT have confidence that the proposed SQE will be a robust and effective measure of competence. As a preliminary point, we note that assertions have been made about the lack of consistency and rigour in the current qualification process (for example, in the diagram on page 9 of the consultation paper), but no objective evidence appears to have been provided for these assertions, that we can evaluate. We have not yet been convinced that there is a problem which needs to be fixed in the manner outlined. Even if this objection is overcome, we have a number of concerns about the proposals as framed: First, the proposed methods of testing for SQE 1 appear too superficial and, unlike a law degree plus LPC (or degree plus GDL plus LPC), will not permit the testing of a wide range of degree level skills. SQE 1 may provide an adequate test of knowledge (though we would need to see some example papers to be sure), but not of the types of competence needed for a practicing solicitor, such as the ability to analyse situations, to evaluate evidence and make judgements. Paragraph 54 of the consultation paper asserts that computer based testing is successfully used in other professions such as medicine and pharmacy; but this comparison is disingenuous, as the assessments mentioned in those other professions are taken in conjunction with mandatory degree or postgraduate level education in those disciplines. Second, the consultation paper suggests that candidates may take SQE 1 before completing their work based learning, with SQE 2 being taken at the end of the work based learning period. It is stated that SQE would include a test of legal research and a writing test. At present, it is normally not possible to commence a training contract without completing a law degree or equivalent and the LPC. Many firms require this level of qualification even for paralegal roles. It is therefore unrealistic to expect that firms will want to take on employees who are even less well educated and trained than at present. Third, we are concerned that SQE 2 may be too narrow; the removal of electives will mean that successful SQE completers may not have the breadth of knowledge and skills needed for practice. Those wishing to practice in, for example, Family, Consumer, Employment, and

Immigration law, to name but a few, will be put to greater expense in paying for additional training in order to gain employment. Fourth, given that there are various 'reserved' areas of work which are the province of solicitors, we are confused as to why the SRA considers it appropriate that a person could become a solicitor with no testing whatsoever of their practical ability to conduct work in all of those reserved areas. As currently proposed, a candidate could pass SQE 2 having taken assessments only in non-contentious areas, and the next day appear in court for a client. One of the reasons for the introduction of the LPC was to ensure that students had practical competence in all the reserved areas, and we are concerned for consumer safety if the proposal for only two areas of practice is implemented. Finally we are concerned that, while the assessment specification provides helpful information on the assessment objectives of each component of the SQE, we are being asked to evaluate the rigour and efficacy of a testing model without having the opportunity to scrutinise full drafts of the assessments themselves. This makes it impossible to comment fully on the consultation question. Moreover, we have some concerns (i) that the development of these assessments is in any case a huge exercise, which may not be deliverable in the time-frame visualized – indeed, we doubt whether the proposed timescale is long enough to create sufficient banks of both practice and assessment questions; and (ii) that the range of objectives purported to be tested may be framed too broadly, and may not realistically be deliverable within the proposed framework for the assessment centres. We are not confident that it would be safe to proceed without developing full drafts of the envisaged assessments for further comment. We also have a related concern about the development of the assessment centres. We would like to see evidence of the SRA's experience in the procurement of an assessment process at this level and on this scale and are concerned that the procurement process could fail to deliver a useable assessment.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** In principle, we welcome the concept of widening the number of contexts in which work based learning can be experienced. However, we are concerned that it appears that there will be no monitoring of qualifying legal work experience (QLWE). There are criticisms that the current training contract is insufficiently supervised or monitored by the SRA but we are not sure that the removal of almost all regulation is the way to improve this situation. We are unsure as to the value of making an entirely unsupervised and unregulated period of QLWE part of the qualification process, and it is our view that the proposals as currently set out do nothing to promote consistency or quality of experience. It is common ground that there currently is a mismatch between the number of training contracts available and the number of LPC graduates. Allowing would-be solicitors to gain QLWE in other contexts may seem at first glance to be a positive move which would widen access to the profession. However, our experience is that one of the reasons why firms do not offer training contracts is that they require considerable investment from the firm in terms of time spent in supervision and training. Lack of regulation of QLWE could encourage firms and other bodies to take on 'trainees' with no real commitment to their training and development.

##### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We believe that the current requirement of 24 months is about right. However, we need further clarification as to when the SQE stages 1 and 2 could / should be taken - for example, we assume from the paper that a candidate could take SQE 1 before any QLWE is undertaken; could that person then take SQE 2 after, say, six months of QLWE, and, if so, would this mean that person became a qualified solicitor immediately after passing the assessment, thus bypassing the QLWE requirement, or at the very least, creating a situation where time-periods for QWLE vary (potentially considerably) between candidates?

#### 5.

##### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for**

## the SQE?

Strongly disagree

**Comments:** Whilst we can understand why the SRA takes the view that deregulation of the training process may allow for greater innovation in training offered, we have serious concerns that the market could become taken over by unscrupulous training providers with an eye only to profit and with little regard for the quality or appropriateness of the training provided. Anecdotal evidence suggests there is, for example, already some concern about the variability of the currently unregulated QLTS training, and of course the SQE would be a much bigger market. It would also potentially be a very different market than that for QLTS training which is by definition only offered to qualified lawyers; SQE training may conceivably be offered to relatively inexperienced or vulnerable 18 year olds. We believe that one of the SRA's aims is to make the profession more accessible to people of all backgrounds, and arguably reducing the cost of qualifying will contribute to this. However, we do not believe that the cost of the SQE and preparatory training will result in any significant saving - in fact the process could become more expensive. The Consultation paper relies too uncritically on the view that the removal of the LPC will inevitably result in a cost-saving for candidates. We would welcome further research on this, and in particular a critical assessment of the role and regulation of preparatory training in the benchmark jurisdictions. To the extent that the proposal to remove the LPC facilitates the aims of widening participation and access, having a firm view on the likely barriers presented by the provision of unregulated SQE training is essential, and we would caution against embarking on this path without further, detailed investigation of this issue. It is likely to be a significant factor for candidates considering whether to pursue a career in the solicitor profession; and negative experiences and reports of the adverse impact of unregulated training are likely to have a damaging reflexive effect on the reputation of the profession and all providers.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** We disagree that the proposed model is a suitable test of the requirements needed to become a solicitor for all the reasons set out above.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** We are not sure about the wording of this question - we would strongly agree that exemptions should be offered; or strongly disagree that they should not be offered. Whilst we can to an extent see the logic of not offering exemptions, we have concerns that this will result in additional and unnecessary costs to potential solicitors, and we note again the general aim of the consultation to mitigate the costs associated in becoming a solicitor. Education to degree level is a pre-requisite for the SQE, and if that degree happens to be in law, we see no logic in expecting those who have already taken and passed relevant assessments having to take more assessments. There are also individuals qualified to appropriate levels by recognised and rigorous routes for whom it seems illogical to expect them to take very comparable assessments to those they have already passed; for example, barristers, CILEx fellows, and licensed conveyancers.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** We are concerned that the proposed timescale for change remains very challenging. Many individuals have already embarked on their route to qualification and it is very important that none of the expense and effort that they have already incurred should be in vain, so our main concern about transitional arrangements is that they are both very clearly set out and very clearly communicated to current

students. We are concerned that the long-stop arrangements as proposed depend on standard completion trajectories and do not detail a mechanism for considering applications from part-time candidates or candidates with non-standard completion trajectories – for example, a student who commences a QLD in, say, 2018, but experiences an interruption due to serious illness. This may have negative EDI impacts.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Whilst the proposal for widening the scope of QLWE could be (cautiously) welcomed subject to the concerns expressed above, we are concerned that there could also be negative EDI effects to these proposals, as follows:

- We are not convinced that the cost of the new scheme will be significantly less than the current regime and we are concerned that lack of regulation of preparatory training could push costs up.
- Whilst very highly qualified students from the traditional universities may continue to be employed by the larger city firms, who will continue to provide good, bespoke training, the widening of the scope of QLWE might encourage less diligent employers to take on employees without providing appropriate training, to the detriment of those employees, who may well be from less advantaged backgrounds in the first place.
- The proposed lack of exemptions might disadvantage those wishing to enter the profession from non-traditional backgrounds - for example, those lawyers who have qualified as mature students through the CILEx route and now wish to bring their usually considerable experience to the solicitors profession.
- Transitional arrangements should be evaluated and specified in light of EDI impacts.

# Consultation questionnaire

Response ID:373 Data

## 2. Your identity

**Surname**

Kirkup

**Forename(s)**

Rachael

**Your SRA ID number (if applicable)**

434806

**Name of the firm or organisation where you work**

BPP University Law School

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

**Please identify the capacity in which you are submitting a response. I am submitting a response...**

as another legal professional

Please specify:: Supervising Solicitor in Law School Pro Bono Centre

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities,

including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part time work experience or just full time. Many students will not be able to afford to gain work experience unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career. Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained "Through working in a student law clinic". Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non-advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of "student law clinic" but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition "through working in a student law clinic" be expanded to include "through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module". 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify:

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for**

the SQE?

Comments:

6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Disagree

Comments: SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Comments:

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Comments:

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

Comments: I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

# Raynolds Porter Chamberlain

## ***1. To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?***

### ***Disagree***

We believe that there are certain issues which need to be addressed and further details required on some points.

### **SQE 1**

In the current proposal, we do not believe that there is enough stretch covered in the six 'Functioning Legal Knowledge' modules assessed through SQE Stage 1 (**SQE1**) for lawyers intending to work in commercial practices. Currently we, in common with other City practices, require our future trainees to complete tailored and additional electives as part of the LPC (and before they start at the firm) in order for them to acquire the necessary knowledge and skills to support their period of recognised training at our commercial law firm. In the proposed SQE 1 there is an undue emphasis placed on Wills and the Administration of Estates and Trusts (which, in our view, is of limited relevance to the modern commercial profession) whilst the Commercial and Corporate Law and Practice module has been reduced to a single subject. The 'Principles' course seeks to cover a very large range of subjects and is the only teaching of EU law. In our view, the proposed content of SQE 1 is too broad and shallow. It requires a reorientation towards the requirements of the modern practice of law and greater depth in the subjects covered. At the very least, firms (or self-funding students certain of the direction of their future career) should have the option to choose tailored courses relevant to their practice (or future career path). The SRA should then signpost the examined content applicable to the different strands of activity rather than one broad scope.

The SRA state that "*we do not propose to specify how candidates prepare for the SQE*". However, it is unlikely that a qualifying law degree student, let alone a non-law degree graduate, would be able to complete the SQE1 assessment successfully without any pre course or learning materials being available. We would also require our future trainees to complete additional learning modules in order for them to perform at the entry level required in a commercial law firm. This will mean that the current GDL/LPC provider market will simply replace the GDL/LPC with a central SQE 1 preparation course with optional add on premium courses at a cost. This is unlikely to aid diversity across the profession and will potentially create a two tier system. There is likely to be a disparity between candidates who have already secured a training contract at a firm (and therefore will likely complete the premium preparatory course with add on modules) and those still searching for a training contract who are not able to afford to complete the premium courses required by commercial firms.

There are only two opportunities to complete the SQE1 exam per year. We envisage that this is not with enough frequency to cope with the volume of individuals completing SQE1.

The SRA need to provide more guidance around how individuals can prepare for SQE stage 1 including recommending:

- Preparatory course structure
- Course duration
- Optimum time to complete the course(s).

It is proposed that multiple choice questions will play a large role in the assessment process. Whilst we are aware that this is not the only proposed method of assessment, and there is some

precedent for the use of such means of assessment in professional training, we are concerned that this is not the most appropriate way to assess legal skills and not an inclusive assessment for all candidates.

We are pleased to see that the SQE1 now includes an assessment of candidates' legal research and writing skills. It is essential that this element remains.

The SRA state that they "support students in making informed choices through publishing data about providers' SQE pass rates". We believe that the SRA will need to provide more guidance to individuals and play a role in regulating the large number of courses which will become available in the market. Publication of a mere pass rate is insufficient for informed choices to be made by students who may be spending significant amounts of money on their legal education. Data should be available as to the actual marks gained by students attending any given institution if there is to be transparency and informed choice. There is a vast difference between an institution which has 75% of its students getting, say 51%, and therefore passing the SQE (assuming 50% to be the pass mark) and one which has the same number of its students passing but getting an average of, say, 85%.

## **SQE 2**

The SRA have estimated that the SQE stage 2 (**SQE 2**) will take 20 hours of testing but there is no clarity over when this exam should be taken only that "we expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience". It will prove difficult to release our trainees to complete the SQE 2 at the end of their period of recognised training due to other competing time commitments e.g. the internal qualification process (which needs to be completed several months prior to qualification), client and international secondments, attendance at a preparatory course to pass SQE 2 (of which the SRA have provided no guidance or recommendation) and their full-time role as a trainee solicitor. Some of our trainees will also struggle to take SQE 2 before they have completed a seat in either one of our dispute resolution groups or commercial and corporate practice groups. The other areas: criminal practice, property and the wills and the administration of estates and trusts are largely irrelevant to our practice areas.

There are two key SRA skills standards currently missing from the proposed SQE2 assessment criteria: client care and case transaction management, both of which we believe are key to the role of a solicitor and should be assessed.

Given that there will only be two opportunities to take the SQE stage 2 assessments this will mean that all of our trainee solicitors will be out of the office at the same time (including attending any relevant training courses) which will cause major service disruption to our business. There should be more opportunities to complete the SQE 2 examinations throughout the year on a staged basis.

Our trainee solicitors will have to focus on being a generalist at the point in their career where they are focusing on a specialist area for qualification. If the SRA are taking away the qualification decision (removal of AD1 process) from the training establishment then they need to provide more guidance around the performance expected over the two years of the work placement.

The costs of the assessment of the SQE are still unknown but early indications seem to suggest that they will likely be significant and no less expensive the current costs for the GDL, LPC and PSC.

2.

**(a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

***Disagree.***

We are pleased that the SRA agree that a period of pre-qualification legal work experience is required. We are however concerned about the lack of clarity as to what will constitute qualifying work experience and how the period of training will be monitored and supervised. This is a critical period of training and it is important that there are strict requirements on the quality of the experience and the supervision given.

Whilst we encourage widening access to the profession and inclusivity, we have concerns over the work experience gained through working in a student law clinic and through a placement as part of a sandwich degree.

We would be concerned if the qualifying period of training was allowed to accrue through disjointed, short term work placements which did not provide structured training. Further clarity is needed on this point.

**(b) What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

2 years (24 months)

We suggest that a workplace experience of 24 months is the most appropriate minimum requirement, with the SQE2 being taken no earlier than 12 months into the prescribed period of workplace experience.

However, if the SQE assessments are only going to be available twice a year this may delay the qualification of candidates who are unable to take the SQE2 exam at the end of the training contract due to work or personal commitments.

**3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

***Disagree***

We believe that if the SRA are going to create SQE exams which all future solicitors must pass in order to qualify then they need to specify and regulate the preparatory courses for those exams. Otherwise, we fear that this will result in a potential reduction of training standards across the market, and create an approach which will prejudice both market providers and students. If there is any dilution in training standards through deregulation, firms may need to invest even more into the training and upskilling of these individuals.

As mentioned in a previous answer, a relaxation of regulation may create a two tier system between self-funding students (focusing on the costs) and employers seeking to train and upskill employees before they join the firm and thereby requesting additional training at a cost.

There is no current guidance from the SRA as to how long a preparatory course should be.

**4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

***Disagree***

The concept has not changed since the first consultation. This answer is subject to all of our previous answers. Overall, we do not agree that the proposed SQE stages are a sufficient test of the requirements to be a solicitor.

We are pleased that the SRA now agree that a degree (or equivalent) should be a pre-requisite for entrance to the SQE. Guidance will be required around what preparatory courses should be completed by law and non-law graduates (as previously mentioned).

The SRA repeatedly refers to the current qualification practices in the medical profession as a basis for their proposals. However, Doctors still need to complete a medical degree before professional examinations and a time period for academic study is required and stated. We believe that our future lawyers need a thorough and in-depth knowledge of legal principles and concepts which will not be attained through a preparatory course preparing individuals to answer multiple choice questions.

**5. To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**Agree**

If regulated properly, there should be situations where individuals are exempt from certain stages of the SQE stages, e.g. barristers requalifying as solicitors.

**6. To what extent do you agree or disagree with our proposed transitional arrangements?**

***Disagree***

The transitional period seems to be too close and too short a period of time for all parties (firms, training providers, students) to be prepared for the change in approach. The SRA is optimistically expecting training providers to have designed and received firm buy-in for the various preparatory courses especially when there is currently little guidance from the SRA on what these preparatory courses should be.

**7. Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Yes**

RPC is supportive of widening opportunities into the profession. We fear the lack of guidance around the preparatory courses will lead to a two tier system as firms will be seeking to arrange more in-depth, bespoke training courses for students who have secured a training contract.

It will also provide an unfair advantage to those who have completed a law degree with no equivalent to the GDL proposed. The SQE 1 also does not seem to be an inclusive assessment for non-law graduates. We predict that non-law graduates will struggle to complete this assessment successfully if they complete the same preparatory course as law graduates. As a result, non-law graduates will need to complete an extended or additional preparatory course (which will likely mirror the current GDL approach) at an additional cost and period of time. Therefore, there will be no change to the current approach.

The SRA need to provide more guidance to students about the various, and transitional, routes to qualifying as a lawyer. Currently, students are entirely dependent on the advice they get from their school or university which we know varies across the country.

The lack of a clearly defined and assessed process of workplace experience (like the current period of recognised training) will have a negative impact on EDI as those students with better connections or access to informal networks will have greater opportunities to access these workplace experiences than those without those advantages.

Ultimately, if the various costs associated with SQE 1 & 2 are more than the current approach, commercial law firms will take on fewer trainees which will result in fewer opportunities across the profession.

# Consultation questionnaire

Response ID:311 Data

## 2. Your identity

**Surname**

newdick

**Forename(s)**

chris

**Your SRA ID number (if applicable)**

**Name of the firm or organisation where you work**

**Your email address**

c.newdick@rdg.ac.uk

**Would you like to receive email alerts about Solicitors Regulation Authority consultations?**

Yes

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

**Please identify the capacity in which you are submitting a response. I am submitting a response...**

**as an academic**

Please enter the name of your institution.: Reading University

## 3. (untitled)

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** The proposals are not a robust or effective measure of competence. They are a disproportionate response to a series of untested and unpersuasive assumptions. For example, 1. Para 28 assumes that differing methods of LL.B, GDL and LPC assessments are responsible for undermining competence in the profession. There is no evidence for this assumption. To assume that different methods of teaching and assessment are causing professional negligence claims is unpersuasive. All universities have a system of external examiners and moderation and there are clear subject specific benchmarks. We also know that many solicitors' firms are struggling and there have been some spectacular collapses. A more likely explanation for the rise in professional negligence claims is the commercial stresses and strains surrounding modern commercial practice, especially with the withdrawal of Legal Aid. To attribute this to differing methods of teaching is implausible. By contrast, diverse methods of assessment and teaching benefit able students with different qualities and aptitudes. The SRA's proposal for a single, monochrome style of computer-exam cannot accommodate young people's range of talents and introduces its own systemic disadvantages for these students. It is more likely to encourage crammer courses and a "teach to the test" teaching mentality with minimal commitment to professional skills and values. 2. Para 31 assumes it is better for SQE 1 to teach students substantive and procedural law at the same time. There is no evidence to support this assumption. Inevitably, this would condense the time spent understanding complex substantive law principles in order to study procedural law at the same time. But a sound grasp of substantive law is an essential precondition to understanding legal procedures. To dilute both in the manner proposed would compromise legal competence and increase still further the incidence of professional negligence. Understanding the distinction between substantive and procedural aspects is essential and each should continue to be assessed separately. 3. Para 34 suggests that these will ease the "training contract bottleneck." This is another untested assumption which contradicts the evidence that the legal profession has entered an extremely challenging commercial environment in which many firms will

not survive. The training contract bottleneck is caused by adverse trading conditions. Changing the time for undertaking work experience will not change the market forces restricting the supply of newly qualified jobs. To change the recognition of work experience and make it a prerequisite to SQE2 will only serve to move the bottleneck elsewhere. The SRA proposals ignore this. 4. Paras 51 et seq propose that students will be assessed by computer-based testing. Para 54 assumes that because this works with the physical sciences such as medicine and pharmacy, it will work to test legal skills also. This is profoundly mistaken. The physical and numerical sciences may be amenable to correct/incorrect answers to questions. But this does not accurately characterise the work of a solicitor, much of whose work is about the capacity to weigh and balance a range of information, reasoning skills, clarity of argument and the giving of advice. MCQs can only test reactive skills of good memory. They do not claim to assess the creative capacity to manage and analyse large volumes of information and to present reasoned argument. These skills are most effectively developed by practice at writing legal advice and “managing information.” To expand the point above, the SRA mistakenly believes that the essential skills of a solicitor are about “right and wrong” answers to legal questions. The skills of a solicitor cannot be learnt or assessed by training students to answer right-wrong computer tests, or by unregulated work experience with. Take the example of a mathematics graduate who has successfully passed a degree by “right/wrong” answers to exam questions and who goes on to qualify as a solicitor using the same method of “right/wrong” assessment. Such a person will have no grasp of the crucial role of argument, persuasion, negotiation and the giving of advice. These skills are developed within the academic experience. Law is about the ability to put a client’s problem into an appropriate legal context and to apply complex legal principles to generate a practicable and acceptable solution. The mathematics graduate in this example, having passed the computer-based assessment, would not be competent to create persuasive argument, persuade, negotiate, or construct advice on behalf of a client. Taking the five Skills assessments after work experience will not provide the range and depth of understanding required to manage complex legal problems. The SRA’s proposals are based on a serious misapprehension of the nature of solicitors’ work. 5. The SRA seeks support for its proposal for central examination centres by referring to other jurisdictions which prefer central examinations. However, the SRA fails to note that these jurisdictions also require these candidates to have passed a Law degree, or other post-graduate legal qualification, as a precondition to professional qualification. This is normally by means of an LL.B of JD degree. It is disingenuous for the SRA to use these jurisdictions to support its proposals without acknowledging that they all impose an additional layer of academic qualification as a pre-requisite to practice. The difference between the academic prerequisites in these other jurisdictions and the SRA’s proposals for computer-based assessment is fundamental. The SRA also fails to note that its proposals will make England and Wales unique in the common law world. At a time when the volume and complexity of law is increasing, together with concern about professional negligence, the SRA does not explain how its proposals to simplify the route to qualification can possibly preserve the reputation of the solicitors’ profession. 6. The SRA believes its proposals are likely to be cheaper for students. This is another untested assumption. Candidates will normally still be required to have a degree of some sort (£27,000). The subsequent requirement of two year’s work experience may often have to be undertaken on a voluntary internship, or minimum wage basis. Further, because it has failed to specify the content of “work experience,” many are likely to embark on SQE2 with inadequate preparation and feel misled when they fail. Only by ignoring these costs to students can the SRA suggest the new system will be less expensive. For most, it will probably make qualifying more expensive. By making the process more precarious and less transparent, it will present a disproportionate disadvantage to students without financial means to absorb these uncertainties. Instead, it will benefit those from wealthier backgrounds for whom unpaid work is not an obstacle. The conclusion that the new system will be an inexpensive way of opening up the profession to disadvantaged candidates is wrong.

#### 4. (untitled)

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** We disagree to the fullest extent with your proposals for qualifying legal experience for these reasons: • Whether work experience is required to be 18 months or 2 years, we note there is to be no

quality control over the work experience. On the one hand the SRA is anxious to standardise assessment of SQE 1 and 2 by removing the diversity in the GDL, QLD and LPC. On the other, it proposes to remove all standardisation of work experience. This is illogical. To remove a well-developed system of differing standards – both academic and in the training contract - and replace it with one in which there is (a) no academic training stage whatsoever and (b) no system of work experience quality control, is incomprehensible. This is not a robust system. • The SRA has failed to specify how “two years” work experience should be undertaken, or what will count as sufficient experience. Will periods of time spent in secretarial work be sufficient? Will unrelated work in legal offices in different parts of the country count? How will students know if their training has been adequate to pass SQE2? Solicitors’ firms and students are likely to feel misled and disappointed by this deregulated and unspecified period of “experience” disconnected from the final stage of legal training. • How will work experience equip students to pass SQE2 with no accurate indication of the training required to do so? A move from regulated training contracts to unregulated work experience favours those in well-resourced firms, but places an intolerable burden on smaller firms struggling to survive. In less well-resourced firms, students risk wasting two years of work experience undertaking tasks which do not equip them to pass SQE 2. For example, students may work in a secretarial or administrative capacity, or collate bundles of documents, or take notes in court. But they will not be offered the range of experience sufficient to pass SQE2. It is profoundly unfair for the SRA to devise a system which so favours larger, well-resourced firms and their students, but to impose a much greater financial risk on the students of smaller firms who are least able to bear the burden. The more so since disadvantaged students are least likely to obtain work experience in the best-resourced practices. These proposals are unfair and naïve.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** The period of work experience should be two years. Allegations of negligence and incompetence are likely to increase unless students have detailed knowledge of relevant subject areas, comparable to the levels achieved today. If the SRA requires consistency and standardisation of SQE 1 and 2, then the same logic should apply to workplace experience, as it does for training contracts today. In the absence of persuasive evidence of failings in the current system, we see no reason to change the current arrangements.

**5. (untitled)**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** 1. The SRA suggests Law degree graduates will take five years to qualify because SQE 1 training can take place during the three year LL.B degree (page 25). However, universities will find this impossible. University degrees are regulated by “progression requirements” in which each year progresses to a higher level of study. This presents two problems: (a) First, the basic logic of Law degrees everywhere is to study the “core” subjects before progressing to optional and elective subjects later which build on the learning achieved from the “core” learning. It is not possible to teach optional subjects first and leave the core subjects until later in preparation for the SQE immediately after graduation. At a pedagogic level, this would be irrational. (b) Second, although the SRA conceives that the LL.B would train students to pass SQE1, University examinations are set and structured by universities themselves. LL.B external examiners (as with all the social sciences) are under a duty to approve courses and exams on the basis of their academic and critical content. Courses and exams are unlikely to be approved which are intended to prepare students for the exams set by external, professional bodies, and which are tested by multiple choice questions for descriptive recollection of facts. This means that LL.B graduates will not graduate within five years, as the SRA suggests, because post-LL.B study will be required to prepare for SQE 1 on-line assessment. An LL.B degree, therefore, would not enable graduates to qualify more quickly than graduates of any other subject. 2. The SRA’s presentation of a “possible approach to qualification” (on

page 25) casts the qualification process in a misleadingly benign light. It can only assume that post SQE1 students will find suitable work experience within set timelines by ignoring the “bottleneck” problem. The truth is that many may still be excluded by the bottleneck, or obtain short periods of work experience before having to look elsewhere to continue to qualify. Similarly, the SRA assumes that SQE2 skills will always be properly provided in the period of work experience. But this seems unlikely, given the pressures on many smaller firms. Likewise, the SRA appears to believe that someone who has gained experience say in Employment law will absorb sufficient skill to advise on a Wills matter. We anticipate many students will fail SQE2 and be forced into extended periods of study in further “crammer” courses at additional cost. These “costs” to students are ignored by the SRA’s discussion document. They should be brought into account. The SRA proposes to develop league tables to compare the performance of different providers of SQE1. How will these league tables distinguish between institutions cherry-picking their intake from the most able applicants by comparison to those accepting students from disadvantaged backgrounds? How will they weigh the quality of the learning experience in these two environments and the “value added” by each? How will they compare crammer courses providing instruction on multiple choice questions only from academic institutions seeking to promote rigorous standards of teaching and learning? Will the comparison tables will be so crude as to be arbitrary?

## 6. (untitled)

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We strongly disagree that the SRA model is a suitable test for the reasons we have expressed. The SRA appears to believe that law is essentially about knowledge of legal “facts” and right/wrong answers to questions. Its disengagement from explaining the content of work experience also suggests it thinks that any in-work activity will help to equip students to pass SQE2. The SRA has misunderstood the “knowledge” skills required to be a solicitor and the distinct range of “practical” skills essential to effective practice. Its minimalist approach to legal training might be suitable for those training to become paralegal assistants under close supervision, but it fails to equip students with the basic skills required to be a solicitor.

## 7. (untitled)

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** We agree the majority of overseas lawyers who want to practice as solicitors must pass the stages of training finally introduced, following this consultation.

## 8. (untitled)

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** The proposals are ill-conceived, based on false assumptions and fail to develop the skills required of successful solicitors. They will de-skill and de-professionalise the profession. Solicitors in England and Wales will become the least qualified lawyers in the common law world. The transitional arrangements are inadequate. These are colossal changes. The SRA wishes to introduce its reforms by 2019 but the proposals create huge uncertainty in terms of the new systems required to be in place, new teaching skills, and methods of teaching and assessment. The period of transition is likely to be chaotic and prejudice aspiring solicitors no matter when it is introduced, but the longer the time during which teaching institutions can adapt, the better. It will greatly prejudice the public interest if these reforms interrupt the flow of newly qualified solicitors. For a long time, a common period of training has existed for those wishing to qualify as solicitors or barristers. Today, common training exists in the Qualifying Law Degree (QLD) and the General Diploma in Law (GDL). This is valuable because it serves the public interest by enabling young students to make an informed choice as to the branch of the profession best suited to their skills and

ambitions. The SRA proposals appear to depart from that practice by abolishing the QLD and GDL and put students on a single track to qualification as a solicitor. This does not serve the interests of students or the public interest. The Bar Standards Board (BSB) is also consulting at present and proposes to retain both these routes to qualification (ie QLD and GDL). It is crucial for the SRA and BSB to discuss the future of training together and to preserve a common route at the early stages of training.

## 9. (untitled)

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** The SRA's proposal to deregulate "work experience" will often mean that it will take the form of a sequence of unpaid, or low-paid, internships. It believes this will benefit everyone. However, the proposals will benefit those who can afford to take unpaid/low-paid work. It will disadvantage students without independent means who need to support themselves and disfavour smaller and less well-resourced practices who are already struggling to manage their businesses. They will benefit well-established commercial practices, but impose unreasonable burdens on those representing disadvantaged communities. They are irrational, divisive and unfair.

## 10. More about you

**Your sex**

**Your age**

**The Disability Discrimination Act 1995 defines a disability as "a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities". Do you consider yourself to be disabled as set out under the Disability Discrimination Act 1995?**

**Please indicate your type(s) of impairment. You may select more than one option below.**

**Your ethnicity**

**More about your White ethnic background**

**More about your Black or Black British ethnic background**

**More about your Asian or Asian British ethnic background**

**More about your Mixed ethnic background**

**More about your Chinese or other ethnic background**

**Where did you hear about this consultation?**

# Consultation questionnaire

Response ID:578 Data

## 2. Your identity

**Surname**

YATES

**Forename(s)**

REBECCA

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
in another capacity**

Please specify: non practicing solicitor and law lecturer

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** There are inherent problems with the limited nature of the proposed assessing regime as the ability to think laterally and solve problems in a work based context cannot be properly tested by multiple choice or best answer questions. The type of examination proposed for SQE 1 is satisfactory for knowledge based testing although it does create a number of problems and barriers to those with a variety of medical conditions that require alternative assessment support. A solicitor however requires training in an ability to demonstrate skill and proficiency to not only to analyse and synthesise complex legal information but also an ability to demonstrate a commercial competence when advising a client and also to be able to communicate the information to a high standard. The proposed examination regime does not specify that any of the communication skills needs to be taught before the student enters the work place and so there is no context in which they can be effectively demonstrated to potential employers. This omission in the testing regime at this stage creates a lacuna as employers have no way of testing this before they employ legal staff be they trainees or paralegals. The effect of this is that many law firms will lean towards employing those who have embarked upon a course of study that very closely resembles the current training provision, especially so given that the proposed changes are neither welcomed nor required by the profession and so the impact on costs will be an increase rather than a reduction in the costs. In relation to the proposed central testing and the omission of elective specialist knowledge not only means that those entering the profession will be less able to demonstrate basic skills of a lawyer they as they will have no specialist knowledge. This removal of the elective stage of the studies again means that students embarking on the start of their legal careers will be less skilled and this will inevitably led to them being less valuable and therefore lower paid employees. Not only will they be likely to be paid less than the current trainees but the law firms will have to pick up the additional training costs of the staff in both skills and specialist knowledge acquisition. Most law firms will want their staff to maintain the current levels of knowledge and so will be likely to employ those who have had the equivalent LPC training supporting the view that a clear two tier system will develop. Arguably, those most in need of good advice despite having talent will opt for the cheapest possible route and with the added likely hood that there will be a great deal of confusion in the market place, they will potentially render themselves unemployable. Given that law firms have not called for these sweeping experimental changes to the profession it is difficult to see how this route of qualification will gain any status in the market both from the student or employer perspective. The Solicitor apprenticeship has as it end point exam the SQE as proposed; it would be better for the status of

the apprentice qualified solicitors that they have the equivalent to the current qualifications with their providers to enable them to have parity rather than to change the entire qualification process. I personally qualified via the FILEX route and then studied the LPC this gave me equal standing with my peers more than an MCQ test would which does not require the same background knowledge, commercial understanding and practice ready skills that the LPC provides. In principle in relation to some common subject areas like professional conduct a centrally set exam could have some merit and would be manageable unlike the proposed assessment regime.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** While two years is an acceptable and necessary period of training in a supervised structure as is the current system with a limited number of exceptions as they currently apply. The proposal that a legal employee can gather work experience that may be low level and inconsistently supervised by a variety of different law firms doesn't instil confidence for the public consumer. While it can be difficult for students to acquire training contracts and the market is very competitive it does mean that the highest calibre students ultimately qualify. By allowing admission in this way it means that it is possible for weaker candidates to be able to work long enough to become qualified and this will ultimately create a bottle neck in NQ solicitors and again some of whom will not be employed as solicitors and will therefore have spent more time on a career in which they are unlikely to have a successful legal career as a solicitor. Current graduate students can be weak as they lack the higher level skills required for the LPC and these weaker students who do not succeed on the LPC in its current format are out of the system relatively quickly when they do not successfully complete the LPC assessments which rigorously test their higher level skills.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** The current system is more than adequate and allows for those with experience to have a reduced period of time and those who qualify through CILEX to have a reduced or no training period and so there is no need to change the current system.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** 1. It was noted that rather than open up access to the profession the current proposals would create a clear two tier profession. Some student consumers potentially those most likely to opt for the cheapest route to qualification, but who may nevertheless have great talent, could find themselves unemployable by the firms to which they aspire. 4. The current UK LPC is widely recognised internationally as a gold standard where by already qualified international students travel to study the LPC in the UK. These changes would lower the status of the UK qualified lawyer were we to adopt the standards required by some other jurisdictions. 5. It is potentially misleading for the regulatory body to guide that successful completion of a degree or equivalent and successful completion the SQE is all that is required for a successful career in the legal profession where this is not in fact reflected in the market. Students embarking on the start of their legal careers will be less skilled and this will inevitably lead to them being less valuable and therefore lower paid employees. Not only will they be likely to be paid less than the current trainees but the law firms will have to pick up the additional training costs of the staff in both skills and specialist knowledge acquisition. Most law firms will want their staff to maintain the current levels of knowledge and so will be likely to employ those who have had the equivalent LPC training supporting the view that a clear two tier system will develop. Arguably, those most in need of good advice despite having talent will opt for the cheapest possible route and with the added likelihood that there will be a great deal of confusion in the market place, they will potentially render themselves unemployable. Given that law firms

have not called for these sweeping experimental changes to the profession it is difficult to see how this route of qualification will gain any status in the market both from the student or employer perspective. The proposed changes will make the recruitment process for law firms far more forensic and detailed and by virtue of this will potentially reduce diversity in the profession and the playing field becomes even more uneven given that the profession is unlikely to place a great deal of value on an exam as is currently proposed and the obvious lack of skills training so the educational history and work experience will become even more important than is currently the position. The current proposals educationally lend themselves to surface learning rather than high level analysis and processing of legal and commercial and legal business practicalities. It is progress that the SRA has changed its mind and agrees with the profession that solicitors should be educated to degree level or equivalent. The LPC provides a programme of preparation for practice in respect of which there are necessary exams but not all aspects of the programme are examined but are an important part of learning how to become a legal professional. The emphasis on passing testing without the necessity for professional training is misguided and will likely result in a drop in standards and a two tier system. It will be extremely difficult for student consumers to be able to identify the basis upon which the various employers will base their selection criteria upon at the stage before they make their decisions about their studies. There will be a plethora of ways in which the student consumer can come to sit the SQE and while variety is good for the profession there is a point at which it becomes confusing and a potentially creates a two tier system and a gold standard. If student consumers leave the decision about their preferred future employers until after their successful completion of the SQE it could be too late and result in either unrealised aspirations or further delay and expense to the student consumer and a lack of diversity. This lack of transparency and confusion in the market place will require student consumers to be very savvy about their choices (and know what their exact aspirations are) at an earlier stage in their studies. Those of us with experience of students know that we have to provide them with a great deal of support and guidance while they study the LPC which is why we have professional mentoring schemes and a careers service to help guide students to make the right career choices. The proposed system assumes that student consumers will be extremely sophisticated in their career path knowledge and research the law firms in great detail at an early stage in their studies and in some cases before they even embark on their professional career path and we know that this is frequently not the case. The SQE stage 2 assessments at the point of entry which will most likely to be two years after formal study has ended will again increase the potential costs to the student and the employer. The test at point of qualification will render the tests very high risk and expensive tests given the need for further test preparation for the exams in respect of which the costs cannot yet be ascertained but given the volume and nature of the tests cannot be anything other than expensive.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** There are inherent problems with the limited nature of the proposed assessing regime as the ability to think laterally and solve problems in a work based context cannot be properly tested by multiple choice or best answer questions. The type of examination proposed for SQE 1 is satisfactory for knowledge based testing although it does create a number of problems and barriers to those with a variety of medical conditions that require alternative assessment support. A solicitor however requires training in an ability to demonstrate skill and proficiency to not only to analyse and synthesise complex legal information but also an ability to demonstrate a commercial competence when advising a client and also to be able to communicate the information to a high standard. The proposed examination regime does not specify that any of the communication skills needs to be taught before the student enters the work place and so there is no context in which they can be effectively demonstrated to potential employers. This omission in the testing regime at this stage creates a lacuna as employers have no way of testing this before they employ legal staff be they trainees or paralegals. The effect of this is that many law firms will lean towards employing those who have embarked upon a course of study that very closely resembles the current training provision, especially so given that the proposed changes are neither welcomed nor required by the

profession and so the impact on costs will be an increase rather than a reduction in the costs. In relation to the proposed central testing and the omission of elective specialist knowledge not only means that those entering the profession will be less able to demonstrate basic skills of a lawyer they as they will have no specialist knowledge. This removal of the elective stage of the studies again means that students embarking on the start of their legal careers will be less skilled and this will inevitably led to them being less valuable and therefore lower paid employees. Not only will they be likely to be paid less than the current trainees but the law firms will have to pick up the additional training costs of the staff in both skills and specialist knowledge acquisition. Most law firms will want their staff to maintain the current levels of knowledge and so will be likely to employ those who have had the equivalent LPC training supporting the view that a clear two tier system will develop. Arguably, those most in need of good advice despite having talent will opt for the cheapest possible route and with the added likely hood that there will be a great deal of confusion in the market place, they will potentially render themselves unemployable. Given that law firms have not called for these sweeping experimental changes to the profession it is difficult to see how this route of qualification will gain any status in the market both from the student or employer perspective. The proposed changes do not appear to have any regard to the problems faced by some students who have some learning support requirements beyond extra time in exams but who inherently struggle with multiple choice answers despite in a classroom context and in other long form written pieces of work demonstrate high level functioning. There is no requirement for the student to hold a law degree and so low level crammer courses will develop and this will weaken standards and the reputation of the profession. Students can be tutored to be able to answer questions but this does not mean that they also demonstrate the skills and attributes necessary to be develop into quality solicitors offering a high level of service to the public. Law firms will be employing trainees with a lower level starting point and so SQE 1 is not a good indicator or solicitor competencies. SQE 2 will inevitably lead to crammer courses and refresher course4s for the various practice areas as the students concerned will not ahve been in an assessment scenario for two years and so will want refresher course and this again leads to additional expense in the system and of course a high stakes series of exams .

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** The system as it currently stands allows for appropriate exemptions and it would be wrong to take this flexibility out of the system and would reduce diversity and opportunity for those who currently successfully are granted exemptions .

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** The proposed time frame will create a great deal of uncertainty in the market as the drafting of all of the assessments, marking standards and information for the consumers and the education providers all need to be designed and tested and then the consumer educated. Ina diition to this law firms will need to re=frame their recruitment processes and training programmes all of which takes a great deal of work to ensure high standards are met.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** As stated in earlier answers the type of questions proposed in SQE 1 has an adverse impact of some students with learning disabilities. It is diffulct to comment further on the actual exam given there is no sample to consider. It is highly likely that the cost of qualification will increase rather than decrease as which the cost of the actual exam may be slightly less than the average LPC there remains a need for training and this cost will still exist only now alongside the additional exam costs and will be borne either by

the student or the employer. The multiple route into the profession will potentially discourage those with ability and aspiration from diverse back grounds as law may no longer be an aspiration profession whatever back ground they come from. The confusion will be very difficult for the school, college careers advisors to navigate and they are unlikely to be aware of the ways in which law firm recruit which will inevitably change and become for forensic in look at the student's educational history in an attempt to only recruit the best who can demonstrate the experiance that they seek in terms of skills etc if the LPC is no longer a bench mark in which law firms can be satisfied that recruits have a particular career ready skills and subject experience and specialism. set - this may disadvantage those who do not come from professional family back grounds who are able to offer support and insight to their children or those from the anything other than privileged educational back grounds.

# Consultation questionnaire

Response ID:530 Data

## 2. Your identity

### Surname

Zdolynny

### Forename(s)

Steven

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Riverview Law

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** The use of Miller's pyramid as a formative basis for the development of the SQE does indicate that there will be a robust manner in assessments. This is due to designing the assessments to include cognitive and behavioural elements to each examination which will assess how candidates apply the knowledge of the legal facts to practical situations. It is clear that the SQE will provide for a more consistent method of assessment in the route to becoming a qualified solicitor. Currently, assessment methods include open book exams, closed book exams, multiple choice papers and coursework pieces. The way in which students are assessed in each module varies between providers, creating an inconsistency in the level of training each future trainee has by the time they commence their training contracts. Having a set of exams standardised by the SRA will take away this inconsistency as all examinations will be assessed in the same manner at a secure examination centre. With relation to the assessments, more clarity needs to be provided into sitting the examinations in an assessment centre. Will all candidates be given the same paper or will questions be randomised from a database of questions? If candidates are all given the same paper, this could cause conflict as candidates may leave the test centre and discuss questions with other candidates. It is also indicated examinations will be sat in "assessment windows" but no information is provided on the length of these assessment windows. Further information should be provided on the length of these to ensure that a full picture of the SQE is provided. The proposal for the SQE indicates that core modules will be covered in the Functioning Legal Knowledge Assessments. These core modules are already covered in less practical means on an undergraduate LLB or a GDL/Qualifying law. The majority also make up a substantial number of the core module on the LPC. By just covering core modules, this has the potential to eliminate diversity that the elective modules on the current LPC provide. Often, firms that specialise in areas such as family require future trainees to complete this as an LPC elective. There appears to be no option to sit additional modules to broaden learning in other areas of law aside from the functioning assessments listed. This could have a detrimental effect on smaller, high street practices that do not have the resource to fully train candidates internally. The SQE Stage 1 proposal to include constitutional law and EU law will need to be reconsidered in due course as Brexit discussions continue to evaluate if EU law is required to be examined upon activation of Article 50. It may become a redundant area to teach thus weakening the effectiveness of the SQE examination. The weightings of examinations should be considered carefully, particularly in relation to constitutional law and the EU law proposal as this includes the SRA Handbook and Code of Conduct area of practice. On the LPC this is currently assessed

in an individual examination that focuses full understanding on the principles of the code of conduct and acknowledges full compliance with code. Including this in an overarching module could mean that less emphasis is placed on the SRA Handbook and the Code of Conduct. Candidates may not score highly in this area but could score highly in the other weightings indicated, mean they could pass the examination regardless of their marks in this area. The Code of Conduct currently underpins the entirety of the LPC. Consideration should be given to examining this as a standalone area to ensure all candidates comply with the SRA Code of Conduct. In Stage 2, Practical Legal Skills Assessments are only available in relation the areas of law examined by Stage 1. As prior mentioned, this firstly eliminates diversity in applicants but also creates problems for those who complete their workplace experience in smaller, specialist practices such as serious injury or family law. Their skills will be adapted to a different type of client than you may experience with criminal law. Clearer guidelines should be specified as to how the Stage 2 assessments will be completed and as to how they will coincide with the workplace experience gained as there is a possibility that this may not be an effective means of examination for some legal practice areas.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** Just one area of potential concern. Legal clinics offered by a university vary between each institution. Whilst some can afford to run a clinic where students are fully immersed in the clinic, others only allow students provide written advice. They are also limited to the legal services that they can offer. Insurance premiums for legal clinics are high due to the nature of work being undertaken by students that are unqualified. Whilst the work is checked by supervising solicitors, I understand it is by no means as complex as the work carried out in an SRA regulated firm or ABS. It therefore seems that this method would be inappropriate for obtaining legal work experience unless clear structure and guidelines are put in place for university legal clinics. There is also an indication that qualifying work experience can be obtained in a non-SRA regulated entity. This area needs clarification as qualifying legal work experience in a non-SRA regulated entity needs to be of sufficient quality and subject to appropriate supervision.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** The reason for the stating 24 months is that if a candidate is completing stage 1 before workplace experience, they may have never completed any legal work prior to commencing the SQE. If a candidate for workplace experience has a substantial length of time as a paralegal prior to completing the work based experience, then the existing 'time to count' process could be considered to reduce the time down from 24 months to 18 months. Both the regulator and the profession as a whole needs to ensure that standards are not reduced through the SQE.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** Preparatory training is always going to be necessary to allow candidates to develop their knowledge and receive educational support in their continued learning running up to the SQE examinations. Whilst it is indicated that the SRA do not believe an "Ofsted-style regime" would be practical, some form of regime should be considered to ensure all providers are meeting a similar standard across the board. One of the current problems appears to be the inconsistency between providers in methods of delivery and how candidates are examined. By keeping a reign on standards of delivery of preparatory training, the inconsistencies can be eliminated between providers meaning a fairer method of examination for students. The transparent approach of compiling and publishing data on providers and the results candidates receive at each will ensure that fair access is given to the information often relied upon to make preparatory training based decisions. Candidates will be assured by high figures from providers and will be

able to make more informed decisions to suit their needs. More focus should be given on how preparatory training will be delivered to students prior to SQE Stages 1 and 2. Currently, providers can offer a mix of preparatory training to LPC students via online webinars, face-to-face lectures and small group seminars. This allows for the consolidation of learning via methods that suit each individual students learning requirements. Continuing to provide up-to-date information on each provider will ensure candidates can receive preparatory training that suits their needs.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** Whilst the proposed model will provide more consistency, I am concerned about the lack of options. Stage 1 and 2 both eliminate optional modules such as family, intellectual property and employment law and therefore limits the diversity of individuals to a specific framework. In my experience, smaller niche firms; such as those offering family services; require their trainees to take family on their LPC. Eliminating optional modules like this is only likely to cause problems for these firms when it comes to recruitment. It could also mean that firms suffer financially as they may not have the resource to pay for additional training in these specialised areas but will be required to due to the lack of exposure to them on the SQE.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** It is strongly agreed with that all candidates should sit Stage 1 and Stage 2. Whilst universities appear to be stressing that law graduates should be exempt from some Stage 1 examinations, it remains clear that the purpose of the SQE is to educate future solicitors in a practical manner. Undergraduate law degrees focus on legal education in a manner that is essay based and has few to no elements of practical application of the law in a real life situation. Undergraduate law students are not provided exemptions on the LPC despite taking modules that may be similar to their LLB. It would therefore be proposed that there are no exemptions from the SQE if the proposal goes ahead and that it continues to be a basis to build upon legal knowledge acquired in an undergraduate degree in a practical manner.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:** Where would the CILEx route would fit into the transitional arrangements? A clearer emphasis should be placed on the transitional timescales of all academic routes to provide a fuller picture for students who aim to qualify post-2019.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** A positive EDI impact of the SQE is with the proposed costs being reduced, the course will be more inclusive. Costs are currently something that candidates struggle with and often the cost of the LPC is what deters candidates from taking the course. If the SQE reduces costs as proposed, then more candidates from diverse backgrounds will be likely to sit the examinations. A negative EDI that may arise is whether or not the examinations are inclusive of everyone. Currently, candidates with extenuating circumstances e.g. dyslexia, are provided more time to complete assessments. There is little indication in the discussion paper as to how the SQE will deal with any proposed extenuating circumstances. Information should be collated on this to continue promoting EDI in the profession and to provide candidates with possible support mechanisms prior to sitting any examinations. Continued access to the

profession is also an EDI impact that should be considered. Whilst candidates may sit and pass Stage 1, they may struggle to obtain workplace experience which would then prevent them from sitting Stage 2. This would have a negative impact on those struggling to obtain the experience. It has been indicated that qualifications would have a length of 6 years attached to them before they expire, considerations should be provided as to what would happen if a candidate could not get workplace experience within that timeframe that would qualify them to sit Stage 2. Whilst the SQE aims to enhance access to the profession by providing fairer access, the SQE will not be able to resolve access to the profession in an overarching manner, it will only be able to solve the educational aspect of fairer access. Therefore it should not be viewed that the SQE will resolve all issues but that it is a stepping stone in the right direction to continue promoting positive EDI in the profession. In the Consultation Summary it is stated that 'Candidates would typically complete the SQE stage 1 before undertaking their period of work experience'. However, unless this is mandatory, there could be a massive number of candidates that have already undertaken substantial periods of work based learning e.g. as paralegals, who seek to qualify quickly through taking the SQE1 & 2 in quick succession. The EDI impact, and indeed the wider impact on the profession (e.g. on likely NQ salaries and potential flood of NQs onto the market post 2019, of this should be considered.

# Consultation questionnaire

Response ID:20 Data

## 2. Your identity

### Surname

Cantwell

### Forename(s)

Rosemary

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a member of the public**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** One issue is whether or not the qualification is for England and Wales alone or can be transferred elsewhere, just as European lawyers can work here.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** Individuals are individuals and some people come to their full potential later than others, so a flexible system is a good one.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** Preparatory training is like having teacher training. Supervision is necessary to ensure good understanding of basic principles.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:**

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** Treat every person as an individual with individual specific training which gives flexibility of approach to fit a person's needs.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:** Much depends on what happens to Brexit and the future of the UK.

# Consultation questionnaire

Response ID:534 Data

## 2. Your identity

### Surname

Silbereis

### Forename(s)

Scott

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: as a non-practicing solicitor

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** The consultation documents appear to be full of vague assertions and promises about being robust and effective, but until exemplar materials are published, there is no evidence to show if/how this will actually be achieved.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** Two years is, in most cases, about right. It is appropriate that there be a structure/standards for the experience. However, there should also be flexibility in the structure/standards/time based on the individual. Whilst the proposals regarding qualifying legal work experience are probably the least offensive in this consultation, I am not convinced that the consultation as a whole demonstrates a need to move away from the present system.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** Two years is a reasonable default starting position, though some individuals may require more time and some may require less (particularly if they have other experience already).

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** I'm not convinced that the regulation of preparatory training (e.g. undergraduate degrees, GDL/LPC providers) needs to be substantively changed. I accept that some universities are more rigorous than others, but potential students and potential employers are aware of this. If the SRA views this as the major concern, there are much smaller and more proportionate steps which could be taken (e.g. requiring universities to publish relevant details to have their degrees accredited), rather than overhauling the entirety

of the route to qualification.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** Whilst it appears sound in principle, there are a number of potential problems when considering the detail. The issue at present is, we don't have enough detail. Until exemplar materials are published, it is impossible to know whether the model will suitably test candidates. The risk is that if not done right, it would create a two-tier (or even 3+ tier) market and causing significant problems to consumers and the public.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** Where a rigorous undergraduate programme is completed, this could warrant a complete exemption from SQE stage 1. Where suitable post-graduate training is complete, this could warrant a complete exemption from SQE stage 2. Ultimately, that is effectively the scenario now, as students earn degrees and then do the LPC and a Training Contract. If the SRA believes there are problems with certain universities or certain training contracts, those elements should be adjusted rather than a wholesale change to the qualification system.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** This question assumes the SQE will be implemented regardless of the rest of this consultation. If the SRA has already decided to do this, the timetable proposed is entirely unworkable for all parties. Several more years must be added in order to make it viable for universities, publishers, employers, and students. It must be made transparent for more than one year exactly what changes will take effect and when. Further, anyone who has started on the current path should have an unfettered ability to continue under this system.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I see potential for significant negative impact from the proposals, specifically a reduction in the number of BME students pursuing qualification, as I expect the actual cost of reaching qualification would increase. If the cost does not increase, this would only be because a two-tiered profession is created, meaning those unable to pay for the "higher grade" training will end up in the lower tier of the profession - this is likely to disproportionately impact minorities. This is another reason the current proposal for an SQE does not appear, fundamentally, likely to achieve the stated goals.

# Consultation questionnaire

Response ID:485 Data

## 2. Your identity

### Surname

Mac Cann

### Forename(s)

Seán Gerard

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: Personal capacity, non-practising

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** Ours is supposed to be a literate profession. The idea that one can get to a stage 2 assessment via glorified multiple-choice assessment is depressing and disturbing.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** I have recruited juniors for in-house commercial roles. Generally, one would never waste time on someone with less than two years' PQE, and ideally 3. That is, including their training contract, a total of 4 – 5 years' experience as an absolute minimum before one can assume any sort of all-round competence. My experience is that, technical knowledge aside, employees with less than two years' PQE can't give advice or make decisions unless they can find the answer online or in a textbook (if anyone even reads textbooks any more, that is). You wouldn't trust them to do or say the right thing in a difficult situation. Commercial solicitors often advise corporate clients peopled by hard-nosed, sophisticated people with 40+ years life and international commercial experience. High street solicitors often advise mature people in difficult life situations. There is no substitute for a period of continuous mentoring; there is no substitute for having made a few mistakes in a monitored environment and there is no substitute for chronological and situational maturity. A good legal adviser needs character as well as knowledge and you don't acquire character while doing mere bloody exams. I agree strongly with your position that a series of short-term placements is an absolute waste of time. You will clock up the hours, but unless you are there for an extended period, you will never have had any serious involvement or mentoring in the first place. You never get any meaningful responsibility or meaningful involvement in itsy-bitsy placements. You're a glorified gopher, making the tea. All very pleasant, but largely a waste of time. The idea that e.g., 24 x 1 month random lightweight placements are equivalent in aggregate quality to a proper 1 x 24 continuous training contract is a hare-brained fallacy.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** Your proposal re "compiling and publishing data about training providers' performance on the SQE" probably is the best approach. In time, the best candidates will gravitate to the best-performing provider colleges and that will hopefully drive up entry standards and thereby create a standards virtuous circle.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Disagree

**Comments:** To ensure public respect for the profession and to keep standards high, we need a return to a cheerfully-hellish exam. We need an exam that is difficult to pass. The Independent newspaper, on 20 August 1992, noted that: "The LPC differs from the old finals course in several ways. Each teaching institution will be responsible for its own assessment arrangements; there will no longer be a single national examination." The old LSF differed in a number of ways from the downwards-spiral PC nonsense that followed: 1. All Solicitors took the same course. 2. All subjects were compulsory, across the entire spectrum of practice. 3. All subjects were studied in detail, in full. 4. All subjects were assessed by final written examination only. No fraudulent continuous assessment; no (perish the thought) illiteracy-option questions aka multiple choice. 5. In exams, all questions were compulsory. You could be examined on a very small % of the dreaded 'core materials'. "Question spotting" was a guaranteed way to fail. 6. The pass mark was 50% in each subject. 7. Around 40% of candidates failed the LSF. Fail it 3 times, and you were barred from further re-sits. Obviously, the old LSF needed modernising in terms of course content and delivery. However, in every other way, re points 1 - 7 above, those are what we need to get back to. By comparison, the new proposed syllabus seems lightweight - the kind of standard that is set low enough for most average people to pass relatively easily, with a modicum of effort and organisation. This is a flawed approach. It is in the public interest that our profession's exams return to being hellish, with high failure rates. How else does one weed out the dunderheads and the slackers? The practice of law is a harsh and un-forgiving place; and it is no use having a training system which molly-coddles people. We need to discourage the second-raters. The call for a return to a common national exam is an admission that they cocked it up when they introduced the LPC; so 2 cheers for dusting off that principle. However, there's little point in bringing back a common national examination if the content of it is designed to suit plodders and shirkers who have no place in the profession. Of course, now that examining bodies see themselves primarily as profit centres (as opposed to upholders of standards), there is a not-so-hidden agenda towards keeping entry standards low.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** Agree 100% - no exemptions. It's too easy as it is, without handing out freebies.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly agree

**Comments:** Sensible approach.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** I can't see that they would impact strongly one way or another.

# Consultation questionnaire

Response ID:188 Data

## 2. Your identity

### Surname

maybud

### Forename(s)

seema laura

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as a student studying for a qualifying law degree or legal practice course**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** For students who are currently doing their LLB, GDL and or LPC, there is no guarantee that we shall get a training contract immediately. After all the hard work we've put into our studies, as well as time and money, we shall not be exempt from the SQE or at least part of it. I've done a BBA (University of Kent), LLM (University of Kent), LLM (Robert Gordon University), GDL (BPP), LLB (BPP) and currently completing my LPC (University of Law, London). After all these degrees, the SQE will require me to start from scratch. I therefore strongly disagree - unless the SRA will give students the possibility to be exempt after their review of our diplomas and transcripts. Thank you for your attention. Sincerely, Seema Laura Maybud

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** The idea of having a kind of "New York Bar" route, does require all future solicitors to be at the same level - quality wise, education wise, knowledge and knowhow. I therefore believe it is not a bad idea, however as I am part of the "Old School" era, I believe the SRA needs to strongly consider these students. The SRA should allow students send their documents (transcripts, diplomas and work experience) to which the SRA can review them and according to the standard and grades, give these students an exemption.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** What happens to the students who have done their GDL, LLB, LPC etc who could not qualify for a training contract? Some of us, have contemplated on doing the CILEx route to become a Chartered Legal Executive Lawyer, however even the CILEx route is being questioned by the SRA. Which doesn't leave much options for us.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**

# Consultation questionnaire

Response ID:262 Data

## 2. Your identity

### Surname

Gascoyne

### Forename(s)

Paul

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Shearman & Sterling (London) LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** We largely agree that the volume of material covered in the syllabus would be a robust and effective measure of competence based on the 'Draft Assessment Specification' document produced by the SRA in October 2016. Addressing the issue of the use of SBAs and EMQs in SQE1, we feel comfortable that these can be an effective way to assess functioning legal knowledge and we share the SRA's view that the current system can result in exam question spotting. It appears this would not be possible with SBAs and EMQs. However, we do have some concerns that the content currently covered within the commercial module options of the LPC would no longer be taught. Our future trainees will therefore either start their period of workplace experience with less relevant knowledge, or non-regulated programmes will be created with law schools to fill this gap.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** We feel that there needs to be further clarity on when SQE2 will be taken and where it can be taken. It seems logical that SQE2 will be best taken in the final six months of qualifying legal work experience (if it remains two years), although currently it appears that this could be at the discretion of individual law firms. If SQE2 can be sat, and passed by the majority, during the early stages of qualifying legal work experience, it would raise questions as to the robustness of this assessment. As has been raised by a number of international law firms, many trainees are on overseas secondment during the final year of their training contract. As such, it would be beneficial to understand if it will be possible to sit SQE2 in overseas locations, and we would strongly recommend that this be an option.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We agree with the SRA. A period less than two years FTE is insufficient.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** We agree regulation of providers is currently ineffective. There is limited consistency across universities and law schools. Competition between law schools is not working well currently. We understand that the proposal is to remove all regulation of providers except with respect to data provision on performance. Provided that there is a centrally controlled assessment provided by an independent provider we see no reason why this would not work in principle. However, all providers should be required to make extensive comparable data publically available. Providers should also have advertising claims subject to regulation. We think that the data at paragraphs 93-94 may not be sufficiently extensive. Ratio of first time to total pass rates would be welcome. In particular, we would like to see provider characteristic and student body characteristic data as well. For example staff student ratio; course pricing; teaching group sizes; ratio of staff with professional qualifications; average years of professional experience staff have; most common (eg top 5) universities of candidates etc. Data provision against a single standard assessment will make it easier for us to tender for training providers and differentiate on quality. We share the SRA's concern at paragraph 33 of the consultation paper that: "In a market where there is little or no independent information about the quality of courses, price is seen by students as a proxy for quality. The price of the LPC has risen inexorably since it was introduced. We see no evidence of downward competitive pressures on price." We consider that this situation is unlikely to lead to fair and cost effective outcomes for students.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:**

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** We do not see the need for exemptions and in particular do not see the need to exempt university law courses. If such courses are teaching the required subjects to the required standard then students will pass the inexpensive and centrally moderated SQE1 examination.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** If, as the SRA has proposed, the cost of SQE1 will be significantly cheaper than the current model, then we can see that this could improve EDI. As the SRA has highlighted, it costs more to enter the profession now than ever before due to increased university tuition fees and law school fees. We can therefore see that the current system can deter less financially able candidates resulting in a negative impact on EDI. However, we do see a risk that a poorly functioning market for the LPC could be replaced with a poorly functioning market for SQE preparation courses. The provision of data by providers which is extensive and publically available is the best way to improve market outcomes which will benefit EDI candidates. The data should be available to private sector analytics providers who can analyse it to provide online tools allowing students and law firms to discriminate between training providers on basis of quality /

price. Control of provider advertising is also warranted. It is not clear that this is sufficiently strong via ASA. Lastly, while securing a training contract is a bottleneck to entering the profession – it is also true that the incentives in the current system – particularly on GDL/LPC providers - have resulted in an oversupply of candidates. In our view, it is this that is primarily to blame for the frustration, poor outcomes and unfairness some candidates (including EDI candidates) experience – rather than the availability of training contracts as such. Training contracts also operate as a market mechanic compensating for the failures the SRA rightly identifies in effective and consistent quality control at the professional stage of training. The training contract is and will remain critically important for training the solicitors joining our business.

# Consultation questionnaire

Response ID:487 Data

## 2. Your identity

### Surname

Cosgrove

### Forename(s)

Natalie

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on behalf of a local law society**

Please enter the name of the society.: Sheffield and District Law Society

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** Sheffield and District Law Society firmly believe that the SQE is fit for purpose. We are not in agreement that the current system is flawed, and are very concerned about this broad brush approach that is being taken. There is no evidence that it is more robust or more effective than the current regime. It would have been far better to retain the current arrangements but to centrally assess the Legal Practice Course, we do not agree that this should be through the SRA, but we appreciate that this may not be possible. It is difficult to imagine that 120 questions in 180 minutes can assess in any real depth. It appears that it is more a test of memory recall, not practical skills that are fundamental to not just being able to day to day work. Moreover, it is the fundamentals that are learnt in academia that are called upon on a daily basis. SQE1 does not test, for the example, the ability to explain issues to a client, to construct an argument, or to carry out tasks that often fall within the scope of a solicitors work. These are tasks that are only tested to a limited extent in SQE2 (and possibly not at all, depending upon the choices that one makes in SQE2). It is surprising that one can qualify without having to be able to draft a contract, or an advice or letter. All which are part and parcel of daily life as a working lawyer, not just solicitors. We believe that the SQE2 is flawed because it threatens small to medium sized firms. We believe that many magic circle firms will see little issues, but there is more to the legal field than those firms. We are greatly concerned as to the adverse effect this will have in areas such as Sheffield and District who are struggling and this places more pressure on them. The risk of small to medium sized firms not taking trainees because of the risk of them not passing SQE2 and the concern that, as a result, individuals will seek to make themselves more marketable by going through SQE2 before work-based learning.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** We believe that the need for work experience is absolutely essential and we are of the opinion that no lawyer can qualify without having a reasonable amount of work experience, coupled with a background of academia and vocational academic training prior to being in practice. We believe that if you are in a work experience role, it should be heavily supervised and we are extremely concerned that this is nigh impossible to regulate and will bring about a greater degree of difference in ability. We do agree that it

shouldn't be formally assessed, as we feel it is almost impossible to do so. We think that it should be at least three areas of practice, but not necessarily both contentious and non-contentious. We agree that no more than four periods of experience to be allowed to be stitched together, with each being no less than three months long at the very least.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We have said 2 years but we actually feel that this is a minimum. We do like the way in which doctors undertake their training but we do wonder if this could be replicated. At least at the end of placement for medical students they are formally assessed and then formally assessed twice a year on their competence and knowledge. We are very concerned on the background to supervisors that are signing off the forms. We are worried that access to the experience will be difficult and that less scrupulous firms may use this as an excuse to take on a, 'sell them cheap, pack them high'. We are concerned that it may be a carrot and stick approach by employers which will encourage people to undertake extended periods of free work in return of being signed off and this is very unjust.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** Sheffield and District Law Society believe that the present LLB/GDL and LPC works perfectly, however we would suggest a central assessment for this. This is because it will create a consistent standard.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We do not believe that this is a reasonable proposal and we are very concerned that this is going to make the paralegal market more volatile than it is. We are concerned that individuals won't have a standardised level of experience. They could then 'cram' for the tests and this is not reflective of what makes a good solicitor. Being a practising solicitor is not a memory test and yet these tests look as though they are being brought in. Practical skills cannot be assessed by the tests currently proposed and so we fail to see how these individuals could be prepared for the industry.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** We are bemused as to why this would be proposed in the first place. There needs to be some sort of assessment, which we feel the LPC fully trains and adequately prepares students for their period of training. There is no current exception to this, and we wouldn't expect them in the current regime or the proposed one.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** Sheffield and District Law Society feel that it is all rather rushed and that many feel that the proposed regime is not functional in the real world. What works on black and white does not work in reality and practice. Our Members are concerned that this is being brought in with a consultation as an afterthought. We understand that the apprenticeship scheme will be reliant on this and therefore we feel it

is a fait accompli.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Negative. It seems to us that it is likely that these proposals will increase the costs of qualifying, and that is likely to have a negative EDI consequence. We are very concerned that this is going to create cramming schools who will be able to charge whatever they want to get students through the examinations and this will be a cost to those who will see it as a tick box exercise and just want to get into the profession. It will prey on the desperate.

# Consultation questionnaire

Response ID:28 Data

## 2. Your identity

### Surname

Singleton

### Forename(s)

Elizabeth Susan

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Singletons

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** It is designed to make it easier to enter the profession and will mean those who are not as bright practise as solicitors, to the detriment of the public. It will damage the professional image of solicitors. It is also unfair on students to make them do exams after they have done 2 years of training.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** The TC requirement weeds out the sheep from the goats at present. Plenty of people who are not up to the mark do the LPC without a TC and thankfully they never qualify. This protects the public. We must keep it as it stands. Solicitors' firms know who will be good and who will not. Allowing things like work in law centres and the like will make a generation of solicitors much less competent than now.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** 2 years as long as it is a formal training contract as now which most people cannot obtain because they are not up to it. It needs to be difficult otherwise we will not have competent people in the profession.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** The current system is much better. I would not be against returning to a system of three law schools as we used to have but we need all exams completed before the TC starts otherwise you waste 2 years working and then fail. Utterly unfair on students.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** An equity partner in a German top law firm with a PhD in law etc obviously we can just have pass a couple of exams only but otherwise we need everyone passing the exam which should remain the LPC before the TC, not the proposed SQE with its unfair two stages. That is a non starter.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** I want the current system to remain so no transition would then be needed.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:** Is this some kind of management speak? I did a google search of EDI and all I found is electronic data interchange. I do not understand the question. Perhaps explain acronyms.

## A new route to qualification: Solicitors Qualifying Examination

### Consultation Response: Society of Asian Lawyers

#### 1. Introduction

In October 2016, the Solicitors Regulatory Authority ("SRA") issued a consultation paper with respect to its proposed plan to introduce the Solicitors Qualifying Examination ("SQE"), together with associated reforms relating to the route to qualification for aspiring lawyers. This document represents a response to that consultation paper, sent on behalf of the Society of Asian Lawyers ("SAL").

SAL is an organisation consisting of approximately 2,500 members, comprising current and aspiring lawyers, from virtually all areas of the legal profession. A proportion (indeed an increasing proportion) of our membership consists of students, who are likely to be directly affected by the SQE and associated reforms. Other elements of our membership, although already qualified, are equally interested in the SQE and the impact it could have on aspiring lawyers of Asian heritage.

Although not a trade union, SAL aims to represent its members on issues which may affect the legal profession. It is in that overall context that we are providing this response to the SRA consultation. SAL was particularly minded to submit a response to the SRA consultation, in circumstances where the consultation paper expressly provides that the SRA "*believe that our proposals could promote fairer access*" (at para 141, p. 28). This response contains, amongst other things, our view on whether that belief is well held and supported.

The implementation of the SQE presents, in a neutral sense, issues which are of general interest to the legal profession, including the Asian proportion of the profession. We have sought, in this response, not to discuss in detail issues which are of general interest to the profession. We have sought, instead, to focus primarily on the equality and diversity elements of the SQE proposal and to evaluate whether, in fact, the SQE is likely to have any unique or specific impact on aspiring Asian lawyers.

We are very pleased to be providing this consultation response – and we would be delighted to provide a further and more detailed response if so requested by the SRA. Our response is structured in two principal sections below:

- Section 2 contains an overview of the SQE.
- Section 3 contains our principal thoughts and conclusions.

#### 2. Overview of SQE

As far as we understand it, the SQE is part of an overhauled process for aspiring lawyers to achieve qualification in England and Wales. The process as a whole comprises:

- **Degree:** A requirement that individuals hold a degree, apprenticeship or equivalent.
- **SQE:** A requirement that individuals pass stages 1 and 2 of the SQE.
- **Workplace Training:** A requirement that individuals undertake a requisite period of workplace training (with the means of obtaining that training broader than the current "training contract" model).
- **Character Suitability:** A requirement that individuals meet the SRA's character and suitability requirements.

The SQE, at stage 1, tests functional legal knowledge and practical legal skills, limited to legal research and training. At stage 2, the SQE tests a broader range of practical legal skills, including client interviewing and case and matter analysis.

In overall terms, the new qualification process is fundamentally different from the current process of obtaining qualification in (at least) two central ways:

- First, the SQE is a single, centralised, assessment; in contrast to the current system where different LPC providers set a disparate and non-uniform set of assessments for their students.
- Second, the workplace training requirement is intended to be broader and more flexible than the current system, which relies (in the majority of cases) on the attainment and completion of a training contract. Under the new system, "*working in a student law clinic, as an apprentice or a paralegal, or through a placement as part of a sandwich degree could all contribute to this requirement*" (para. 23).

The rationale behind the proposal is set out in detail in the consultation paper. In summary, the proposal seeks to ensure consistency and high quality, as well as remove the "*training contract bottleneck*" which is currently a "*major constraint on new entrants to the profession*" (para. 34).

Within the "*case for change*" section of the consultation paper, the SRA states that "*the qualification regime should provide sufficient flexibility to encourage diversity within the profession*". We note however, that the SRA falls short (at para. 42) of stating that the SQE and associated changes "would" have any impact on equality and diversity. Rather, the impact on diversity is expressed in decidedly weaker language in paras. 141 et. seq., in the following terms:

*"While we recognise that the SQE cannot solve wider issues of social justice, we believe that our proposals **could** promote fairer access. We also believe that a competitive diverse profession helps to enhance professional standards"*.

We were interested to read, at para. 143, the responses to the equality, diversity and inclusivity assessment that the SRA conducted as part of its first consultation on the SQE. We were equally interested to read, at para. 146, that the SRA intends to conduct a "*further piece of research on impact during the consultation period and will publish a final Equality Impact Assessment, which will take into account comments received from the consultation itself, at the end of the consultation when we publish our response*". We would be interested to receive and consider the results of the Equality Impact Assessment, as and when completed. We consider these matters further in section 3 below.

### **3. Principal Conclusions**

SAL circulated a message to its members, inviting thoughts on the SQE and the SRA's proposed reforms in general. A number of members of the SAL committee have also considered the reforms. Our principal conclusions are as follows:

- The SRA has stopped short of expressly stating that the SQE and associated reforms would improve diversity in the legal profession. From the perspective of aspiring Asian lawyers, we would agree with that assessment. We too would stop short of concluding that the proposed reforms would definitively improve the chances of aspiring Asian lawyers, as distinct from any other body of aspiring lawyers, of entering the profession.
- Equally, we do not believe that the SQE and associated reforms would have a detrimental impact on the prospects of aspiring Asian lawyers entering the profession, as distinct from

any other body of aspiring lawyers. We do not consider that the issues raised in para. 143 of the consultation paper are distinctly applicable to aspiring Asian lawyers – and, accordingly, we do not believe that aspiring Asian lawyers, specifically, will be adversely affected by the proposed reforms.

- The SRA has concluded that the SQE and associated reforms "could", in summary, improve diversity. We would agree with that assessment. Although we do not have definitive statistics currently available to us, a number of aspiring Asian lawyers have practical legal experience (in paralegal positions and otherwise), but are unable to qualify due to the absence of a training contract. The SRA's new regime may result in these aspiring lawyers qualifying more easily as lawyers. We would emphasise that this "bottleneck" is not necessarily specific to Asian lawyers – indeed we have seen no evidence to that effect – but the SRA's proposed reforms may result in more Asian lawyers entering the profession than under the current system.
- Aside from ethnic diversity, which is the principal focus of this response, other feedback we have received as a result of our message to members is as follows:
  - **Standards:** *"The SQE is a good thing and will improve standards in the industry".*
  - **Equality:** *"If the exam will allow people from a non financially stable background to enter into the profession of solicitors more easily then it should be encouraged. It may help to increase diversity as well as the LPC gamble."*

We trust this brief response is helpful in setting out our principal thoughts on the SQE and associated reforms. We would be delighted to provide further comments, if necessary and helpful.

**SAL Committee**

**9 January 2017**

# Society of Legal Scholars

## Consultation questions

The Society of Legal Scholars is a learned society whose members teach law in a University or similar institution or who are otherwise engaged in legal scholarship. Founded in 1909, and with just under 3,000 members, it is the oldest as well as the largest learned society in the field. The great majority of members of the Society are legal academics in Universities, although members of the senior judiciary and members of the legal professions also participate regularly in its work. The Society's membership is drawn from all jurisdictions in the British Isles and also includes affiliated members typically working in other common law systems. The Society is the principal representative body for legal academics in the UK as well as one of the larger learned societies in arts, humanities and social science.

Please state your level of agreement with each proposal on a scale of 1 (strongly agree) to 5 (strongly disagree)

### Question 1

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

5. The whole process has been fundamentally flawed.

- It ignores the evidence in the Legal Education and Training Review, commissioned by amongst others the SRA, which said that most people are broadly happy with the current system of legal education and training the SRA and want only limited reforms.
- Despite having several years to do so the SRA has failed to provide robust evidence as to inconsistency of standards in the present system.
- There is still no evidence that a new system of assessment for SQE1 that is mainly based on a large number of computer-marked questions, which have to be answered very quickly, can show that people have the same depth of legal knowledge as is demonstrated by the present QLD/DL system.
- It does not show how the SQE1 provider will be regulated or how the cramming colleges that will train people to take the SQE1 will be regulated.
- It ignores the fact that a two tier system will be created with there being a small number of SQE-only solicitors whose existence will damage the reputation of all solicitors.

The essential question is to what extent can a consumer or employer have confidence in a solicitor whose legal knowledge and skills have only been assessed by the SQE. Five of the six knowledge assessments for the SQE1 will be three hours long and consist of 120 questions with one being two hours long with 80 questions. Given this consumers and

employers can, at best, assume only that their solicitor's knowledge is very superficial. Despite these new computer marked questions being at the heart of the changes to qualification and despite the fact that we are now several years into the consultation exercise the SRA has still not produced examples of the kinds of questions and answers it has in mind. The level at which the questions will be put is opaque. If, as the consultation document says, they are not comparable to academic standards what standards are they comparable to?

Law is a discursive subject where, on occasion, solicitors are expected to provide appropriate arguments for their clients' circumstances in situations where the law is unclear. There is no evidence that the suggested assessment regime will demonstrate that SQE candidates are capable of doing this. The fact that computer marked questions have previously been used in relation to disciplines such as medicine does not offer any reason for thinking they will work as the major vehicle for testing knowledge and understanding in relation to qualification as a solicitor. The fact that these forms of assessment regimes have been used in assessing professional legal qualifications in other circumstances, where candidates are usually law graduates, is equally irrelevant since not all candidates for the SQE will be law graduates or indeed graduates at all. It cannot be said that a future solicitor who is merely SQE accredited will have the same depth of knowledge of law as a solicitor who has graduated with a degree in law. This risks creating a two-tier occupation with solicitors who will be viewed as technicians on the one hand and those who will be regarded as professionals on the other. How will consumers know which kind of solicitor they are employing?

There is no indication of how the work of the single provider of assessment in the new system will be regulated. There is no indication of how the panel of experts that the SRA proposes to appoint in relation to assessment will be selected and trained.

If the SRA's proposals are implemented it is inevitable that cramming colleges teaching students how to pass the SQE will be set up. (They already exist for the QLTS.) Since they will be unregulated they will be of varying quality. Commercial exigencies mean that none are likely to provide teaching which is comparable in quality with that found in QLD and LPC providers. In time some of the new colleges will prove to be ineffective at training for the SQE. However their market failure will be at the expense of the time and money of students that they have taken in.

The SRA in setting out a new training regime are proceeding on the basis of faith rather than evidence and the risk for consumers, employers and students is enormous.

The structure and content proposed for SQE1 and SQE 2 might be seen as a plausible centralised replacement for the LPC. It deals with the supposed problem of variable standards among LPC providers. No detailed evidence is provided in the Consultation Paper to support the claims as to that variability and no evidence is provided whatsoever to link problems for consumers to this or indeed any aspect of the current arrangements for education and training. However, given that centralised assessment at this stage has been adopted by the Bar Standards Board and in many overseas jurisdictions, it cannot be argued that adoption of centralised arrangements is wrong in principle. The major flaw is that the proposed arrangements do not provide a robust and effective measure of competence as regards knowledge and understanding of the current foundation subjects, which remain part of the areas of required knowledge. The draft Assessment Framework reveals that the proportion of the SQE1 assessments directed to knowledge of the substantive content of the foundation

subjects is relatively small. That is in no way comparable to the assessment of those subjects in a QLD or GDL offered by providers subject to overview by the QAA/HEFCE. It means in effect that the profession will become one where a person will be able to qualify as a practitioner without having studied at degree level and been assessed at that level on the core building blocks of the knowledge needed for that profession. The Bar, which is unlikely to make the same mistake, will truly be able to say that barristers are better educated in the law than solicitors. Most jurisdictions around the world require possession of a law degree as a complement to a centralised assessment. There are real risks that the qualification of solicitor will be devalued in international perception. This contradicts the statement at para 26 in the Consultation paper that ‘It is vital that we have a qualification that justifies the high reputation of solicitors of England and Wales around the world.’ A further flaw is that while the centralised assessment should ensure equivalence of standards, it has not been demonstrated that the methods of assessment proposed for use in SQE 1 (largely MCQs) to assess the areas of knowledge and understanding of the law currently assessed at the LPC stage, are at least the equivalent of the variety of methods of assessment at present adopted by LPC providers.

We have the following comments on statements in the Consultation Paper that relate to this question:

#### Centralised Assessments

Para 22: *‘The introduction of a centralised assessment would bring us into line with other international jurisdictions such as New York, California, Germany, France and India’*. This may be true as to the narrow matter of the use of a centralised assessment but is misleading as to the overall position given the general requirements in the clear majority of jurisdictions as to possession of a law degree or the equivalent.

#### The Current System

Para 28: *‘We cannot know from the current system of legal education that all aspiring solicitors are assessed to a consistent standard and achieve the same outcomes. There are about 110 universities involved in assessing students through Qualifying Law Degrees (QLD), Exempting Law Degrees (ELD),ii the CPE and the LPC. These universities both teach their students and assess them through examinations which the universities set, mark and moderate. With this number of providers, we cannot be sure that all new solicitors are meeting, on a consistent basis, the levels of knowledge and skills that consumers expect of the profession’* In our view, sufficient assurance on this is provided by the introduction of a centralised assessment at the SQE stage to complement possession of a QLD/GDL. There is not the slightest evidence that the current arrangements for assessment of the academic stage have caused problems for consumers.

#### The Separation of Procedural and Substantive Law

Para 31: *‘The current tri-partite structure of legal education, divided into academic, professional and work-based stages, means students often learn substantive and procedural law separately. This is not surprising. Most areas of law, whether substantive or procedural, have many difficulties and uncertainties. There is a limit to how much a student can be expected to study and take in at any one time. There is no room in, say, a 20 or 30 credit module on Contract, to incorporate extensive coverage of civil procedure as well, without*

serious dumbing-down. The real point is how steps can be taken to ensure that sufficient knowledge of substantive law is carried into the study of procedure. *They may not be adequately assessed on the core professional competence of applying the legal principles they have learned in the academic stage of training to practical transactions or to solving clients' problems.* What is important here is evidence that it is not happening (not 'may not be happening') within current LPC provision. The Consultation Paper gives no evidence on this point.

*'Content standards relate to substantive, not procedural, law: teaches substantive law in procedural vacuum'* The first proposition is usually true, as procedural law is covered by the LPC. It is unlikely that many law schools provide as part of a QLD programme the equivalent of the civil and criminal litigation courses that are part of the LPC. To imply that the absence of such detailed courses as part of a typical LLB programme means that substantive law is taught in a *procedural vacuum* (which suggests that law students in University law schools have no understanding of procedure at all) is a non sequitur for which no evidence is provided.

### Cost

Para 32: *'It is no longer acceptable or fair for us to force all CPE graduates, and law graduates who do not qualify through ELDs, to take the LPC - an additional course on top of a degree - at a cost of up to £15,000 (with living expenses on top) when there are other ways in which they could acquire the professional skills and knowledge currently taught on the LPC.'* This implies that students will be able to acquire the professional skills and knowledge currently taught on the LPC much more cheaply through one or more other routes, but fails to indicate what they might be. It is possible that some providers may use an undergraduate law degree to deliver the education and training needed for SQE 1 (or even SQE1 and 2). It is very unlikely that leading law schools will choose to do that. It is difficult to predict how many law schools will. Apart from this possibility it is very difficult to see that the preparation for assessments on procedure and the non-foundation subject required knowledge and the relatively intensive education and training needed to prepare a student for skills assessments can delivered at significantly less cost than for a current LPC course. This may explain why *'We see no evidence of downward competitive pressures on price'*: para 33.

### Academic Standards

Diagram before para 36: This includes the following comments on the academic stage (and therefore both QLDs and GDLs):

*'No clear performance standard'* In so far as there is not one national LLB examination this is true. But each HEI provider has to have clear performance standards. All providers have systems for external examiners.

### Content

*'Do not teach competences in Competence Statement'* It is true that LLB degrees do not teach all the competences in the Competence Statement. To imply that they teach none is absurd. See the Law Subject Benchmark (<http://www.qaa.ac.uk/publications/information-and-guidance/publication?PubID=2966#.WHJNMH1EO88>).

*'Liberal law degrees, designed to deliver requirements of QAA subject benchmarking statement and FHEQ requirements'* True, but they also have to deliver the requirements of the Joint Statement to cover foundation subjects that, according to a widespread consensus, all lawyers need. The omission of this makes this comment seriously misleading to readers of the Consultation Paper who are not familiar with the details of QLDs and GDLS.

*'Minimal content standard specified in the Joint Statement'* If there were evidence that this itself caused a problem then it could of course be revisited. We are not aware of any such evidence.

*'Assessment practices have fallen behind best practices in standard setting'* No evidence is provided to support this general criticism of HEI providers.

### Consumer Experience

Para 38: *'Although establishing a direct causal link between the current training system and poor consumer experiences is difficult, we do believe that there is a case to be made that it could be improved to the benefit of the users of legal services.'* The first part of this proposition implies that there is some such evidence. If there is it should be given. Otherwise the proposition should have been: *'Although there is no evidence establishing a direct causal link between the current training system and poor consumer experiences, we do believe that there is a case to be made that it could be improved to the benefit of the users of legal services.'* Regulation simply based on the 'beliefs' of the regulator that have not been evidenced is not acceptable.

### **Question 2a**

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

2. The introduction of greater flexibility is sensible and supported.

### **Question 2b**

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

We do not have a view on this point.

### **Question 3**

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

5. All the pathways to qualification should require possession of a QLD or GDL or the equivalent (eg via the apprenticeship route).

### **Question 4**

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

4. The lack of a QLD or GDL is a fatal flaw. The overreliance on MCQs is a further flaw. The requirements as to work experience are a step forward.

### **Question 5**

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

3 The current content of many and perhaps all law degrees does cover parts of SQE1 in a more detailed and regulated way than would be true in the SQE1 assessment. However any exemptions at all would mean that the SRA had accepted that the whole new approach was unnecessary.

### **Question 6**

To what extent do you agree or disagree with our proposed transitional arrangements?

1 We agree with these proposals.

### **Question 7**

Do you foresee any positive or negative EDI impacts arising from our proposals?

5 The impacts will be negative. Implementation of the proposed arrangements will introduce a great deal of uncertainty as to what education and training students will need to be employable, as distinct from to be eligible for the award of the qualification of solicitor. Serious firms will require trainees to have at least the equivalent of the GDL and not just preparation for the SQE. SQE1 will be regarded as involving dumbing down and crammer courses. Firms may require applicants for traineeship with them to have studied particular subjects in a Law degree. The consequent fragmentation is to be contrasted with the certainty on this point provided by the Joint Statement. Firms may require trainees to undergo some professional training before starting a traineeship. All this uncertainty will operate to the advantage of applicants from better-off backgrounds, with access to relevant networking, who will be in a better position to navigate these uncertain waters.

While in theory a cheaper and faster route to qualification may be available, there is a serious risk that people who qualify by that route will be less employable than those who have a law degree/GDL as well. This creation of a de facto two-tier structure is likely to operate to the disadvantage of the less well-off. There is also a need for clear regulatory structures for providers of course leading to the proposed SQA and the provider of the SQA itself.





## **Solicitors Regulation Authority**

### ***A New Route to Qualification: The Solicitors Qualifying Examination (SQE)***

The Socio-Legal Studies Association (SLSA) welcomes the opportunity to respond to the SRA's second consultation on its proposals to introduce an SQE in place of the current arrangements for qualification as a solicitor. The SLSA is an association of largely UK-based academics concerned to advance teaching, research and the dissemination of knowledge in the field of socio-legal studies. As such, our interests and expertise encompass the nature of legal education, processes of legal professional formation and acculturation, and the role of lawyers in society. From this perspective, we have several concerns about the SRA's proposals. In particular we do not consider that the proposals will meet the SRA's objectives of consistency, quality and increasing access to the solicitors' profession.

In relation to consistency, we believe the assertions in the consultation paper concerning lack of consistency in the current system are substantially misleading. The provision of academic law degrees is not the free-for-all it is represented to be on p.9. The QAA through its benchmark statements, as well as external examining systems, ensure that standards are met and upheld. There is no evidence to suggest that standards vary to an unacceptable level across the academic degrees. Indeed, the Legal Education and Training Review concluded that the academic stage was broadly satisfactory. For the vocational stage varying pass rates do not necessarily constitute evidence of varying standards. They may be the result of a range of factors and firm conclusions cannot be drawn without detailed research. Consistency of standards at the workplace training stage is currently unregulated and we agree that there is an argument for something along the lines of proposed SQE Stage 2. But even if it is accepted that the SQE as a whole would provide a greater guarantee of consistency, we have grave concerns that consistency is being elevated *at the expense of* quality and equity.

In relation to quality, the proposal is that the current QLD or degree plus GDL, together with the LPC, be replaced with any degree, together with SQE Stage 1. We cannot see how it can possibly be maintained that someone who has no legal education (other than a cramming course for SQE Stage 1) would have the same breadth and depth of knowledge, and have been as rigorously assessed on their ability to analyse legal problems and apply legal knowledge in a nuanced and contextualised way, as someone who has a Law degree or GDL. In other words, the proposals are likely to have a seriously detrimental impact on the depth of understanding of would-be solicitors in relation to law in general, and in particular in relation to fundamental legal values, jurisprudential knowledge and understanding of the 'law in context'. This risks damaging the reputation of the English and Welsh solicitors' profession as a whole.

Other systems with common examinations – for example the USA and Germany – have prior law degree requirements. Indeed, in the USA applicants must have undertaken both a

generalist undergraduate degree *and* a postgraduate degree in law. Neither are US Bar exams and the German 1<sup>st</sup> State Examination assessed entirely by means of MCQs. In disciplines that use MCQs, aspiring doctors and pharmacists must have medical or pharmacy degrees. Moreover, law differs from these other disciplines in being a discursive subject involving processes of classification, interpretation and judgement, including the giving of advice and making arguments in situations where the law is unclear. These tasks are inherently difficult to assess by means of MCQs, and no examples are provided to suggest this can be done satisfactorily.

In addition, there is no evidence that the current level of consumer complaints is related to inadequacies in the system of legal education and training. It appears that the majority of complaints in fact relate to lack of effective and timely communication or dishonesty, and the numbers given in the consultation paper are of complaints brought rather than complaints substantiated after investigation. The consultation paper refers only to the area of Immigration as an area where practitioners were found to lack legal knowledge, but since the SQE is not intended to cover this area, this issue would not be addressed. Neither is evidence provided to suggest that in jurisdictions with access tests, the number of complaints is significantly lower or consumer satisfaction is significantly higher. In any event, it is difficult to see the logic of the proposition that removing the requirement for specialist education would be likely to reduce complaints. Indeed there would seem to be quite substantial risks for consumers in the proposals. Assuming that some practitioners will continue to obtain law degrees, one risk is for the emergence of a two-tier profession, in which elite, highly qualified solicitors serve corporate and wealthy clients, while poorer clients are only able to afford the services of minimally SQE-qualified solicitors.

As well as inequity for consumers, the proposals are likely to produce inequities for aspiring entrants to the solicitors' profession. First, while students will no longer need to meet the cost of the LPC, this will be replaced by the cost of the SQE and of the cramming course that will almost invariably be required in order successfully to pass the SQE. It is not at all clear that this will result in an overall reduction of costs for students. Secondly, the varying pathways to qualification as a solicitor will not be of equal value. A non-law degree plus SQE, or even an intensively SQE-focused law degree, is unlikely to increase access to the profession for non-traditional applicants, since firms are unlikely to want to take on employees who are less well educated when they are competing with applicants with academic law degrees. To the extent that those taking the new pathways are attractive to employers, it will be because they offer the possibility of cheaper labour. The creation of a de facto two-tier structure as envisaged above is likely to operate to the disadvantage of less well-off and non-traditional entrants who do not possess the resources and/or the social and cultural capital to position themselves at the elite end of the profession.

In light of these concerns, our answers to the specific questions posed in the consultation are as follows:

1. To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

We strongly disagree (5). There is no convincing evidence presented that suggests that SQE Stage 1 will robustly or effectively test the range of knowledge or the types of competence needed for a practising solicitor, such as the ability to analyse situations, to evaluate evidence and make judgements.

2a. To what extent do you agree or disagree with our proposals for qualifying legal work experience?

2b. What length of time do you think would be the most appropriate minimum requirement for workplace experience?

We have no comment on this aspect of the proposals.

3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

We disagree with this proposal as part of our general disagreement with the proposed model for qualification as a solicitor.

4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

We strongly disagree (5). For reasons of both quality and equity, we suggest that all the pathways to qualification should require possession of a QLD or GDL or equivalent (e.g. via the apprenticeship route, or transfer of an overseas qualification). We further suggest that centralised testing should be limited to the SQE Stage 2, but that this stage should be expanded to include practice contexts such as Family Law, Employment Law, Immigration Law and Welfare Law.

5. To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

If a QLD or GDL or equivalent continues to be optional, we believe that graduates with such qualifications should be exempt from SQE Stage 1. This would encourage greater educational quality while also promoting equity by sparing law graduates the additional expense of SQE Stage 1.

6. To what extent do you agree or disagree with our proposed transitional arrangements?

In our view, if the proposals go ahead, there will be a need for considerable testing, piloting and validating of the SQE prior to its full-scale introduction, as well as clear information and advice being given to prospective entrants – especially law students – at the point of commencing university study. September 2019 would appear to be too early on both of these counts. Our preferred model would involve simpler changes and correspondingly less lead time.

7. Do you foresee any positive or negative EDI impacts arising from our proposals?

As explained above, we foresee mainly negative EDI impacts arising from the proposals – certainly outweighing any potential positive impacts.

Professor Rosemary Hunter FAcSS  
Chair  
On behalf of the Executive Committee of the SLSA  
9 January 2017

# Consultation questionnaire

Response ID:112 Data

## 2. Your identity

### Surname

Babre

### Forename(s)

Sonal

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Advocate from India

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:** I understand there is mandatory training requirement for the period of 18 to 24 months, this requirement is not there for QLTS currently. How are you going to plan this for non- EU lawyers, or more specific commonwealth lawyers, with current trend of anti- immigration rules for visa, especially tier 2 sponsor requirement, do you think Asian lawyers will be able to get a training contract for two years?. Looks like this whole SQE is now going to be only for lawyers of England and Wales and EU lawyers. Do you have any plan for getting training contracts for commonwealth lawyers, meaning non-EEA/EU lawyers. If not then is it not going to be a disaster for us. Do you also have some hidden anti-immigration policy? please make your intentions amply clear at the beginning itself as to who can take SQE.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** its very unfair for someone who is not from England and Wales or EU, as getting training contracts under current visa regulation is next to impossible.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

No minimum

**Comments:** this requirement cannot apply to commonwealth non EEA/EU lawyers, otherwise are you going to guarantee them training contracts, or you are not going to let them take exam. Is the exam only for people from EU and England and Wales? If so, please make it amply clear at the beginning itself.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** training is such a subjective word, some one learns things in one go, while the other may take ages. Person may be bad at grades, but excellent in actual work, while someone may be excellent at

theories but bad with work, how on earth are you going to moderate this? Also final signing authority is solicitor, and you never know who the candidate is treated or exploited during the training contract, minimum wages question also comes in, especially for trainees requiring tier 2 visa, and are they really going to get them?, why don't you recognise work period of a person who is an international lawyer while deciding eligibility criterion. how can you combine qlts with SQE, qlts is for someone who is already qualified in his jurisdiction, has number of years of experience and is looking for additional qualification, hence in all probability not a student. So where is the comparison, how can you stop QLTS?

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** to put it simple, current GDL LPC for non law graduates and LLB with training contract in both and QLTS for foreign lawyer is pretty good. All you need to do is to bring all university under one umbrella, give them common syllabus word to word and hold one common university exam on same date.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** no exemption while studying, you can give some to foreign lawyers with respect to training requirement. No exemption even for current QLTS syllabus, it is fantastic infact.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** negative impact, you guys have anti-immigration policy on your mind if you are going to make training in England and Wales mandatory requirement.

# Consultation questionnaire

Response ID:548 Data

## 2. Your identity

### Surname

Hush

### Forename(s)

Robert

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on behalf of a local law society**

Please enter the name of the society.: South London Law Society

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** General Remarks: The South London Law Society is the local law society for solicitors' firms in the South London Boroughs of Wandsworth, Lambeth, Southwark, Lewisham and Greenwich. There are approximately 415 South London firms providing legal services in the justice system. These are approximate figures which are taken from "Find a solicitor", the Law Society's website accessed by members of the public looking for a solicitor. Members of the South London Law Society work in the majority for high street firms, partnerships with three or less partners, sole practitioners' practices and fewer than five large firms. The South London Law Society is concerned with the proposals put forward by the SRA, in particular as it considers that the proposals, if implemented, would lower the standards of entrants to the profession, which in turn will adversely affect consumer protection and the trust the public places in the profession. We set out our comments to the consultation questions in more detail below. Consultation questions For the SRA to include your response in their analysis of ordinal data, please state your level of agreement with each proposal on a scale of 1 (strongly agree) to 5 (strongly disagree). Consultation question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence? 5 Strongly Disagree The proposals will not ensure as high a standard of competence as the current qualification regime. The SRA has failed to provide any evidence to establish that variable pass rates at the different LPC provider institutions are attributable to variable standards or that the current qualification regime is responsible for high levels of client complaints and professional negligence claims as it speculates (Paras 29, 30 and 38). SQE 1 does not appear to assess or require the development of the higher intellectual skills required by the QAA Law benchmark: It does not appear to address: • viii ability to recognise ambiguity and deal with uncertainty in law • ix ability to produce a synthesis of relevant doctrinal and policy issues, presentation of a reasoned choice between alternative solutions and critical judgement of the merits of particular arguments These skills are also required by the SRA Statement of Solicitor Competence A4(c) and A5(a)-(e): A4 Draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively, including a. Identifying relevant legal principles b. Applying legal principles to factual issues, so as to produce a solution which best addresses a client's needs and reflects the client's commercial or personal circumstances c. Spotting issues that are outside their expertise and taking appropriate action, using both an awareness of a broad base of legal knowledge1 (insofar as relevant to their practice area) and detailed knowledge of their practice area A5 Apply understanding, critical thinking and analysis to solve problems, including a.

Assessing information to identify key issues and risks b. Recognising inconsistencies and gaps in information c. Evaluating the quality and reliability of information d. Using multiple sources of information to make effective judgements e. Reaching reasoned decisions supported by relevant evidence It is not clear from the Statement of Legal Knowledge and the Draft Assessment Criteria how much legal knowledge is required to pass the SQE 1. Although the SoLK is broad and deep in its requirements, a large part of the Draft Assessment Criteria for Dispute Resolution in Contract or Tort, for example, are taken up by the assessment of procedure. Dispute Resolution in Contract or Tort - Legal Knowledge In this assessment candidates are expected to draw on and apply knowledge from the following areas of law to civil dispute scenarios regularly encountered in practice:

- The core principles of contract law
- The core principles of tort
- The principles, procedures and processes involved in dispute resolution and the Rules of Civil Procedure.

The depth and breadth of legal knowledge required of candidates is that of 'functioning legal knowledge'. This means that a candidate should be able to:

- identify relevant core legal principles or rules – whether derived from cases, statutes or regulatory sources
- apply them appropriately and effectively to client-based and ethical problems and situations encountered in practice.

Candidates are not required to recall specific case names or cite statutory or other regulatory authorities except where specified. Candidates are required to demonstrate an ability to navigate their way round the Civil Procedure Rules so as to be able to identify relevant provisions and apply them to the conduct of a civil dispute. The effect is likely to encourage students to focus on the application of straightforward principles of law in everyday practice situations without sufficient regard to complexity and ambiguity as required by the QAA Law Benchmark and the SRA Statement of Solicitor Competence. Students qualifying without having taken a law degree will be less prepared for practice at the highest standard of competence and students who qualify with a law degree are likely to have engaged in additional time and expense. This is likely to impact on professional standards and diversity or both. It is not clear how legal complexity and ambiguity will be assessed by questions that take an average of 90 seconds to answer (Para 52) This problem is compounded by the fact that the SQE 2, which is taken at the point of qualification, does not purport (despite some ambiguity) to assess legal knowledge at all.

- The assessments are set in a range of practice contexts to provide a platform for the assessment of competence. They assess the core competences required for effective practice, including ethical and professional conduct, but do not assess legal knowledge.
- Primary legal resources will be provided to candidates. Although the stage 2 assessments are assessing skills, the candidate cannot be competent in a skill area if they misconceive the law. If candidates are not able to correctly identify and apply legal principles or ethical considerations, they will fail the assessment. Nor will SQE 2 necessarily assess candidates in the context of the law they intend to practise (Family Law, Employment Law, etc.) and which they may wish to practise in the period of their Qualifying Legal Experience. This may have a serious impact on the role of students in their communities and more widely for Access to Justice. For example, the President of the family Division and many other members of the judiciary in the family Court have cited, by way of example, the Californian experience, to call for the involvement of students in providing assistance for Litigants in Person in the Family Court. There are presently a number of schemes around the country where family law students offer help to Litigants in person. The SRA is invited to visit on such scheme at the Central Family Court in London where family law students assist Litigants in Person. It is difficult to see how such schemes will prevail if there is no longer any motive for students to study family law. Finally, the benefits of qualifying legal experience are undermined by the proposal to delay any assessment of skills until after the legal experience is taken. The proposals give no consideration to how and when skills will be taught, learnt and developed and only require the practice supervisor to
- to sign a declaration that a candidate had had the opportunity to develop the competences in the Statement of Solicitor Competence through the required period of workplace experience. There is a real danger that intending solicitors will undertake qualifying legal experience without preparation and without supervision and feedback and so gain considerably less benefit from work experience than currently under the Training Contract. We urge the SRA to co-ordinate and co-operate with the Bar Standards Board and CILEx as much as possible in finalising their proposals, as recommended by the Legal Education & Training Review (recommendation 4), to ensure the maximum of consistency, overlap and flexibility between the different qualification routes.

### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** While we welcome the enhanced flexibility, as discussed above the benefits of qualifying legal experience are undermined by the failure to give any consideration to how and when skills will be taught, learnt and developed and to only require the practice supervisor to sign a declaration that a candidate had had the opportunity to develop the competences in the Statement of Solicitor Competence through the required period of workplace experience. As discussed above (Consultation Question 1), there is a real danger that intending solicitors will undertake qualifying legal experience without preparation and without supervision and feedback and so gain considerably less benefit from work experience than currently under the Training Contract. We note that AlphaPlus, in their Final Report appended to the first consultation (Appendix 1), recommended workplace assessment for SoSC A2, A3, D1, D2 & D3 as they felt these could not be fully assessed within the proposed SQE parts 1 & 2 (Final Report, para 6.3.3). We believe that the training supervisor should be a solicitor and should retain a responsibility for the development of the trainee solicitor's professional skills in terms of structure, supervision and feedback, not just for providing an opportunity to develop competence and to ensure their competence for their role. The difference is the provision of legal work experience beyond the trainee's competence in a structured and supervised way that develops their competence. (Paras 100, 115 & 116). This could perhaps be achieved by a requirement for the supervising solicitor to sign off the training record proposed (paras 113 & 114). This requirement would supplement rather than undermine the SQE proposal. It is particularly worrying that the SRA is separately considering the removal of the requirement of 3 years Post Qualification Experience before a Solicitor can become a sole practitioner (Para 14). Such changes will put standards and the protection of the public interest at risk.

### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** 2 years is appropriate and in line with the training of barristers.

## **5.**

### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** This proposal is unworkable. The SRA is proposing to publish market data about training providers' performance when there will be no SQE course (Paras 112 – 114). Different candidates will prepare in many different ways, attending different and various institutions, combined with self study. We are concerned that if the market data is unreliable / uninformative and there is no regulation or supervision of training providers the SRA will open the door to unscrupulous providers who will offer alternative or supplemental courses that do properly prepare candidates for practice and the SQE and do not represent good value for money.

## **6.**

### **To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** For the reasons given above, we are concerned that the depth and breadth of legal knowledge, the intellectual skills, the value of qualifying legal work experience and the level of professional practice skills required to pass the SQE will be less than required at present. We do not share the SRA's confidence that the proposed SQE will bear the weight you intend to place upon it and we note that no example assessments and model answers have been produced to date. The proposals will put at risk: 1. the professionalism of solicitors 2. The involvement of students in specialist areas, such as family law. 3. The involvement of students in Access to Justice work in specialist areas, such as family law

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** We disagree with the SRA's proposal to offer no exemptions because of the duplication of effort and costs the proposal entails for applicants and because of the negative impact the SQE is likely to have on legal education and training.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** We are concerned that the SRA may not be able to produce a sufficient body of exemplar / practice assessments in time for institutions to design appropriate courses and for students to have a sufficient opportunity to prepare for the first offerings of the SQE in 2019.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We are concerned that the SQE will be no less expensive than the current LPC regime (Para 75) Extrapolating from the Qualified Lawyers Transfer Scheme assessments, we estimate that the SQE will cost £6,339 (see below). This does not take account of any study costs and assumes that all assessments will be passed at the first sitting. QLTS MCT costs £678 (5.5 hours = £123 ph) Estimate SQE Stage 1 will cost £2,214 (18 hours x £123 ph) QLTS OSCE costs £3,510 (12.75 hours x £275) Estimate SQE Stage 2 will cost £4,125 (15 hours x £275) TOTAL: £6,339 We are concerned that the very high costs of the assessments will have a negative impact on diversity. We are concerned that the narrowness of the assessment regime will have a negative impact on diversity. We are concerned that the duplication of study and assessment between degree level study and the various courses that are likely to be offered to prepare for the SQE will unduly favour those who can afford to pay fees for multiple courses and that this will have a negative impact on diversity.

# Consultation questionnaire

Response ID:374 Data

## 2. Your identity

### Surname

Cutter

### Forename(s)

Stephen

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: Legal Advice Clinics Manager

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part

time work experience or just full time. Many students will not be able to afford to gain work experience unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career.

Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify: Recommendation below

**Comments:** 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**Comments:**

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

## Stewarts Law LLP Response to SRA Consultation: “A new route to qualification: the Solicitors Qualifying Examination”

### 1 Question 1

*To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?*

Level of agreement: 4 - Disagree

We are concerned that the proposed SQE is not sufficiently robust or effective enough to demonstrate a sufficiently high level of skill and competence necessary for prospective new entrants to the profession.

The indication is that the SQE1 will be less comprehensive in scope and depth than the current Legal Practice Course (LPC). We note that the SRA proposes that it may not be necessary to have a qualifying law degree or GDL; our view is that this will mean new entrants having less legal knowledge that they currently do. This will inevitably mean that there will be cost (which may not be insignificant) to all firms who take on trainees to bring their legal knowledge up to an acceptable minimum standard. Not all firms will be willing to invest in such training. There is also likely to be a greater risk to the public from firms who take on trainees but do not have the skills or resources to deliver training that bridges the gap between the SQE1 and minimum expected standards.

We are also concerned that the proposed method of assessment of the SQE1 – through Multiple Choice Questions (MCQs) – will result in a lack of rigor. MCQs do not provide scope for a candidate to truly demonstrate any depth of understanding or real knowledge. It is inevitable that candidates will be able to teach themselves, be tutored or “play” the system so that they only need gain or memorise the minimum information necessary to pass the SQE1. This may further result in a high number of individuals passing the SQE1 who have not actually gained the requisite standard of legal knowledge or skills reflective of a world class legal profession.

The indication that the SQE1 will not cover the topics currently covered by the City LPC electives suggests that City firms will face additional expense to train new entrants in the very areas that they currently study on the LPC. This will inevitably add necessary time to acquire these skills during work based learning, following completion of the SQE1; this may not be palatable for some new entrants as it will take them longer to qualify than a trainee who does not undertake their training within a City firm. These electives, it must be reiterated, were developed to address a skills gap with the current LPC, therefore any further erosion of training in these skills will be to the detriment of City firms and the client base they serve.

Furthermore, we are not reassured that the SQE2 requirements are sufficient to assess an individual’s ability to provide quality legal advice and services to the public once “passed”. The SRA has indicated that the level of skill of legal research and writing which the SQE2 will assess will be “basic”, certainly at a lower level currently required to pass the LPC. We do not believe it to be in the public or the profession’s interests to reduce the current standards and would instead welcome raising the standard that individuals are required to demonstrate in the areas of legal

knowledge, application of the law, research and analytical skills before they are admitted. In view of the changing landscape of the modern legal market, we see this as an opportunity for the SRA to consider some newer skills that new entrants should be able to offer as part of the provision of legal services, such as demonstrating an understanding of legal technology and project management skills.

## **2 Question 2a**

*To what extent do you agree or disagree with our proposals for qualifying legal work experience?*

Level of agreement: 5 – Strongly disagree

We are concerned that the proposals for qualifying work experience will significantly restrict the ability of some niche practices, including some of the most prominent specialist City firms, to offer two distinct “practice contexts”. It also indicates the SRA’s refusal to accept that the “general practitioner” is becoming rarer. For example, the broad category of “Dispute Resolution” does not accommodate a firm which specialises in litigation across several practice areas, such as Stewarts, even though in reality these practice areas are individual and distinct – dispute resolution in the context of Personal Injury is significantly different from litigation in the context of Family, Employment or Commercial law. We anticipate that this will affect many firms who are increasingly tending to move toward specialisation more generally and have been deliberately training new entrants to the profession in niche areas of the law; successfully breeding lawyers in those areas to become experts in a specialist field.

We also note the examples given of how a trainee might gain sufficient work based experience to meet the requirements of the SQE2. The examples are varied and disparate, from working in a student law clinic to a traditional period of recognised training (“training contract”), presumably identical to the current training contract or period of recognised training. It is our understanding that the SQE2 is not currently benchmarked to universal standards. Our view is that this need much more detail from the SRA to ensure that there are outcomes that are comparable and measurable so that newly qualified solicitors, whatever their work experience, meet the same minimum thresholds upon qualification.

## **3 Question 2b**

*What length of time do you think would be the most appropriate minimum requirement for workplace experience?*

In our opinion a proposed minimum duration of work experience of no less than 18 months does not significantly change the current position. We note however that under the current proposals it is possible that an individual may qualify in less time after passing the SQE1, if they acquire the skills that will enable them to pass the SQE2, probably also taking into consideration work experience gained prior to completion of the SQE1. Our view is that work based experience should start to count from completion of the SQE1, save in exceptional circumstances. However, it is likely that these exceptional circumstances will be where an individual has a non-legal background, gaining the skills that are increasingly required in more innovative practice areas. For example, firms are increasingly utilising the expertise of individuals with very diverse professional backgrounds such as engineering, mathematics and finance to provide additional value and sector specific expertise to clients. In the US, it has been noted, there has been a notable shift to desiring lawyers with such backgrounds. Under the current SRA proposals however, a firm seeking to employ such an individual would not be able to count their prior work experience toward the qualifying period, whereas the prior work experience of an individual gained in a legal environment with little or no relevance to the current firm and their client base would be able to use that experience to count.

Using our own current model as an example, trainees are usually chosen from our current pool of paralegals and are usually only able to successfully demonstrate that they meet our assessment

criteria after at least 12 months of experience gained as a paralegal. Our training contracts are for the duration of 24 months: even though the individual may have already had a not inconsiderable period of work experience with us, we do not seek a reduction for time to count as in our experience this is the minimum time needed to gain the skills required as a solicitor. Under the new proposals, as it is unlikely that we and most other City firms will cease to offer a traditional training contract, this is likely to mean our newly qualified solicitors will have at least 3 years relevant work experience prior to qualification, which is longer than that proposed under the new regime. While we acknowledge that it is beneficial to retain flexibility for exceptional candidates who bring significant skills gleaned through prior experience, we would be in favour of a prescribed minimum work experience period post-SQE1 of no less than 18 months.

There may also be a risk in that some firms may gravitate towards applying the minimum period of time, perhaps to attract new recruits, even though, as reflected in our responses to questions 1 and 2, the standard of competence after this period under the new proposals will result in newly qualified solicitors whose legal knowledge and skills generally fall short of current standards. Furthermore, the assessment process for both SQE1 and SQE2 will not sufficiently test the applicant's ability to provide legal services upon qualification. Again, our primary concern is the potential risk to the public and the impact of lowering the general professional status and quality of the profession.

#### **4 Question 3**

*To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?*

Level of agreement: 2 – Agree

We do not believe that SRA regulatory oversight of providers of SQE1 courses specifically is necessary, as the SQE1 will be assessed through the same standard MCQs, which do not appear to be academically rigorous therefore not necessitating regulation. We reiterate our general concerns previously stated with the robustness of the SQE1. It is beneficial for there to be competition among providers as this may result in value for money for students. Although the requirements of the SQE2 are higher than the SQE1, we are not at this stage convinced that the SRA has the ability or resources to adequately or meaningfully regulate providers of the SQE2. As we have stated elsewhere, we feel that the current proposals for the SQE2 course requirements and assessment need to be significantly raised.

#### **5 Question 4**

*To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?*

Level of agreement: 5 – Strongly disagree

We refer to our responses to Questions 1 – 3. We welcome a root and branch review of the training and qualification requirements and are in favour of seeking solutions to open up the profession to increase social mobility and diversity. However we do not agree that the model currently proposed by the SRA is a suitable test of minimum standards needed to become a solicitor and we are concerned that this model will result in solicitors who are ill-prepared to provide quality legal services.

#### **6 Question 5**

*To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?*

Level of agreement: 5 – strongly disagree (see qualification below)

We do believe that there should be the same standard qualifications undertaken by all new entrants to the profession prior to admission (i.e. SQE2 stage) regardless of the overall route of qualification without exception. However, for reasons previously stated we do not believe that the current proposals for the SQE1 in particular are equivalent to desirable minimal standards of legal knowledge required prior to embarking on a period of work based learning. We would suggest that the knowledge required to undertake the SQE1 should be of comparable standard to a qualifying law degree or the GDL and should be offered as an alternative, which we anticipate would be undertaken by individuals who do not have a degree. We would be interested to see any work the SRA has undertaken comparing the standards of the CILEx Level 3 Professional Diploma in Law and Practice with the proposed SQE and whether a programme similar to the CILEx qualification route would be a potential alternative to the SQE.

## **7 Question 6**

*To what extent do you agree or disagree with our proposed transitional arrangements?*

Level of agreement: 3 - Neutral

We do not have strong views on the SRA's proposed transitional arrangements. We believe that the transitional arrangements if well thought out and given sufficient lead in time, are workable.

## **8 Question 7**

*Do you foresee any positive or negative EDI impacts arising from our proposals?*

Level of agreement: 4 – Disagree (that the proposals will result in positive EDI impact)

We do not foresee any long term positive impact arising from the proposals in terms of creating a more inclusive profession as we believe that the SQE will simply lead to a greater number of individuals "qualifying" in an increasingly contracting job market. The competition for these work experience placements and ultimately qualification as a solicitor will increase. There is no evidence that a greater number of placements will be allocated to those from more diverse backgrounds simply because there are a greater number of candidates to choose from. Indeed it is very possible that the likely outcome will be in direct opposition to the intention – that the profession actually becomes more elitist because there may still be a preference given to applicants who have gone through a "traditional" route or have undertaken the SQE at a more "prestigious" training institution and the difference between those who have and have not may become even more stark.

While we acknowledge the SRA's reasoning behind its proposals advocating non-prescriptive qualification routes this alone will not create a diverse profession. What it may facilitate is an increase in the number of individuals able to qualify as "solicitors" and widen the pathways to qualification. There are two problems with this – firstly this is an assumption which the SRA has not provided evidence as yet to support. Secondly, an increase in diversity upon qualification is not the same as a more diverse profession, particularly in the City; the strata of the profession where a lack of social mobility and diversity appears to be most acutely seen. There are not an infinite number of solicitor positions available; particularly at newly qualified level therefore it is more likely that although the numbers of "qualified solicitors" increase, the majority will not work as solicitors, thereby exacerbating an inherently problematic situation of individuals "qualifying" but with completely unrealistic career expectations. It will not be a surprise to end up with a surplus of "solicitors" who are not doing the work of a solicitor but are continuing to undertake the same work that they did when non-qualified, presumably for the same remuneration or who have left the legal sector altogether.

We would be interested to see any Equality Impact Assessment or research that the SRA has already undertaken to support the assertion that the proposals will have a positive impact on equality, diversity and inclusion.

# Student Law Think Tank



## Northumbria Law School

Response to a new route to qualification: The Solicitors  
Qualifying Examination

# January 2017

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# Foreword

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## **Background**

This is a response from a group of students at Northumbria University in response to an open consultation regarding the proposed SQE (Solicitors Qualifying Exam). These students are members of the Student Law Think Tank, which is a student body in Northumbria Law School. The aims of the Student Law Think Tank are to get students involved with law reform and policy and getting the students' voice heard. It is important to emphasise that this is the sole work of the students listed in the Appendix below and is not necessarily representative of the views of Northumbria University.

## **Aims**

To provide the SRA with the comments of current students and their views over the proposed reform.

## **Approach**

Over a 3-week period, a series of group meetings were held to produce the following response. Approximately 10 students undertook research relating to each question; the meetings were used to discuss and debate the findings.

The opinions of all the contributors have been taken into account in the following response. These opinions have been edited and reformatted.

# Response to Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

**0/10 We do not agree with the proposal to any extent. We have four grounds for this.**

1. Computer Based Testing
2. Evidence produced by SRA
3. Scope of tests in relation to the areas of law selected by SRA
4. Work based learning

## Computer Based Testing

The first issue is in relation to computer based testing for SQE 1. If it is consistency that the SRA wishes to achieve, then this can be accomplished through a standard examination which could be taken at individual institutions. By taking it out of the institutions and putting it into an examination centre, this could be seen as insulting as the SRA are implying that institutions are, in part, to blame for the issues they believe to be occurring.

Additionally, we take issue with the fact that the SRA are creating two examinations per year. As with other computer based testing, there are a finite number of questions that could possibly be considered; therefore, the SRA increase the risk of “question spotting” rather than reducing it. This is similar to the driving theory test in which candidates will purchase DVDs and guides on what questions can be asked and taking them repeatedly hence cramming for the assessment. This, therefore, measures the competence of memory as opposed to other competencies that are required of a solicitor.

There are also the potential issues in measuring a candidate’s competence in relation to ethics, as ethics can be confused with common sense in computer based testing. If you give a candidate the question “What would you do if you saw a child burning in a building?” and the choice of the answers;

- “A) Leave them, you have no duty to act
- B) Run in and save the child
- C) Laugh
- D) Create a legal case against the defendant at the scene”.

Which answer, using common sense, would a candidate pick? It takes no possession of ethics to be able to answer correctly in accordance with ethics. This is why written tasks are a more robust and effective measure as they allow the candidate to develop their answer thus allowing them to demonstrate a real sense of ethics. By allowing, through a written answer, for the logical reasoning of the student to be presented, the ethical basis for the decision will become much more apparent.

Decisions, particularly those with an ethical dilemma, are not as clear cut or black and white as MCQs would make it appear. We fear that through the strive for consistency, the SQEs will have a detrimental effect on quality as “consistent and comparable minimum standards (elsewhere referred to as a stated objective of the SRA) are not the same as high quality standards.”<sup>1</sup> The SRA clearly mistake consistency with quality, and we find that quality is the much more important factor.

#### Evidence produced by the SRA

Our second ground of dissent is that there are clear issues with evidence provided by the SRA to support the idea that this will be more robust and effective than the current examinations. The SRA have cited a statement by the HEFCE “the current quality assessment system does not provide direct assurance about the standard of awards made to students, or their broad comparability”<sup>2</sup>. This was taken out of context by the SRA and, as we stated above, shows that the emphasis is on comparability rather than bearing any relevance to quality itself. The SRA mistake consistency with confidence by considering a single study that collected data from the general public.<sup>3</sup> Whilst this is a compelling measure of confidence, there is nothing to suggest that by standardising a test this will impact consistency and if so, to improve it to a higher quality of consistency. The question also used the word “exam”, the assumption being a written exam, and therefore to apply this to a computer based model is making the relevance of this study even weaker.

#### Scope of tests in relation to the areas of law selected by SRA

Thirdly, we take issue with the scope of tests in relation to the areas of law selected by the SRA as they limit creativity. We support the University of Leeds who stated in the first consultation that “key areas such as Family Law, Disability Rights, Immigration Law and other aspects of Social Welfare Law are critically important areas to support the vital public service contribution the profession makes to society”<sup>4</sup>. Each of these areas is extremely different and therefore requires different competencies. This also limits candidate creativity by restricting choice, which could impact on their performance if they are uninterested in the subject that they are being forced to study.

#### Work based learning

Finally, another basis of disagreement is regarding the Work Based Learning, for the significant reason that it undermines the claim that there would be a “high level of assurance to consumers of legal services in the competence of solicitors.” Work Based Learning would not achieve proper scrutiny of the competence of potential solicitors, for the following reasons. The work experience available would not be guaranteed to all candidates; in fact, work experience would be more easily obtained by candidates with family members and other connections in the legal profession. Assessment by the means of Work Based Learning may not encompass all candidates as there would be social class barriers. This will damage, rather than promote, the public perception of solicitors as

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<sup>1</sup> The City of London Law Society “City of London Law Society Training Committee Response to the SRA’s Consultation on Assessing Competence” 4<sup>th</sup> March 2016

<sup>2</sup> HEFCE “Future approaches to quality in England, Wales and Northern Ireland; Consultation” June 2015

<sup>3</sup> Com Res “Solicitors Regulation Authority Solicitors’ Education Research” August 2016

<sup>4</sup> University of Leeds “Reforms to the qualification route to the solicitors’ profession; Briefing note” October 2016

it will revert back to being a profession dominated by those with the right connections rather than those who are the best qualified.

Additionally, there would be a lesser degree of scrutiny in comparison to Training Contracts. This results from the fact a lesser amount of responsibilities would be attached to candidates, because Work Based Learning may be viewed by firms as less important or valuable. This would entail situations where candidates would not receive proper overview from firms. They could be viewed as a stereotypical 'Intern' and given tasks such as fetching coffee or printing duties. Some law firms may not offer Work Based Learning placements, establishing a detriment to potential candidates whom are interested in a particular firm. The comparison with training contracts is also important in that there are already considerably more applicants for training contracts than actual places, and this will be a problem simply transferred to the new structure.

Another dispute to Work Based Learning is that some firms may simply continue offering Vacation Schemes and Training Contracts through the idea of "why fix what isn't broken". As we have discussed, the SRA's evidence for necessity of change is poor and many firms are happy with the quality of candidates that they take on and so would see no reason to adopt this new system if they do not have to. Depending on the SRA following up this proposition, there may be no obligation for law firms to offer Work Based Learning, in substitute of Vacation Schemes and Training Contracts, making the new SQE useless.

## Response to question 2a: to what extent do you agree or disagree with our proposals for qualifying legal work experience?

### **4/10 We have several reasons for dissent.**

Whilst the greater flexibility of the qualifying work experience aspect of the proposals is to be welcomed, if the SRA is to achieve its aim of raising solicitor standards then it needs to ensure that qualifying work experience placements offer meaningful instruction and preparation for budding-practitioners. We would encourage the SRA to provide more information about what types of experience will qualify. Furthermore, we agree with proposals to set a minimum length on placements of three months or a minimum amount of hours which are to be completed. Some degree of continuity is required in order to ensure that candidates acquire the necessary skills from their placements.

#### Need For Transparency

There needs to be transparency as to the recruitment processes for legal work experience to ensure a level playing field between candidates. Work experience is invariably easier to access for those with contacts in the legal profession, but it would be unjust to allow placements secured through personal contacts to class as qualifying work experience placements. In order to fully agree with the proposals, we would need to see some attempt by the SRA to limit this.

#### Protection Against Exploitation

Likewise, we are worried that candidates may be exploited by firms in their search for qualifying work experience. We do not want to allow the situation where firms are able to recruit candidates working towards SQE 2 and give them lengthy, unpaid internships rather than employing them as salaried paralegals. This would leave candidates in an unenviable situation: needing the work experience in order to qualify, but deserving to be paid for the type of work they do. We suggest that the SRA should work to restrict the potential for this by stipulating that work experience has to be salaried in order to be qualifying. However, this should not restrict the potential of meaningful pro-bono work to count as qualifying work experience.

#### Flexibility And Stability

Finally, we believe that by maintaining the training contract route into the profession risks creating a two-tier qualification system, where those with training contracts are favoured over those taking a more flexible approach. The training contract route provides stability to the profession, in that those qualifying through a training contract will likely have a job with the firm which is training them. The question could be asked whether there is really a benefit to having more qualified solicitors if there are not enough jobs? Would it not be better to take inspiration from the Irish system of qualification, where in order to train as a solicitor you have to have already secured a training contract? Such a system may create a more sustainable profession, rather than a glut of qualified, but unemployed, solicitors in the job market.

Lawyers work extremely hard and are often rewarded with appropriate salaries to reflect this. Although an unpaid internship is an invaluable way to gain experience, this is likely to abolish the newly qualified salaries at law firms. This will be unfair to those fortunate enough to secure a job at a firm after their internship because their salary will be at the mercy of the firm. For such a demanding career, there needs to be an incentive to work hard. If newly qualified salaries are removed, applicants may simply find a “less demanding” career that will pay around the same salary. This reason may reduce the number of students wanting to become lawyers.

It, again, seems illogical for law firms to take on unpaid interns when they do not have the required skills. There appears to be a “learn on the job” attitude which will potentially increase the risk of professional negligence claims. The proposed exams are designed so that applicants reach the required minimum standard. This is simply not good enough. Our profession should pride itself in taking only the best applicants – those who have consistently performed well throughout their academic careers, secured a reasonable amount of work experience and other experiences that prove good interpersonal skills. Lawyers need to have an excellent grasp of language and be approachable to clients so as to maintain their trust and confidence in them.

#### Funding

Many law firms provide funding for the LPC. There is a danger that this funding will be removed under the newly proposed system. The consequence of this is that some students may be priced out of a career in law. This is unacceptable. There should be no implication that only those who can afford to sit the exams can become a lawyer. It is unfair to ignore talented students solely due to socio-economic reasons.

#### Crash Courses

There is also a concern that various institutions, not necessarily academic institutions, will impose courses to help applicants pass the newly proposed exam. This is comparable to the “crash-courses” offered by driving instructors. Institutions may very well teach students how to pass the exam quickly but they will not have the depth of knowledge that a traditional law graduate will have, for example. As mentioned earlier, there is a danger of more claims of professional negligence as students will have the bare-minimum knowledge needed for the profession.

Overall, whilst we agree that the new proposals for qualifying work experience have the potential to offer a good alternative to the traditional training contract model, which will suit some candidates, we would need more information to be convinced that qualifying work experience will help maintain or boost standards in the profession.

Response to question 2b: what length of time do you think would be most appropriate minimum requirement for workplace experience?

**7/10 We agree with the proposal that the requisite period of 18-24 months (full-time), but longer for part-time, should be installed as the appropriate minimum requirement for workplace experience.**

We believe this will give people sufficient training and expertise to become a competent solicitor. In addition, experience should be across multiple areas to provide trainees with a broader experience and to allow them to gain a better understanding of the firm and the law in general. We further believe that for the experience to be worthwhile, an individual should spend at least 4 months in one area at one firm before the work experience should be valid. We believe that there should be at one 'seat' of this 4-6month period should be in non-contentious and contentious areas of practice. As a result of these recommendations, we believe that the traditional training contract, lasting 2 years, actually performs this role well.

There is currently no minimum time stated for a workplace placement. For the assurance of workplace protocol and for students to have a real grasp of the practical aspects of being a lawyer, it is suggested that the minimum period is 18-24 months.

# Response to question 3: to what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

## **2/10 We do not agree with the proposal. We have six grounds for dissent.**

1. Non-law students
2. Exemptions
3. Increasing the types of work experience
4. No set fee
5. Adverse effect from expert panel
6. Data on education and training providers

### Non-law students

Firstly, we take issue with non-law students who wish to complete the SQE without a real grasp of legal knowledge as, it appears from the consultation, they would not need to take the current GDL. This, as discussed in question 1, means candidates could rely on cramming and fluking to pass the computer based examinations. We predict that by removing the GDL, this could mean that a post-graduate course that may be shorter or more intensive will need to be put in place to give candidates a basis of legal knowledge. This will be extremely expensive for students and contradict the SRA's aims of consistency by not having the strict regulation the GDL possess nor achieving the competency as they will be aimed at passing the test, not imparting the legal knowledge.

### Exemptions

Secondly, there are also potential issues with exemptions, in relation to qualified EU citizens. Though this will be discussed more thoroughly in relation to question 5, we wish to mention it here as by making qualified EU citizens exempt they will not need to undergo any preparation before being fully qualified. We fear that the SRA are contradicting their own ideas of standardisation as degrees from other countries will be very different from that of an English degree hence there will be differing consistencies in preparation received by solicitors.

### Increasing other types of work experience

Thirdly, we take issue with increasing the types of work experience. This was discussed in question 2a and b, however we think it is relevant here as well. The SRA are relying on work experience for preparation to SQE 2 yet they have provided no clear structure to what a provider of said work experience must provide for the candidate. This could result in providers taking different interpretations on how advocacy or client interviews should be taught and addressed hence the SRA lose its prime objective of achieving this coveted consistency.

We also agree with the statement made by the Cardiff and District law society in the initial consultation that "no-one wants a return to the days when trainees were perceived as photocopying

slaves or someone to make the tea.”<sup>5</sup> Lack of information in what is required by providers for SQE Prep 2 may result in firms taking a much more laid back approach hence affecting the consistency in the quality of the preparation for SQE2 by no fault of the candidate. To some extent, firms could exploit candidates who require some experience by using them as a free source of personal assistance hence candidates would not benefit from this experience.

#### No set fee

Further issues, concerning the disagreement of these proposals of preparatory training, are there is currently no exact fee set (at the moment). The fee could possibly be equal to (if not more than) the current fees in supporting the Legal Practitioner Course. This is not practical for students, particularly those who apply to firms who do not fund the LPC, as there would clearly be a financial detriment if the costs outweigh those for LPC. This also ties in with the fact that, as mentioned above and throughout, the work experience element will potentially be unpaid, further burdening students.

#### Adverse effect from expert panel

Alongside this, the need for an expert panel composed of academics and practitioners would be negative for the students undergoing preparatory training and the legal profession as it would equate inadequate regulation of preparatory training. It would lead to a strain on the legal profession, due to the consistent need for numerous legal professionals to be involved, as there are assessments twice per year. The situation would be the same for academics in their teachings. This would inevitably lead to the situation where the teaching that students received would be affected negatively and, in turn, influence their ability in the assessments.

#### Data on education and training providers

The SRA have suggested they would report on candidate performance by reference to prior education and SQE training. They would also allow education and training providers to publish and analyse the data themselves and provide information to contextualise their performance. This is, in short, pointless to regulatory training especially at such an early stage. We recognise that candidates will require information about how to qualify and the range of options which may become available. We believe a number of common routes to qualification are likely to emerge about which we can provide information. Initially, we will publish 'exemplar pathways' demonstrating some, but by no means all, of the ways in which candidates could choose to qualify. The exemplar pathways would be part of a toolkit of resources for candidates to help them navigate their pathway to qualification, understand the choices they have and select the options which work best for them. As well as the exemplar pathways, the toolkit might include case studies, guidance about what good training looks like and questions to ask of prospective training providers.

The SRA do not seem to have addressed the concerns of the BSB when devising their ideas for the new route to qualification. The BSB, in our opinion, have produced a much more efficient route to qualification. To begin with, the vocational stage will be assessed by the institutions, however more

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<sup>5</sup> SRA “Training for tomorrow: Assessing competence. Consultation on a proposal to introduce the Solicitors Qualifying Examination: Consultation response” October 2016

institutions will be eligible to run the vocational stage.<sup>6</sup> This reduces the issues of cost as they will be incorporated into the undergraduate degree, hence will be eligible for student finance. This mirrors the system we employ at Northumbria and ensures greater accessibility to qualification for those who have less financial support.

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<sup>6</sup> Addendum to the BSB's Consultation paper "The Future of Training for the Bar: Future Routes to Authorisation"

## Response to question 4: to what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

**0/10 We do not agree with that the proposed model tests requirements.**

1. Legal knowledge
2. Ethics
3. Level of degree
4. Work based learning

### Legal Knowledge

The first issue we take from this is there is no requirement for a solicitor to have legal knowledge as an individual from any discipline can undertake the SQEs with only “preparation”. This will be extremely expensive for students who have had no experience with law and may find that it is beyond their skills. It also contradicts the SRA’s aims of consistency by not having the strict regulation the GDL possess, nor will it achieve the competency the SRA desires as they will be aimed at passing the test, not imparting the legal knowledge. As mentioned above, students who have not undergone the process of the GDL or a law degree could be lacking in significant analytical and logical skills which will not be picked up from a short preparatory course, or even 2-years work experience.

### Ethics

Secondly, we reiterate that there are potential issues in measuring a candidate’s level of ethics as ethics can be confused with common sense in computer based testing. We believe this to be an imperative requirement of a solicitor. Therefore, written tasks are a more robust and effective measure as they allow the candidate to develop on their answer hence demonstrate a real sense of ethics.

### Level Of Degree

Thirdly, the SRA, have stated the qualification must be “equivalent to a bachelor's or master's degree (such as a level 6 or 7 apprenticeship or a level 6 or 7 professional qualification),”<sup>7</sup>. The SRA appears to be taking the stance that they can improve the profession by introducing a broad exam that anyone, regardless of degree and classification, can sit. To maintain the already very high standard of our profession, it is crucial that there is the imposition of a minimum entry requirement as to ascertain the best future lawyers.

### Work Based Learning

Additionally, we take issue with the proposal of Work Based Learning (WBL), as solicitors are required to achieve work experience, which we support, however this must be of a high quality and

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<sup>7</sup> SRA “Training for tomorrow: Assessing competence. Consultation on a proposal to introduce the Solicitors Qualifying Examination: Consultation response” October 2016

there is nothing in the current report that ensures this will be so. In fact, we consider the opposite to be a much more likely, as law firms will be under no self-driven desire to ensure the student receives a high quality experience. Under the current training contract scheme, law firms dedicated significant resources to training, not least a salary for 2-years employment, with the aim being that the trainee stays at the firm following training and they earn their money back over the work the employee then does. However, under the proposals, there is no such effort that needs to be made by the law firm. They can put as little or as much effort into the experience as they like, which is unacceptable.

## Response to question 5: to what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

**9/10 We agree there should be exemptions offered for the SQE stages. We have two points of consideration.**

1. QLD/GDL/CILEX
2. International qualifications

### QLD/GDL/CILEX

Primarily, it is important to develop exemptions for those who have studied through CILEX or a validated University Law degree as to offer no exemptions for these individuals, increases costs and potentially increases the assessment load on students unnecessarily. We contend that consistency can still be achieved through adapting programme content without forcing students to undertake further exams.

### International Qualifications

We dissent, however, that those who have qualified abroad should have exemption from the SQE stages. This will almost definitely impact on the consistency of solicitors. The law in other countries is very different from that of the UK therefore allowing candidates to enter the profession without legal knowledge of at least a theoretical basis in this country is highly undesirable. In addition to this, with Britain's anticipated exit from the EU, it is unclear what the regulatory requirements will be for EU nationals working in the British legal professions. Exemptions, if any, offered to EU nationals in particular will have to depend on the agreements reached on access to the single market. However, we are concerned allowing any exemption for EU nationals will cause the same issues of inconsistencies that other international qualifications imply.

## Response to question 6: To what extent do you agree or disagree with our proposed transitional arrangements?

**7/10 We agree that, should the proposals be successful, a transitional period is needed. However, we have concerns as to the proposed arrangements.**

We disagree with the arrangements for several reasons. Firstly, it is lowering the standards of solicitors as it will be easier and will not take as long as the traditional route. If there is no requirement to do a law degree, nor the GDL (or such a qualification), both of which are notoriously difficult, then the natural instinct will be to aim for the easiest route into the profession. However, we submit that this 'easiest route' provides the lowest degree of useful practical skills required to actually work in the profession. The SRA wants to address the current problem of inconsistent and variable provider dependent pass rates across the Legal Practice Course and Common Professional Examination; however, as people would be able to apply from any degree they will not have the same legal knowledge and background as law students and so the legal knowledge solicitors have will be inconsistent. We also fear that it will leave many people qualified as solicitors but unable to find a job after they have completed the SQE.

## Response to question 7: Do you foresee any positive or negative EDI (equality, diversity and inclusivity) impacts arising from our proposals?

### Positive EDI Impact

We foresee some positive EDI impact arising from the SRA's proposals. In particular, the greater flexibility provided by the system of qualifying work experience has the potential to open up the profession by allowing part-time working towards qualification. This may help groups such as carers or parents who have commitments which prevent them from qualifying full-time.

### Preference Of Wealthier Candidates

However, the proposed changes may still favour wealthier candidates or those with contacts in the legal profession. Although suggestions to limit the number of resits go some way towards ensuring that there is a level playing field between candidates, there are more pressing issues surrounding the availability of qualifying legal work experience, which will inevitably be easier to procure if a candidate has contacts in the legal profession. Consequently, it is unlikely that the proposals will improve access to the profession and they may even limit it given that work experience is of more fundamental importance in the new scheme than it was in the past. Qualification will be significantly easier for those with legal contacts than for those without. In order to overcome this, it will be essential to make sure that the application process for work experience in firms is structured and transparent. Likewise, those undertaking qualifying work experience should be salaried, to ensure that the system does not favour those candidates who have the resources to work unpaid.

As was raised in the previous consultations, the complexity of the SQE may be off-putting for candidates who do not have contacts in the legal profession. Although the greater flexibility of the SQE may be an advantage, it is also extremely convoluted and it may be difficult for students to understand their options.

### Uncertainty Of Proposal

It is difficult to assess whether the SQE will have any positive or negative EDI impacts without knowing how much it will cost. The SRA is right to identify that LPC fees have risen dramatically and are restricting access to the profession, however the statement in the consultation document that 'we do not expect the cost of the SQE and preparatory training would be greater or even equivalent to this sum' is not very reassuring. If a full year of university-based training is removed from qualification then the cost of qualification should be a fraction of the price, yet the SRA is not guaranteeing that this will be the case. The lack of definite costings is troubling, and the risk exists that students will be getting less value for money than they are in the present system. If the SQE was introduced at a similar cost to the LPC it is hard to see how it would be achieving anything at all.

## Chapter 4: Summary of evidence

We have outlined three broad areas for refusing to implement the suggested changes concerning the SQE. Firstly, there needs to be a fair study conducted, with an assessment as to what the public wants from its qualified solicitors and how this can be implemented into training. Secondly, the study has to show clearly how the desired aims will be achieved as a result of the changes. If the SRA want to have a more consistent training scheme, then they will have to show how the new scheme benefits it with empirical evidence, rather than merely hoping it would be the case. Finally, more information will be required about the specifics of the new proposal before it can be truly considered. Any discussion about changes to training must be centred around the quality provided and the accessibility for students. For example, information regarding whether the work experience element will be paid is crucial when it could lead to a massively detrimental situation for students.

## Appendix: Contributors

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Gemma Foster,

Shannon Richardson,

Jordan Barber,

Jack Cottrel,

Jaxon Hind,

Kyran Brady,

Rebecca Scaturro,

Craig Harvey,

Alexander Noble,

Melody Helm-Stovell,

Juhi Alam,

Beth Richardson,

Georgia Sproat,

Thomas Brittain,

Emma Ward,

Rachel Hunter,

Farah Mukhtar,

Josh Tuddenham,

Carrie Brogden

## **A new route to qualification: the Solicitors Qualifying Examination (SQE)**

Response of the Junior Lawyers Division of the Law Society to the SRA consultation: A new route to qualification: The Solicitors Qualifying Examination (SQE).

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The JLD is one of the largest communities within the Law Society with over 70,000 members. Membership of the JLD is free and automatic for those within its membership group including LPC students, LPC graduates, trainee solicitors and solicitors one to five years PQE.

The JLD considers it appropriate to respond to this consultation in the interests of its members. Several local JLD groups wished to support our response with an additional statement, which we have appended to this consultation response.

As expressed in our response to the initial SRA consultation Training for Tomorrow: Assessing Competence the JLD is supportive, in theory of a consistent centralised standard and recognises that there are limitations with the current system of education and training. The JLD also acknowledges that the SRA has taken into consideration responses to the previous consultation and that this is reflected in the revised format of the SQE. The JLD is pleased that the revised proposals are more aligned to the current system of training, the system that the JLD believes inspires confidence in the profession with consumers.

In our response to the Training for Tomorrow: Assessing Competence consultation ('the first consultation') the JLD raised concerns about social mobility which have not been fully addressed by the SRA. There is still a lack of information in relation to costs of the SQE, preparatory costs for the SQE and funding. The JLD ask that the SRA provide this information without delay.

The JLD has considered each question asked by the SRA in the Consultation and provides its answer below.

The JLD also annexes to this response a response prepared by the Leeds Junior Lawyers Division.

**Consultation question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

The JLD is pleased that the SRA have made significant changes to the original format and content of the SQE and have taken on board the concerns raised within responses to the first consultation. The JLD is also pleased that a limit has been placed on the number of times a candidate can re-take the SQE.

As previously expressed, the JLD is supportive, in theory, of a centralised examination being regulated by the SRA, which would ensure that all aspiring solicitors are assessed to a consistent standard and achieve the same outcomes. The JLD recognises that, presently, there is significant disparity in the content of courses/teaching and assessment practices throughout England and Wales.

The consultation document notes at para 112 that it is likely that some firms will continue to offer traditional training contracts as before. This could lead to a multi-tiered system where the SRA's current concerns about curricula-based inconsistencies are substituted by firms and/or clients having concerns about solicitors having inconsistent routes to qualification. The JLD would be concerned that employers may see the revised route of combining experiences from more than one employment or period of legal work experience as inferior to the "old" route and therefore exercise a preference for NQ solicitors who have undertaken a traditional style period of training. This could lead to those who have satisfied the work experience element of training through multiple employers being disadvantaged.

Paragraph 42 sets out the eight outcomes that the SRA believes the SQE proposals could achieve. The JLD believes that introducing a central curriculum/assessment methodology could achieve six out of the eight objectives (i.e. with the exception of those relating to the training contract bottleneck and commitment to expensive training). Although the JLD agrees with the SRA's aspirations to lower the costs of training and reduce the 'training contract bottleneck', there is no evidence that the current proposals to change routes to qualification will be successful in achieving this. Instead, the JLD would be concerned that as a formal training contract is not required and a wider range of work experience will count towards qualification, the bottleneck will instead move to NQ positions where there is potentially a surge in qualified solicitors, many of whom (particularly those who have undertaken training not resembling the training contract) will be considered to be second-tier candidates. As such, aspiring solicitors are left back where they began, having incurred a vast amount of debt to pay for education and preparation for qualification but struggling to find a job.

As paragraph 42 notes, the way in which solicitors qualify underpins the reputation of solicitors in England and Wales throughout the world. The JLD believes that introducing a central curriculum/assessment could bolster this already strong reputation.

Without prejudice to the above, the JLD is supportive of the revised format of the SQE stage 1 examinations, save for the use of multiple choice questions (MCQs). MCQs provide prompts for candidates to select the correct answer and we are concerned that, as the SQE is the only examination a candidate must pass to become a fully-fledged solicitor;

this could be perceived by consumers and recruiters as simplifying the qualification process. The JLD does not believe that MCQ's are a robust method of assessment. However, the JLD does not object to EMQs being utilised as they are in medicine. We feel that this is a more robust method of assessing candidate's capabilities and will test a candidate's knowledge more effectively than traditional MCQ's whilst still providing a more cost effective means of assessment than essay based questions.

In addition, the JLD notes that, in the course of discussions during the first consultation period, the SRA confirmed that its consumer research (as well as discussions with members of the profession) demonstrated that there was a great deal of support for un-flagged ethical questions throughout all examinations. We could not see specific references to this in the assessment specification but consider that the inclusion of un-flagged ethical questions would be an important improvement to current system. Ideally, all aspiring solicitors should have a thorough understanding of the SRA code of conduct before working in a law firm.

Having considered the SRA's revised proposals, the JLD is satisfied that the SQE stage 2 has the potential to adequately assess candidate's skills. However, as the SRA has recognised, many candidates will not have experience in the 'practice contexts' that they may pick from in the SQE stage 2 (Criminal Practice, Dispute Resolution, Property, Wills and the Administration of Estates and Trusts and Commercial and Corporate Practice). Whilst the JLD appreciates that part 2 is not designed to assess knowledge in a particular area it would be difficult for a candidate with no experience of that area of law to pass an exam, even based solely on legal skills, without prior experience. Having considered the revised proposals, which are clearer than the first consultation, the JLD does not object to candidates being able to select the practice contexts in which they are examined for the part 2 exams. The JLD considers that this will enable candidates who have considerable experience in a particular area of law to use that experience towards qualifying as a solicitor.

The topics proposed by the SRA are limited and the JLD would come to the SRA's expansion of the practice contexts proposed to enable candidates to demonstrate the skills they have developed in those areas.

However, the JLD does not agree with the removal of the requirement to be examined in both a contentious and non-contentious context. Whilst the JLD appreciates that the purpose is not to test a candidate's legal knowledge, the JLD believes that there are skills developed in contentious roles that are of significance for those acting in a non-contentious role when they qualify. For example, it is necessary for a property solicitor to be able to spot the signs of a potential property dispute and know how to effectively handle that situation. Further, if a litigation client has been referred to a non-contentious solicitor to complete related work it is important that the non-contentious solicitor has sufficient understanding and skills in relation to the litigation work to be able to effectively manage that client and act in their best interests.

Furthermore, a solicitor's training is what sets them apart and awards them the 'gold standard'. This training has always encompassed at least three different areas of law and contentious and non-contentious practice. This inherently recognises the breadth and depth of understanding which is gained by practising different areas of law.

The JLD are alive to the challenges posed to the SRA of adopting a qualification process which appeals to as many audiences as possible. However, it is submitted that in this instance, the desire for some firms to not have to send their trainees on a two week litigation workshop is vastly outweighed by the benefit gained by trainee solicitors in terms of their personal developments and careers, and not to mention consumers. Not all trainees will train in these firms and not all consumers will use these firms.

The JLD is aware that smaller firms are able to arrange secondments for their trainees and that these arrangements have continued successfully for a great number of years, therefore there is no great evil to be addressed here. It is also, in the JLD's view, an unnecessary relaxation to the requirements of the content of the period of recognised training when greater flexibility is already proposed.

In relation to the publication of SQE results, the JLD is supportive of candidates being provided with their individual results.

The JLD will further address the work experience aspect of the SQE later in the consultation.

**Consultation question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

As previously expressed, the JLD agrees that a prescribed minimum is necessary before qualification - such as via the current system of a period of recognised training ("PORT"). The JLD is supportive of 2 years' work experience and suggests that a minimum of 3 months consistently in each role would be appropriate.

The JLD feels that the SRA's proposal for the work experience element to comprise of no more than 4 separate placements in different employers restrictive. The JLD would support a maximum of 6 separate placements to enable those who have had the opportunity to work in several different firms/areas of law to use that experience to contribute to the qualifying work experience element of the SQE. This is comparative with the current maximum number of seats a trainee solicitor would take during a PORT.

However, the JLD wishes to stress that the work experience element must not simply be "time spent" in an organisation. The quality of the work undertaken (including during short periods) is more important in ensuring that the candidate is equipped with enough experience to discharge the huge responsibility which will be placed on them when they qualify. As such, the JLD would welcome the release of guidance for individuals and employers as to the kind of work which "trainees" should be undertaking. The JLD is concerned by the idea that an employer merely has to confirm that an individual "had the opportunity" to gain legal skills – this is something which most legal teams could comfortably confirm, without them having to take any responsibility for the quality of the work delegated to an individual or the level of supervision and training which they are given. Further, this statement does not assist other employers (seeking to provide an additional training placement or indeed an NQ position) with assessing the experience obtained by an individual or their training needs moving forwards. Instead, the JLD suggests that a form to be completed at the end of a placement which includes not simply the amount of time the individual has spent there, but (for example) a statement that the individual "gained experience in..." with a checklist of the various skills which the individual should be developing ahead of their SQE stage 2. We consider that this would not be onerous on employers; indeed, it would alleviate concerns that the last employer at the end of the two years would effectively have to "sign off" on a previous employer's training.

The JLD notes that no information has been provided in relation to the expiration date for the work experience element. How historic can the experience be? Is there a requirement that the experience is gained within a certain period immediately preceding the taking of the exam?

The JLD would also like further information about the SRA's proposals for candidates whom already satisfy the work experience element at the time the SQE is introduced (currently proposed for 2019). Any proposals must take into consideration absences as a result of long-term illnesses and parental leave.

**Consultation question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years. However, the JLD would be concerned with what would happen should a candidate fail their part 2 exams towards the conclusion of the two year period of training. The JLD believes that there should be scope to extend the period of training if necessary to assess whether a candidate is competent or if the training provided is insufficient, given that the SRA will not be monitoring or regulating training providers.

However, the JLD is also concerned about trainees being "held to ransom" under the new system. We consider it extremely unlikely that any individual would undertake the SQE stage 2 (and thus be admitted as a solicitor) without the support of the organisation in which they work, particularly if they wish to continue working at that organisation. Under the current system, some individuals spend years as paralegals in one organisation in order to obtain a training contract which never materialises, but are worried that moving will mean their time has been wasted. Our concern is that the new system risks individuals being "stuck" as a trainee beyond two years until their firm is willing to support entry into SQE stage 2. As such, the JLD would like to see some guidance indicating that candidates would take SQE stage 2 at the end of their two years' experience, but that if they fail, the work experience can be extended.

Furthermore, it is important that the candidate is actually trained as opposed to being employed to undertake administrative work under the guise of a period of training.

### **Consultation question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Very little information is provided about the SQE preparatory course within the consultation. The JLD invites the SRA to provide further information about the preparatory course. At present it is unclear whether a preparatory course of sorts will be a mandatory requirement. No information has been provided in relation to the cost or methods of funding the course.

The JLD is unable to fully respond either agreeing or disagreeing with the SRA's proposals to the preparatory course as there are huge gaps in the information provided to date.

However, the JLD wishes to point out that the SRA identified in the first consultation that there are inconsistencies in the way in which the LPC is delivered, with no way of telling which courses or providers are better, and the "brand" of some providers being a deciding factor. It is extremely likely that a number of rival preparatory courses will arise and the JLD is of the opinion that in order to fulfil the Regulatory Objectives, the SRA should have some oversight of what is being delivered, and that such courses are marketed responsibly to aspiring solicitors and we ask the SRA to bear this in mind as it continues to develop its proposals relating to preparatory training. We wish to see a requirement for courses/providers to be approved by the SRA and consider that publishing the results of such providers will be extremely helpful in assessing quality and value for money.

Although the JLD is unable to provide a complete response, the JLD is particularly concerned (due to the lack of information provided regarding costs and funding options) about social mobility. If reasonable funding options are not made available, candidates that are unable to afford the preparatory course may opt for the SQE only, which is likely to result in lower marks. The JLD appreciates that the marks will not be published, but as the SRA has pointed out within the consultation (at paragraph 94); recruiters and employers would be free to ask candidates for their SQE scores. There is no doubt that such a question will be part of the recruitment process and candidates will feel obliged to disclose them. This runs the risk of candidates from lower socio-economic backgrounds, who could not afford to undertake the preparatory course, being at a disadvantage, even though the SRA has deemed them (through the SQE) to be deserving of the title of solicitor.

The JLD is particularly worried about how prospective students are expected to fund the course, in addition to also funding the cost of the examinations. Without such funding it is likely that students from lower socio-economic backgrounds will be disadvantaged as a result which could lead to a two tier system whereby candidates are considered to be preferable as a result of having undertaken the preparatory course, or may obtain better results as a result.

It is important that candidates are "firm ready" after taking their SQE 1. As such, the JLD believes that conduct and ethics questions should be included in the SQE 1 examinations to ensure that candidates do not pose a risk to firms or consumers when they commence their training. At present, candidates undertake these elements of their education when they undertake the LPC and are assessed as competent in them before undertaking work. There is therefore a large gap in knowledge and understanding in the currently proposed system that needs to be addressed. The JLD believes that these questions should be replicated in

the SQE examination to ensure protection for consumers and to prevent trainee solicitors inadvertently breaching the code of conduct.

**Consultation question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

As expressed in our response to Question 1, the JLD's view is that MCQs are not a thorough and robust method of assessing knowledge. The JLD invites the SRA to replace MCQs with EMQ's. This would enable the SRA to examine delegates on the whole curriculum without providing prompts. The JLD is concerned that the use of MCQ's as proposed could lead consumers to perceive that entrance to the profession is being reduced to the ability to spot the correct answer in a quiz like setting.

Subject to the above, the JLD is, in principle, supportive of the revised model of assessment.

At present, one of the issues resulting in the lack of consistency of the supervision and training of aspiring solicitors is a failure by the SRA to regulate training contracts. The JLD has previously expressed concerns in relation to this and has been advised the SRA do not currently have the resources to regulate to a sufficient standard. The JLD is therefore concerned that the SRA is unlikely to have the resources to monitor the work experience element of the model and invites the SRA to provide further information regarding the proposed regulation of the SQE and the work experience element, given that it is now essential to a candidate's ability to pass stage 2 of the SQE.

The JLD appreciates that the intention is to ensure a consistent standard across the profession, however the way in which this is managed has to ensure that public perception of the profession remains high, together with confidence in the solicitor's profession itself.

**Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

The JLD's understanding of the SRA's motivation behind the SQE is to ensure a consistency of high standards of solicitors throughout England and Wales. To ensure this consistency the JLD believes that all aspiring solicitors should sit the SQE.

The JLD believes that the starting point should be that anyone wishing to become a solicitor in England and Wales would need to pass the SQE (including overseas lawyers and apprentices).

The JLD's position is that there should be no exceptions to SQE part 1. However, if a candidate can prove that they are competent in a skill to be assessed as part of SQE stage 2 then the JLD would not be adverse to there being an exception, assessed on an individual basis. The candidate must be able to provide contemporaneous evidence that they are competent in that particular skill and should therefore be exempt from undertaking that particular aspect of SQE stage 2. For example, a CILEX member with a number of years of experience should not be required to undertake some SQE stage 2 exams. A candidate who is already employed as a qualified lawyer should already have the key skills that SQE stage 2 assesses.

**Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

As previously expressed in our response to the first consultation, the JLD's position is that if the motivation for the SQE is quality then its implementation should not be rushed.

August 2019 is too soon as firms may have already started the recruitment process for 2019.

Further, education providers need to be given sufficient time to draft and implement their courses. The SRA has confirmed that preparatory courses will be widely available which reiterates this issue.

In addition, the SRA should be mindful that deciding to become a solicitor (or indeed a barrister) is a big decision for many individuals and is made many years in advance. The JLD has already been approached by students who do not know whether they should enrol on the GDL or LPC, as there is so much uncertainty at the moment. The SRA wishes to give individuals the option to choose which path they follow during the transitional arrangements, but students need time to understand what the new system entails so that they can make this decision which, in either case, will involve a huge commitment of time and money.

Detailed information needs to be provided to undergraduate law providers, as effectively the 2016 intake (who would be due to finish their degree in 2019/2020) will likely be required to undertake the SQE. The SRA have previously stressed that the SQE is not the same as the LPC and therefore students have potentially wasted a year studying for an unnecessary qualification. They will not have been given the opportunity to undertake a course with a 'SQE preparatory element'. Many of students from the 2016 intake will therefore need to take a preparatory SQE course or take the SQE independently.

The SRA also need to be mindful that a number of aspiring solicitors who have opted for a combined LLB and LPC (4 year undergraduate course) will have already enrolled on this course.

The date that the SQE comes into effect should not be confirmed until the consultation process is complete – and only at that point, should a realistic implementation timetable be proposed. Having an implementation timetable already in place undermines the credibility of the consultation process.

In terms of the post-implementation evaluation of the SQE mentioned in paragraph 140 of the consultation document, the JLD believes that it should be measured firstly in terms of its direct impact in terms of alleviating the problems which the SRA believes warrant its introduction (where these are measurable) – namely the cost of training the 'training contract bottleneck and consumer experience'. Secondly, any indirect on social mobility and aspiring solicitors with Equality Act 2010 protected characteristics should be monitored.

**Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

The SRA has confirmed within the consultation that further research will be undertaken into EDI and publish a final Equality Impact Assessment. The JLD looks forward to reviewing that information in due course.

The JLD asks that the SRA publish information about the cost of the SQE and any preparatory course. The JLD also asks that the SRA approaches funding providers to confirm the funding options available for the SQE and any preparatory course to ensure that those from a lower socio-economic background are not disadvantaged from the introduction of the SQE.

Although the SRA has not yet disclosed cost/ funding information, it was confirmed that the revised route to qualification would be cheaper than the present route. We are concerned that this is not correct. Under the proposed format aspiring solicitor would need to undertake a degree (or equivalent) and it is very likely that all SQE delegates will opt for a preparatory course (subject to the availability of funding) to give them the best possible chance of passing, particularly in the early years of the assessment. The SRA believes that some universities will look to incorporate the SQE preparation within the existing three year law degree. However, this is entirely dependent on the institutions making this decision and even if they do, the candidate who has chosen the 'cut-price' option will potentially be less attractive to firms as they do not hold a 'traditional' LLB.

There is also the concern that aspiring solicitors will be exploited during the work experience element. A recent JLD survey on unpaid work experience showed that a large number of respondents had worked for period in excess of 2 years unpaid. Under these proposals, there is greater scope for trainees to work for periods without pay on the understanding that they are gaining experience that will enable them to subsequently qualify as a solicitor. This would result in only those of independent means being able to afford to qualify.

The JLD is therefore concerned that the cost of qualification will remain the same or be more expensive. The JLD is also concerned that the work experience element will plunge aspiring solicitors into further debt, as those from less privileged backgrounds will be forced to rely on credit cards and overdraft facilities.

The JLD also queries whether resources will be provided within the cost of the SQE or whether candidates are expected to fund study resources in addition to the as yet unknown cost of sitting the SQE.

Finally, the JLD wishes to highlight that at present, LPC providers are in a position to highlight to students the SRA's character and suitability test to ensure that any potential issues can be dealt with in the most appropriate way in advance of the student undertaking formal work experience and interacting with clients. It is important that the SRA considers when prospective candidates will have to consider the character and suitability test so as to ensure that they are not exposed to clients when they do not meet the required standard as there is a real possibility that work experience which qualifies as formal legal work experience could be undertaken at an early stage, prior to commencing any SQE preparatory course.

## **Annex - Response from the Leeds JLD:**

The Leeds branch of the Junior Lawyers Division of the Law Society of England and Wales (the 'Leeds JLD') represents Legal Practice Course ('LPC') students, paralegals who have completed the LPC, trainee solicitors, and solicitors up to five years' PQE. With a membership of approximately 200 individuals, it is important that we represent our members in all matters likely to affect them either currently and / or in the future. The proposals surrounding the Solicitors' Qualification Exam ('SQE') will have a significant impact on junior lawyers. Hence, we wish to make this additional statement as part of the national Junior Lawyers Division's submission on the initiative. We note the changes that have been made to the proposals since the initial consultation and are pleased to have the opportunity to contribute further to the discussion. We are generally supportive of the notion that all solicitors will have undertaken the same final assessment for entry to the profession.

Firstly, although it does not appear that there will be any insistence on preparatory 'vocational' training, we consider that current providers of the LPC or LLB will simply amend their courses to cater for the SQE. This will leave students with the decision of whether to attempt SQE without having undertaken a preparatory course. We consider that the 'gamble' is being moved from taking the LPC without a training contract to taking the SQE without a preparatory course and/or a qualification job secured.

We note the suggestion that undergraduate providers may adapt their current law degrees to include the Stage 1 exams. However, we would also note that of the many higher education providers in the country, very few chose to adapt their courses to meet the LPC requirements. Furthermore, those that have adapted their courses have mostly done so by extending their undergraduate courses for a further year to effectively include a preparatory course.

The Leeds JLD agrees that a fixed amount of work experience is necessary and considers that a minimum of 18 months and a maximum of 24 months is appropriate. We also suggest that significant part-time work experience should be counted on a pro-rata basis. The exemplar pathways all consider that some, if not all, of the qualifying work experience will be undertaken between Stage 1 and Stage 2. We agree that a maximum length of time between Stage 1 and Stage 2 is appropriate. We would question whether it has been considered whether Stage 1 and Stage 2 could be taken very close together, perhaps for those who have already completed a significant amount of qualifying work experience. We do however consider that there should be a time limit as to when work undertaken prior to Stage 1 can no longer count.

We consider that August 2019 may be too soon to bring into effect the new proposals. There will be a number of firms who have already begun their recruitment processes for 2019 by the consultation end date. Students who have begun their degree in September 2016 could be the first graduates to be able to take up the opportunity. Anecdotally, we are aware of concerns amongst the undergraduate law student body that insufficient information is available. Information needs to be circulated at an early stage to enable potential candidates to choose the right route for them. If an obligatory preparatory course will no longer be required, this will need to be made clear early on in their higher education.

Finally, the Leeds JLD is concerned that the SQE is being considered somewhat in isolation from other suggested reforms to higher education. We also note other SRA proposals whose currently uncertain outcome may impact on the SQE. We are concerned that there are areas which are not addressed in the consultation; though appreciate that these may be reserved for a later date. There is very little clarity in relation to costs, which is extremely concerning for its potential impact upon equality and diversity. When viewed in light of recent proposals for a 'three-tier' system for university fees, the additional cost of the SQE and any preparatory course is particularly worrying.



The Law Society

**A new route to qualification:  
The Solicitors Qualifying Examination**  
Response of the Law Society of England and Wales  
December 2016



## **A new route to qualification: The Solicitor's Qualifying Examination**

### **A response from the Law Society of England and Wales**

**December 2016**

#### **Introduction**

The Law Society ("The Society") is the representative body for over 170,000 solicitors in England and Wales. It presents the policy of its Council made on behalf of the solicitors' profession as a whole, to regulators, Government and others. It also works closely with stakeholders to improve access to justice for consumers. The Society welcomes the opportunity to comment on the SRA's revised proposals for the Solicitor's Qualifying Exam.

We are glad to see that this consultation seeks to address many of our concerns from the first consultation, which were echoed by many in the profession and other stakeholders who responded to the first consultation. Particularly welcome are the proposed inclusion of a degree-level qualification and two years' work-based training in all routes to entry. These are key elements which contribute to the robustness of a solicitor's competence and the international respect that England and Wales enjoys as a jurisdiction.

#### Centralised Assessment

The Law Society is supportive in principle of the SRA proposal for a centralised assessment for solicitors entering the profession. In our view, this centralised assessment must meet two key aims. First, the level must be set appropriately, so that the introduction of this centralised assessment does not dilute the standards required of new solicitors. It must therefore test those skills that employers and their clients need, while anticipating the future needs of the profession and ensuring that those who qualify are of an equivalent level of competence to those from competing jurisdictions. Secondly, it is important that the solicitor profession continues to be accessible to applicants from a diverse range of backgrounds, reflecting the makeup of our society. In that context, it is important that the new arrangements address any potential barriers to applicants, especially those from non-traditional backgrounds, seeking to join the profession.

#### Diversity

The Society, like the SRA, wants to see people from all backgrounds being able to enter the profession based on merit and, in that context, welcomes the way in which the revised proposals create the potential for multiple ways of joining the profession. The SRA's suggestion to set out clear pathways into the profession will go some way towards widening access by providing better information. The Society welcomes the SRA's proposal to develop a toolkit to enable potential entrants to the profession to make informed choices about which route may be best for them. It will be important to ensure that this toolkit is communicated widely to schools, universities and careers advisers. The Society has a role in promoting information on how to enter the profession, and this is something on which we would be happy to work with the SRA.

## Concerns

Having stated our support for the essence of the SRA's proposals, The Society has some areas of concern. Notwithstanding our support for the flexibility implied by the SRA's proposals, it is clear that some potential employers will continue to regard candidates who qualify through more traditional routes as preferable to those who take newer, potentially shorter routes. Employers may take longer to adjust to the new system, especially in the earlier years and we think that any SRA toolkit should make adequate provision to ensure that candidates and employers are fully informed.

It should also be made clear in any guidance that choices made at an early stage of education and training may adversely affect their ability to move into another legal profession, such as the Bar. In the interests of those considering a legal career but with no strong view as to which branch to enter when beginning on their path, it is essential that the SRA and the BSB work together.

## Apprenticeships

The Society sees that there is room for misunderstanding regarding the requirements for applicants seeking to enter the profession through the new solicitor apprenticeship route. Whilst this apprenticeship is set at degree level, the award of a degree is not required through this route, albeit many providers will include one in their courses, which may raise questions about the apprenticeship route. Whilst we understand that this is not a matter for the SRA alone, we would urge the SRA to work with Government to ensure, and robustly demonstrate to candidates and employers, that apprenticeships are at least equivalent to degrees. Otherwise there is a real risk that the solicitor apprenticeship route could be undermined.

## Funding

Finally, the Society has a concern that students may not be able to access funding for either the new assessments or the preparatory courses for them. LPC students can currently apply for graduate loans to cover the costs of their courses. It is critical that the SRA ensures that similar loan funding will also be available to cover the cost of both SQE preparation and assessments. The changeover to the new system must not inadvertently result in a new financial barrier being imposed, whereby candidates cannot access loan-funding for the SQE assessments. Such a financial barrier would inevitably impact most on individuals from lower income groups, with a negative effect on diversity and social mobility.

None of these concerns detract from the Society's underlying support for the SRA's proposal. If the potential information and financial barriers are addressed, then these new routes into the profession have the potential to widen access. At the same time, the SQE has the potential to provide essential assurance that the standards attained at point of entry to the profession are equal and to open up additional routes to qualification.

## **Question 1**

### **To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

The SQE, now that it is underpinned by essential legal education and training in the form of a degree level qualification and two years work-based learning, is far closer to being a robust and effective measure of competence than previous proposals. The proposals for both a limit on the number of years that will be allowed for the completion of all elements of the SQE, alongside a limited number of retakes, are welcome and address some of The Law Society's previous concerns about the robustness of the SQE.

The SRA move to awarding candidates either a pass or a fail is also welcome. The SQE is designed to assess competence, in line with the Competence Statement for Solicitors, and this is therefore an appropriate way of grading candidates.

It is essential to the reputation of the SRA in particular and to the profession in general, both domestically and abroad, that the SQE assessments are both reliable and valid, and do what they set out to do. The data generated to show the reliability of the assessments should be published, analysed and evaluated to determine the success of the SQE. The SRA should publish indicators for success against which these evaluations can be measured and the process must be open and transparent to ensure the trust and understanding of the profession. This will then aid the SRA in using the SQE to achieve the aims for aiding diversity in the profession that they set out at the beginning of this process. Assuring to the satisfaction of all stakeholders that standards of entry to the profession and further diversity within and access to the profession by demonstrating that the same standards can be achieved through differing routes.

The consultation states that an evaluation will take place after the introduction of the SQE but data gained in the testing period would provide useful assurance to stakeholders about the quality of the process as the SQE is launched. A timetable for the evaluation and details regarding the measures for success and how these will be evaluated would be welcomed.

There are many stakeholders, particularly those with involvement in the early stages of legal education, who are uneasy about the introduction of a multiple choice assessment in SQE 1, which may struggle to adequately assess these complexities. The introduction of these assessments must not result in a reductive assessment as this could have the unintended consequence of adding pressure to those teaching to reduce their curriculum to what is covered in the assessments.

Concerns have been raised by some stakeholders regarding the contexts for the SQE 2 assessments, that candidates will not be required to be assessed in both contentious and non-contentious practice areas. The Law Society understands the reasoning given by the SRA, that firms have struggled to provide workplace experience in both contexts, that solicitors rarely move between contexts once they have finished their training and that some of this will have been covered by the SQE 1 assessments. However, it is important to recognise that solicitors have rights of audience awarded at point of qualification.

There is clearly a tension between pragmatism and the need to adequately assess the skills that a solicitor must be able to demonstrate but the Law Society encourages the SRA to look again at this issue as the current proposals fall short of the ideal.

## **Question 2a**

### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

The Law Society supports the requirement for a fixed term two years of work-place experience prior to qualification and welcomes the agreement from the SRA that this is "an essential part of becoming a solicitor". Two years training is key to ensuring that solicitors are of an adequate standard when they enter the profession. With the removal of the legal practice course (LPC) it is likely that trainees will be less well prepared when they commence their training than they currently are. Therefore the two years will be doing all it currently does, as well as making up the expected shortfall in skills for future trainees.

It is important to maintain the involvement of a supervising solicitor. Requiring the supervising solicitor to attest to having provided adequate and appropriate opportunities for their trainee to have acquired certain competencies goes some way towards ensuring the quality of the placement, although the Society would prefer to see a duty placed upon the employer to provide adequate training in preparation for the SQE 2 assessments. This will also provide some assurance to trainees that they will not simply be used as a form of cheap labour, without any duty to be adequately trained.

Providing a toolkit for employers will also enable providers of the work-place experience to see what must be done and in what way, without much of the current ambiguity that exists around the training period and what 'good' training looks like.

A flexible approach to gaining two years of work-place experience is, in principle, a positive step as it enables applicants to seek diverse and varied learning opportunities as well as giving employers the flexibility to offer shorter periods of training without concern that they will not be able to cover all of the competencies within their practice. It remains to be seen how this will work in practice and how willing employers will be to take applicants on for shorter periods of time as there would inevitably be a settling in period with any new employer which may impact on the usefulness of shorter placements.

The proposals to limit the number and the minimum length of placements are essential. The Society supports a minimum length of three months for any placement and a maximum of four placements overall. These requirements provide some flexibility, whilst ensuring that a trainee has completed at least one substantial period of work-place experience in a stable environment under one supervising solicitor. The SRA should be able to apply flexibility in enforcing this requirement so that training placements which fall a few days short can still be counted where they are of value, or where the period has been over a longer period but not consecutive days, such as experience gained in a law clinic whilst studying. Work experience must be at the right level to enable trainees to gain the necessary experience to achieve the competencies. Guidelines as to what constitutes appropriate training should be produced to ensure that organisations are able to meet the standard that will benefit their students and trainees. A longer period in one place will enable a trainee to gain in-depth experience that is more likely to ensure this.

The SRA's guidance should clearly set out that work-place experience is essential preparation for the SQE 2 assessments and that the majority of the required experience should be completed prior to sitting these assessments. If this is not the

case then the SQE 2 may be judged as having failed in its aim of being an assessment of the skills learnt during this period.

## **Question 2b**

### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

The Law Society supports retaining a two year period of work-based learning, as is currently required. The Global Competitiveness Report<sup>1</sup> carried out by the Society in 2015 showed that this substantial period was valued domestically and one of the key reasons for the good reputation of England and Wales solicitors internationally. Compared to overseas jurisdictions, England and Wales already has shorter formal education and training requirements.

It is essential to ensure that newly qualified solicitors are familiar with the workings of the business of law, the work environment and relationships with other professionals, as well as having had ample time to develop and demonstrate their competence at the range of skills required. The two years' training contributes to assuring that this is the case, especially as candidates will most likely no longer undertake the Legal Practice Course.

The two years training is particularly important if the SRA follows through on the proposal to alter Rule 12, contained in their consultation this year on 'Looking to the Future: Flexibility and public protection'. In that consultation, the SRA proposed changes that could potentially allow a newly qualified solicitor to set up in business as a sole practitioner, rather than requiring them to have, effectively, 3 years post-qualification experience (PQE), during which period they have continued to be supervised by a solicitor. Although not the subject of this consultation, the Society remains opposed to the proposed change in Rule 12 as does the Junior Lawyers Division (JLD).

The threshold day one standard as set out in the Competence Statement for Solicitors is appropriate under the current requirements, which assume that a solicitor will continue to be supervised post-qualification. If solicitors are to be allowed to practice independently straight after qualification then the threshold standard would need to be higher.

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<sup>1</sup> Report into the global competitiveness of the England and Wales solicitor qualification, An investigation into the potential impact of the SRA's Training for Tomorrow proposals on the global reputation of solicitors of England and Wales, July 2015

### **Question 3**

#### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

The approach outlined for regulation of preparatory training seems a good fit with the approach taken for the SQE. The Law Society recognises that this allows universities and other providers of education and training the freedom to decide on their course content and methods of teaching, thereby providing students with a range of learning options, whilst retaining the overall standards regarding the level of teaching, at degree level, and attainment, via the SQE assessments.

It may be useful for the SRA to issue guidance (on the Competence Statement for Solicitors and SQE materials) to providers who wish to provide SQE preparatory elements. It may also be useful to have a timetable for when and in what form these materials will be made available, in order to allow providers to develop appropriate courses.

The Society has some concerns regarding the ways in which data may be used and wishes to sound a note of caution. Students should be able to clearly compare like with like for education and training providers, but in order to do so, differences in what providers offer must be made clear. The SRA has a responsibility, when issuing the data, to make sure that it is clear and understandable to someone who is perhaps not familiar with the legal education market. For example, not all providers of education and training will include the SQE preparatory elements within their courses and it should be made clear that not all courses are on a level playing field in this regard.

It may be helpful to split data on SQE preparation courses into various sets, according to the different types of education and training provider they relate to. This would ensure basic fairness between different types of provider. These can of course then be compared against each other while also making clear that there are different types of providers. It may also be worth noting whether those providers have entry requirements, and what those entry requirements are, as it should be assumed that if a provider requires a higher bar for entry they should see that reflected in a higher rate of SQE passes.

#### **Question 4**

#### **To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

The redeveloped proposals do not differ significantly, apart from the introduction of the SQE, from the current system which meets the needs of the profession well. The inclusion of a degree level qualification and a substantial and supervised period of work experience in a legal environment are welcomed and offer enormous reassurances regarding the robustness of the education and training which underpin the SQE assessments.

The SQE assessments should offer the assurance that all pathways to qualification will meet the same minimum standard. Where new pathways are developed the SQE should ensure that these new pathways can build up a reputation within the profession as being as valid as the more traditionally recognised routes. Consistent standards for entry to the profession, alongside reassurances about the comparability of the routes, allows employers to be confident in widening their recruitment pools, which in turn should have a positive effect on diversity within the profession.

As the Society stated in response to the SRA Handbook consultation, the content of the SRA's character and suitability test for potential solicitors is fair and discharging the burden of the suitability test is straightforward in administrative terms. However, the timing of the test, just prior to beginning the period of training, raises concerns about client protection. As the pathways to entry will be even more flexible with the introduction of the SQE, it becomes even more important that this issue is addressed. The timing of the test should also be carefully considered, especially where students may carry out some of their qualifying workplace experience as part of a sandwich course, or through an apprenticeship, where they will be in contact with clients and expected to carry out work at an appropriately high level.

The SRA will no longer be able to rely on Legal Practice Course providers to brief students about the requirements. There is also the issue of data collection and how the SRA will be able to monitor the equality and diversity impacts of the new system if data is not being systematically collected at different stages.

Clear and appropriate information regarding the suitability test should be made available to students at an early stage in order to make it obvious where previous conduct may prevent them from joining the profession and to give them a clear idea of the conduct they will be expected to demonstrate over the ensuing years if they wish to join the profession.

### **Question 5**

#### **To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

The Society supports the SRA's general position on exemptions, having considered the issue against the key aim of the SQE assessments - to ensure that solicitors are competent to practise. It seems appropriate to recognise the difference between the academic studies completed, through a law degree or equivalent, and the requirements for demonstrating competence as a solicitor, which must include the practical application and understanding of this knowledge. The SQE assessments are therefore not simply a re-examining of the academic stage of legal education but an assessment of the way in which a student can demonstrate that they can apply that academic knowledge in practice.

When the SRA looks at the way in which the SQE could recognise other professions though, it should consider the LSB's 2014 Statutory guidance on legal education and training, which tasks regulators with minimising barriers between different parts of the legal profession, and not just in England and Wales but also for Irish and Scottish practitioners.

The SQE will introduce additional assessments for students, on top of pre-existing academic and work experience requirements. It will be important to ensure that the timing of these assessments does not result in students becoming overloaded. In addition, none of these students should be impeded from beginning the next stage of training at an appropriate point in the year. The SRA should engage with firms and universities to find an appropriate point for the sitting, and if necessary, re-sitting, of these SQE 1 assessments.

**Question 6****To what extent do you agree or disagree with our proposed transitional arrangements?**

The Law Society would urge the SRA to take the necessary time to ensure that the SQE assessments are right, reliable and well tested. If there is a risk that the timetable outlined in the consultation document does not give sufficient time for this, the timetable should be extended. It would be damaging to the profession as a whole, as well as to the SRA itself, if these assessments were to be seen as a failure.

Sufficient time should be given for the assessment providers to fully pilot the assessments and build up a sizeable bank of suitable questions. The timeline should allow the providers of legal education and training to develop courses to support these assessments, which would require them to have sight of the assessment materials. The SRA could consider sharing further information updates regarding the processes of appointing, testing and evaluating the actual assessments as they develop.

The transitional arrangements outlined in the consultation document and the time span outlined for students to complete their existing pathways seem achievable but the SRA needs to be certain. On the basis that the overall timetable is workable, the arrangements to ensure that those engaged on part-time study courses can qualify under the existing system seem fair.

## **Question 7**

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

As mentioned in the introduction and the response to question 6 above, the Law Society has grave concerns regarding the availability of funding for any necessary or desirable SQE preparation courses and assessments. This concern was raised in response to the SRA's first consultation and is one of the few areas that have not yet been addressed, which is disappointing given the significant risk of disadvantaging those from poorer backgrounds.

The Society appreciates that the SRA sees the SQE as a leveller of standards and that all routes to the SQE are to be of equal value, but students should be able to choose the route which they feel will suit their style of learning and future career ambitions the best. They should not have to choose one route simply because it is their only affordable option. Unless all routes have credible funding arrangements which do not require a student to provide up-front capital, there will be a risk to diversity within the legal profession. It would be completely unacceptable to introduce the SQE without ensuring that it is affordable for students from all backgrounds.

There are two aspects to the question of affordability:

- 1) The courses and assessments must be priced in a way that represents value for money;
- 2) Up-front funding (e.g. graduate loans) must be available for students who do not have access to capital.

We acknowledge that the question of affordability is not solely within the SRA's control. The price of the courses and assessments will be determined by training providers, but the SRA has an important role in ensuring that they provide clear information to providers to encourage a competitive market for training that will result in prices that deliver good value for students.

On the availability of funding point, it is critical that the move to the SQE does not leave students from less affluent backgrounds unable to study. Currently, students can access graduate loans (backed by the Government) to study the LPC. The SRA should ensure that any new courses or assessments meet the criteria for receiving funding. If these changes are introduced without funding being secured, then there would be negative impacts on the diversity and social mobility of the solicitor profession.

It may be that the government's Professional and Career Development Loans could provide a funding option, and further investigation into this should be carried out by the SRA. The SRA should ensure that their proposals meet the criteria to enable students to apply for this funding. The Law Society would be happy to help approach the government to determine whether this funding can be made available.

Concerns have also been raised about the accessibility of the type of testing that is implemented. The increase in online testing rather than written exam style answers poses particular problems and adds to the burden of students with various disabilities. Online tests are often speed tests and if the student has visual

impairments and has to work through a scribe or speech software this increases the challenge. Extra time is arbitrary if the design of the testing is wrong for the end user. Students with arm mobility issues can also have problems in the accuracy of placing a tick in a box. Dyslexic students are also challenged by this type of testing. The SRA should ensure that they consider these factors when developing the tests, rather than attempting to adapt assessments which have been designed for those without disabilities.



## **A new route to qualification: The Solicitors Qualifying Examination**

### **A response from The Law Society of Scotland**

#### **Introduction**

The Law Society of Scotland (the Society) aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes. To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Society's Education and Training (Standard-Setting) Sub-Committee welcomes the opportunity to consider and respond to the Solicitors Regulation Authority's (SRA) revised proposals for the Solicitor's Qualifying Exam.

We responded to the SRA's first consultation<sup>1</sup>. We note that this consultation seeks to address many of the concerns raised by ourselves and others during the first consultation phase.

We are particularly glad to see the proposed inclusion of a degree-level qualification and also significantly more detail regarding the nature and extent of work-based training for all intending solicitors. The route to qualification in England and Wales is of the utmost importance to the Scottish profession. Our members share a title with practitioners south of the border. Given the size of the English and Welsh jurisdiction – and given the nature of the global legal services market which sees London as the pre-eminent hub for international dispute resolution – we believe that anything that may alter the perception of the title 'solicitor' will have an impact upon our members.

#### ***Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?***

We agree that the proposed SQE is a robust and effective measure of competence. It may not be the method of assessing competence we would choose for our own jurisdiction but we acknowledge that such an examination – depending, of course, on how it is structured and assessed – combined with significant in-office learning is a robust and effective way to measure competence.

We note that the contexts of examination have changed. In the first consultation these were: civil litigation, criminal litigation, property law and practice, wills and probate, and the law of organisations. These have been changed subtly to: criminal practice, dispute resolution, property, wills and the administration of estates and trusts, and commercial and corporate practice. The first four of these make sense. The SRA has been consistent in its understandable call to focus on the reserved areas of practice. Whilst it is undoubtedly true that many solicitors do practice commercial

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<sup>1</sup> <https://www.lawscot.org.uk/media/733084/sra-consultation-response.pdf>

and corporate practice we feel that the logic of its inclusion necessarily means other contexts should be considered (e.g. IP, employment law, family law etc). It seems entirely arbitrary to pick commercial and corporate practice and not other areas of non-reserved activity.

***Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?***

We support the requirement to have a fixed term of work-place experience prior to qualification. The current system in England and Wales and also in Scotland of a fixed period of two years works well.

We think the involvement of a supervising solicitor is fundamental. Whilst an exam-based approach is understandable we think that observation by a qualified professional is important. This is for two reasons:

Firstly, the SRA's expert guidance (paragraph 63 of the first consultation) noted that not all competencies can be assessed via the SQE. If these competencies cannot be assessed via the SQE - and they are important enough to be assessed - then necessarily it follows that they must be assessed in another format most obviously via some form of work-based learning. It is likely that such work-based learning would need to be somewhat prescribed and regulated (e.g. something akin to the period of recognised training) and assessed by a supervising solicitor. Toolkits, training or guidance would no doubt be extremely useful.

Secondly, we welcome the SRA's strong focus on ethics we understand that in an examination a clever mind may well select "the right answer" simply because the person is in examination conditions. Observation and training by a professional may be a better way of assessing and inculcating ethical behaviours or, at the very least, complimentary.

Whilst we understand the intrinsic tension between an outcomes-based approach and a time-served approach we think that a minimum time period allows intending solicitors time to be assessed properly (as it is likely that - either as part of the SQE or separately - there will need to be some element of workplace assessment of certain competencies) and to develop important practice skills. We think the tensions between an outcomes-based approach and a time-served approach can be reasonably managed and, moreover, there is scope within the current system in England and Wales to reduce the length of time required on cause shown (e.g. time to count).

We note that it is likely that individuals commencing qualifying work experience without the vocational support of the LPC may actually need more remedial support at the beginning of such work experience.

We understand that 'obtaining a training contract is currently one of the main barriers to qualification as a solicitor'. We understand that for those who cannot obtain a training contract this is extremely frustrating. That said, we are unsure that the negative element of market scarcity trumps the positive element of a good model of training. We worry that those who undertake other forms of work-based learning may lose out in the long run when training organisations select those with the most standard background.

We raised in our response to the first consultation that there is currently a 'loophole' within the SRA's processes. For instance, under the current system, an English LLB graduate could undertake the New York Bar Exams and then – once qualified as a New York attorney – undertake the QLTS.

Such an individual would then be dual-qualified and eligible to practise in England and Wales without any in-office experience. We assume that this 'loophole' will be closed going forward.

***Question 2b: What length do you think would be the most appropriate minimum requirement for workplace experience?***

We support a two year period of legal work experience particularly given the removal of the vocational stage of education and training in England and Wales.

We note that another SRA consultation has proposed changes that could allow an NQ solicitor to set up in business as a sole principal rather than having a certain number of years PQE.

Whilst we acknowledge this is a separate matter the two cannot reasonably be viewed in isolation. It would be inconceivable to allow an individual with less than two years' supervised work-based experience to become a sole principal.

***Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?***

We accredit all providers of the degree and PEAT 1 programme in Scotland and we think this system works well – to the benefit of members and the public. We understand though the SRA's policy stance.

***Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?***

The proposals are not significantly different to the current system – bar the introduction of examinations and the likely elimination of the LPC. The change in SRA policy on a degree level qualification and a lengthy supervised period of work experience adds considerable strength to the SRA's proposals.

***Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?***

We believe that Scottish solicitors (as well as solicitors in other jurisdictions in the British Isles) should be exempted from elements of the SQE as of right (as is presently the case) and that further exemptions should be considered on a case by case basis.

Of the elements of part 1 we believe that Scottish solicitors should only be examined in matters that are reserved to English solicitors. It would be superfluous, for instance, to require a Scottish solicitor to answer questions on UK constitutional law, EU law, human rights law, ethics and professional conduct, business law and practice, and contract law. Scottish solicitors will have undertaken a four year law degree (accredited via the Society's processes), a one year vocational degree (accredited via the Society's processes) and a structured two year training contract based around meeting a series of outcomes set by the Law Society of Scotland. We do not believe that this is analogous to the position of a school leaver in England and Wales.

Moreover, we note the anomaly regarding intra-Member state movement of lawyers when compared to the freedom of movement under the Establishment Directive for lawyers from other jurisdictions. It is a quirk of European law that Estonian lawyers can establish in England and Wales but Scottish lawyers cannot. We would urge consideration of this matter in early course.

We note the Legal Service Board's statutory guidance on legal education and training (2014) which tasks regulators with minimising barriers between different parts of the legal profession (not just between the solicitor, barrister and legal executive professions but also for Irish, Northern Irish and Scottish practitioners).

***Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?***

No comment.

***Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?***

Yes. Like the SRA, we fundamentally believe that people from all backgrounds who have the skills, desire and ability to join the profession should be able to do so. We support the creation of multiple pathways to the English and Welsh profession.

We were concerned that the previous proposals were too amorphous so we are pleased to see the SRA now suggests that there will be clear pathways into the profession. We think this will particularly help those from disadvantaged backgrounds who set out on the journey to become a lawyer. It is important for those from backgrounds which do not traditionally produce large numbers of lawyers have certainty about potential routes and can readily evaluate which route is best for them (this would need to be easily accessible).

Students from more disadvantaged groups are disproportionately likely to be less well-informed about how the profession may be accessed. It is plausible that such students will pick a course that helps them to pass the SQE but then is not viewed positively by employers.

There is also the possibility that students incur significant debts by undertaking courses which do not prepare them adequately for the SQE. In such an instance it is likely that a condensed version of the LPC would be necessary. It is unlikely there will be financial support for such "crammer courses" thus creating rather than obviating access issues

We do not believe that the SRA has outlined how costs for SQE preparation courses would be funded. We, and others (including the Law Society of England and Wales) raised this in response to the first consultation and we are surprised that this has not been addressed.

The SRA is to be commended on creating a multiplicity of pathways for future lawyers. In reality though students may not have the choice the SRA intends. If there are six potential routes to becoming a lawyer and a student can only afford one then there is no choice at all.

We raised in response to the first consultation that the nature of testing may also cause concern. There may also be some equality and diversity concerns relating to insisting it be computer-based though it is likely these could be overcome with reasonable adjustments.

There is evidence from other professions where examinations - despite best of intentions - actually bias against certain populations. This will need to be monitored.

There is some evidence from other jurisdictions and professions that suggests multiple entry points can actually harm equality of access to a profession and can harm progression once within the profession. It may be that training organisations create an informal hierarchy which may still

disadvantage those who have taken the least conventional or least 'normal' pathway to qualification (regardless of score on SQE). It may be that entities - once solicitors are employed - continue to prefer candidates with from certain backgrounds for progression. (For example: preference towards Russell Group candidates in the current legal recruitment market over non-Russell Group universities).

## **Solicitors Qualifying Examination (SQE)**

### **Response to SRA's Second Consultation Proposals – The Legal Education Foundation**

#### **Introduction**

The Legal Education Foundation (TLEF) is a Royal Charter charity. Its purpose is “to promote the advancement of legal education and the study of the law in all its branches”. The Foundation does this by making grants to a wide variety of mostly charitable organisations working in different social, professional and academic settings and by commissioning research. The Foundation believes that the law plays an essential role in supporting civil society, economic development and democracy. In this context, it is important that everyone understands the law and has the capability and opportunity to use it to ensure their rights and to fulfil the obligations that accompany these rights.

In responding to the SRA's consultation, the Foundation wishes to focus on the impact of the proposals on access to the profession for those practising social welfare law, often called the law of everyday life. Social welfare law includes issues that affect most people, particularly those that may be experiencing barriers to securing access to justice in areas such as housing, welfare benefits, debt, community care, immigration, asylum and employment.

Two factors are crucial to the context for our comments; the reduction in public funding for civil and family law, and the widespread lack of public awareness and understanding of when their problems may have legal causes and solutions.

#### **Reductions in public funding**

Reductions in public funding for legal advice and representation in areas of civil law introduced by the Legal Aid, Sentencing and Punishment of Offenders Act (2012) and through pressure on local authority budgets have impacted negatively on the availability of specialist legal advice across whole areas of civil law. In evidence given to the Justice Select Committee in July 2014, the Chief Executive of Citizens Advice reported on a survey of all Bureaux across England and Wales, which identified that 92 per cent of Bureaux reported difficulties accessing legal aid-funded specialist advice and representation for individuals who remain eligible for legal aid-funded civil law advice. Figures presented by the National Audit Office (NAO) demonstrate that, in 2013–14, the Legal Aid Agency's spending on

representation in civil law matters was £9.7 million *less* than predicted, which may indicate problems in the ability of individuals to access specialist civil legal representation. The areas of law particularly implicated in this crisis of availability are specialist social welfare advice, specialist immigration advice and legal assistance for domestic violence victims in family law proceedings (Justice Select Committee 2014–15: 33).

### **Lack of public awareness**

Successive research studies have identified a deficit in public awareness and understanding of the civil law as it applies to individuals in their everyday lives. Legal needs surveys conducted in England and Wales have identified that problems that are justiciable are most likely to be characterised as ‘bad luck’ with 47 percent of problems reported by respondents as part of the Civil and Social Justice Panel surveys of 2010 and 2012 being characterised in this way. This has an impact on the strategies adopted by individuals to resolve these problems – if issues are not characterised as ‘legal’ those experiencing these problems are more likely to attempt to handle them alone (Plesence et al 2015: vi). The inability to recognise problems as legal undermines the ability of individuals to secure accurate and timely information, and to access support where necessary. Evidence suggests that where people have previously experienced problems that they recognise to be legal in nature, their faith in their own ability to resolve future problems of a legal nature declines (Plesence et al 2015: x), suggesting that individuals may not realise the complexity involved in attempting to resolve justiciable problems until they are in the midst of one. As such, the training, development and retention of lawyers who are specialist in these areas of social welfare, immigration and family law remains of vital importance, given the important role legal services can play in securing rights, protection and fair treatment.

### **Justice First Fellowship**

Of further relevance to the context of our comments is the experience gained by the Foundation through our Justice First Fellowship, launched by the Foundation in April 2014. This is a scheme to provide fully-funded pupillage, training contracts and wider development opportunities for law graduates seeking to pursue careers in social welfare law. Fellows spend two years working in leading UK social welfare legal organisations and, alongside their formal training, are given responsibility for a project that provides valuable experience for the Fellow and the potential for the host organisation to develop a vehicle that could contribute to the salary and other costs of the Fellow once funding from the scheme comes to an end. Fellows are brought together at regular points throughout the two years to receive training and be introduced to themes, ideas, practices, issues and people that will help them to develop effective, sustainable projects and organisations.

By February 2017, 33 Fellows will have joined the scheme in three cohorts. The Foundation is currently recruiting host organisations for the fourth cohort.

A recent independent review of the scheme found that the scheme is successfully meeting its aims and is highly valued by both hosts and Fellows. Host organisations would not have been able to take on trainees without financial support from the Fellowship and, correspondingly, Fellows have gained opportunities to complete their training that they would not have been able to access without the Fellowship's support.

### **LEF's response to this consultation**

We welcome the opportunity to respond to this second consultation on the Solicitors Qualifying Examination. We welcome some aspects of the proposals, as they would result in more flexible path to qualification which could help a number of aspiring lawyers to qualify through social welfare specialist organisations. However, we have concerns about the extent to which the proposals may not support the training and development of future specialists in this vital area of law.

We have not responded via the website as we felt that the questions and the nature of the close ended questionnaire did not allow us to reflect the wider context which we believe also needs to be considered and so we are grateful that the SRA also permits submission by email.

We hope there will be further opportunities to discuss the issues in the consultation paper and our response. We should be happy to assist the SRA further in developing a scheme which will encourage diversity and promote access to legal services in social welfare law.

- We strongly encourage the SRA to add a 'social welfare law' practice context to those currently proposed.
- We consider that broader business and practice development skills, such as building networks, communication, meeting wider business objectives and developing strategies for long term sustainability, need more emphasis than in the current proposals.
- We fear that the removal of the Legal Practice Course will put more pressure on academic institutions to 'teach to the test' (SQE) at degree level, and so without the changes above, the SQE will fail to produce specialist social welfare lawyers.
- We welcome the SRA's proposal that qualifying legal work experience need no longer be sequential or undertaken during a continuous period. We also welcome the proposal to accept experience gained in a wider range of contexts than currently.

An effective measure of competence needs to account for social welfare law, with consideration being given to the development of specialist training pathways. Feedback from JFF Fellows indicates that students are currently being actively deterred from taking a social welfare law path to qualification and we do not believe the current proposals would counter this trend. We fear that the removal of the Legal Practice Course will put more pressure on academic institutions to 'teach to the test' (SQE) at degree level, and undermine wider social welfare context elements of current courses, where these still exist.

The SRA may consider social welfare law and family (so often an underlying factor in social welfare law problems) can be accommodated by the currently proposed practice contexts

for stage 2 assessments: crime; dispute resolution; property; Wills and estate administration; commercial and corporate. However, we are concerned that social welfare law and family are invisible and likely to be overlooked in the wider context. So, we strongly encourage the SRA to add a 'social welfare law' practice context to those currently proposed.

We welcome the proposal that all assessments would include un-flagged ethical questions. This is important as students will go on to work in practice after part 1, and so should have a good understanding of the practical application of Code of Conduct expectations. Again, we would ask the SRA to ensure that the approach is relevant in a social welfare law context.

We completely understand that legal experience is essential to the production of good solicitors, but we are also aware of broader business and practice development skills which we do not think are sufficiently emphasised in the proposals. We know from our experience of the JFF scheme that employers are likely to expect lawyers to demonstrate skills in building networks, communication, meeting wider business objectives and developing strategies for long term sustainability. This is particularly relevant as more lawyers are practising outside traditional private practice as Legal Services Act changes take effect and more solicitors practise in ABSs or unregulated organisations.

We welcome the SRA's proposal that qualifying legal work experience need no longer be sequential or undertaken during a continuous period. We also welcome the proposal that qualifying legal work experience could include: working in a student law clinic; as an apprentice or paralegal; placement as part of a sandwich degree. Some leading social welfare law practices take on paralegals to work on specific big cases for a few months, and we know that funding for social welfare law is often time limited for short periods. We welcome this type of training being acceptable experience towards qualification.

At present, those who cannot afford to pay for the LPC can obtain bank loans. JFF Fellows have expressed concern that this form of finance would not be available for the SQE exam because loan funding is restricted to courses rather than examinations.

**The Legal Education Foundation**  
**7<sup>th</sup> January 2017**

## **Draft response of The Yorkshire Union of Law Societies to the SRA Consultation Paper**

### **“A New route to qualification: The Solicitors Qualifying examination 2016”**

The Yorkshire Union of Law Societies, founded more than one hundred years ago, is the umbrella organisation for the local law societies in Yorkshire which, in aggregate, represent several thousand solicitors. This response is based on comments made by members of those local law societies both at the meeting to discuss the SRA Consultation held in December and in subsequent communications. This response does not necessarily represent the views of all the local law societies in Yorkshire or the individual members of all those local law societies.

#### **Question 1**

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

#### **5 - Strongly disagree**

The view is that based on the information provided the SQE as proposed is not a robust and effective measure of competence. Particular concerns are that:-

1. As proposed in the consultation paper, it would appear that the coverage of legal practice areas and the level practical skills training offered by SQE 1 and SQE 2 prior to work based training would be significantly lower than the level offered by the present training system and that firms would be required to provide, either directly or indirectly, additional legal practice training and practical skills training to trainees entering the workplace to make up the shortfall. This would have adverse implications on firms not only in terms of the cost of providing that additional training but also on the logistics of providing that additional training. The SRA claims to be reducing the cost of training but in practice it seems likely that part of the cost of training will be transferred to firms. Firms do not wish to recruit trainees with a lower level of knowledge and skills than under the present training system. Further if firms are expected to recruit trainees without recruitment being conditional on passing the LPC, firms will be required to carry out searching investigation into the academic background of trainees and the route taken to qualification and this may impact on equality and diversity.
2. The SRA appear to have modelled their proposals for SQE 1 and SQE 2 on the training and examination procedures adopted by the medical profession but vital elements of those procedures are missing. The suspicion must be that to replicate the procedures adopted by the medical profession in the procedures proposed for the legal profession would be prohibitively expensive and further impact on equality and diversity.
3. As stated above, the SRA claims to be reducing the cost of training but there is a lack of detail on the likely cost of taking SQE 1 and SQE 2 and precisely how those reductions in costs will be achieved.
4. The multiple choice questions proposed for SQE 1 tend to test short term surface learning skills and the ability to retain information but do not test analytical skills and the ability to reach a reasoned conclusion. Further multiple choice questions do not test writing skills.
5. SQE 2 will involve an assessments of oral skills. Given that approximately 5000 trainees are currently admitted each year the recruitment of a sufficient number of suitably qualified

assessors to conduct approximately 5000 assessments in two sessions per annum will be a significant problem and is likely to lead to major logistical problems and delays in the finalising and publication of results.

6. If firms are expected to recruit trainees without recruitment being conditional on having passed SQE 2, those firms will have to cope with the problem of not knowing how much time those trainees will need to be out of the office to train for SQE 2 and to be assessed for SQE 2 (and the need to provide cover for that trainee during those periods), the problem of who should pay for SQE 2 training, the problem of training those trainees in the relevant context areas of SQE 2 (there have been suggestions that there be random selection of context areas) if the firm does not deal with those areas (many large firms do not deal with private client work), the problem of whether to allow those trainees to re-sit SQE 2 and if so, how many times and the problem of dealing with those trainees if the trainees simply cannot pass SQE 2. Those uncertainties are not an issue under the present system where firms can recruit conditional on passing the LPC.
7. Many firms understand the desirability of centralised assessment to ensure that there is a level playing field for all prospective solicitors but still maintain that the existing traditional route to qualification i.e. QLD/CPE, LPC and a two year training contract is still basically fit for purposes and should be further refined rather than abandoned completely. Further many firms have not seen any substantive evidence of a “public appetite for reform”.
8. Any revision of the route to qualification must have as its paramount objective the maintenance of the highest standards for the profession. There must be no dumbing down.

## **Question 2a**

**To what extent do you agree or disagree with our proposals for qualifying work experience?**

### **5 – Strongly disagree**

Any qualifying work experience should be properly planned, make provision for seat rotation as under the present system and include both contentious and non-contentious work. The present system gives trainees a breadth of experience in different areas of law. Not only is a basic knowledge of other areas of law essential to produce a well-rounded solicitor but the exposure to different areas of law assists trainees in the formulation of ideas for their own future specialisations. Other forms of qualifying work experience proposed would give much more limited exposure to different areas of law and may be less well supervised.

## **Question 2b**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

The present period of two years should be retained and for the reasons given in response to question 2a that period of two years should comprise not less than four placements each for a minimum of four months and not more than six placements with a maximum of three employers. Further each employer would be required to have trainees formally signed off by the training supervisor for that employee at the end of each placement.

### **Question 3**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE**

**5 – Strongly disagree**

The concern over the cost of legal education is understood but nevertheless it is considered that all preparatory courses for SQE 1 and SQE 2 should be properly regulated to avoid any reduction in training standards though it is accepted that to maintain diversity there should be a wide variety in the preparatory courses available i.e. full time courses, part time courses and sandwich courses. It is not sufficient for the SRA to simply outsource SQE 1 and SQE 2 to an assessment organisation without regulating the training for SQE 1 and SQE 2.

The danger of not regulating preparatory courses is that inevitably market forces will prevail and students, particularly those self-funded, will focus on what is the minimum level required to pass SQE 1 and SQE 2 at the lowest cost. The absence of a properly regulated preparatory course will ultimately lead to a reduction in the standards of skill and competence in the profession which is not in the public interest. In addition there is a danger that a two tier profession will emerge with those who have had the comprehensive level of legal education required by firms on the upper tier and those who have focussed on qualification at the lowest cost on the lower tier. Further a two tier profession is likely to exacerbate the equality and diversity issues the profession is trying to resolve. Again that is not in the public interest.

### **Question 4**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**5 - Strongly disagree**

The proposals for SQE 1 and SQE 2 and the proposals for workplace experience are not considered to be an adequate test of the requirements needed to qualify as a solicitor and if implemented would be a retrograde step and likely to result in a diminution of standards in the profession. Properly regulated and varied workplace experience and rigorous academic study are a fundamental part of the requirements to become a solicitor.

### **Question 5**

**To what extent do you agree or disagree that we should offer exemptions from SQE stage 1 or 2?**

On the basis that SQE 2 should be the effective “eye of the needle” that all entrants to the profession have to pass prior to qualification the number of exemptions from SQE 2 should be kept to an absolute minimum. In relation to SQE 1 it is accepted that there could be more scope for granting exemptions where students have passed equivalent assessments. This is common practice in other professions.

## **Question 6**

### **To what extent do you agree or disagree with our proposed transitional amendments?**

If the SRA are determined to introduce SQE 1 and SQE 2 and scrap the existing training regime it is considered that parts of the transitional arrangements are unfair and discriminatory. In particular:-

1. Domestic students are only required to take SQE 1 and SQE 2 from 2024 whereas overseas students have to take SQE 1 and SQE 2 from 2019.
2. No provision appears to have been made for students who have passed the LPC but are having difficulties in finding a training contract.
3. No account appears to have been taken of the practice of firms to recruit two years in advance i.e. firms will be recruiting later this year for trainees to start their training contracts in September 2019 with no clear picture of how SQE 2 will fit into their training programme.

Further it is considered that the SRA are not allowing sufficient time for an assessment organisation to be appointed and develop and fully test a robust means of assessment for SQE 1 and SQE 2 and for training organisations to develop and fully test courses for students wishing to take SQE 1 and SQE 2.

## **Question 7**

### **Do you foresee any positive or negative EDI impacts arising from our proposals?**

It is most concerning that the SRA has not produced any specimen questions or papers for SQE 1 or SQE 2 or details of the mechanics for taking SQE 1 and SQE 2. In those circumstances it is difficult to comment on an unknown assessment proposal.

It is noted that the SRA is aware of the need to commission an EDI impact assessment but it would have been sensible for such an EDI impact assessment to have been commissioned as part of this consultation.

There is a lack of evidence as to how the SRA intends to ensure that any assessment organisation will cater for students with disabilities or who require other learning support.

There is a lack of evidence as to how the proposals will reduce the costs of qualification and it is considered that though the cost of the actual exam may fall other costs will simply be transferred to students and firms employing those students as trainees.

There is concern that part time students will be prejudiced by the proposals. At present there is provision for students to study for the LPC part time. It is not clear how students could study for SQE 1 part time.

There is concern that if the providers of courses for SQE 1 and SQE 2 are not regulated this will lead to the growth of unregulated crammers whose prime aim is simply to assist students to pass SQE 1 and SQE 2 rather than provide those students with a comprehensive legal education. This will inevitably have a detrimental effect on the level of professional skills and competence in the profession.

## **Conclusion**

The Yorkshire Union of Law Societies is of the view that before the existing LPC procedure is scrapped in its entirety and replaced by SQE 1 and SQE 2 further consideration should be given to a critical review of how the existing LPC procedure could be revised and improved to include the centralised setting and marking of the LPC .

# Consultation questionnaire

Response ID:449 Data

## 2. Your identity

### Surname

Latham

### Forename(s)

Tobias John

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: BPP University

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** The SQE will result in trainees entering the workplace with fewer skills and less knowledge than at present due to the removal of the requirement for students to study elective modules and the reduction in the number of skills in which students will be assessed under the proposals when compared to the current structure. For example, a small immigration firm can currently choose to employ trainees that have studied an immigration law elective and can therefore be confident that such students have a basic grounding in this area. Under the SRA proposals no such study will be required. The same scenario could be found in respect of all areas of specialised law that are currently studied by students during stage 2 of the LPC. The proposal amounts to 'squashing together' the current GDL and LPC courses which will result in students studying material at a surface level rather than a deep level and will also result in students being able to 'fast track' their way to the profession (in 5 years rather than 6) with less in-depth knowledge, thereby threatening the integrity of the profession. I remain unconvinced that a multiple choice question test can adequately assess the skills required to become a solicitor. The assessments sat by students at BPP closely resemble work carried out by solicitors on a day-to-day basis. A multiple choice question assessment cannot do this. I fail to understand therefore how the latter approach can prepare students for practice better than the former approach. The number of questions proposed for each examination would suggest that students will have 1 minute 30 seconds to answer each question. I do not think it possible to examine the higher order cognitive skills required to be an effective solicitor when so little time will be dedicated to each question. As stated in paragraph 36 of the consultation document, it is difficult to establish a causal link between consumer detriment and inadequate training. I do not believe that this link has been made out by the SRA. Nor do I believe that there is a strong enough evidence base to warrant wholesale changes to the manner in which future trainees are prepared for practice. A much more effective approach would be to expand the existing quality assurance framework as suggested in paragraph 39 of the consultation document. I believe the SRA is ducking its responsibility to ensure and protect the integrity of the profession in choosing a less resource intensive model in the SQE. The multiple choice question design of the SQE will result in the proliferation of cheap crammer courses that will not encourage deep learning. This will also result in the development of a 'gold standard' preparation course which some law firms will demand and will therefore damage the prospects of students who cannot afford to study such courses. I disagree with the statement in paragraph 56 of the consultation document that multiple choice questions provide a far more consistent, objective and robust form of assessment than traditional essay-

type examinations. The consultation suggests that students might 'question spot' on such essay-type examinations. Such a tactic is not possible at BPP as all topics are examinable and regularly are examined. The only sensible way to revise for a BPP assessment is to cover all of the topics in depth. Indeed, I suggest it would be less risky for a student to omit studying a topic (or topics) ahead of a multiple choice question examination in the knowledge that certain topics can only comprise a limited part of the assessment and, even if the student had no knowledge of an area, they could still guess an answer. Finally, when attending the SRA roadshow regarding the SQE it was suggested by the presenter that the SRA is trying to align England and Wales with other jurisdictions around the world that use a central examination model. I question why such an alignment is desirable when our jurisdiction stands apart as arguably the most popular and well respected legal jurisdiction in the world.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** I agree that two years is a broadly suitable period of time to train to be a solicitor however I believe the current requirements are clear and well understood and that there is no convincing evidence for change.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** Two years guarantees consistency across the profession and is a sufficient amount of time to experience a number of areas of practice.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** I disagree with the SRA's belief stated in paragraph 120 of the consultation document. I believe a thorough regime of Ofsted-style quality assurance inspections would lead robust and effective training at all providers. The outsourcing of a central set of examinations without specifying and regulating preparatory courses for the assessments invites a 'race to the bottom' in which some providers will offer the least amount of preparation possible in order to pass the assessment. At the other end of the spectrum, some providers will offer additional training over and above that required to pass the SQE. Students that can afford such courses will have a significant advantage when competing for the most sought after training contracts. The removal of the regulation of preparatory training also deprives employers of the knowledge that the trainees they employ must have studied a structured and detailed course. The current requirements for students to study a prescribed course are more desirable to employers than a assessment requirement without the need to study any particular course. The latter scenario will lead to law firms assessing what sort of preparatory course prospective trainees have taken and selecting those that have undertaken more detailed and in depth courses. This risks making the profession less equal and benefitting those students who are better off financially.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** I strongly disagree due to the reasons stated in my response to question 1.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** I believe that exemptions should be offered where candidates can show that they have studied to an equivalent level in a sufficiently well developed legal jurisdiction.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** I think that the proposals are unrealistic in terms of timing. Introducing such a fundamental change will take more time. Training providers like BPP will also need more time to adapt to the new system and prepare to offer preparatory courses (in conjunction with the existing course). I am confused as to why overseas candidates and domestic candidates will be treated differently. This appears to be discriminatory and will present problems for some cohorts of students such as part-time students.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** As mentioned in my responses to previous questions I think the proposals will yield a two tier system of preparation for the SQE that will disadvantage those students who cannot afford the gold standard courses that will be offered by training providers in order to meet the needs of employers. Trainees will be less prepared and less qualified when they begin their training contract and therefore may be paid less. This could have negative EDI impacts. The removal of a clearly defined period of workplace experience could result in those students who have access to informal networks of legal contacts being able to arrange experience more easily than those student who do not. The potential for negative EDI impacts here is clear. It remains unclear at this time what provisions will be made for students with learning support requirements. This must be considered carefully.

# Consultation questionnaire

Response ID:440 Data

## 2. Your identity

### Surname

King

### Forename(s)

Tony

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity**

Please specify: Retired solicitor

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:** A centralised assessment approach makes sense where the objective is to ensure common standards against a clearly defined list of knowledge/skills/competencies. The assessment must be set at the right level ("degree level") and the assessment must address the broad range of knowledge/skills/competences which are expected of newly qualified solicitors whatever prior training (academic or practical) they may have received and whatever area of practice they will enter on qualification. This is for the protection of the public and the protection of the "brand" of solicitor both nationally and internationally. It is difficult to say whether those objectives will in fact be achieved given the (relatively) limited information the SRA is able to provide (albeit for understandable reasons) about the detail of the assessment. In particular, there is not enough clear evidence that the MCQ approach the SRA is envisaging will ensure the necessary rigour. may be it will but that hasn't been proved, merely asserted. Going on from that, while assuming the SQE1 will be set at "degree level", will the assessment ensure "degree level" expertise in terms of the breadth of skills development which can be expected of graduates who have completed three years of a degree? The SRA is leaving it open to academia to decide how (if at all) those institutions adjust their courses in the light of SQE1 (an approach I support). Whether a student completes a "traditional" law degree with some form of SQE1-specific "add on" or a degree tailored to SQE1, he/she should have developed graduate-level skills of writing, research etc. However, the SRA's argument for the SQE approach is that there is no consistency of standards across law degrees and yet the MCQ approach of SQE1 cannot assess these vitally important skills. It is true that they may be assessed at SQE2 but by that time the student is a long way down the path to qualification. On SQE2, the concept of assessing a range of skills makes sense and doing so in practical contexts gives the right "flavour". I do see the logistical difficulties of extending the current list of "contexts" though that list does omit some significant areas of legal practice. There is the issue of whether the two (if two is retained as the number of "contexts") topics should include both contentious and non-contentious work. Again, I see the logistical problems some firms may have in terms of giving their trainees the right experience to make such a requirement realistic. Furthermore, even though it is the skills (research, writing etc) rather than the knowledge which is being assessed, I can envisage "push back" if a trainee fails SQE2 because of a "context" of which he or she has little or no experience and in which he/she will not practice in future. Given that, I (somewhat reluctantly) accept that this "mixed" approach to the contexts may not work. Be that as it may, the qualification process must ensure there is no risk to solicitors' current rights of audience on qualification.

Taking all this into account, I cannot go beyond being "neutral" as regards the SQE approach. As a result I cannot "strongly agree" that the SQE is the right approach. An added concern is the process envisaged

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** I strongly support the concept of retaining a substantial period of work experience prior to qualification. It "socialises" would-be solicitors as professionals, helping them develop or refine all the skills and knowledge they will need as practitioners (including an appreciation of the practical application of the ethical obligations of solicitors). I am open minded on how long that period should be though two years has worked well to date and I see not good reason to move away from that. I support the idea of aggregating periods of work experience as a way of facilitating access. However, there need to be rigorous rules on what counts (minimum length, the nature of the employer or supervisor, the quality/breadth of the work etc). That said, I do have concerns that "stitching" work experience together in this way may lead to inconsistency or narrow experience. Until the detailed rules are clear, I cannot wholeheartedly support the concept. Finally, the consultation on "Looking to the Future : Flexibility and public protection" envisaged a change to Rule 12. If the current requirement of 3 years supervision prior to setting up as a sole practitioners is removed, the standards required by the qualification process need to reflect this change (by being made even more rigorous).

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** I have made my points about the length of experience in Q 2a.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** The planned approach gives training providers the necessary flexibility to meet the various competing demands they face (of their own institutions, their students and the wider market place). There is a need to give training providers enough information to decide their approach to SQE and to prepare any revisions to their courses/materials. Therefore, a full guidance pack would be helpful. On the point about providing data, clearly the more accurate and wide-ranging the information which can be made available to students, the better. That information does need to be genuinely helpful. Therefore, careful thought needs to be given to how it is set out, given the likelihood of training providers adopting a range of approaches at the degree and SQE1 preparation levels.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** In principle, the model should deliver the objective of ensuring common standards for all newly qualified solicitors, given the centralised assessment approach. Whether it will achieve that objective in reality is more debatable. Ignoring reasons which are beyond the control of the SRA (such as the inherent intellectual quality of the people going through the process), the range of possible routes which will develop may lead to some differences in the "quality" of newly qualified solicitors. Will a student who as completed a "traditional law degree" followed by a SQE1-tailored preparation courses have acquired/developed different skills/knowledge from one who has completed a SQE1-tailored law degree? Will a student who as completed a well structured 2 year "traineeship in one firm (perhaps coupled with LPC Elective-related additional training) be different from a student who has passed the standard SQE1

and stitched together a series of paralegal roles in 3 or 4 firms? If they have all passed SQE1&2, this may not be a regulatory issue but will it be a public protection or employability issue?

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** SQE1 is intended to have a different purpose/focus from the law degree and so granting exemptions from it to students seems illogical. Similarly, SQE2 is intended to test the practical skills students have developed during their period of work experience. Again, it would seem illogical to grant exemptions. That said, first there may be issues of additional burden (in terms of cost and time) to consider which may impact access. Secondly, whether it is fair not to grant exemptions to qualified lawyers who wish to requalify as solicitors needs careful consideration. Logically, exemptions could be considered for such lawyers if their original qualification process matches some/all of the SQE process. I am setting to one side the issue of EU lawyers, given considering them as a special case may be irrelevant by the time the new process is in place.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Agree

**Comments:** The key to the transitional arrangements is that implementing the changes should not be rushed. Therefore, enough time needs to be allowed to ensure all aspects of the new model work well and achieve their intended objectives. This involves not only publicising the process and appointing an assessment body but also testing every aspect (so far as possible). The potential providers of each element of the model need to be clear on what is required so they can take informed decisions on how they will react to the new regime. The students who will be affected by the changes need plenty of notice of how they may be affected. This applies particularly to those whose qualification "timetables" are such that they could follow either the old or the new process.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** The level playing field approach embodied in the central assessment should, in principle, ensure that all newly qualified solicitors are "equal". However, the plethora of possible routes runs the risk of creating a two tier qualification. It is correct to say that the central assessment will ensure common standards (at least at the "pass mark" level). However, it is likely that the wider academic and practical backgrounds of the students will continue to figure in the decisions making of employers. This will especially be the case if the routes to SQE1 and/or 2 are very different. There is also the issue of cost on which there is no hard data, only assertions. It may well be the case that no route to passing SQE1 (degree + preparation course + assessment fee) may cost more than the current degree + LPC (and especially if the GDL is thrown into the mix). However, while the most expensive LPCs cost in the region of £15,000 plus any living expenses, not all LPCs cost that. Whatever the overall cost, students who are self-funding will still have a significant burden to carry and will loans be available? No doubt, the cost of SQE2 (preparation course + assessment fee) will be borne by the employing firm of a student completing a two year traineeship. However, who will meet those costs of a student who is stitching together a series of work placements? Presumably, the student so (potentially) a barrier. Others are more qualified than me to speak on whether the proposals pose any difficulties for students with disabilities.

# Consultation questionnaire

Response ID:244 Data

## 2. Your identity

Surname

Savage

Forename(s)

Tracy

Your SRA ID number (if applicable)

Name of the firm or organisation where you work

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Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as an employed solicitor

## 3.

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Strongly disagree

Comments: There is not enough detail about the SQE to make this assessment. MCQs are not an adequate way of examining competence in a profession where answers are not "black and white" and so much advice depends upon the client's particular situation

## 4.

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Disagree

Comments: Legal work experience is a fundamental and important part of qualification as a solicitor, however I am concerned how firm's ensure they are covering all the issues which may come up in an assessment, what happens to those who have completed the work experience but do not pass the assessment

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

Two years

Comments:

## 5.

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Strongly disagree

Comments:

## 6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements

needed to become a solicitor?

Strongly disagree

Comments:

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Comments: If you are saying everyone must complete a standard assessment there can be no exemptions

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Disagree

Comments: Not long enough, many students especially those from more diverse backgrounds take longer to complete the existing "standard" qualification route, due to part time options, having to defer due to financial problems etc

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

Comments: Having the assessments together will affect students who need time between assessments. How will any tuition required to pass the assessments be funded - currently students can use student finance for an undergraduate degree and some of the LPCs - this will not be available for these assessments

# TRAVERS SMITH

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## TRAVERS SMITH RESPONSE TO SRA SECOND CONSULTATION ON THE PROPOSED SQE

This is Travers Smith's response to the SRA's consultation of 3 October 2016, "**A new route to qualification: the Solicitors Qualifying Examination (SQE)**". Travers Smith is a City-based international law firm with approximately 350 fee earners, of whom 50 (at the time of writing) are trainees. We typically recruit 25 trainees per year, of whom on average, 94% stay with the firm on qualification. The firm is a leading corporate law firm and within that context, what can be called full service. Our trainees currently rotate every six months during their period of recognised training ("PRT").

Travers Smith fully endorses the response to the consultation submitted by the CLLS Training Sub-Committee. The comments made in our response should be read in conjunction with those made by the CLLS in its response. We would also direct the SRA to our response to the previous consultation, which makes a number of points which have not been addressed in the current consultation, in particular, in our responses to questions 1 – 4, 13 and 17 of the previous consultation which contain many serious points and which remain of significant concern. We have included a copy of our previous response in the appendix to this document.

### Key points

We have responded to the SRA's specific questions in detail, below, and many of the following points are amplified there. We set out below some general observations.

- Despite the SRA's acknowledgement, since the first consultation, that SQE candidates must be in possession of a degree or equivalent, it need not be a qualifying law degree and the wide variation in standards at degree level between courses and academic providers means that these entry requirements provide little assurance of quality. We therefore remain very concerned about the heavy reliance on the SQE as the gateway to the profession, particularly given the concerns we expressed over quality and rigour in our response to the first consultation (see appendix), which the second consultation has done nothing to address.
- In particular, the suggestion that SQE 2 can be attempted without any practical experience of the relevant context (presumably to address practitioners' concerns that they will find it difficult to accommodate demand from trainees for SQE-relevant seats, if indeed they have them, before the SQE assessment windows) seriously undermines the SRA's claim that the SQE will be a rigorous exam.
- Since our previous response, the result of the EU referendum, which poses a risk to the pre-eminence of the English courts, makes it all the more important to support the argument that English legal training is best in class. The proposals in their current form seriously jeopardise that position.
- Our general preference for a front-loaded approach to legal training, so that trainees are well-prepared for the workplace by the time they arrive, will be apparent from our responses to the specific questions. We believe the existing pathways to qualification support this approach, subject to our point (made at the end of our response) that more could be done to develop alternative pathways to a legal career, such as graduate level apprenticeships.

- However, if the SRA is determined to press ahead with the SQE proposal, and if the SQE is to be the main gateway to admission, and therefore a suitably rigorous *pre-admission* test of knowledge and skill, the SQE 2 should only be attempted at or towards the end of the period of workplace training. This pre-supposes a much wider choice of contexts to accommodate the variety of experience to which trainees will be exposed in practice, reflecting at least the existing range of elective courses at LPC.
- The proposal that SQE 2 should be undertaken alongside the PRT will have an adverse effect on the scope and quality of workplace training and potentially the likelihood of a trainee obtaining a job on qualification. Please see our more detailed comments at Q2a.
- The proposals disadvantage non-law graduates whom we value highly for the skills and diversity they bring. Law graduates will be far better placed to pass expedited SQE courses if, as we suspect, that is how the market will develop. We would be unwilling to accept trainees with non-law backgrounds after only completing a short, post-graduate course based on multiple choice questions alone and would be likely to require them to have completed something akin to the GDL, and other City firms may share this view. This will put non-law graduates to extra expense, potentially act as a deterrent to them entering the profession (which would diminish it as a whole) and ultimately undermine the principles of equality, diversity and inclusivity ("EDI") which underpins this consultation. To the extent that this additional cost is to be met by firms, non-law graduates become a more expensive option which may discourage some firms from taking them on.
- The proposed changes are unlikely to promote EDI in general, and may actively discriminate against those from less advantageous backgrounds. We expand on this further at Qs 3 and 7.
- The consultation suggests (para 24, 32ff) that the proposals may represent a cost saving, compared to the LPC. There is no evidence provided to support this.
- At paragraph 34, the SRA identifies the "training contract bottleneck" as a problem. The proposals merely shift the "bottleneck" to a later stage in the career pathway. There is a bottleneck because there is an oversupply of trainees. Whilst we support attempts to ensure the brightest and best enter the profession from whatever background they come, we are concerned that there will not be jobs for an increased number of trainees on qualification, at which point more time and money will have been incurred than under the present system. We also note that it is inconsistent to suggest both that (i) the SQE is sufficiently rigorous to ensure a suitable level of competence on entry to the profession and (ii) that in implementing the SQE more potential lawyers will qualify.

Question 1 - **To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

**[5 – strongly disagree]**

We refer you to the points made in our previous response, particularly in relation to question 2. We further develop those points as regards the SQE 1 in response to this question, as we comment more fully on SQE 2 later in our response. We also have concerns as to the efficacy of SQE 2.

As we have not yet seen any specimen SQE assessment papers, it is currently impossible to assess whether the proposed examination will be a robust and effective measure of competence. However, based on what we know from the consultation papers and discussions with academic providers, we understand that the SRA is still proposing to place considerable reliance upon computer-assessed "single best answer" multiple choice questions ("MCQs"). We reiterate our view that such an approach is a poor substitute for full written assessments which require a

candidate to develop and present and sustain reasoned arguments, which better reflect the realities of legal practice. Whilst we recognise that there may be discrete areas which lend themselves to the MCQ approach, we think there should be much more emphasis on full written assessment.

Accordingly, based on the current suggestions, we strongly disagree that the proposed SQE 1 is a robust and effective measure of competence, and we consider that it is unrealistic to expect employers to take a view on the competence and suitability of candidates for training contracts, based solely on the results of the SQE in its proposed form.

Question 2A -

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

**[ 5 – strongly disagree]**

We agree with the basic premise that pre-qualification work experience is an essential part of becoming a solicitor. We see the proposals around qualifying legal work experience as inextricably linked to the proposed SQE 2. We perceive that there are intrinsic difficulties with the timing of the SQE 2 and its relationship to work-based learning. Please take the first three bullet points below to answer in part our concerns in relation to the SQE 2 and question 1.

- At paragraph 61 the SRA states that whilst Stage 2 would assess candidates' skills rather than knowledge, "getting the law right" is clearly a core competence and having provided candidates with legal materials they would be expected (quite rightly) to provide accurate legal advice. Whilst we firmly believe that training should be front-loaded, it appears that candidates will be ill-prepared for the SQE 2 assessment as it is currently proposed, unless it takes place after a period of practice in the relevant context. Without this, there will be undue focus on "mugging up" on an unfamiliar area of law, to the detriment of skills development. We find it difficult to imagine how candidates can properly demonstrate the skills they have acquired in practice in a context of which they have no practical experience. We are also concerned that non-law candidates could be disadvantaged in this respect.
- The narrow scope of the assessment contexts applicable to SQE 2 will result in trainees competing to obtain a seat in the relevant practice area and in some firms, the depth and breadth of experience offered to trainees will be compromised in favour of a focus on SQE-compliant activities.
- Equally, if the "crib sheet" approach is really all that is required to pass SQE 2 we are concerned that this severely undermines the SRA's insistence that the SQE will be a rigorous exam.
- SQE 2 will represent an abandonment of the specialist focus of the LPC elective regime which has been honed in collaboration between law schools and practitioners over the past few years, particularly to reflect the business context in which City lawyers

practice. Again, this will undermine the SRA's proposal that SQE is a robust and effective measure of competence,

- We fear that the entry of trainees into the workplace who are less well prepared for practice (because they have not completed the LPC) will have an adverse impact on the quality and range of work allocated to them, to the detriment of the breadth and depth of their experience at the point of admission and correspondingly, the calibre of those entering the profession. There are also considerable cost and resourcing issues for employers in training trainees to develop knowledge and skills which are currently undertaken on the LPC before a trainee arrives in the workplace, and supervising them in so doing.
- The timing of the SQE 2 still troubles us. At paragraph 111 the SRA states that it believes candidates would need substantial work experience in order to pass SQE Stage 2. However, the completion of work-based learning would be required by the point of admission, not as a condition of eligibility to sit SQE Stage 2. As noted above, employers will need to adapt their training and supervision programmes to monitor and develop trainees from an earlier stage, allowing them study leave to prepare for the SQE. There will be staffing disruption as trainees will inevitably have to take time out of their business commitments in order to prepare for the exam. If trainees have to take regular periods of absence then firms may have to recruit more trainees than they intend to retain on qualification. This would have an adverse effect on retention rates. There are clearly also elements of risk in terms of business disruption and potential distress for trainees if they were to have completed their work-based learning and then to take and fail the SQE 2.
- As we mentioned in our response to the first SRA consultation, our trainees are very much involved on a day-to-day basis in case and transactional work, an approach which relies on them being well-prepared and which we consider, based on our experience over many years, equips them to be more than competent solicitors. For this reason, and because of our concerns, set out above, with the SQE 2 proposals, we prefer a front-loaded approach to pre-admission training.

Question 2B -

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We consider two years to be the appropriate length of workplace training. In order for trainees to fully understand the workings of the firm, to have a proper idea of where they would like to qualify and to garner a sufficient level of experience a minimum of four six month rotations is desirable. Time off for study leave will also eat into the PRT so a period of workplace training shorter than 24 months would be inadvisable.

The proposal that workplace training can be undertaken at different organisations is likely to result in disjointed and poor quality experience

unless there is a minimum amount of time spent in a single organisation for it to count (we suggest 6 months) and a limit on the number of different placements (we suggest 2 or 3 at most).

Question 3 - **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**[4 – disagree]**

We note that the SRA's proposal is to publish exam result data in order to create an open market and to encourage candidates to choose whichever provider suits their circumstances. The SRA does not propose to regulate the training via quality assurance (paragraphs 119 – 122). This approach may perpetuate a two-tier system with courses deemed suitable by the City, and those deemed acceptable for the high street, probably being differentiated by cost.

Those students who are more motivated by apparent "value for money" (paragraph 122) than their wealthier peers will be disadvantaged. They may be circumscribed in their choices and follow an SQE route which limits their employment options, both from the outset of their careers and going forward, lessening mobility throughout the profession.

In addition to the financial imperatives such a system may create, it is possible that this same group of students may not have access to the insight of careers advice in the same way as those from more privileged backgrounds and may not be best placed to choose courses advisedly.

This situation may already exist but as the SRA's proposals are supposed to create a change for better EDI, we are certain that they do not achieve that.

Question 4 - **To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**[5 – strongly disagree]**

As we have previously mentioned, the abandonment of the LPC will mean an end to the extended collaboration between law schools and practitioners (which has produced tailored, high-quality courses and, on the whole, trainees who are ready for the workplace) and will not provide as comprehensive an assessment of trainees' fitness to become solicitors as the LPC does currently. Building on the suggestion we raised at question 3 that the proposals may engender a two-tier system, it is our observation following discussions with various colleagues at other law firms that there will be two forms of SQE: those fit for the high street and for the City. A solely MCQ- based assessment for legal knowledge and a skills based assessment with a crib sheet are not suitable replacements for a law degree/the GDL plus the LPC and will not achieve the objectives set out in the first consultation – Assessing Competence (Paragraphs 36 & 37).

We understand the rationale for introducing one test for all and support the harmonisation of standards (upwards), in terms of the public's perception of the profession (paragraph 5).

We are very concerned about the statement at paragraph 134: *"Stage 1 is assessing the candidate's ability to use their legal knowledge in practical contexts through assessments which integrate substantive and procedural law. It is not assessing what is assessed in an academic law degree and it is not appropriate to give exemptions to QLD or GDL students"*. This clearly indicates to us that non-law graduates will be severely disadvantaged as they move through the examination process. Specifically, unless law firms can be convinced that SQE 1 is as rigorous and wide-ranging as the GDL, some may develop a strong bias towards law graduates.

Travers Smith currently has a fairly even split of lawyers and non-lawyers amongst its trainee body. This diversity enhances our workplace and we would not want to see it undermined. Some commentators are so concerned about SQE 1 that they propose making a law degree compulsory pre-SQE 1. As noted in our previous response, we support alternative pathways such as the apprenticeship route to qualification provided they are properly regulated. Compelling young people to make the "right" career choice at 17 or 18 years of age would have a very detrimental impact on diversity, and in some cases on the lives of the young people in question.

In any event, as SQE 1 is not a replacement for the GDL, non-law graduates will clearly have to have further training in order to be competent to qualify as a solicitor, which is likely to be expensive and seems contrary to the SRA's EDI objectives.

Overall, we are very concerned that the proposed model is not a suitable test of the requirements needed to become a solicitor.

Question 5 - **To what extent do you agree or disagree that we should offer any exemptions from the SQE Stage 1 or 2?**

**[Both agree and disagree – see below]**

Please refer to our response to question 3 of the previous consultation. In principle, no practising lawyer should be exempt from rigorous legal and practical training prior to admission but assuming the market for QLD-style law degrees and GDL courses continues, appropriate exemptions should be available to the extent that course content overlaps.

Question 6 - **To what extent do you agree or disagree with our proposed transitional arrangements?**

**[5 - strongly disagree]**

The variations that the transitional arrangements permit are so numerous that for a graduate leaving university between now and August 2024 there will be a baffling array of choices. For graduate recruitment teams, careers advisers, universities, course providers and candidates, the transitional arrangements leave far too many options to consider. We would imagine that most law firms would favour graduates continuing with the existing system until the last possible moment and candidates will be nervous

about following a new route until some published data is available, creating a chicken/egg dilemma.

Question 7 - **Do you foresee any positive or negative EDI impact arising from our proposals?**

We fear there is a real risk that we and similar firms become more conservative in our candidate selection without the safety net of the QLD. We also foresee that we and similar firms will set our own, rigorous entry requirements to fill in perceived gaps in trainees' preparation for the workplace in view of deficiencies in the SQE syllabus and the SQE approach to assessment of knowledge and skills as compared with the current system.

Whilst we applaud the different routes to access the profession via apprenticeships etc., this is very much a sub-set of the SQE proposals, and as we explain in Other Matters, below, the proposals have missed the opportunity to maximise these. As we have mentioned throughout this response, these proposals are likely to result in two-tier entry to the profession and not permit mobility further on in the careers of trainees who have undergone the SQE process with a "sub-City" standard provider.

Further, a section of students may be deterred from entering the profession at all because of the confusing transitional arrangements or the very real bias to law graduates and the inevitable extra expense for non-lawyers. That many of our trainees come from non-law backgrounds is vital to the overall skills our lawyers have (for example, in languages) and allows those who make career choices later to enter the law with relative facility. This element of diversity will be limited severely by the proposals.

**Other matters:**

**Timing issues**

At paragraph 86 you state that you would welcome views on the proposal to assess the candidates for SQE Stages 1 and 2 in the outlined assessment windows. We are very concerned about the pressure this would put on any examining body and the length of time it would take to process results, creating a potential for further business disruption and an unsettling period of "limbo" for candidates awaiting results.

**T4T – a missed opportunity**

The T4T consultation is, in our view, a missed opportunity for exploring ways of supporting alternative legal career options. Much is talked about the commoditisation of legal services which is resulting in a polarisation of legal services delivery: at the lower end, a need for routine, process-driven work to be carried out by lower-paid staff (and increasingly facilitated by technology) and the high end work for which clients are prepared to pay a premium which is the preserve of an increasingly small pool of highly qualified and skilled "trusted advisers". One of the objectives of T4T was to address the training contract bottleneck. One way of addressing it would be to offer alternative career options, such as the expansion of the legal executive/professional paralegal options.

Some legal education providers are looking to offer a graduate entry legal apprenticeship course which makes use of the apprenticeship levy and would satisfy a need in the market for more

support at the lower end of the complexity scale. Market forces would suggest this will grow. It is a shame this consultation does not help with that development and as such appears out of touch with the drivers that really affect the legal profession.

## APPENDIX

### Travers Smith response to the SRA's December 2015 T4T consultation

This is Travers Smith's response to the SRA's consultation of 7 December 2015, **Training for Tomorrow: assessing competence**.

Travers Smith is a City law firm with approximately 350 fee earners, of whom 48 (at the time of writing) are trainees. We typically recruit 25 trainees per year, of whom on average, 94% stay with the firm on qualification. The firm is a leading corporate law firm and within that context, what can be called full service. Our trainees currently rotate every 6 months during their PRT.

Travers Smith fully endorses the response to the consultation submitted by the CLLS Training Committee. The comments made in this response should be read in conjunction with those provided by the CLLS Training Committee in its consultation response.

***Question 1 – Do you agree that the introduction of the SQE, a common professional assessment for all intending solicitors, best meets the objectives set out in paragraph 10 [of the consultation]?***

No. We agree that a common assessment, regardless of the pathway to qualification, is an effective means of achieving consistent and comparable standards at the point of admission, but *only* in relation to the specific knowledge and skills assessed as part of the SQE. Based on the limited information given about the course content and assessment framework, we disagree that the SQE on its own will provide assurance of rigorously high standards.

**SQE as the single point of access to qualification:** Our overriding concern is that the proposed new SQE framework is heavily reliant on the SQE itself, given the uncertainty over the SRA's plans for the future of workplace training (the PRT) and academic entry requirements for the SQE. By contrast, the current system involves different assessments of different aspects of legal knowledge and skills developed over a period of time. If the SQE is going to be the single point of access to qualification, it is critical that it is set at a sufficiently high standard, and encompasses all of the knowledge and skills expected of a solicitor at the point of qualification. We are deeply concerned that if the SQE is the single point of entry, candidates are taught to pass the SQE but not to develop wider legal knowledge and skills, which cannot possibly result in higher standards than we currently have.

Whilst the consultation suggests that the aim is that the SQE is set at post-graduate level, it is impossible to judge the rigour of the SQE without more information on course content beyond the very basic list of topics in the Statement of Legal Knowledge (draft syllabuses) and more detail on the assessment framework. In short, we are unable to approve the proposed SQE framework, even in principle, until the details have been fully developed and the wider issues of the future of the PRT and the SRA's plans for academic entry requirements resolved.

From a standards perspective, we are also concerned that there is an assumption that some universities will incorporate SQE1 into their law degrees, which may prejudice the depth of learning acquired by undergraduates. We are also aware, as noted in our response to Q17, that there are some universities who will resist doing so, in part to preserve academic freedom and rigour, and in part to ensure that they do not discourage students aiming for the Bar.

**Negative impact on workplace experience:** Assuming that some form of pre-admission workplace training is retained, the fact that the SQE2 can only be attempted at the point of admission but that the LPC in its current form will fall away implies that law firms may be recruiting trainees straight out of university (or from an SQE1 course) without any of the vocational training currently built into the LPC. This will impact adversely on the quality of work law firms are able to allocate to trainees.

It is also regrettable that the work that training providers have put into developing tailored, enhanced LPC courses in conjunction with employers to ensure the LPC represents the reality of modern legal practice may be lost. The LPC electives enable our trainees to "hit the ground running" when they come to us.

To resolve concerns around the variability in standards applied in LPC courses and by employers offering the PRT, our preference would be to focus the reforms on an enhanced, centrally set or regulated LPC (reflecting the enhancements referred to above) which all intending solicitors should pass (other than those attempting QLTS), regardless of their route to qualification – **prior to** the PRT for graduates, or prior to admission for those qualifying via the apprenticeship or equivalence routes. In addition to maintaining high quality work during the PRT, it would resolve some of the practical difficulties we perceive with a pre-admission test for trainees. For example:

- Under the proposed SQE model, law firms will, presumably, have to either prepare their trainees for the SQE2 or allow them study leave to enable candidates to attend external preparatory courses for the SQE2. We anticipate that many law firms will want to outsource SQE2 preparation, although without a detailed SQE syllabus, it is difficult to assess how much law firm trainee training programmes would need to be adapted to the SQE requirements.
- If candidates are to be allowed some form of study leave, we have concerns as to how this will fit around a typical work schedule. Our trainees work a very full day and are heavily involved in, and relied upon for, client work from Day 1. This is an essential part of their training and preparation for qualification as a solicitor. It would be disruptive for trainees to repeatedly take time out for study leave and could result in the allocation of more peripheral, less demanding tasks to trainees. This would have a detrimental effect on their training. It would also prejudice their ability to see a matter through to its conclusion and in its entirety. It would also adversely affect the depth of understanding trainees obtain of different areas of practice and make it more difficult for them to select the right specialisation when they qualify.
- If trainees are expected to prepare for the SQE in their own time, again we are concerned that it is impractical to expect trainees to combine study for the SQE2 with a full working day.
- The suggested contexts for SQE2 may not reflect range of experience and practice areas likely to be relevant to trainees in City firms – see response to Q4, which does not present a problem at QLD/GDL/LPC level since the training takes place before the PRT. With a pre-admission test, there is a risk that not all legal practice will be able to provide adequate training and experience in the contexts required for the SQE2.

***Question 2: Do you agree that the proposed model assessment for the SQE described in paragraphs 39-45 and in Annex 5 will provide an effective test of the competences needed to be a solicitor?***

No, we disagree. It is difficult to respond fully without further detail on the assessment framework but based on the limited information given in the consultation, as a matter of principle, we are particularly concerned about the reliance on multi-choice questions. Whilst MCQs as a means of assessment may be sufficient for testing aspects of legal knowledge (as noted in the AlphaPlus report, but subject to verification of the full content of the SQE1), MCQs do not reflect the reality of the work of a solicitor. We cannot envisage how MCQs can adequately assess a candidate's ability to identify and critically assess all relevant legal issues arising from a given scenario, construct and develop arguments and counter-arguments in relation to those issues, give appropriate weight to them and translate their conclusions into succinct advice which is suitable for delivery to a client.

We note that SQE2 is intended to assess some of the skills required in order to apply legal knowledge effectively in a range of practical contexts and that SQE2 will involve written and oral tests. This is already the function of the LPC. However, the LPC is currently a stepping stone to the PRT where trainees are forced to apply their knowledge and skills to real-life situations which they may not have previously encountered at the academic stage of training, and to develop communication and other personal and professional skills which cannot be adequately tested in an exam environment. In isolation, we doubt that either the LPC or the SQE2, even assuming it is set at a level higher than the current LPC, can adequately assess the full range of knowledge and skills required of a good solicitor in practice, as reflected in the SRA's competence statement. This is recognised by AlphaPlus in their technical evaluation.

Furthermore, we think the oft-cited comparison between the QLTS (which adopts a similar model) and the SQE is misconceived since overseas lawyers sitting the QLTS are already qualified in their own jurisdictions

and will have undergone rigorous legal education and training leading up to that qualification, followed by, in many cases, substantial experience in legal practice.

**Question 3: Do you agree that all intending solicitors, including solicitor apprentices and lawyers qualified in another jurisdiction, should be required to pass the SQE to qualify and that there should be no exemptions beyond those required by EU legislation, or as part of transitional arrangements?**

No, we disagree. We see no reason in principle why there should not be exemptions from elements of both SQE1 and SQE2 (given that they are modular) to reflect study which has been completed and assessed to an appropriate level as part of a qualifying law degree. To do otherwise would be duplicative in terms of both cost and time. Similarly, during the transitional phase, we believe that students who have successfully completed GDL and/or LPC course should be granted appropriate exemptions from the SQE.

**Question 4: With which of the stated options do you agree and why:**

- a) *offering a choice of 5 assessment contexts in Part 2, those aligned to the reserved activities, with the addition of the law of organisations?*
- b) *offering a broader number of contexts for the Part 2 assessment for candidates to choose from?*
- c) *focusing the Part 2 assessment on the reserved activities but recognising the different legal areas in which these apply?*

We are strongly in favour of option b). The problem is the timing of in depth study of the reserved activities.

Although the reserved activities have grown up piecemeal, we do not disagree that training on the reserved activities should form an essential part of legal education and training at an earlier stage. Nor do we disagree that the law of organisations (corporate law) should also be included since it is the bedrock of our own legal practice and that of most City firms. We would support a model of legal education and training which ensured that solicitors acquire and maintain a good basic knowledge of core areas such as contract law, and are not permitted to specialise too early in their careers.

However, the difficulty with a focus on reserved activities in a structure based around assessment *at the point of qualification*, assuming this happens after a period of workplace experience, is that workplace experience will often be focussed on specialisms within the reserved activities, e.g. commercial property rather than residential property. This presents less of a problem with the LPC route since the LPC is completed prior to the PRT, and as noted elsewhere in our response, LPC providers have worked with employers to ensure the LPC reflects the reality of modern legal practice.

A focus on the reserved activities during the period of workplace experience would require trainees to spend valuable time out of the workplace attempting to regain knowledge of areas which are irrelevant to their practice, and will seriously detract from the learning and development trainees undertake, and the on the job experience they gain during that period.

**Question 5: Do you agree that the standard for qualification as a solicitor, which will be assessed through the SQE, should be set at least at graduate level or equivalent?**

It is inconceivable to us that entry to the profession should not require graduate or graduate-level academic qualification.

We are strongly of the view that higher education provides an opportunity for students to mature on a personal level, and develop analytical and research skills, regardless of their discipline.

We believe that failure to prescribe graduate level entry requirements will have a negative impact on the perception of the English legal profession at home and abroad and will compare unfavourably with other jurisdictions (e.g the New York Bar) and other professions. The SRA's proposals also seem to be at odds with the Bar's ongoing review of academic requirements for entry to the Bar, and its suggestion that it may require a minimum 2:1 degree, which may engender a 2-tier profession. As noted in the EPC report, removing the regulated status of the QLD could prejudice the number of international students at British

universities (they currently make up 25% of QLD courses) and the standing of advice provided by English law firms.

Our understanding is that the academic standard to which the SQE is set will not be benchmarked against FHEQ standards. We find it difficult to see how the SRA can justify the claim that the SQE will be set at higher than graduate level without reference to FHEQ standards and the lack of benchmarking adds to the uncertainty over the intended academic standard for the SQE.

***Question 6: Do you agree that we should continue to require some form of pre-qualification workplace experience?***

It is also inconceivable to us that the prescribed routes to qualification should not involve some period of work-based training. Workplace training or experience forms an essential part of all of the current pathways to qualification. It is in our view imperative to retain a prescribed minimum period of workplace experience and, as noted in our response to Q2 (and by AlphaPlus), without it, intending solicitors will be unable to meet elements of the Threshold Standard in the Competence Statement. For example, the standards requiring solicitors to (i) achieve an acceptable standard routinely for straightforward tasks, and (ii) use experience to check information provided and to form judgements about possible courses of action and ways forward both seem predicated on the individual having completed a period of workplace experience and/or an assessment over a period of time.

***Question 7: Do you consider it necessary for the SRA to specify a minimum time period of pre-qualification workplace experience for candidates?***

Yes. Otherwise, there is a risk that market forces could result in a race to the bottom. Our experience is that 2 years is the right period and is the minimum time period for the average trainee to acquire the necessary knowledge, skills, maturity and judgement required before he/she can hold him or herself out as a qualified solicitor.

Any prescribed minimum period should also take account of the time out trainees may need to prepare to sit the SQE2.

***Question 8: Should the SRA specify the competences to be met during the pre-qualification workplace experience instead of specifying the minimum time period?***

To a degree, the SRA has already specified those competences at a very high level in the Threshold Standard, but as noted below in our response to Q12, we think it would be helpful if the SRA produced detailed guidance for employers on their supervisory role in ensuring that trainees meet those competences and giving examples of the evidence they should be seeking in order to demonstrate that they have done so. We do not regard this as an adequate alternative to specifying a minimum time period.

***Question 9: Do you agree that we should recognise a wider range of pre-qualification workplace experience, including experience obtained during a degree programme, or with a range of employers?***

To do so would risk diluting the aim of harmonised, centrally monitored standards, but if the SRA is prepared to continue to regulate and authorise all providers of workplace experience or educational providers, we do not object in principle to this suggestion.

***Question 10: Do you consider that including an element of workplace assessment will enhance the quality of the qualification process and that this justifies the additional cost and regulatory burden?***

We agree that trainees need to be monitored and supervised during their PRT and that under the Competence Statement/Threshold Standard model, employers will be responsible for assessing whether trainees have met the competences required of them at the pre-admission stage. Some form of assessment is a logical follow-on from the observation made elsewhere in this response that important aspects of the learning and skills of a good solicitor cannot be tested by the SQE or any other exam-based assessment. However, our trainees already receive a comprehensive programme of high quality training during their PRT, they are closely supervised and monitored, and an informal assessment of their knowledge and skills is

carried out at each appraisal and finally as part of the decision to offer them employment (or not) at the end of the PRT.

We already recognise that the workplace assessment we carry out on trainees must reflect the requirements of the Threshold Standard, as a minimum. To the extent that the SRA has a more formal workplace assessment in mind, employers should be given full details to enable them to assess the practicality, cost and resourcing implications of the proposed assessment.

**Question 11: If you are an employer, do you feel you would have the expertise to enable you to assess trainee solicitors' competences, not capable of assessment in Part 1 and Part 2, to a specified performance standard?**

Yes, with the help of the toolkit referred to in Q12.

**Question 12: If we were to introduce workplace assessment, would a toolkit of guidance and resources be sufficient to support you to assess to the required standard? What other support may be required?**

We think such a toolkit would be useful, particularly since the Competence Statement and Threshold Standard are newly introduced and lacking in the level of detail we would need to determine whether an individual meets the requirements.

**Question 13: Do you consider that the prescription or regulation of training pathways, or the specification of entry requirements to the SQE, are needed in order to:**

- a) support the credibility of the assessment?**
- b) and/or protect consumers of legal services and students at least for a transitional period?**

Yes. We find it very worrying that courses and course providers will potentially be completely unregulated, resulting in varying standards and unfairness on less well-informed candidates opting for courses which do not adequately prepare them for the SQE or, more fundamentally, for practice.

We do not see the rationale for continuing to prescribe training pathways and authorise courses and providers only for a transitional period whilst the SQE establishes credibility and in this respect we disagree with the recommendation of AlphaPlus. The SQE could very swiftly lose that credibility if, following the transitional period, the quality, breadth and depth of SQE preparation courses began to be eroded. Some of our concerns over the SQE as the single point of access could be alleviated by the SRA's continued involvement in monitoring and authorising the quality of training courses and ensuring that market forces do not result in the proliferation of (cheap) crammer courses which teach candidates to pass an MCQ-style test and add very little to the candidates' wider knowledge or skills. Such courses would be one-dimensional and would inevitably result in poorer quality and would not prepare trainees for entry to the profession.

**Question 14: Do you agree that not all solicitors should be required to hold a degree?**

Yes. We have supported the apprenticeship and CILEx/ equivalence routes which have existed for some time and would continue to do so, provided those routes were properly regulated.

**Question 15: Do you agree that we should provide candidates with information about their individual and comparative performance on the SQE?**

It would be useful for employers to have access to information about the individual's performance on the SQE for the purposes of making decisions about their future employment with the firm, and if a candidate fails the SQE but is allowed to re-sit, those areas where additional training is needed. For the same reason, we can see merit in having a graded SQE rather than simply a pass/fail.

Having said that, the unlimited re-sit policy is potentially detrimental to perception of high standards in the profession. If the SQE is the single gateway to qualification, it would be worrying if a person were allowed to practice having scraped a pass after several attempts. Multiple re-sits are also potentially disruptive to legal practice (assuming the continuation of workplace experience), as well as unfair for candidates who do not

have means to fund further training for a re-sit, or who find it difficult to obtain employment having funded multiple re-sits.

**Question 16: What information do you think it would be helpful for us to publish about:**

- a) overall candidate performance on the SQE?
- b) training provider performance?

As noted in relation to Q15, information on individual candidate performance (including in the context of overall performance) would be helpful for employers and for students. Statistics in relation to training provider performance *on their own* may give a misleading impression of their course quality and standards, since they may be very good at teaching students to pass the SQE but that is not the same thing as turning out students who will become good solicitors.

**Question 17: Do you foresee any additional EDI impacts, whether positive or negative, from our proposal to introduce the SQE?**

It is our understanding, from speaking to some universities, that they will not adjust their existing undergraduate courses to cater for SQE1. Undergraduates at universities who adopt this approach may take SQE1 during their university vacations but the likelihood is that they will do so after graduation. Students (or employers) will be required to meet the additional cost of top-up courses or opt for university courses, which may or may not be the most suitable or robust academically, purely on the basis of whether they tick the SQE1 box or not. The additional cost involved in top-up courses may impact adversely on diversity where that cost is not met by an employer.

The SRA's suggestion that it would no longer prescribe academic entry requirements is likely to cause employers to retrench and promote a tendency to recruit from universities with a proven track record of high academic standards; in turn this is likely to reduce diversity rather than improve it and will increase the risk of a two-tier profession.

Whilst we support efforts to promote diversity in the legal profession, we are aware that there is already considerable over-supply of candidates for training contracts, and that there is a natural limitation on the number of jobs available on qualification, so we would not be in favour of reforms which increased the number of students incurring substantial amounts of debt with no prospect of a job at the end of their legal education.

**Question 18: Do you have any comments on these transitional arrangements?**

It is difficult to comment at this stage without full disclosure of the SRA's plans for the future of the PRT. The key for us as an employer is that the changes are introduced with sufficient time to enable us to prepare fully for the new regime, including reviewing our graduate recruitment processes and timetable, the provision of external training and how we build that around workplace experience and training, our internal trainee training programmes, and our staffing generally to accommodate the possibility of trainees arriving for work without having completed any vocational training at all.

**Question 19: What challenges do you foresee in having a cut-off date of 2025/26?**

See answer to Q18 above.

**Question 20: Do you consider that this development timetable is feasible?**

There is clearly a huge amount more work to be done to develop these proposals to the degree necessary to gain the trust and confidence of the profession and the public. As such we think the timetable is very ambitious.

# Consultation questionnaire

Response ID:486 Data

## 2. Your identity

### Surname

Chatterton

### Forename(s)

Tricia

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: BPP University Law School

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I have no objection to the concept of a centralised assessment but do not consider that the proposed SQE is fit for purpose: 1. there is an over-emphasis on assessing knowledge which is a lower-level skill than those required of a functioning solicitor; 2. there is a place for MCQs in a mixed diet of assessment methods, but the proposal places too much emphasis and reliance on MCQs; 3. the coverage in SQE1 is too wide to be fairly assessed in one assessment window; 4. some of the subject combinations for SQE1 are bizarre; 5. SQE1 gives a much higher emphasis to the assessment of criminal law and practice than is currently the case, when comparatively few NQs actually practice in criminal law; 6. conversely, there is reduced emphasis on business etc. which is of much higher importance to far more practising lawyers; 7. there is no requirement to have studied anything in particular - and specifically there is clearly going to be no assessment of knowledge/practice in the current 'elective' areas of practice - to be able to sit SQE1 and this is likely to lead to a dumbing down of the training offered to future lawyers, rather than to improve competence - how can this be in the interest of the individual, their employer, the profession or the consumer?

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** I strongly agree there should be a period of QWE but I strongly disagree with the proposed lack of regulation. One of the SRA's expressed concerns with the current provision is that some trainees have less genuine experience than others - how does removing any regulation from the QWE overcome this problem? In fact, it exacerbates it. Simply saying that proof of competence will be demonstrated through successfully passing SQE2 will not ensure that trainees are exposed to the right experiences in their TCs.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:**

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** I agree that the SRA's current involvement with the LPC is too restrictive but strongly disagree with the proposal to go to the opposite extreme and to cease to have any regulation of programmes whatsoever. It will lead to a two-tier system. Those who can afford to pay for training which bridges the gap between the SQE and what is really needed in practice will flourish whilst those who opt for cheap crammer courses will struggle to carve out a meaningful career in law.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** Your proposal is that applicants should be assessed in the context of two distinct areas of practice. But those areas of practice do not reflect the wide range of practice areas that NQs qualify into. This will be unfair on applicants. Your proposals that this should take place towards the end of the QWE period (and has to do so in the case of apprentices) will be hugely disruptive to the NQ process in law firms. It will put applicants who have gone through many years of training in a highly stressful situation. Comments to Q1 also cover this.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** I understand that offering exemptions defeats the purpose of the centralised assessment but it seems very unfair on students who have already undertaken assessments in subjects to have to undertake them again. It will result in a window of assessments that will seek to assess students on learning which has taken place over very many years. However, if this system is to be implemented then all should be subject to it, with no exemptions, for example, for an applicant with a CILEx qualification. If someone with a law degree cannot be exempted from subjects studied in that law degree then it makes no sense at all that others going through a different route could be exempted.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** Your proposals are too restrictive and have not taken into account students who may have to defer assessments or who may be undertaking PT programmes. Also, if the first assessment is to be available from September 2019 that leaves very little time for providers to design suitable programmes of training and leaves employers very little time to communicate with applicants for training contracts

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** 1. MCQs have been shown to prejudice certain groups, particularly those with learning needs; 2. Students with less access to funding are likely to end up being less well trained, as they will opt for the cheaper crammer courses to simply pass the SQE.

**Response from Tunbridge Wells Tonbridge and District Law Society to the  
SRA's Consultation: A new route to qualification: The Solicitors Qualifying  
Examination (SQE)**

**Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

In principle, the SQE – both parts 1 and part 2: – does appear to be a robust and effective measure of competence and it certainly appears to be comprehensive (subject to some observations we make below).

The SRA states fairly that it cannot know from the current system whether all candidates are assessed at the same consistent standard because of the large number of universities and other colleges testing them out; on the other hand, most candidates have to pass the professional skills course before they qualify and so this does provide a degree of standardised central assessment – although we accept that this will not be the case in relation to candidates qualifying via the QLTS, apprenticeships or equivalent means.

Our main concern is over the period of “preparation”. The SRA states that there will need to be a period of preparation before candidates can take SQE stage 1. The difficulty is that the SRA appears not to have addressed at all – let alone comprehensively – the question of how much preparation will be required, how long that preparation will take, when that preparation will be carried out and what that preparation will cost.

For example, the chart at the top of page 25 of the consultation document gives the example of a law student taking a law degree. The SRA states that it would take that candidate five years to qualify – which clearly means three years for the law degree and two years work experience: a total of five years. This obviously envisages that the preparation period will be very short. Presumably the SRA takes this view because a candidate with a law degree would not need very much preparation. The difficulty is that the draft assessment specification which the SRA has supplied envisages that candidates would be examined on a large number of topics which a law degree certainly does not cover. These topics include:

- Ethics, the Code of Conduct and the SRA handbook
- Money laundering
- Regulation of Financial Services
- Confidentiality, data protection and file destruction
- Reserved and non-reserved legal activities
- Solicitors accounts
- Civil procedure (including issuing proceedings, disclosure, case management, pleadings and applications)
- Costs budgeting in civil litigation
- Serving proceedings out of the jurisdiction
- Enforcement of judgments
- Pre-action protocols
- Practice directions
- Conveyancing procedure including pre-contract searches and exchange
- Company filing requirements
- Disclosure in criminal proceedings

These are only examples. They are all areas which are not covered on the legal practice course but after the candidate starts work. How are candidates to be examined on all these subjects when they will not have covered them as part of their academic training (in the case of a law student, rather than a candidate who has already had significant work experience)?

It is clear that there is considerable confusion about this, as we have seen reports that universities have asked for law students to be exempted from SQE stage 1. On the basis of the SRA's draft assessment specification for the exam, however, it is clear that everyone, including law students, would not only need to take SQE stage 1 but would need a considerable amount of preparation for it. The SRA has failed to provide for this, nor taken account of the very considerable expense of the necessary training. The SRA's clear intention with the SQE is to avoid the need for the legal practice course which costs up to £15,000 in terms of fees alone. On the basis of SRA's proposals, however, it is far from clear that there would be any saving at all and certainly nothing like the saving which the SRA suggests.

In relation to the format of SQE stage 1, it is not clear exactly what this would be. The draft assessment specification suggests that there would be single best answer questions, extended matching questions, a research task and writing tasks. The consultation document however, suggests that SQE stage 1 could be limited to multiple choice. While multiple choice can be a satisfactory test if it is sufficiently rigorous, we consider that multiple choice only would not be sufficient and that candidates should be tested out on their writing skills in particular, bearing in mind that this is a key requirement of being a practising solicitor.

The SRA proposes that SQE stage 1 would test out skills in dispute resolution either in contract or tort. In our view, these are such important subjects that both contract and tort should be tested out in the context of dispute resolution.

The SRA states that it is concerned that, in relation to pure essay based examinations, some candidates could be lucky in preparing for only a small number of topics and finding that those came up in the exams. This is possible, but very unlikely – gambling on topics in exams is usually disastrous. The SRA should explain how there would be a balance between essay type examinations and eg multiple choice examinations. The SRA recognises that computer based testing does not test out communication skills and the SRA needs to clarify how communication skills will be tested out in SQE stage 1 – or would they be tested out only in SQE stage 2?

In relation to SQE stage 2, we accept that the role play exercise suggested seems rigorous. We are not, however, content with the proposal that the candidate would only have to choose two practice contexts out of five. We believe that it should be three as at present, with at least one contentious and one non-contentious. We also believe that there is much to be said for adding family law and employment law as a context for the assessments under SQE stage 2. The SRA argues that this isn't necessary as it is not a test of law at this stage – it is test of skill only. Nonetheless, these are such important areas of law that we believe that they should be included.

We agree with the SRA's proposal that assessment providers would have to have a very high degree of fraud deterrence, as fraud is widespread in other forms of examination.

The proposal to have a single assessment organisation to deliver the SQE seems sensible.

The overall time limit of six years between passing stage 1 and stage 2 is acceptable.

The proposal to publish anonymised results seems fair. We agree that record keeping is essential.

The SRA proposes that Ofsted style inspections will not be necessary. We do not agree. There is a risk here that candidates finish up by having training from establishments which do not provide adequate courses or qualification of sufficient quality. The risk therefore is that candidates could find themselves inadequately prepared for the SQE. Consequently, the SRA should carry out monitoring of training establishments, for the protection of candidates – particularly vulnerable ones who may not have access to the most expensive courses.

Level of agreement: 4

**Question 2 (a): To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

We agree entirely that workplace experience is necessary and we welcome the SRA's change of heart from their previous consultation in March 2016. In our view, the starting point should be that 24 months work experience is necessary.

The SRA envisages that legal experience could be obtained either from a firm of regulated solicitors or at a non-regulated entity but under the supervision of a solicitor. This would include working in a student law clinic or as an apprentice or a paralegal as part of a sandwich degree. The problem with this is that it is likely to lead to a wide divergence in terms of work experience. The SRA's response to this is that, if the workplace training was inadequate, that will be exposed through SQE stage 2. That may well be the case, but it would mean that many candidates would fall victim to inadequate training, particularly those without access to the best preparation for the SQE stage 2.

We agree with the SRA that there is a risk that a large number of work placements during the 24 month period is undesirable and likely to lead to candidates not being properly prepared for the SQE stage 2. This could disadvantage in particular candidates without access to the best training. In our view, the number of periods of workplace experience during the 24 month period should be no more than four and ideally no more than two or three. Clearly, it would be unacceptable for candidates to simply obtain monthly periods of work experience and present that as being adequate workplace experience.

There is, in connection with the issue of the number of workplace assessments, no clarity as to who would sign candidates off. At present, this is done at the end of the training contract. If a candidate had three or four periods of work experience with different employers, who would sign the candidate off? Would it just be the last provider of work experience or the other providers of work experience as well? Furthermore, how would the last provider of work experience be able to sign a candidate off without knowing about the previous periods of work experience?

The SRA's response to this seems to be that signing candidates off is not particularly important and it points out (perhaps fairly) that at present, candidates are generally signed off as a matter of routine after their training contract before qualifying as a solicitor. The SRA's point seems to be that signing off doesn't matter because the real test will be the SRA's stage 2 exam and, if a candidate hasn't had satisfactory

work experience, they won't be able to pass that. That point is accepted but we still believe that the SRA needs to address the issue as to who would be responsible for finally signing the candidate off at the end of their workplace experience and what the significance of that would be (if any).

Level of agreement: 2

**Question 2 (b): What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Twenty-four months – see answer to 2 (a) above. We should add that we accept that a degree of flexibility would be desirable in the amount of workplace experience and that a candidate with a significant amount of previous workplace experience could be allowed to qualify early. If so, we suggest that the minimum period of workplace experience after the SQE stage 1 should be 18 months.

Level of agreement: 2

**Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

We have already set out above our concerns in relation to the period of preparation: in particular, that the SRA appears to have not thought through the amount of preparatory training which would be required. Even for a student with a law degree, the amount of preparatory training would have to be very considerable.

On the question of regulation, the SRA stated that it is not proposing to monitor courses at all. We do not agree with this and believe the SRA needs to provide regulation of training, not least to prevent vulnerable candidates from having entirely inadequate training because they do not have access to the best and most expensive courses. We think therefore that it is not sufficient for the SRA to simply publish results – indeed, the SRA admits in the consultation document that it doesn't know why candidates' performance on the LPC varies so much from one institution to the other. Clearly, the SRA needs to be find out why this is the case and it certainly needs to regulate and monitor course providers.

Clearly, good providers of training will charge more and presumably it will be the same training providers as those at present. The SRA proposes to publish the pass and fail mark, together with a percentage mark for individual modules. We suggest that the SRA should also include the name of the training provider, to enable differing standards to be observed and monitored.

Level of agreement: 4

**Question 4: To what extent do agree or disagree that our proposed models are a suitable test of the requirements needed to become a solicitor?**

As we have stated above, we agree in principle with the SRA's proposals and agree that the draft assessment specification (subject to the points we have made above in relation to additional contexts for assessment under SQE stage 2) are satisfactory. We repeat, however, our point that the SRA appears not to have thought through the issue of the preparatory training necessary for candidates to take SQE stage 1. As we have stated above, it appears to us that a very considerable amount of training would be required and that the SRA's worked examples of different types of candidates (i.e. those with law degrees, paralegals, those without law degrees etc)

are fundamentally flawed because they assume a very short and inexpensive period of preparatory training. It is quite clear that preparatory training will need to be protracted and expensive. The problem with this of course is that it undermines the entire purpose of the SQE in the first place. One of the SRA's key objectives is to do away with the need for the legal practice course and the very considerable expense which that entails and how that puts candidates off from trying to enter the profession. It appears to us that in practice the SRA's proposals will not result in the saving of time and money which the SRA envisages.

It is agreed that the present tests for the character and suitability of solicitors should not be changed.

Level of agreement: 4

**Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

As we have indicated above, we are aware that universities for example have asked for those with law degrees to be exempt from SQE stage 1. As we have indicated above, we cannot see how this can be possible, given the extent of knowledge required by SQE stage 1 and in particular the very extensive requirements for knowledge of subjects which are not covered by law degrees. We cannot, therefore, see that anyone can be exempted from SQE stage 1.

As a key objective of the SRA is to ensure one single gateway into the profession for all, we also cannot see how there can be any exemptions from SQE stage 2.

In relation to foreign law students, we accept that Britain's forthcoming departure from the EU obviously creates great uncertainty about EU candidates and we accept that no decisions can be made at this stage until the position becomes clearer.

Level of agreement: 3

**Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

We agree with the SRA's transitional arrangements. We did have some concerns about the transitional arrangements proposed in relation to the previous consultation over the SQE in March 2016, but these appear to have been addressed and additional time allowed.

Level of agreement: 2

**Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

We are concerned at the cost of courses. The key objective of the SRA, as we have pointed out above, is to reduce the costs of training which are perceived as a barrier to entry to the profession. The difficulty is that, given the apparent rigour of the SQE stage 1 exam, a considerable amount of preparatory training will be necessary and we are concerned that the cost of this could be just as high as the current LPC. It is this area about which we are most concerned and which the SRA needs to address, as it has entirely failed to do so in the consultation paper. Would the SRA limit the fees which colleges could charge?

Level of agreement: 4

6 January 2017

## **Cardiff University – School of Law and Politics - supplementary response to SRA Consultation – ‘A new route to qualification: The Solicitors Qualifying Examination (SQE), October 2016’ on detailed contents of SQE Assessment Specification**

*Cardiff University is a research intensive Russell Group university which was placed 5<sup>th</sup> (among non-specialist institutions) in the most recent REF exercise. Cardiff is alone among Russell Group universities in offering (through its Centre for Professional Legal Studies - CPLS) the vocational routes to qualification for both barristers and solicitors. It has delivered these since 1993 (LPC) and 1996 (BVC/BPTC). Since 2012 the School has also delivered the GDL. Both the LPC and the GDL are offered on a full time and a part time basis.*

*The School of Law and Politics is also a well-established QLD provider, with more than 1,000 law students. Many remain at Cardiff to complete their professional training through CPLS. The School is also home to the Journal of Law and Society, the Centre for Crime, Law and Justice and the Wales Governance Centre among others.*

### **Introductory**

This document is a supplementary response, commenting only on some of the detailed provisions of the SQE Assessment Specification. This document does not seek to respond to the main questions asked in the SRA’s consultation paper. For our responses to those questions, please see our main response, which includes comments on the overall structure of the SQE and the proposed methods of assessment (particularly the use of MCTs for the Functioning Legal Knowledge Assessments). This document is concerned more with the content of specific assessments, and some questions on the arrangements for the assessments.

The comments are those received from a number of colleagues on different aspects of the Assessment Specification, and not all aspects of the Assessment Specification are commented on. However, it is hoped that the Assessment Specification will not be finalised as a result of this current consultation, as it would be helpful if stakeholders can continue to comment on the Specification if the SRA Board decides to introduce the SQE, and that further amendments and refinements will be considered in future, after the closure of this consultation. The SRA has acknowledged that the Assessment Specification would need further development if it is to be introduced, so we assume that the Assessment Specification in its current form is a ‘first draft’ and is indicative only.

### **General comments**

There are general questions about rigour and level. For Stage One, there are references throughout to the Statement of Solicitors Competence, yet are not the point of qualification/admission and Stage Two supposed to be at higher levels than Stage One?

It is not clear why candidates may be assessed on their competency in Welsh in some of the Stage 1 and Stage 2 assessments but not in others. Should the Functioning Legal Knowledge Assessments be made available in Welsh? Also, according to the references in the Assessment Specification, although a number of skills assessments may be conducted through the medium of Welsh (Stage 1 Practical Skills Assessment, and the following in Stage 2: Client Interviewing; Legal Research and Written Advice; and Legal Drafting), two of the skills assessments appear to be English only (Advocacy/Persuasive Oral Communication; Case and Matter Analysis). Is this just an oversight? (NB

we cannot find reference 'ix' in the main text, so it may be that the reference has been omitted). If it is not an oversight, why should candidates not have the choice to be assessed in Welsh in Advocacy/Persuasive Oral Communication or Case and Matter Analysis? It is possible to conduct advocacy in Welsh in courts in Wales.

## **Stage 1 assessments**

### **A. Functioning Legal Knowledge Assessments**

#### **General points**

It is not clear if the Functioning Legal Knowledge Assessments are to be (a) closed book, (b) open book (with any materials permitted), or (c) with a prescribed set of books and materials.

If the Assessments are to be closed book, the Assessments will just become memory tests. It is unlikely that any solicitor would need to keep the breadth and depth of knowledge shown in the Assessment Specification at all times in their head. Making the assessments closed book seems rather impractical, and unrealistic, therefore.

However, if the Functioning Knowledge Assessments are fully open book, then there are issues of policing what candidates bring in to the assessment with them, and there is an EDI issue as better off candidates will be able to afford better resources to bring in to the assessment.

If, instead, there will be a prescribed set of books and materials, there will be an inherent cost to candidates of purchasing those books and materials. Also, there is a policing issue, and invigilators will need to check that candidates only have the permitted books and materials. With one centralised assessment, though, it will be virtually impossible to identify all the different texts that may be introduced, and all the course material that different candidates will be relying on (assuming a multiplicity of course providers).

There seems very little in the Assessment Specification of the 6 Functioning Legal Knowledge Assessments that covers what is currently covered in the qualifying law degree. The vast majority of what is in the Assessment Specification is material currently covered on the LPC. The SQE Stage 1 appears to be largely a straight replacement for the core subject assessments of the LPC, with very little assessment of the core subject content of the QLD.

Arguably insufficient attention is paid to the foundations of areas of law. (This is particularly true in relation to trusts - where the much of the conceptual framework typically covered on the LLB module is absent, but understanding of it will be assumed for the more vocational elements. There is also insufficient attention paid to equity generally.)

'Ethics, professional conduct and regulation, including money laundering' is listed as being relevant to only two of the Functioning Legal Knowledge Assessments ('Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales', and 'Commercial and Corporate Law and Practice') in the Overview section of each Assessment. It is not mentioned in the Overviews of the other four Functioning Legal Knowledge Assessments, where it is clearly also relevant, although there are references to conduct etc. in parts of the other Assessments.

Although contract law is identified as assessable in Dispute Resolution in Contract or Tort and also in Property Law and Practice, there is no description of the relevant principles in the assessment specification for Property Law and Practice and the description in the assessment specification for

Dispute Resolution in Contract and Tort is not as extensive as the one found in Commercial and Corporate Law and Practice.

Should other important practical topics, such as employment law and family law be included? Is the list of topics assessed in Stage 1 and Stage 2 sufficiently wide?

The Stage 1 assessments are stated (see page 4) to assess the Functioning Legal Knowledge required for effective practice and to assess the 'knows' and 'knows how' levels on Miller's pyramid. In the overview for each of the six stage 1 Functioning Legal Knowledge Assessments, the references are to the Statement of Solicitor Competence (SoSC) not to the Statements of Legal Knowledge. Is this correct? In contrast, the stage 2 assessments are stated to assess a number of elements of the SoSC.

There seems to be a very high number of questions per Assessment. For the 3 hour assessments there are 120 questions and for the 2 hour assessment there are 80 questions. This means 1.5 minutes to answer each question. This does not appear to allow much time for thought or reflection on the part of candidates. It is difficult to see how this will enable the testing of higher level evaluative skills. Is it feasible or desirable to have so many questions for each Assessment?

### **1. Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales**

The title of the assessment should be changed to refer to the legal system of England and Wales. There is only one legal system for England and Wales, just as there is only one jurisdiction - the jurisdiction of England and Wales.

Turning to Assessment Objectives C (Apply knowledge of the institutions and operation of constitutional law and EU law to develop and advise on options and progress cases), there are a number of points to be made. They are:

- candidates should identify and apply principles of the UK constitution - at present there is no British constitution;
- there should be an objective which requires candidates to demonstrate an understanding of what is meant by the royal prerogative;
- there should be an objective which requires candidates to demonstrate an understanding of the subject areas in which the National Assembly for Wales has legislative competence;
- there should be an objective which requires candidates to demonstrate an awareness of the Sewel Convention;
- the objective that candidates should be able to identify the nature of and procedure for passing primary legislation should be divided so it provides specifically for the procedures for passing primary legislation which applies to the UK, for passing primary legislation which provides for England and Wales only, and only to England (the so-called English votes for English laws procedure) and the procedure for passing Acts of the National Assembly for Wales.

Assessment Objective D (Apply knowledge of relevant sources of law to develop and advise on options and progress cases) should include an objective which requires candidates to demonstrate an understanding of the growing divergence of law which applies only to England and law which

applies only to Wales. It should also include another objective which requires candidates to demonstrate an awareness of the sources of the law of England and the law of Wales.

Actually, Assessment Objective D is at present extremely vague – ‘Apply knowledge of relevant sources of law to develop and advise on options and progress cases’. Given that the other Assessment Objectives (A-C, E and F) specifically mention topics or relevant sources, it is not clear what the 20% weighting on Assessment Objective D is covering.

Given the importance of the Accounts Rules, candidates should be able to understand and interpret ledgers.

## **2. Dispute Resolution in Contract or Tort**

In the section headed Legal Knowledge and the sub-heading of “Core Principles of Contract Law”, the point relating to formation of the contract should include capacity to enter into a contract and legality of the subject-matter of the contract.

In the section headed “Different Options for Dispute Resolution”, the point which concerns where to start proceedings should refer to allocation of business between the High Court and the County Court, not “the county courts”.

## **3. Property Law and Practice**

Although generally the specification seems to identify the right aspects of Property work:

- there should be a greater emphasis on acting for the lender;
- there should be explicit reference to coverage of sales/purchases of part and new builds;
- should the candidates be able to undertake the various matters in the context of commercial and residential transactions? Should this be made clear? If that is the case, that would expand the syllabus considerably. Should it be made clear that the objectives can (or cannot) be assessed in either or both? Some of the objectives are only relevant in the commercial context;
- there should be explicit reference to seller client’s initial instructions;
- “Candidates are not required to recall specific case names, or cite statutory or regulatory authorities except those specified below” suggests a “dumbing down” – a reduction in rigour – as against the current regime (only two statutes are then “specified below”).

Paragraph H of the assessment objectives is missing from the overview.

Candidates should be able to prepare financial statements. This could be covered within the Property objectives.

#### 4. Commercial and Corporate Law and Practice

The specification for this assessment is very broad, very general and difficult to make sense of in places.

##### Overview

Paragraph D of the assessment objectives and weightings is missing from the overview which runs from paragraphs A - G rather than A - H.

On a quick comparison with the other five assessments, this assessment appears unmanageably broad. There are eight separate areas described, all of which are potentially extremely wide ranging. All of the descriptions are very general, making it difficult to know precisely what is intended to be covered and what depth of knowledge is required, despite the further information provided in the assessment objectives which follow.

It appears that the assessment could potentially cover the following areas:

- company law (private and public) including corporate governance
- partnership law including 1890 Act partnerships and limited liability partnerships
- employment law
- contract law
- commercial law (sale of goods, agency, distribution, franchising)
- business accounts
- company and business finance
- business and company sales and acquisitions
- insolvency law
- taxation of businesses and their owners.

However, the four areas of law specifically mentioned in the description of the legal knowledge to be assessed (page 34) are:

- business organisations;
- taxation of business organisations;
- core principles of contract law\*
- ethics, professional conduct and regulation, including money laundering\*\*

which does not appear to be an accurate description of the balance of the assessment or its overall emphasis.

\* Although contract law is also identified as assessable in Dispute Resolution in Contract or Tort and also in Property Law and Practice, there is no description of the relevant principles in the assessment specification for Property Law and Practice and the description in the assessment specification for Dispute Resolution in Contract and Tort is not as extensive as the one found here.

\*\* This area is also listed as being relevant to Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales but is not mentioned in any of the other four subjects where it is clearly also relevant.

There are inconsistencies in the approach taken that need to be resolved.

## Assessment Objectives

These are imprecise, poorly drafted and difficult to make sense of making it difficult to offer constructive comments. Very few of the objectives are clear enough to raise no further questions and all need to be clarified and explained in much more detail to provide an assessment specification that is meaningful and comprehensive. Many of the objectives cover areas that are so broad that working out the scope of the assessment is almost impossible. There is potentially so much to cover that any assessment will be unmanageable in its breadth and will lack any proper depth.

### *A Establish a business start up to meet a client's business objectives*

What does A1 add that is not already covered in A2?

A3 refers to candidates being asked to "identify funding options". What is the law/procedure that is potentially being tested here? Is this aimed at candidate being asked to advise at a general level on the choice between personal and third party funds, or the choice between debt finance and (in a company) equity finance. What about venture capital, crowd funding etc? Could candidates be asked to advise on the procedures for raising equity finance and the procedures for borrowing from a bank?

A4 "identify the tax implications of a specific business medium" - can a business medium have tax implications or is it the choice of one business medium over another that has implications for the taxation of the owners of the business and, if it is incorporated, the business itself?

A6 "evaluate constitutional requirements to meet business and client needs" - does this involve advising on the requirement for a company to have articles of association? Does it involve advising on what should be included in the constitution of a company in order to meet a client's objectives? Is this limited to company constitutions or does it extend to advising on the "constitution" of a partnership?

A7 "identify liability risks on a business start-up, including limited liability for companies and partnerships" - shareholders in a company have limited liability - companies themselves don't; partners in an 1890 Act partnership have unlimited liability for debts etc; the position is different in limited partnerships and limited liability partnerships.

A8 "identify client instructions potentially amounting to FSMA regulated activity, recognise the limitations placed on solicitors and evaluate the permitted options for carrying out the work" - this could be drafted much more precisely. (For example, the wording could read: "identify when a client's instructions involve carrying out a regulated activity and explain the circumstances in which, and on what conditions, a particular solicitor might be permitted to carry out that activity")

In addition, its relevance extends beyond the start-up phase of a business.

### *B Evaluate a client's extant and prospective, rights, duties and responsibilities as an employer and as a party to common commercial transactions*

Two potentially huge areas of law are covered here with the detail not really helping to clarify the precise scope and depth of coverage required. Other topics (taxation and money laundering) are then referred to in the detail about what candidates will be asked.

For example B1 refers to candidates being asked to "recognise the legal rights and duties of employees and employers" which would appear to require a detailed study of employment law. If that is the intention then that should be stated much more clearly.

B2 - refers to the taxation of payments to directors, employees and contractors. It would make more sense for taxation to be dealt with separately rather than under the heading of employment law and commercial agreements. Additionally, is the intention that candidates could be asked to deal with the tax implications for the recipient as well as for the paying company or business?

B3 - it would be helpful if what is meant by "common commercial transactions" could be explained so that the precise scope of this assessment objective and of B4, B5 and B6 is clearer. How do the risks referred to in B6 differ (if at all) from those referred to in B10?

B8 - it would make sense for taxation to be dealt with separately given the range of topics already covered by assessment objective B

B9 - it would also make more sense for money laundering issues to be dealt with separately.

*C Apply the rules and procedures necessary to ensure proper governance of a client's business and its compliance with statutory and other requirements*

Presumably the "statutory and other requirements" referred to here are those concerning business governance but this could be made clearer.

C1 what exactly is meant by "governance and compliance issues" - could this be explained more precisely. Is the governance of listed companies intended to be covered here? Or is the focus on owner managed businesses?

C4 - There are very few decision making processes *required* of partnerships with the PA 1890 requiring unanimity for some decisions. It would also appear to make more sense to consider the typical contents of a partnership agreement more generally rather than focusing on what an agreement might provide about decision making within a partnership. It may be that this is what is intended to be covered by A6 as it is unclear where else the substance of a partnership agreement might be covered.

C6 - "company officers, agents and partners" is ambiguous. What type of partners are included here? Does this include the members of a limited liability partnership and partners in an 1890 Act partnership? Is the reference to agents intended to cover commercial agents or is it limited to agency in the context of partnerships and the company/director relationship?

Are the "filing requirements" in C3 and the "statutory filing requirements" in C5 two different things?

C7 - what exactly is the scope of this? Is it limited to the rules found in sections 175, 177 and 182 of the Companies Act 2006 or does it extend to cover the additional obligations placed, for example, on the directors of listed companies?

*D Apply the rules for the calculation, distribution and taxation of profits to meet a client's objectives*

Why is the focus here on profits rather than gains?

D1 - to what extent is this just an arithmetical or accounting calculation and to what extent might candidates be asked about the law governing how, for example, the profits of a trade are calculated for tax purposes? Why is there such a focus on the distribution of those profits given that profits are often retained in the business to fund further growth? Distribution of gains is not a term that is commonly used.

D2 - what is meant by "identifying options" for distribution of profits and gains. Could this be made more explicit?

D3 - what is meant by "appraising applicable tax regimes in respect of profits and gains" and what does this add to the other assessment objectives. Could simpler language be used throughout so that the scope of what might be assessed is clearer

D4 - what are "basic charges to tax"?

D6 - why is the language used so vague - could this be drafted so that it refers to reliefs from income tax, capital gains tax and corporation tax?

D7 - what does recognising anti-avoidance legislation involve?

D8 - what does assessing procedures and approvals required to distribute profits and gains involve and how does this differ from D2?

*E Apply understanding of business accounting*

What levels of knowledge of business accounting are required here? There is very little detail provided in E1 - 3 making it difficult to understand the scope of this assessment objective.

E2 - what exactly is meant by "standard elements of financial records" as distinct from standard elements of accounts? Does this mean that a candidate should be able to interpret ledger accounts and should be able to understand the double entry bookkeeping system?

E3 - what is meant by "basic accounting information". What exactly does a candidate need to be able to interpret?

*F Apply understanding of business finance to meet a client's objectives*

Again, what is meant here by "understanding of business finance". Could the legal elements of what is required as distinct from the commercial and financial elements be made clearer? Are candidates expected to be able to answer questions about the law relating to debt finance including the law relating to the granting of security?

F1 - is "identifying sources of additional funding for growth" really what a solicitor does?

F2 - and is "assessing the best/most appropriate form of finance/security to meet a client's needs" the role of the solicitor? This sounds like financial advice rather than legal advice and the legal aspects of what a candidate might be asked to do need to be made clearer.

F3 - this specifically refers to "financial advice" and the limitations on a solicitor's ability to provide it.

*G Apply understanding of the law and practice relating to business sales and share transfers to meet a client's objectives*

This is a very large topic in its own right and the scope of what might be assessed here needs to be explained in a lot more detail. Presumably, given the reference to business sales, the reference to share transfers is intended to include not only sales of some of the shares in a company but also a sale of the entire issued share capital.

G1 - what is meant by "assessing contractual considerations and procedural requirements"? Are candidates expected to know and to be able to comment on the typical terms of share and business sale and purchase agreements. Are they expected to be able to describe the procedures involved in and the stages of the sale or purchase of a business or a company?

G2 - presumably candidates should also be able to advise on the tax implications of acquisitions as well as disposals.

G4 - again the reference to regulatory limitations would appear to be better dealt with as a general requirement to be able to recognise the regulatory implications of corporate and commercial work as a whole.

*H Apply understanding of the law and practice relating to business insolvency to meet a client's objectives*

The assessment objectives are very brief and do not appear to require consideration of the creditor's perspective (secured or unsecured) except in H4 which focuses purely on calculating the funds available to different types of creditors.

H1 - presumably the focus here should be on financial distress caused by business debt rather than consumer debt.

H2 - what is meant by "procedural requirements of insolvency"? What is the scope of this topic? Does this purely involve describing how an individual might be made bankrupt or does it also involve dealing with the legal implications of the bankruptcy for the individual and his/her creditors. Presumably candidates should be able to demonstrate their understanding of the nature, purpose and effect of the various insolvency procedures for companies and individuals as well as being able to describe the procedures involved in each case.

#### Legal Knowledge

The level of detail in which the four areas of legal knowledge are described is inconsistent and the balance of the assessment does not seem to have appropriate coverage of business law and practice.

#### Business organisations

The bullet points that appear under the heading "Partnership decision-making and authority of partners" clearly do not relate to the law of partnership as they comprise employment law and the law relating to sales and purchase of businesses etc.

### Taxation of business organisations

This makes more sense than the references to taxation contained in the assessment objectives.

### Core principles of contract law

See the comments earlier about the way in which contract law is dealt with in Property Law and Practice, and in Dispute Resolution in Contract or Tort.

### Ethics, professional conduct and regulation, including money laundering

See the comments earlier about this topic. Why is there more apparent emphasis on this topic in this assessment than in any other? Why is the Serious Crime Act 2015 mentioned here but not elsewhere? What is its specific relevance to this topic rather than any other?

### Weightings

The assessment is very broad in its coverage with no topic being allocated more than 15% of the marks. The ability to cover any area in depth is therefore limited.

### Scenario questions in the assessment

The emphasis in the scenarios listed is more in line with what might be appropriate for an assessment of a candidate's knowledge of commercial and corporate law and practice.

## **Wills and the Administration of Estates and Trusts**

The Wills and Administration of Estates aspects of this Assessment appear to reflect the limited set of LPC Outcomes for the LPC Core subject of Wills and Administration of Estates. Significantly, they do not include the drafting of wills, something that has not been compulsory on an LPC since 1997. As a result, Stage 1 of the SQE will not improve the perceived deficiencies in will drafting referenced at paragraph 37 of the main consultation paper.

There is also very little 'doing' in the Assessment Specification. This is a function of the form of assessment. For example, MCTs will not test candidates on whether they can prepare applications for grants of representation, or complete Inheritance Tax accounts. Surely solicitors need to know *how* to do things, rather than just be able to answer MCQs on practical topics.

Regarding the Trusts aspects of this Assessment, Trusts is the only QLD subject which is not featured in the specification in its current form (the form taken by most courses and textbooks). However, it seems that the SQE assessments assume a knowledge of these Trusts principles. It is arguable that the role of Equity is not emphasised enough in the Assessment Specification as a whole, because Equity and Trusts is relevant to many areas of practice, including those featured in the Assessment Specification, not just to Wills and Administration of Estates.

Further information is needed from the SRA as to the extent of Trusts law knowledge requirements for the SQE.

The required legal knowledge in relation to trusts law is set out at p.42. This includes knowledge about:

1. The duties, liabilities and protection of personal representatives and trustees.
2. The more commonly arising kinds of trusts
3. The powers of personal representatives and trustees
4. Beneficiaries' rights, remedies and powers

Without sight of a proposed syllabus for this particular SQE module it is difficult to say to what extent existing LLB Trust courses cover the knowledge needed for this particular Functioning Legal Knowledge Assessment. More detail is needed to see whether the Trusts requirements of the SQE are covered by existing Trusts modules, or would be covered with minor revisions.

Most of the SQE Assessment Specification for Wills and the Administration of Estates and Trusts will not be covered currently in an LLB Trusts module and would not fit well into a Trusts module. That content would need to be covered in a separate module or a separate course.

### **Criminal Law and Practice**

The section reads as if it has been written by someone with limited understanding of criminal law, even down to the terminology used e.g. phrases such as 'claim' and 'business' are used, rather than 'prosecution' and 'case'.

The main concerns, however, are:

- it is difficult to imagine how candidates will be able to cover some of these areas at all during a three hour MCQ style exam - for example: 'Develop a case presentation theory which takes into account the client's instructions, the relevant law and evidential burden in the case.';
- aspects of criminal practice such as 'witness handling' are to be assessed at Stage 1, although the candidates are not required to do any trial advocacy as part of Stage 1 – again, how can this be done through multiple choice questions?;
- under legal knowledge, the material covered seems random and disjointed. For example, it appears that candidates are not expected to cover murder, or any of the homicide offences specifically. They are, however, expected to cover the partial defences to murder. This is illogical and inconsistent.

### **Stage 1 Legal Research and Writing**

Candidates will have 3 hours to research, prepare a research trail, a memorandum or briefing and to write 2 letters. The letters seem to be unrelated to the research, so it is not clear why the different tasks are being put together. It is also not clear how long is allocated to each of the 2 parts (the research tasks and the letter writing). Assuming it is 90 minutes for each, this will not allow for anything more than fairly basic research – there is not enough time in a 2 hour LPC small group session for students to research a topic, write a memo and do a research trial. Our concern is that there is insufficient time allowed for the tasks.

## Stage 2

### General points

The Stage 2 skills assessments are said to cover the following competences from the Statement of Solicitor Competence (SoSC):

- Maintain the level of ...legal knowledge needed to practise effectively;
- Draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively.

However, the Stage 2 assessments are not always going to be in the 'field(s) of work' of every candidate. Also, the relevant legal material will be given to candidates before the assessment, so the 'legal knowledge' will be provided to the candidate by the Stage 2 assessment organisation at the beginning of the supervised assessment. We cannot see, therefore, how the Stage 2 skills assessments will test the above competences.

One of the major practical problems we envisage is the sheer scale of assessing candidates at Stage 2, particularly with the oral skills of Advocacy/Persuasive Oral Communication, Case and Matter Analysis and Client Interviewing. The need for assessors and for clients to role play will make assessing Stage 2 for all candidates across England and Wales a truly mammoth undertaking. Will one assessment organisation really be able to cope with this? What sort of time period will be needed to complete a single diet of Stage 2 assessments, given the number of candidates and the number of lengthy individual assessments that will be required? The problem is doubled by assessing candidates twice in each Skill. We doubt the feasibility of this. Currently, similar skills based assessment on the LPC (and BPTC) is managed by a large number of provider institutions that between them are able to share the not inconsiderable workload of managing a smaller number of skills assessments (e.g. on the LPC currently there is one Advocacy and one Interviewing and Advising assessment).

Presumably all oral skills assessments will be recorded, and there will be appropriate moderation processes, to ensure that a significant proportion of the skills assessments are reviewed/moderated. This will be extremely time-consuming and expensive.

### Client Interviewing

Broadly, the structure of each Client Interviewing assessment looks appropriate.

Given each assessment involves more than one task – an interview and an attendance note – what will the mark weighting be for each task? Will candidates have to be competent in both tasks?

In practice, interviewers commonly used checklists designed to help obtaining relevant information in particular contexts. Will candidates be provided with appropriate checklists in the assessments? Will the content of those checklists be made available for candidates to see in advance of sitting the assessments i.e. will they be readily available for candidates and course providers to see and use?

The list of scenarios for the Commercial and Corporate Practice context is much longer than the list of scenarios for other contexts. Is this fair? Should the number of possible scenarios within each context be the same, to help ensure consistency of assessment across different contexts?

We are surprised at two of the Property contexts for Client Interviewing, namely interviewing a client:

- 'who is landlord or tenant under a lease of residential premises
- who has been served with Notice to Quit'

as these issues do not figure, so far as we can see, anywhere else in the SQE. We think that this could be considered unfair.

On the Wills and Administration of Estates and Trusts context, we do not know why the intestacy scenario should be limited to the intestacy of a partner/parent/child or friend. Also, the use of the term 'partner' is misleading, as if the partners were not civil, the client would have no entitlement on intestacy. Also, are the second and third scenarios – discussing a will as beneficiary or a personal representative – meant to be post-death? Might there not be other valid scenarios e.g. interviewing someone who wishes to challenge the validity of a will, or who wishes to bring an application under the Inheritance (Provision for Family and Dependants) Act 1975?

### **Advocacy/Persuasive Oral Communication**

We have the following generic comments:

- it seems that this is a presentation rather than advocacy - there is no element of interactivity as the assessor won't ask any questions;
- we are concerned that the assessments need not be in a litigious context. This is not going to prepare students for a chambers appointment, which is something many of them are likely to be required to do fairly early on in their training, even if students sit Stage 2 before entering the period of qualifying work experience;
- we are not entirely sure what the presentations in a non-litigious context are meant to replicate;
- we are also concerned by the one hour preparation time. This is not long to consider the issues and to think about a sensible structure.

Regarding Property contexts for Advocacy, we do not understand what is meant by the second context ('ownership of is most appropriate'), which looks like a typo.

### **Legal Research and Written Advice**

This looks more akin to what LPC students do now (in Practical Legal Research, or PLR), other than the fact it will be time constrained. The time allowed looks more realistic than the time allowed for the Stage 1 assessment and we do not have any particular concerns.

However, will it be possible to judge the candidates research skills from the letter written? A properly written client letter will often exclude technical details in the interests of giving the client comprehensible advice. It might not be clear from the wording of the letter that the candidate has accurately understood the research problem or identified the correct legal sources.

If there is to be a separate note of the research findings, what will the weighting be between the note and the letter? In any event, what will be weighting be between the research and the writing skills?

### **Legal Drafting**

On the Wills and Administration of Estates and Trusts contexts, what is 'probate documentation' in the second bullet point meant to refer to, as the third bullet point refers to oaths. Could the reference be made more specific?

### **Conclusion**

As said in the Introduction, should the SRA decide to proceed with the SQE, we would welcome further opportunities to comment on the Assessment Specification as it evolves, assuming that changes would be made in the light of this current consultation.

Byron Jones  
LPC Course Leader  
School of Law and Politics  
Cardiff University  
January 2017

# Consultation questionnaire

Response ID:552 Data

## 2. Your identity

### Surname

Conaghan

### Forename(s)

Joanne

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: On behalf of the University of Bristol Law School

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** The University of Bristol Law School has been a leading provider of legal education for over a century. We have a long and established reputation for producing graduates who go on to excel in the legal profession. Many of our graduates also go on to careers in other fields, including acting, politics, journalism, banking and finance and many more. We aim to produce intellectually accomplished well rounded enquiring graduates with a rich, ethically grounded appreciation of law in business and society. To this end our curriculum is designed to hone and develop a range of critical and practical skills which are valuable to legal practice and beyond. University of Bristol students enjoy a first rate legal education. Moreover we have a long established commitment to inclusivity of learning and widening participation is central to our student recruitment strategy. In our response to the first consultation we made it clear that we did not think that the introduction of the SQE would achieve the goals stated or indeed that there was a particular problem that required addressing. There is no evidence offered to support claims that the current system does not provide a robust and effective measure of relevant competences. In any event we remain utterly unconvinced that the knowledge assessments forming part of SQE1 and comprising primarily computer based testing are a better measure of competence than the current system. In addition, it continues to be extremely difficult to gauge whether the proposed SQE1 will be even minimally fit for purpose given that we have no concrete sense of what the assessment will entail. We question the conception of SQE1 in terms of knowledge fundamentals as if the retention of knowledge is the primary feature of legal practitioner competence. In fact legal knowledge is only of value in so far as it can be effectively used and what the current QLD system does is impart knowledge of law in a form which is discursive and challengeable, enabling its effective application and critique. It is not legal knowledge per se which is of primary value but the context such knowledge provides for the exploration and development of valuable legal and broader transferable skills. In addition, any knowledge base built up in preparation for SQE1 given the proposed form of assessment, is likely to privilege breadth over depth in terms of grasp of the relevant knowledge field(s).

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** We agree with reservations. We support the aspiration to facilitate greater flexibility. We question whether university law clinics will be equipped to provide anything like the in depth work experience necessary not least because work experience is scheduled to take place after SQE1 and most students will engage in law clinic work while studying for their undergraduate degree (ie before SQE1).

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** WE have no objection to the current 2 year requirement. We think that law firms are better placed to comment on appropriate duration of work experience.

**5.**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** There are no proposals for regulating the preparatory training other than to publish data on results. The assumption is that the market will provide and so it will but as with markets generally, provision will be indifferent to questions of access, social mobility and the like. There is likely to be exploitation of the less well-informed by unscrupulous training providers and little to guide potential students in what is likely to be a large and unregulated market for training provision. There are already a range of measures in place to gauge the quality and content of the academic stage of legal training in any particular institution and robust QA requirements to which QLD provider must adhere. The current regulation of preparatory training for legal practice is infinitely better than what is being proposed. The QLD.GDL model remains a valid, appropriate and superior basis for the SRA to ensure high quality legal education in core subjects and skills. Moreover, the most efficient and effective way of regulating this is through a rigorous process of professional accreditation of law degrees. Some of the comments in the consultation document exaggerate the extent to which university degrees are lacking in standardisation. At para 28, for example, it is stated that '[Universities] both teach their students and assess them through examinations which the universities set, mark and moderate.' This overstates the independence of each university's examination processes, since all universities use external as well as internal moderation. There is a good case for arguing that this is a robust and transparent process. If there is insistence upon moving away from this, we urge the SRA to allow law students to take SQE 1 exams on a modular basis, so that they can take university exams and the associated SQE exam at a similar time. At the moment, the proposals dictate that a student would have to take all of the SQE exams at the same assessment period. This would have to be after university graduation, adding substantially to the student study and exam burden.

**6.**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** As we said in our response to the previous consultation, We remain wholly unpersuaded that computer-based assessments can adequately assess the ability of a candidate to display the intellectual creativity in handling substantial bodies of knowledge required of a graduate. However detailed and comprehensive they may be, computer-based assessments require binary judgements of right/wrong or better/worse against pre-articulated text, and cannot effectively assess the ability of candidates to formulate and express the reasons they have for making specific judgements. The position argued for by a candidate may be one that is difficult to support against the relevant source material, but we would want to give credit for serious and creative attempts to take such a position. This is why, beyond a very basic level, computer based forms of assessment are not used in Law Schools, and are not the sole form of assessment in the Law National Admissions Test. At university level, to pass normally requires no more than a fairly basic knowledge base, but little else. However, to obtain a better mark, much more sophisticated competences must be demonstrated such as comprehension, analysis, synthesis, critical evaluation and problem-

solving. The fairly basic knowledge base required for a pass mark at degree level could be tested by a computer based assessment, but for the reasons given above, the higher level skills could not, because they require the demonstration of the capacity to judge and weigh legal material. We could accept that a SQE could be based upon a computerised assessment which tested fairly basic legal knowledge. But it is unlikely that such an assessment would meet the end of ensuring the intellectual standards of those entering the legal profession. One might even want to test more detailed knowledge about the law. But the capacity to retain substantial knowledge of legal materials has very little to do with the competences that make a good lawyer. The intellectual standards that characterise a good lawyer are characterised by the more sophisticated competences already mentioned. In our view, to valorise the capacity to retain knowledge as a characteristic of a good lawyer seems both archaic and odd. Certainly, the assessment proposed will inevitably be set at too basic a level to address the SRA's motivating concerns of inconsistency in degree-level standards. In summary we believe that the current system comprising the QLD/GDL to impart academic 'knowledge' (construed to include graduate skills of critical thinking and practical problem-solving) is a strength of the current system which should be retained.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** We continue to believe that the Qualifying Law Degree model has merit, and that it is practical and appropriate to retain this model, and to grant exemptions from substantial parts of SQE 1 for students who obtain a QLD. This does not and should not preclude other qualifying routes. If the objection is that the QLD does not cover subjects the SRA wishes to cover then it is open to the SRA to propose changes to the QLD requirements (and correspondingly to the GDL). Not only is this a better - more robust training route - but it enables students to benefit directly from the hard work and effort they put into their degrees. It cannot be right to add to the student burden at a time when they and/or their families already make vast financial sacrifices to acquire a high quality education. It is difficult too to envisage how the removal of the current QLD exemptions can do anything other than add to the cost of acquiring a first rate legal education.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** They seem fair for students purposes but give universities very limited time to make changes to their curricula. It would be better too to coordinate any changes envisaged with the BSB.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We find it inconceivable that the proposal to end QLD exemptions in particular will not add to the costs of becoming a solicitor. There may be some opportunity to off-set because of the lack of a formal requirement to sit the LPC but it is equally likely that costs will be increased by the entry into the market of unregulated training providers. A properly-tailored exemption system by its very nature reduces student costs.

# Dundee Law School, University of Dundee

## Response to Consultation on *A New Route to Qualification: The SQE*

This response is being submitted on behalf of Dundee Law School, University of Dundee. The Law School currently offers standard LLB degrees (over 3 and 4 years) and accelerated, graduate-entry degrees (2 years), all of which are accredited by the professional bodies in England and Wales, Scotland and Northern Ireland.

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### General

The proposals here amount to a great leap into the unknown, in terms of the capacity of the SQE to deliver the desired outcomes, how candidates will prepare for it and the provision of courses, etc. to assist them. Moreover, at this stage the actual content of the exams is unknown (what level of knowledge will be required?), making full assessment of the proposals impossible.

We are not convinced by the initial analysis in the consultation paper. The current qualification process is based on an academic stage developing foundational knowledge and the ability to “think like a lawyer”, followed by a vocational stage (LPC plus traineeship) in which the applied knowledge and skills are developed. To the extent that there are problems of inadequate service to consumers, no evidence is provided to establish that these arise from failings at the academic stage, nor that a move to the pattern proposed will improve the position.

Our experience in Scotland is that the existing Quality Assurance mechanisms in higher education institutions (including internal processes, supervised by QAA’s Enhancement Led Institutional Review, QAA Benchmarks, external examining) are effective in avoiding inadequate provision. Moreover, adding further external scrutiny to those mechanisms is not unduly onerous on any party (e.g. a representative from a professional body participating in the periodic reviews of programmes undertaken by institutions). But the position may be different in the more commercially focussed sector south of the border.

It may be that a centrally set examination is desirable, but that does not mean that such an exam needs to be the model (and to replace wholly all other forms of qualification) at all stages of what is inevitably a lengthy process. Retaining a QLD (or equivalent, such as through apprenticeship schemes) as a pre-requisite of sitting the SQE(1) would reduce the scale and burden of that exam and enable students to start preparation for a legal career with a clearer exit qualification if (for whatever reason) they choose not to pursue that route.

The current proposal would enable a candidate to become a qualified solicitor in England and Wales without ever having been resident there (or only minimally if the exams require personal attendance in the UK), since preparation for the exams can be done anywhere and the work experience could be done overseas (or in Scotland) either within an English-regulated firm or under the supervision of a suitable solicitor. This may be a good or bad thing, but deserves express attention.

### **Question 1**

*To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?*

Strongly Disagree

We have grave concerns over the suitability of the proposed SQE(1) to provide an appropriate assessment of what is intended. The volume of material to be at the student's fingertips over a fairly intense examination diet is vast. This inevitably favours short-term, shallow learning over deeper understanding of complex issues and limits the scope for the analysis and original thought required to be a good lawyer able to respond creatively to clients' demands. There are good reasons why at school and universities the trend in recent years (albeit sometimes taken to excess) has been away from "big bang" final exams at the end of several years of study to assessments on a more manageable scale. Computer-based assessments can offer good tests of sophisticated analysis and reasoning, but we doubt whether this is possible when only 90 seconds is allowed for each question.

The proposals give very little idea of the level and depth of knowledge required. As one simple example, the Property element at SQE(1) is supposed to include "Core principles of planning law" including "Definition of 'Development'" and the matters that do and do not need permission. The standard textbook takes over 70 pages to cover this (without going into all the details) and we devote a whole seminar to this in our level 3/4 module, but there is no indication at all of what level of knowledge is required for what is just a small part of a big subject, e.g. how much detail of the General Permitted Development or Use Classes Orders will be required?

The proposals do not explain sufficiently how the body (or bodies) chosen to provide the SQE will be selected and supervised to ensure that the exams are run fairly and at the appropriate standard, and that appropriate mechanisms will be in place to make reasonable adjustments for disabilities or mitigating circumstances (e.g. alternative provision for those who find the standard computer-based set-up impractical, extending time-limits to account for serious illness).

### **Question 2**

*To what extent do you agree or disagree with our proposals for qualifying legal work experience? What length of time do you think would be the most appropriate minimum requirement for workplace experience?*

Neutral

The introduction of greater flexibility is desirable, but there will be substantial work involved in ensuring that some forms of experience do indeed meet the eligibility requirements, especially work outside SRA-regulated entities and where multiple placements are involved.

### **Question 3**

*To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?*

Strongly Disagree

The proposed mechanisms to inform students cannot work during the initial few years as new courses, providers and pathways develop, so that there will be some cohorts of students left to make important (and expensive) choices with no knowledge of "the market". The absence of all regulation beyond retrospective data provision appears to leave students vulnerable to short-lived providers who (in good or bad faith) appear to offer attractive services but do not in fact deliver to the requisite standard.

**Question 4**

*To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?*

Strongly Disagree

We do not consider that the model is suitable. The emphasis on short-term, shallow learning to pass at SQE(1) is unsatisfactory. It takes more than cramming for a series of big exams to develop the ability to think like a lawyer, and this is best provided through a law degree (or equivalent experience such as the apprenticeship).

**Question 5**

*To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?*

Neutral

The logic of these proposals for centralised assessment rules out any scope for exemptions.

**Question 6**

*To what extent do you agree or disagree with our proposed transitional arrangements?*

Neutral

The timescales seem adequate, but there should be provision for exceptions to be made for those whose progress is disrupted by external circumstances, such as serious illness delaying progress at key stages.

**Question 7**

*Do you foresee any positive or negative EDI impacts arising from our proposals?*

Yes

Whilst there are advantages in the greater flexibility proposed, we are concerned that the uncertainty produced will have negative consequences. At present the limited routes create certainty over time and finance for students, their families and their funders, whereas the much more fluid position will make future planning more difficult. As firms come to terms with the new arrangements, there is a danger of them falling back on what seems familiar and comfortable, privileging those able to undertake unpaid work experience and coming through the traditional routes, undermining the moves to greater diversity.

It is not clear how well the SQE will cope with disability issues (not every student can cope with computer-based assessments in a standard setting), and care will have to be taken in setting questions to avoid unintentional “cultural and local baggage” creating unfairness (e.g. simple things like the sex associated with particular names can be disruptive – from local experience in exam setting, a difficulty arose because Carol is perceived as a female name here, but as male in Eastern Europe).

## **Response to the SRA Consultation: A new route to qualification**

### **Introduction**

Whilst we were disappointed by the paucity of evidence to support the SRA's assertions that the current system is in need of such radical reform, we recognise the SRA's right to determine, as it thinks fit, the regulatory regime that is to apply to the education and training of new entrants to the solicitor's profession. We appreciate the SRA's willingness to consider the points made by respondents to the first consultation and value this opportunity to respond to the latest SRA proposals in this consultation.

We were pleased to see a number of modifications to the SQE proposals following the responses to the first consultation. In particular, we see the maintenance of the profession as a largely graduate one (accepting equivalence in the case of the apprenticeship scheme) as a crucial recognition of the importance of degree level education in the training of solicitors.

However, we remain deeply concerned about the SRA's proposed withdrawal from its role in relation to the regulation of the Qualifying Law Degree.

The continuation of the worldwide high standing of English Law, the courts and the legal profession is promoted and supported by the experiences gained every year by a large volume of overseas students who study at law schools across England and Wales and who in turn spread and champion the values, principles and reasoning associated with the common law tradition in their own jurisdictions. We would suggest that the high reputation overseas of the qualifying law degree and the attractions of studying law in the UK are virtues the legal profession has an interest in protecting, particularly at a time of increasing globalization of legal practice.

We believe that that the effective abolition of the QLD would cause considerable confusion to prospective international students and potentially damage the international status of law schools in England and Wales. We recognize that the SRA may consider that this to be a matter with which it is not directly concerned but we would suggest that this part of the proposal might well cause lasting damage to the recognition and international standing of the solicitors' profession in England and Wales and thus indirectly impact upon the SRA.

We note that in its consultation the BSB, proposes that it would "reduce to a minimum" the regulation of the qualifying law degree and, as part of any new pathway it may authorize, the current mandatory foundation law modules prescribed in the Joint Statement would be replaced with a "general requirement". Whilst it is unclear as to what mechanisms the BSB might envisage employing to assess an institution's compliance with such a general requirement,

we would encourage the SRA to explore with the BSB the possibility of continued joint regulation of law degrees at some level. Perhaps the SRA and the BSB could participate in a process, overseen by one or more learned society, that as a matter of “self-regulation”, performed the function of recognising compliance with a statement of “general requirements”. The burden upon the professional bodies would be much less onerous than at present but their engagement with the process would present to the world a strong indication of the continued relationship between law schools in England and Wales, the Solicitors Regulation Authority and the Bar Standards Board.

Although we recognize the substantial work that the SRA has carried out in the interim between consultations to further develop proposed centralised assessments and to provide more detail in relation to the subject coverage and required outcomes, we found some of the claims made for the rigour and effectiveness of the assessment methodology under the SQE proposals very difficult, if not impossible, to evaluate without sight of sample assessments as exemplars. As a result we have not been able to support the proposals to the extent that we might otherwise have done had such exemplars satisfied some or all of the concerns expressed below.

### **Proposal One: Introducing the new SQE**

#### **Consultation question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Whilst we have not found the arguments or the supporting evidence advanced by the SRA concerning a claimed lack of consistency of standards to be particularly compelling, we do understand the SRA’s desire to introduce a system of centralised assessment.

The number of assessments in SQE 1 and the number of subjects covered in each assessment would certainly make the examination challenging. The proposed number of SBA/MCQs in each assessment would plainly enable a wide coverage of functioning legal knowledge in each subject. However, it is not possible to comment further without sight of exemplar MCQs.

We understand the SRA’s interest in ensuring solicitors have a clear knowledge and understanding of how rules of law and practice work and therefore how they may be applied to solve clients’ problems. Indeed, whilst the aims and objectives of our law degree pathways at the University of Exeter will continue to aspire to conveying to our students much more than a mere ‘functioning knowledge’ of law and its application and our assessment methodologies will continue to extend much further than the use of single best answer/multiple choice questions, we accept there is much to be said for establishing, and possibly testing in formative assessments, this basic level of understanding before embarking on more in-depth academic study and summative assessment.

However, although the SQE 1 may be efficient in assessing this basic *functioning* knowledge of law and its application, it is difficult, in the absence of exemplar

questions capable of demonstrating this, to accept that the proposed format of the SQE questions would be a robust and effective measure of *competence* as a solicitor. In practice, things are rarely a matter of choosing the correct one of four options. An indication of the possible simplicity of the envisaged MCQs might be found in the suggestion that the number of questions set and the time available to answer them would mean, on average, each question would require approximately 90 seconds to answer. Without sight of exemplars it is difficult to conclude that these questions will really test the student's ability to analyse complex client problems, evaluate evidence, formulate arguments and make judgements in the client's best interests.

The concentration under the SQE regime on assessment rather than teaching and learning and the SRA's move away from approving regulated training courses might mean that in the future any teaching intending to cover SQE1 module subjects might become very textbook-based and concentrate on recognizing issues in MCQ format and determining the correct answer rather than the more transactional approach of the LPC. It would be detrimental to lose the current approach of considering detailed client instructions and the progress of a particular case or transaction with the opportunity to learn from the experience of a tutor as to how the transaction will proceed and the possible problems that might be encountered along the way including the incidence of professional conduct and regulatory issues (such as financial services or anti-money laundering) that might arise. On the LPC it is possible to teach in this way because, to some extent, the case study approach is reflected in the assessment. Under SQE 1, the pressure to pass the assessment will strongly influence the format of the teaching, particularly where the course is a bespoke "crammer" as opposed to one that aims to meet the needs of students in relation to SQE 1 as part of a wider academic programme.

Further, given that SQE 2 is to be taken at or towards the end of the QLWE- even with the writing and research module of SQE 1- this would appear to result in students undertaking QLWE having considerably less experience of the conduct of cases and transactions and the skills required to complete them than present trainees who have had the benefit of having completed the LPC (or are undertaking a LPC part-time alongside training contract experience).

In the circumstances it is difficult not to conclude that a student about to embark on a period of Qualifying Legal Work Experience following SQE 1 might be less well prepared than a current LPC graduate about to commence a recognized period of training under a training contract.

Whilst we are less concerned than some over the loss of the equivalent of the study of LPC electives and see this as off-set by the benefit of a presumed reduction of the costs to students, we do feel that the ambit of SQE 2 is too narrow and find it surprising that under these proposals passing the SQE 2 assessment would permit a person to become a solicitor without having been assessed in all of the areas of work 'reserved' to solicitors. We think this is wrong in principle.

We were attracted to the COIC/Bar Council proposal in relation to the parallel BSB consultation, as regards training for the Bar, that the knowledge subjects be split from the BPTC and be centrally assessed (as they are now) before bar students proceeded to work-based learning and a three month BSB approved course teaching and assessing the skills subjects.

If the SRA adopted a similar approach, the “knowledge subjects” would be covered in SQE 1 as presently proposed and the SQE 2 would follow the period of QLWE and a short taught course *approved and regulated by the SRA*. This course might be no longer than two months but it (and the SQE 2 assessment) could cover a wider range of practice contexts and transactions than the SQE 2 (as it is presently proposed), test the higher level application of knowledge (as well as the skills), ensure a full exploration of the incidence of professional conduct, financial services regulation and anti-money laundering obligations in the context of the conduct of cases and transactions and allow for pre-assessment training in skills required of a solicitor but not necessarily experienced in QLWE e.g. Advocacy for candidates whose QLWE has been gained largely in non-contentious work.

Of course this suggestion would involve the SRA returning (albeit to a lesser extent than at present) to the role of approving prescribed courses but it would go some way to dealing with perceived deficiencies of the present proposals. It might be suggested that the imposition of such a course during the QLWE would interrupt the training. However, it seems inconceivable that any more than small proportion of candidates for the presently proposed SQE 2 would undertake the assessments without first attending some form of preparatory course whether or not it was to be funded by an employer. Further, a compulsory attendance course during the training period is nothing new. The requirement for trainees to attend the PSC with all its elements has been in place since the early 1990s and before it there were compulsory attendance courses such as the Accounts Course in Articles.

One way to reduce the disruption to QLWE/employers might be to split the course into two parts. The first part could be delivered immediately before QLWE (which would then have the added benefit of contributing to the preparation of students for the QLWE) with the second part held towards the end of the QLWE period immediately before the SQE 2 assessment.

## **Proposal two: Qualifying legal work experience**

### **Consultation question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

We welcome the widening of opportunities for WBL as part of the qualification process. We see real possibilities arising from this for further integrating clinical education and pro bono activities as part of the degree curriculum and for obtaining recognition of student participation as qualifying work experience.

However, we are unclear as to how students would register and record their experience and how the SRA propose to the qualifying legal work experience under these proposals. Greater detail and clarity would be helpful on this.

At Exeter we already offer a range of skills in our LLB programme. Students are required to study negotiation and advocacy as part of our Year 1 module Legal Foundations and are assessed on these skills. Students can then build on the skills developed through our wide range of pro bono opportunities including law clinic. The Law School at Exeter is in the process of integrating these pro bono experiences into the curriculum through varied and innovative assessment processes. We would welcome the opportunity for the acquisition of these skills by our students to count formally towards their professional qualifications.

The timing of SQE 1 is also relevant here as there seems to be an expectation that students would “typically do SQE 1 before” the QLWE. Whilst it makes perfect sense that students wishing to undertake qualifying pro bono work should at least take the relevant (but not necessarily all) SQE subjects before undertaking the pro bono work, the proposed requirement to take all SQE 1 in one sitting may effectively prevent this. We do not agree with the notion that, for example, splitting the SQE 1 module assessment diet in half so that three taken in one sitting (plus Research and Writing) and the other three in a later sitting would be “cherry picking” and reduce the rigour of the overall assessment. It would, however, facilitate better course design and the integration of pro bono work capable of qualifying as legal work experience. We would therefore invite the SRA to reconsider the overly rigid requirement that SQE 1 be taken in one sitting.

### **Consultation question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

The current requirement of 24 months seems to work well and we can see no reason to disturb this. In our opinion, whilst subject to overall time limits to ensure sufficient currency of experience, it need not necessarily be continuous or gained with the same employer or supervising organization. It ought to be capable of being accrued incrementally in periods (perhaps of not less than 3 months) and at least part of the 24 months should be capable of being undertaken in the course of a law degree or GDL (see comments on 2a above).

## **Proposal three: Regulating preparatory training for the SQE**

### **Consultation question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Whilst some degree of deregulation is desirable so as to give universities and other providers sufficient flexibility to design programmes to meet the needs of students and employers, the proposed abdication of regulation of training providers presents a number of risks.

Although it seems likely that some universities will re-design their degree programmes so as to offer preparation for some or all of SQE 1, others will choose not to do so. Some of the students graduating from the latter may be fortunate enough to be recruited by one of the larger firms of solicitors for whom selected providers will deliver bespoke SQE1 (and SQE 2) courses. Students not having the benefit of such preparation may attempt SQE 1 aided only by published texts. Others will seek a course provider. This will present a commercial opportunity for so-called “crammer courses”. Students will no doubt be influenced in their choice by the claimed success rate, the location/ease of access on-line and cost. The risk is that, left unregulated, claims of success, quality of provision and cost will not be subject to any controls and students may be misled.

This difference in provision at undergraduate level may also result in a two or even three-tier provision for students whose degree did not prepare them for SQE 1. Where the sponsored or otherwise well-funded student might receive high quality provision, the less well-funded student might receive poor provision or none at all, with the consequent EDI impact this might have.

Whilst a degree of uncertainty is inevitable with any change of this magnitude, particularly in the early years, there is a significant risk that students and employers may be confused about the ways in which the system will work and the decisions that they will need to take. It is suggested that, under the SQE regime, the SRA must assume some responsibility for ensuring that prospective students are well informed as to their options and, in particular, are given clear guidance as to the requirements of the SQE, the differences between providers and the significance of any information published in league tables.

## **Proposal four: Qualification requirements**

**Consultation question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

For the reasons advanced in our answer to question 1, we are concerned that SQE1 could lead to a superficial coverage of knowledge, and SQE2 to a narrow and shallow experience. In relation to SQE 1 it is possible that our misgivings would be allayed by sight of sample exemplars of assessments. We think SQE 2 needs to be reconsidered.

## **Proposal five: Exemptions**

**Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

The underlying rationale for the SQE militates against the SRA offering exemptions. If, in the interests of consistency, those who have already passed equivalent assessments in the course of a law degree or GDL must undertake all SQE 1 assessments then it would be illogical and unfair to allow others to take advantage of exemptions. In our view, SQE 2 as it presently stands is already both narrow and too shallow, it would be a further erosion to allow any exemptions.

## **Proposal six: Timescales and transitional arrangements**

**Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

In our view, the proposed timescales are too short and unrealistic.

Providers will need considerably more detail from the SRA together with a wide range of sample SRA MCQs as exemplars of how the required outcomes will be assessed before courses may be designed to meet the needs of those studying for the SQE. We imagine this would take the SRA some time to deliver.

Whilst some institutions may be able to launch new programmes to meet the SQE by the proposed date and should be permitted to do so as 'pathfinders', many others will not. This substantial and far-reaching change should not be rushed and the proposed deadlines should be deferred accordingly.

## **Equality diversity and inclusivity implications**

### **Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

Whilst there may be cost savings for some and where this is the case it will tend to widen access in this respect, there are significant risks that a two or even three-tier system (as described in our answer to question three) will emerge with a negative EDI impact.

If the proposals lead to significantly greater flexibility (including the ability to sit SQE 1 modules over two sittings) being given to providers this is likely to have a positive EDI impact. This would be true in relation to full time provision where providers choose to incorporate SQE 1 preparation in their programmes but particularly so as regards part-time and blended learning provision.

The heavy reliance on electronic assessment by way of MCQ/SBA and the heavy burden of preparing for seven assessments in one sitting raises questions for the SRA about the suitability and fairness of these proposals in relation to students with disabilities.

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## **Kent Law School's response to the SRA's second consultation.**

The following is the response of Kent Law School to the Solicitors Regulation Authority's second consultation on its proposals to introduce the Solicitors Qualifying Examination (SQE). As part of this response, we have sought the opinions of our undergraduate student representatives and students from a 'widening participation' background. These students have made a significant contribution to the responses set out below and particularly in regard to question 1 (robustness and effectiveness of the SQE) and question 7 (EDI impacts).

### ***General and specific concerns***

At the outset of our response, we would echo some of the general and specific concerns raised by the Committee of Heads of UK Law Schools (CHULS) in its response, namely:

- That assertions have been made about a lack of consistency and rigour in the current qualification process and we would agree with CHULS that no objective evidence appears to have been provided for these assertions, that can be evaluated by us. The consultation paper has also failed to acknowledge or address the role played by External Examiners in ensuring consistent, comparable and rigorous standards in assessment processes (including between institutions).

As a School, we regard the proposed changes as extensive and we consider they would have a significant impact on our current and future students. We are not convinced the SRA has provided us, or the sector, with enough evidence to justify such wide-ranging changes.

During discussions with the SRA at national events (including those hosted by the BSB), it has been asserted that lack of consistency and rigour in the current qualification process is a public concern which, consequently, has served as one of the main drivers for the proposed changes. However, we note that the BSB are not considering a centralised assessment because, we are told, consistency and rigour in the current process is not among the concerns of those the BSB initially surveyed. We are concerned that the SRA's proposals are being driven to a greater degree by factors other than evidence that a problem actually exists.

- We are also concerned by the suggestion, at paragraphs 36 - 37, that there may be a correlation between the current method of qualification and the increasing number of indemnity insurance claims / complaints about solicitors. Having made the suggestion, we are particularly concerned by the SRA's admission that no causal link can be proved and question the extent to which this has also driven the proposals. We agree that current data on this subject has not been adequately compared with information from previous years in order to establish a definite deterioration in standards and we would strongly resist any such claim.
- Whilst acknowledging that the SRA are attempting to 'sell' the proposals to a

degree, the suggestion of a relationship between the introduction of the SQE and the “[maintenance of] high standards” (used many times in the consultation paper) is highly presumptive and impossible to prove at this stage, or indeed to evaluate. No assessments have yet been devised for scrutiny and no data exists showing the success or otherwise of the SQE.

- We agree with CHULS that the assessment as outlined runs the risk of 'dumbing down' the depth of knowledge required to become a solicitor, and this could result in loss of public confidence in the solicitors' profession. We are particularly concerned that students' acquisition and application of legal knowledge might ultimately be driven by (and thereby severely limited in quality by) cramming for the SQE. Further, the notion that providers might find themselves having to 'teach to the SQE' is of great concern to us – doing so could severely impact the breadth and quality of legal education provided to students (particularly in light of the fact that a law degree is a highly transferrable qualification and not intended solely for those seeking to become solicitors).
- We do not consider that a and sensible rationale has been provided for not making improvements to the existing qualification framework.
- No information has been provided as to the costs of the SQE (particularly Part 2) for any reliable assertions to be made that the new route will be more cost effective. We are not convinced it will be and would like to have additional cost information before the SRA commits itself further and before stakeholders become subject to the new framework.
- We would echo CHULS's call to see evidence of the SRA's experience in the procurement of an assessment process suitable for FHEQ Levels 6 and 7. In addition, we would echo CHULS's concern that the proposed timescale does not appear to allow enough time to create sufficient banks of both practice and assessment questions.

***Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?***

We have not seen enough detail about the SQE or any examples of the questions that will be asked of candidates for us to be able to undertake an appropriately detailed assessment of the SQE's robustness and effectiveness as a measure of competence. In addition, insufficient information has been provided about how the SQE will be reviewed and quality assured when operational (or indeed before it becomes operational) i.e. by whom, when, by what frequency and how?

However, from the information available, we are not convinced that the format of the SQE 1 has the ability to adequately test the intellectual and transferrable skills obtained by undertaking a degree and we are not convinced that it will test candidates' ability to deploy their knowledge in the manner expected of a graduate. We would also question how the SQE 1 aligns itself in terms of level and expectation with the kinds of reference points we use for this purpose e.g. the level descriptors in the QAA Framework for HE Qualifications. In particular, if a provider's assessment of the Foundations of Legal Knowledge will no longer exempt students

from part of the qualification process it stands to reason that the SQE 1 should constructively align itself with the same reference points we are required to use in order to be regarded as reliably equivalent in level (and that alignment should be apparent in the rigour of the assessment).

It is also important to emphasise that passing the SQE does not causally equate to any greater degree of future competence as a prospective solicitor than a QLD or LPC (as is implied). All assessments are limited in the sense that they are 'snapshots' of performance at the time they are taken and are no guarantee of future competence.

We also note, as CHULS did, that Paragraph 54 of the consultation paper asserts that computer based testing is successfully used in other professions such as medicine and pharmacy. This may be so but we too regard this comparison as disingenuous, no doctor or pharmacist can qualify without also undertaking a degree.

***Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?***

As a principle, we welcome the idea of widening the number of contexts in which work based learning can be experienced. However, we are concerned about the extent to which firms would regard the experience as equivalent to that gained on a standard training contract. If the proposal is implemented, it must be accompanied by detailed guidance on the subject (aimed at students, trainees and firms) in order to ensure that:

- students'/trainees' time and efforts in their work experience are well- and confidently invested, and
- firms have sufficient information and confidence to be able make reliable and consistent decisions about the validity and comparability of the work experience to the overall period of recognised training.

***Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?***

***Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?***

We are concerned that the proposals might undermine a provider's ability to offer high quality legal education because the market will be driven towards achieving the minimum level of competence required by the SQE. We would echo what has been said above.

***Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?***

We disagree that the proposed model is a suitable test of the requirements needed to become a solicitor for all the reasons set out above.

We are particularly concerned by the ability to undertake qualifying work experience before being taught (and assessed on) the legal skills, ethics and professional

conduct elements which currently form part of the LPC element. The burden could fall on universities to prepare students for their work-experience and we question how employable a student would be in the eyes of a law firm with such limited knowledge and experience.

***Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?***

We believe that subject-level exemptions should be possible where an individual has undertaken a law degree which consists of subjects that will be assessed as part of the SQE (even if complete exemption from the SQE is not possible and/or undesirable). We do not see the logic in requiring individuals to be assessed in these areas again, it will only give rise to additional and unnecessary costs for prospective solicitors. As a minimum, those who have undertaken content which satisfies the requirements of the current Foundations of Legal Knowledge should be able to seek exemptions from relevant SQE subjects if the appropriate learning outcomes in the Assessment Framework have been achieved.

***Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?***

We feel that clarity is needed over the use of “overseas candidates” in paragraph 138 of the transitional arrangements, specifically, whether this term refers to “international student candidates” or “qualified international lawyers” or to both. We would be concerned if the treatment of international candidates over domestic candidates were less favourable as it could potentially be incompatible with equality legislation.

In addition, the tone of the section on transitional arrangements almost pre-supposes that all aspects of the new regime have been finalised. As an example, the Assessment Framework (detailing what the SQE will assess) is also out for consultation but no allowance has been made in the transitional arrangements for any delays arising from that consultation. The tendering process for an assessment provider is also still in the early stages. We feel the SRA should wait to specify transitional arrangements until important elements of the consultation have been fully addressed.

Finally, we would reiterate the point that many individuals have already embarked on their route to qualification and it is very important that none of the expense and effort that they have already incurred should be in vain. Transitional arrangements must be set out very clearly and clearly communicated to all concerned.

***Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?***

We foresee the following impacts arising out of the proposals:

- 1) We can see the benefit of the SQE in terms of potentially divorcing students' *almae matres* from the process of qualification (particularly the Russell Group institutions) but have doubts as to whether this can be eliminated entirely. We foresee attendance at institutions such as Oxford and Cambridge as retaining a high degree of influence over applications for training places at larger city firms which will do little for social inclusion.

- 2) The proposed lack of exemptions might disadvantage those wishing to enter the profession from non-traditional backgrounds - for example, those lawyers who have qualified as mature students through the CILEx route and who now wish to bring their usually considerable experience to the solicitors profession.
- 3) There is currently inequality of access to legal work experience which the SRA's proposals do not address. Those with existing networks/connections to legal professionals tend to be from more advantaged backgrounds (e.g. parents in the profession, parents who run or own a firm, friends of parents in the profession). A degree of partiality, i.e. 'who you know', continues to affect access to the profession and individuals from low-income backgrounds are less likely to have access to the networks/connections of those more advantaged to benefit from career enhancing unpaid internships. Moreover, those from less advantaged backgrounds are still less likely to be able to absorb the commitment of an unpaid internship (whether for financial reasons or because of existing work or family commitments).
- 4) Before being able to undertake a period of qualifying work experience, candidates must still meet the costs of the SQE 1 in full and bear the risk of not ultimately securing qualifying work experience. Those from disadvantaged backgrounds tend to be more risk averse when making a financial outlay for a deferred benefit, particularly when there is no guarantee of a return on the investment.
- 5) The possible routes to qualification on page 25 fail to take into account the realistic timescale required for those who may need to study part-time (full-time jobs, parents, carers). A three-year degree is normally completed part-time in six-years, particularly in institutions which structure their programmes in stages rather than years.
- 6) We are particularly concerned at the proposal to publish SQE pass rates by provider. Where preparatory or conversion courses are offered (analogous to the current GDL or LPC) the proposal to publish SQE pass rates carries with it great risk that a hierarchy of providers will emerge with those judged to be the 'most successful' able to charge higher fees, potentially excluding those with low incomes from preparatory courses with 'the best' providers. In addition to that, we do not agree that increased competition will drive down cost – pass rates could potentially become a means for increasing the fees of preparatory/conversion courses which, in turn, could serve as a potentially misleading indicator of quality.
- 7) We are also concerned that potentially unreliable pass rate information might be given to prospective candidates arising from the fact that the SRA will not be validating or quality assuring any law degrees, conversion or preparatory courses in the future. It makes more sense to us that pass rate information should compare, and relate specifically to, the quality of 'kite-marked' courses i.e. courses which are intended by providers to be 'SQE ready' and which the SRA has validated as 'SQE ready'. The current proposals risk comparing apples with pears and could potentially provide very misleading information (with particularly negative consequences for students from less advantaged backgrounds).

It is important to point out that students may undertake the SQE having previously undertaken qualifications which are not 'SQE-ready' or, which were never intended to be or even advertised as 'SQE-ready'. The SRA's proposals do not include a mechanism to prevent this from happening. We would restate the point that a law degree is not necessarily intended solely for those seeking to enter the legal profession. At present, providers offer the option of taking non-Qualifying Law Degrees.

- 8) Where elements of the SQE 1 are marked manually by assessors, candidates' work should be anonymous to avoid any unconscious bias in the assessment process. There is some evidence which shows that individuals from Black and Minority Ethnic (BME) backgrounds tend to experience greater disadvantage where assessment and admissions practices are not anonymised.
- 9) Assessment centres should also be suitably distributed throughout the country to avoid disadvantaging candidates with disabilities or those from low-income backgrounds.

**A new route to qualification:  
The Solicitors Qualifying Examination**

**Response of The University of Law  
December 2016**

***Introduction and context for this response***

The University of Law welcomes the opportunity to respond to what would be a seismic shift in the regulatory function of the SRA, moving from a well-established regulation of pathways to a regulation of outcomes.

In order to respond to this consultation, the University has held meetings in all of its centres around the country as well as a series of teleconferences to which all staff were invited. The meetings and teleconferences were attended by academics and business professionals from student support, disability support, careers and pro bono. This response is informed by extensive consultation and incorporates the views from across The University of Law, one of the biggest providers of under- and postgraduate legal education and training in the UK. The vast majority of our academic staff are qualified solicitors who have been in practice, and therefore have the dual viewpoint of understanding both the standards required of trainee and qualified solicitors in practice, and the realities of training students to acquire the knowledge and skills needed to meet those standards.

The University has also been in discussion with many law firms over the proposals, both on an individual basis and in round-table events we have hosted. We do not purport to be expressing the views of law firms in this submission, yet we found those discussions to be beneficial in formulating this response and in reinforcing our own views.

During our internal consultations, many colleagues observed that the SRA's desire is to establish a standardised, centralised system to address perceived inconsistencies in the quality of training, but the relaxation or even deregulation of training providers brings risks, explained more fully below.

***Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?***

We do think there are positive reasons for a centralised system of examination, particularly to achieve consistency. We do not oppose the *concept* of centralised examinations. There is, however, disagreement that the proposed SQE will be a robust and effective measure of competence.

In general, it was agreed that, as with other professions, law should be a graduate profession but the SQE will be too superficial in stage 1 and too narrow and restricted in stage 2, to properly assess the competence needed for trainee or qualified solicitors to safely act for the public. In particular, the loss of elective subjects means that the level of understanding of key practice areas will inevitably be lower under the SQE regime than the

current one, leading to the likely need for add-on courses for students to equip themselves properly for practice. We anticipate that many law firms will require such courses to be undertaken before the period of work based learning commences to make up for the competence gap compared to current trainees. These courses add to the cost of training, and potentially end up costing students more than the current LPC.

Whilst we agree that the SQE stage 1 examination, together with the volume of the material to be covered in the syllabus, would certainly provide a robust examination, it may be a robust examination of *functioning knowledge only and not competence*. In practice, there are not always a set number of options one of which is correct. Advice is more nuanced and complex. The SQE may not develop or test the full range of intellectual skills needed to practise law. Setting questions that require an answer after only approximately 90 seconds per question (on average) cannot adequately deal with the higher level analytical skills and the ability to evaluate that are essential for a solicitor. We are concerned that the proposed assessments may mean students are less well equipped for practice than they are under the current pathways to qualification.

Of further concern is the risk that the proposed examinations could be discriminatory; there are various studies which show that MCQ examinations may unfairly disadvantage students with learning difficulties.

From a careers perspective, the LPC brings a significant benefit to some students as weight is placed on the quality of the result achieved (most providers do grade their awards), and therefore students with a weaker previous academic background can show development. The SQE proposals risk pushing more scrutiny onto the student's degree and A-level results, as they will not have the same legal training as now at the point of making applications. This may disadvantage certain students; thereby negating what the SRA are trying to achieve (more opportunities for more students).

The assessment framework is too narrow; the omission of practice areas such as Family Law, Employment Law, and Mergers and Acquisitions is glaring and may will remove the ability of the SRA to measure competence in key areas. Such a narrowing of the syllabus means students will not have to learn and will not be assessed on their appreciation of how the law works in society, and how it is applied. Doing the traditional LPC enables students *from all backgrounds* to reach a level of competence through workshop training which provides them with the skills and *confidence* not only to embark upon a training contract, but to do well in the recruitment process. The new proposal risks taking away that comprehensive level of training, and instead may produce candidates who are simply good at learning concepts in a vacuum. The EDI issues are particularly noticeable here (see also Q7). There are further concerns that students will be less prepared for practice, and the SQE model will not provide 'all-rounder' solicitors.

The consultation paper is unclear about the effect on solicitor apprenticeships and we question the extent to which this model will split knowledge gathering/skills development. More fundamentally, we do not understand how the concept of an apprenticeship (learning

on the job over a period of years) fits with the proposal for SQE1 to be sat in one sitting. This seems to us to be at odds with the purpose of an apprenticeship.

***Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?***

It is concerning to see the absence of proposals to monitor the period of qualifying work experience (QWE). It should be noted that, in contrast, apprentices will be closely monitored when in the work place. We are of the view that this will create an unavoidable two-tier system. Solicitor apprentices will be better off; the apprenticeship will be regulated. We are strongly of the view that all QWE should be regulated and recorded, and assessed.

Whilst the opening up of a variety of ways to obtain QWE is to be welcomed, it is not clear how students/trainees will record their QWE. There is the potential for this to become, at best, disorganised and, at worst, chaotic. This is particularly so if QWE can be retrospective to the date of implementation of the SQE system, and so work done without it being thought of at the time as counting for QWE could require retrospective endorsement.

There is a need to clarify the timings of QWE; rather than simply specifying that students “typically do SQE1 before” it should be “always do SQE1 before”, unless they are on an apprenticeship route (if uniformity is to be achieved then all qualifying legal work experience should be after stage 1 SQE). That said, we are of the view that graduate students will not in fact be ready for QWE after SQE1 alone as they will not have gained the necessary level of skills. From firms’ perspective, it would be more difficult to assess the quality of candidates at SQE1 level. These proposals would lead to another (see above) type of two tier system i.e. those that already have contacts in practice and/or good chances of securing qualifying work experience and feel confident enough to press ahead with the SQE1 route, and those that do not.

The proposed timing of SQE2 is of concern to firms. Their anxieties include questions about how this will interrupt the work-based learning, how the firms will prepare trainees, how will they release them. There is no doubt that the proposed model will cause disruption as people leave the office to do refresher training and take the exam. To avoid this, and to minimise disruption to working practice, firms will likely want students to take SQE2 as early as they possibly can, and the SRA will have changed everything (content, accessibility and cost) and nothing (timings).

The opportunity to use clinic, Legal Advice Centres and other pro-bono is a benefit. On a positive note, pro-bono and other clinic work have reporting requirements so it is possible that students/trainees could receive a high-quality experience which could be recorded. That said, clarification will be needed on whether students can count informal work experience as work based learning, and if so, it must be ensured that this is both adequate and robust. A definition of what is counted as QWE will be needed.

**Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

The University's view is that the length of QWE should be 24 months, but we make additional observations. The length of the experience is as important as the nature and quality of work experience; 24 months of photocopying and acting as a messenger would not be acceptable. It is quite clear that the QWE has to be monitored by the SRA. Further, some colleagues suggested the 24 months should be allowed to be taken flexibly, possibly consisting of set minimum continuous periods of at least 3 months. That said, there was some nervousness about this; because the SRA cannot or will not regulate QWE, firms only have to provide "an opportunity" for students to train, so the quality will vary, and if the time period is very short (even at 3 months) there is a question as to whether the student will meet competence. Piecemeal collecting of experience will be an issue – and without regulation, there will be no overview of the total experience of the student.

It is not clear whether there will be anything to prevent someone doing a SQE2 examination within the QWE period and thereby effectively qualify earlier. This does not fit well with the examples of qualification routes outlined by the SRA in the consultation paper. The SRA seems to suggest that the SQE2 is taken after the QWE to test competence at the point of qualification, but this is not prescribed and therefore creates uncertainty.

**Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Generally, we agree in principle that some deregulation of training providers by the SRA would enable training providers to innovate more on developing programmes that meet both the needs of the firms and the students. We would welcome a more liberal regulatory regime that encourages and allows innovation. However, on the whole, we disagree with the proposals.

As a quality training provider, we identify significant risks for consumers and law firms that moving to an outcomes-based system, without *any* form of regulation of courses or providers, will open the market to unscrupulous training providers whose quality is at best mixed. In particular, there is likely to be a proliferation of SQE crammer courses which may well not be of good value or adequately prepare students for the SQE1 assessments. There is a real risk of having a qualifying exam which can be done from a book and without the rigour and skills needed properly to protect the public and prepare for life in practice. It is only by some level of regulation of preparatory training that the SRA can ensure the level of skills and competence by trainees in firms can be maintained at least at current levels, as we are concerned that the SQE alone will not achieve this.

The effective abolition of the QLD will have substantial knock-on effects for the training for those graduates who did not do a law degree. Whether or not universities embrace SQE1 elements in their law degrees, the loss of clear training requirements for the GDL risks creating a substantial gap between those students who have done a law degree, and those

who wish to convert subsequently. We consider it important for the profession that entrants are at a similar level of core legal knowledge, whatever their underlying degree.

The SRA proposals may also impact negatively on diversity, in that firms may revert to recruiting trainees from tried and tested backgrounds. Good performance on an LPC from a well-recognised and respected professional training provider can create opportunities for students who are late developers or from disadvantaged backgrounds.

In effect, the only 'regulation' of providers in the proposals is through a concept of establishing a league table of "good providers" by reference to results. We do not see how such league tables could be produced given the absence of any prescribed training programme. Students will not be required to use any provider, and some could entirely self-teach. Some will self-teach, but attend a provider for revision sessions. Others will take different modules with different providers. Where modules are taken with different providers, some of those modules will overlap within the same SQE1 exam. In these circumstances, it will be meaningless to publish results by provider.

This complexity in training, caused by the absence of regulation of preparatory training, risks causing confusion for both students and those advising them. At present, the QLD system is fairly easy to understand, and brings clarity to students' decision making. The proposals will result in a more complicated system, with real difficulties in students obtaining clear advice as they make decisions over what courses and modules to study. This complexity will also make it more difficult for employers who sponsor students, as they will also need to work out precisely what training is needed for each individual student. We do not consider that creating such uncertainty and complexity in the route to qualification is a benefit to either students or employers, and is likely to have negative EDI implications.

***Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?***

The University disagrees that the proposed SRA model is a suitable test of the requirements to become a solicitor. The combination of subjects within individual SQE1 assessments, and the resulting weighting this puts on different parts of the syllabus, is troubling. The most acute illustration is the combination of civil dispute resolution, contract law and tort law into one assessment, contrasted with criminal law and practice being in a single separate assessment. Given the fundamental importance of contract and tort law, to weigh subjects in this way does appear to us to be very difficult to justify and does not reflect the workload of most solicitors. The same point can be made about other subject combinations within SQE1, and should the proposals go ahead we would urge that the subject balance and coverage be reviewed.

Equally, real concern was expressed about the loss of the elective period of study. Firms will find their trainees will not have the subject knowledge of the area they are working on, nor the same level of skills in applying knowledge to practice areas that current trainees have, which creates a substantial risk when they are going into the office environment without the specialised areas of knowledge that would normally be expected. The removal of the

electives must be a significant concern for firms who only offer services in the elective areas, whether large commercial firms whose trainees will not have done any banking, mergers or public companies training, or smaller firms whose practice might rely on family, employment or immigration work; it is difficult to see what benefit such firms would gain from employing students with a pass in the SQE but no additional training.

More specifically, concern was raised regarding the incorporation of Solicitors Accounts into the SQE1 assessment - solicitors are entrusted to undertake monetary transactions and need to be confident in dealing with client's money. Being tested by MCQs, or single best answer, or even extended matching questions, does not inspire confidence in this area. Similarly, the treatment of professional conduct (including regulation) and ethics (PCE) is seen as a major issue. The current PCE regime includes substantial training, both on the LPC and through the compulsory elements of the PSC, including both discrete and pervasive assessment. The scope of PCE assessment in the SQE is unclear, particularly as to the extent it will be assessed across all SQE1 exams and its importance for SQE2 exams, but the training requirement will clearly be far less than at present. The loss of PCE training as part of the PSC is particularly concerning, given how it allows trainees to refresh and study PCE in real context. We think that this subject deserves more importance, and a requirement and commitment to training both before and during the QWE. We are concerned that the proposed approach will put both junior lawyers and the public at risk.

Further the view was very strongly expressed that the value in a period of QWE was substantially undermined if the students were not equipped with the necessary skills beforehand. The absence of any training requirements for SQE2, and the implication that any training students choose to take (or firms provide) will be during the QWE not before, inevitably means that students will start their QWE with lower skills levels than when they start their training contracts under the current regime. Some colleagues felt that the development of skills in a coherent way through the teaching of electives was key to making students practice ready; this opportunity is lost under the current proposal.

Reservations have been raised regarding MCQs in particular as a form of assessment. We acknowledge MCQs of this nature are used in the recruitment of the judiciary and the medical profession but these are used as part of a long series of exams (medical profession) or as a very high level screening test along with a written application and interview (judiciary).

Colleagues also felt that the SQE2 assessment transfers the onus of training and therefore cost to law firms to provide skills training during the QWE, and for many firms this will be very difficult. This is particularly so for those firms who are unable to offer training in two of the five available contexts for SQE2. We have had comments from large firms with dedicated learning and development teams that they simply do not have the internal resource to do this, and for smaller firms this is likely to be a real barrier to taking on trainees. Firms will also consider paying less if they are employing a less skilled workforce.

Colleagues with experience of the BPTC's change to a centrally set assessment saw the SRA's proposals as a similar kind of transition in that the size of the syllabus would be

problematic, making it unwieldy and unfair for students to learn. This has led, in recent years, to the syllabus being reduced as the BSB has become more expert in exam writing and setting.

The proposals may remove some of the barriers that disabled students face as statistics show that disabled post-graduate LPC students find it difficult to get through the current exam and get a training contract; this proposal may provide more routes in for those students. This is, however, subject to the caveat that the new assessments could be fairly sat by those students. If not, the proposal does not remove barriers so much as replace them with different ones.

***Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?***

Responses from staff were split. On the one hand, there are significant cost implications if everyone must take every part of both stages of the SQE. If someone has already expended a lot of money on something equivalent, then to make them pay for the SQE is unfair and raises EDI issues. It is not clear whether there will be exemptions allowed for foreign qualified lawyers for SQE2. Many colleagues were also struck by the total absence of any mention of the CILEx route.

On the other, many colleagues were of the view there should logically be no exemptions. If the SQE is introduced as proposed, for reasons given above, it is the University's view that it would be workable only without exemptions.

Finally, and this related point was raised time and again, we do understand that the SRA feels the need to have an assurance of competence against their framework, but the SRA should continue to rely on the regulation, quality and standards of education in law schools. The existing system, distinguishing between academic training and vocational training, has largely worked well, and is an established system that is well understood by students, advisors and employers. Exemptions work within that structure. Whilst rigour can always be improved, we do consider that this would be better achieved by the SRA continuing to regulate pathways and providers, and to make evolutionary rather than revolutionary changes.

***Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?***

We disagree that the proposed transitional arrangements are adequate.

Students' expectations have to be managed. Students are already on the "journey" to qualification and they need to be informed clearly and in a timely fashion about the new system. Current Year 1 QLD students will be affected on the current timeline, albeit that they have a choice of LPC or SQE. Students who have already started a part-time QLD or who may be looking to defer/intermit will be caught up in the beginning of the SQE but they may not necessarily know about it, but may have barriers to completing and qualifying. This must

be addressed urgently. Even so, the transition period is too short, because it assumes that students starting their law degrees in 2018 will then go to the LPC and get a training contract in quick succession, and there is no room for slippage. Furthermore, what is the position of someone currently on a non-law degree but who started with every intention of completing the GDL? We are already receiving queries from such students, who are intending to commence a GDL in 2018 or later, and who are worried about what the implications of the SQE proposals are for them. The pressure this puts on students is immense. Has the SRA consulted students?

If the first assessment point for SQE1 is September 2019, there is a general view is that this is not a realistic timeline. At best it is ambitious and in fact, it is highly unlikely that it will be ready. Tendering for the assessment provider, appointing the provider and designing all the exams for a first sitting in 2019, never mind a trial or pilot, and full test and review, is a mammoth task. We think that to try and implement a system by 2019, when in 2017 we will still be in consultation, is unrealistic and possibly dangerous. Further, training providers will need time properly to consider and develop suitable and effective SQE courses which will fit in with an appropriate model and the final model is yet to be agreed. If this is rushed, it will only serve to diminish rather than enhance quality.

On a related but distinct point, firms' recruitment cycle will shortly be underway for 2019, so there is great concern as to the lateness of this.

***Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?***

Colleagues have acknowledged that there may be positive EDI impacts of the proposals, particularly in that training providers may have more flexibility as to the content of the undergraduate law degree, assuming abolition of the QLD, and the potential for less expensive online products as preparation for the SQE assessment. Equally the academically strong student, who is being courted by the firms, will continue to succeed. There is a danger though of creating a second tier of students who are not as academically strong and who may at the same time have financial difficulties. There are concomitant cost consequences given the complexities caused by abandoning the QLD. Different students will turn up for SQE1 courses from very different starting points, whereas for the LPC they currently have a common core of expected knowledge. Some students will have to repeat elements they have already done and this increases costs beyond the cost of assessment, to include course fees – especially because of the way the SRA have combined subjects.

Changing this to the SQE split model may also deter students from less advantaged backgrounds who are concerned they will not get the necessary QWE and will therefore not start a qualification they perceive to be impossible to complete and would therefore only leave them with a partial qualification. The proposed model could also end up being more expensive than the current one and therefore be less accessible as a result.

Colleagues have a concern that the positives would be outweighed by the negative impacts, particularly for part-time students who may not be in a position to undertake all the

assessments in one sitting due to the volume of preparatory work required whilst working and studying at the same time. Rather than creating a more diverse profession; it will create difficulties for these students, who may also be mature students, and who are more likely to have financial issues. Cost implications will surely be a barrier along with the time needed to prepare for seven assessments in one sitting.

Colleagues also noted that students with disabilities, e.g. dyslexic students who need additional support, may also struggle to sit so many centralised exams in such a short space of time. Some students with visual impairments, struggle on medical grounds with MCQ style assessments which could lead to discrimination.

### **Conclusion**

We agree with the aim of ensuring high, consistent, professional standards, and also of the desirability of widening participation to the profession, we disagree that these proposals as they stand will achieve those aims. We note with concern the absence of a detailed pedagogical basis for the proposed changes to the training regime, and weaknesses in the underlying argument as to why these changes are necessary. For instance, it is not obvious to the University either that the level of negligence claims or complaints against the profession (cited as a reason for change) are caused by the current training regime pre-qualification, nor that the proposed reforms could have a meaningful impact – indeed, there is a risk that competence levels may be lowered by these proposals. We also do not consider that the case has been adequately made for the sweeping nature of the proposed reforms, as opposed to more evolutionary change.

We feel that the proposals ignore the fact that to have a career in law, there is value in (regulated, quality) training generally. The failing of the assessment should be the bar to qualification, but passing the exam should not be the only hurdle to practice. It is in academic training that skills, techniques and procedure are learned and understood in context, whilst giving students a forum in which to safely practise those skills and gain in confidence and ability without risking the adverse consequences that can come from mistakes made in the office. These proposals would not necessarily encourage reflection and training methods designed to embed knowledge and encourage longer-term retention for practice. The need for this is something that firms mention frequently, and represent the enhancements that are needed to improve legal training. The current proposals risk encouraging legal education down a route of ‘cramming’ for tests, leading to poorer long-term knowledge, and a lower skills base on day 1 of acting for clients.

As mentioned above, the University does not reject the concept of centrally set assessments, would welcome some de-regulation to enable greater innovation by providers, and appreciates that there is always scope to improve quality and raise standards. We would be happy to engage with any process to explore how best to advance the training, assessment, and qualification process for the profession.



## **SQE – Consultation Response, University of Leeds**

### **Introduction**

The School of Law at the University of Leeds is one of the leading law schools in the UK,<sup>1</sup> and has over a century of experience in legal education. All of our teaching draws on the expertise generated by our four main research centres: Business Law and Practice; Criminal Justice Studies, Law and Social Justice and the Centre for Innovation and Research in Legal Education. The direct link between these research centres and our undergraduate programmes ensures that our teaching is relevant, focused and delivered by leaders in the field.

We have a demonstrable track-record of supporting the objectives to deliver a fair and diverse legal profession open to all, irrespective of background. This track-record is evidenced through our research, policy engagement and outreach and recruitment activities, which has led to approximately a third of our Home/EU intake coming from WP backgrounds. As explained below, it is our view that, rather than opening up the legal profession to a more diverse intake, the consequences of the SRA's plans, as currently framed, are likely to be exactly the opposite. This is surely not what the SRA intends.

The School enjoys strong relationships with the profession in one of the largest legal and financial sectors in the country. This relationship between university legal education and the legal profession is critically important. A strong and clear link between the academic discipline of Law and its practice environments enables our graduates to develop the necessary skills, knowledge and attributes to forge successful careers within the profession. Moreover, it enables innovation in legal services to be informed by cutting edge research, and for research in universities to deliver an impact in the most disciplinarily relevant environment. We have serious concerns that the SRA's proposals are premised on a false opposition between the educational and professional fields. As such, if implemented fully in their current shape, the proposals may undermine the relationship between the academic discipline of law and diverse sectors in which it is practised.

While the requirement of a degree or equivalent is a sensible response to the problems created by the SRA's attempt in its first proposals to develop a graduate level qualification without reference to any 'graduate level' qualification frameworks, we continue to have serious concerns about much of the detail that has been proposed by the SRA and, particularly, the unintended consequences of the proposed changes. In particular, we would have liked to have seen greater engagement with many of the issues raised in the first response.

Our response draws upon the considerable research expertise that the School enjoys in the field of the legal profession, its regulation, education and professional diversity and, in particular, the extensive work carried out by Professors Francis, Loughrey and Sommerlad. This work is characterised not only by high quality, internationally recognised research, but through sustained, regular engagement with the profession, professional bodies and regulators in England and Wales and in overseas jurisdictions.

Much of this response has also been informed by widespread engagement with the profession, from the very largest City firms, to the smallest high street practices. We have engaged with the public and private sector and with solicitors, trainees and paralegals at a variety of career

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<sup>1</sup> 7th in the UK for Law (The Times and The Sunday Times Good University Guide, 2017)



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stages. We also share many of the conclusions and reservations of the Leeds Law Society, which drew on a significant survey of local stakeholders and a workshop exploring these questions.

## In summary:

While we are pleased to see reflection on the SRA's part in terms of the requirement of the degree and recognition of the importance of workplace learning, we have serious concerns about a number of elements within the proposal, particularly those that will lead to un-intended consequences likely to be detrimental to the SRA's stated aims of standardised assessment, reduction of costs and increased equality and diversity. In particular:

- The failure to effectively regulate preparatory training, while, at the same time, urging the development of SQE compliant law degrees will:
  1. have negative implications on the standing of such undergraduate law degrees and those who possess them (including solicitors);
  2. reduce the profession's exposure to core areas of social welfare law and it will have negative implications on equality and diversity, while
  3. in all likelihood, failing to reduce costs in the way that the SRA have suggested will happen (without presenting evidence that this will happen).
- There is a flawed logic in the SRA continuing to insist that no exemptions should be permitted because the SQE is a 'test of professional competence', and so different to an academic law degree, while at the same time encouraging the growth of undergraduate courses heavily directed towards that test of professional competence.
- Considerable concern has also been raised about the separation of the development of practice skills from the assessment of them. Practitioners are concerned that their trainees will not have the requisite skills at the outset of their training.

## The Rationale for the Proposals

Although there is considerably more detail provided in this Consultation, which is to be welcomed, there is still not a clear justification provided as to the need for the change – indeed, 'why the change' was the most common initial response from the practitioners with whom we have engaged.

The SRA aims to create a 'more open market... where competitive pressures raise standards and reduce costs' (p.6). However, there is still little evidence provided for low and/or variable standards across the Legal Education and Training sector as a whole,<sup>2</sup> and very little evidence provided that costs are going to be reduced (see further below). It is worth noting that we have, of course, had an open market for LPC provision for a number of years and there is little evidence that competition has driven down cost. Thus, it is competitive in the sense that some providers have withdrawn from the market, e.g. Oxford Brookes and others. HOWEVER, costs have remained high.

The SRA again highlights the potential for variation in standards within universities. However, in this consultation it doesn't even attempt to provide evidence on this point. It simply asserts that there are a number of different providers. There is absolutely no evidence presented to support the point that UG Law Students are passing the degree while being unable to demonstrate benchmark legal knowledge (and application of that knowledge).

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<sup>2</sup> (LETR (2013: ix) found a 'good standard' overall



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Para 36. The SRA make the point that there is no evidence linking consumer detriment and inadequate training. Given that they provide no evidence of inadequate training, this seems an even more tenuous line of argument (i.e. the consumer protection one) to embark upon.

Para 37. Further concerns are raised about the poor quality of immigration advice as another potential justification for the need to reform education and training. It seems an odd decision to highlight the 'immigration advice sector' as the basis upon which to build the 'consumer safeguard' justification for the proposed education and training changes, as there is nothing explicit in the proposals that will strengthen the quality of immigration solicitors. If this is a major area of concern, it would be helpful if the SRA could make clear how the proposals will, indeed, strengthen the quality and competence of immigration solicitors. What precisely are the problems and how will these be addressed?

The SRA at p.34 continues to lay great emphasis on the training contract as the bottleneck for professional qualification. As we stated in our original response, the proposed changes will do nothing to change this situation. Effectively the TC represents graduate entry. If there are not the roles available (and if firms continue to recruit in the way that they do), there will be no changes in terms of the diversity concerns etc. The bottleneck/barriers will simply shift. This is a distraction from the issues raised.

Many of the firms with which we engaged also raised concerns about the possibilities of paralegals and others qualifying via the SQE route, but without NQ roles and work available within the firm. Perhaps the possibilities for early, independent practice as discussed in the most recent Handbook consultation will provide a route for this cadre of solicitors. However, the SRA will be aware of the concerns that have already been raised by the profession about these developments.

The SRA is also not clear as to its core objectives. Is it about ensuring a standardised point of assessment? Is it about driving down the costs of qualification? Is it about supporting the encouragement of a diverse and open legal profession through multiple pathways to qualification? All of these are broadly laudable objectives, however the way in which the proposals are currently articulated fail to fully anticipate the way in which the pursuit of one objective may undermine progress towards one of the other objectives and vice versa.

Furthermore insofar as the SRA is concerned to institute appropriately robust measures of the standards of solicitors entering practice to ensure consumer confidence in the profession and the wider legal system, we believe it is possible to address this without causing many of the serious consequences both for the quality of the solicitors' profession, the consumer interest and the interests of individual students from less advantaged backgrounds.

The major focus of concern articulated in the SRA's proposals appears to be the LPC - both in terms of the variability of the assessment regimes (and pass rates) and overall cost. This then provides the basis for the SRA's response to the question (as asked by previous Consultation responses) as to why the current system is not simply reformed. Strikingly, perhaps, the most straightforward response – a centralisation of LPC assessment, e.g. using elements of those proposed in the SQE – is not discussed. Was this considered? If not, why not? If so, what is the SRA's analysis of this as an option?

**In sum, the need for (what effectively represents) a reregulation of the route to qualification has not been evidentially established and it does not constitute proportionate regulation in line with the principles of good regulation.**



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Although we make further points about the transitional arrangements in the question below, we would also like to add that if the SRA does proceed with these reforms (or a version of them), then it will be important to set out clearly how it proposes to monitor and evaluate the operation of the new regime against clearly stated objectives. Otherwise, we are likely to see some of the more disadvantaged student groups having to make important and expensive decisions without the confidence of knowing the effectiveness of a particular pathway as a route to the profession. We have concerns that pass-rate data on its own, will be far too crude and unhelpful a measure.

## **Responses to Specific Questions**

### **Question 1. 'To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence'?**

The extent to which the SQE will be robust and effective may, in practice, be undermined by the way in which the SQE is designed and administered and, in particular, concerns which arise as a result of the SRA's abdication of any responsibility to regulate the preparatory stages of training.

Thus, it *may* be possible to develop on-line assessments of the nature envisaged for Stage 1 SQE which will represent a robust measure of competence. However, the robustness of such assessments will depend on large banks of questions being generated to ensure the appropriate level of random generation, that re-assessments can be fairly administered and to enable, in advance of the first assessments, model exams to be made available to providers of preparatory training to ensure appropriate support for students. Discussions with colleagues involved in the regulation of the Dutch financial services sector indicate that it is possible to design assessments which can be a robust measure of higher order competences, but the number of additional questions that are required will add significantly to the overall cost. The absence of any reliable costings remains a real concern about the SRA's plans – see further under the Equality and Diversity concerns.

One of the most fundamental concerns about the SQE's potential robustness, and the measure of competence that the overall qualification framework will provide, is the potential impact that the framework will have on the undergraduate degree, rightly identified as a key entry requirement.

While the SRA has repeatedly stated that it is not concerned with or responsible for the impact of its proposals on the content of law degrees and that this is a matter for universities and the market, it clearly intends the proposed reforms to affect change to the degree. Unless universities respond significantly and change their degrees to be heavily geared towards the SQE preparation, then the desired costs reductions will not materialise. More recently, the SRA has indicated that it expects universities to follow this model.<sup>3</sup> In other words regulation is being used to 'nudge' a market response. As such the SRA is responsible for, and should responsibly take account of, the consequences of such a 'nudge'. While the extent to which this does in fact materialise is, of course, a decision for individual universities, we believe that far more attention needs to be paid to the ways in which this could lead to the degree changing in ways that undermine it, to the detriment of students, consumers and the public interest.

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<sup>3</sup>Legal Futures, 'SQE will become part of law degrees and make LPC "redundant"' 28 October 2016 at <http://www.legalfutures.co.uk/latest-news/sqe-will-become-part-law-degrees-make-lpc-redundant>



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Throughout the Consultation document, there is repeated reference to the fact that SQE Stage 1 is 'not academic content'; it is an assessment of professional competence. If so the SRA needs to acknowledge that the level of preparation will be not be insignificant, given its avowed focus on new knowledge applied in different ways with knowledge of different, explicitly professional contexts.

This is effectively LPC-LITE (albeit with the removal of some skills and important elective elements). Therefore, it is extremely unlikely to be very much shorter or cheaper than the price of the existing LPC. No evidence/comparator has been provided as to the likely price of this.

If the market response (and implicitly SRA desire) is that preparation for this new test of professional competence will be incorporated into undergraduate law degrees as a result of its regulatory interventions, then it needs to acknowledge the direct implications that will follow. In particular, it will be difficult to accommodate the new content without narrowing other aspects of curriculum. This point was made in our Response to the original consultation and we were disappointed to see it not addressed. In particular, key areas such as Family Law, Disability Rights, Immigration law and other aspects of Social Welfare law will have to compete for space in a programme, which would need to accommodate preparation for substantive areas of law and procedure not currently addressed by the majority of undergraduate law degrees. At a time when the legal services market is undergoing immense change, these proposals will narrow the curriculum and stifle more innovative and inter-disciplinary degrees.

Of course, individual law schools may wish to stress these subjects rather than narrow preparation for the SQE, but there is a real concern that across the sector as a whole there will be a restriction of the availability of these subject areas. The decreased opportunity to study these subjects for large numbers of students *across the sector* means that these subjects are at risk of being lost from the discipline – to the ultimate detriment of both individual consumers and the wider public interest, something that seems to breach the regulatory objectives set out in the Legal Services Act 2007. This is an issue of profound concern not only to us, but to the professional stakeholders with whom we have worked. Practitioners from social welfare law firms expressed most concern, but it is striking to note that these concerns were also echoed by the largest commercial law firms. The SRA does need to engage with this point and explain how it anticipates future practitioners having sufficient exposure to these areas of law, to ensure that there is both interest in practising (and knowledge of), these subjects. In the absence of such an explanation there is a real concern about the consumer detriment of a dearth of expert practitioners operating in the social welfare law field – and more broadly practitioners, in whatever field, having had prior exposure of these subjects beyond their immediate practice area.

It is also worth noting that the preparation for multiple choice assessments will diminish law graduates' capacity to develop the knowledge, skills and attributes that have been so valued by the recruiting profession. Multiple pathways through degrees could be developed, but the SRA's proposals now recognise that graduate-ness needs to be demonstrated through means other than passing the SQE – hence the requirement of a degree. However, a degree directed heavily and narrowly towards SQE preparation will struggle to maintain credibility in terms of its development of FHEQ 6 outcomes. Again, the recruiters of some of the largest international commercial law firms were concerned about these developments and were adamant that a narrowly SQE compliant degree would not deliver what they understand 'graduate-ness' to be.

These comments are not intended as a reactionary plea to keep the system in the same way for our own interests. We have confidence in our ability to design and deliver a law degree



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that meets the needs of the recruiting profession, supports our students towards qualification and enables our graduates to develop the knowledge, skills and attributes to make a contribution to society as globally engaged citizens. However, the unintended consequences of an attempt to reduce costs through a qualification framework as designed, have to be addressed.

## Questions 2a/b:

### Consultation question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?

We agree that a period of qualifying legal workplace experience should remain central to the qualification process. Sustained exposure to a variety of practice settings and the issues that arise within them are critical in terms of the development of professional competences. The breadth of exposure to a variety of work, allied with strong, effective practitioner supervision is important not only in terms of protecting consumer interest through the education and training of competent professionals, but also in terms of the broader confidence and standing in which the profession is held. Exposure to practice environments is integral to other professions and to lawyers in other jurisdictions.

There are however, a number of issues that arise in relation to the timing of the assessment for the skills to be developed in the workplace setting.

**First**, the SRA's preference is to assess whether or not a candidate is competent in the skills developed in the workplace setting is to be left until the Stage 2 setting, rather than practitioner sign-off. It is, however, worth noting that it proposes that there should still be regulation about *how* these skills are developed, in terms of the overall length of time, the minimum periods of placement and the practitioner declaration about the nature of the competences developed. This is, in contrast, with the SRA's decision not to involve itself *at all* in the regulation as to *how* the preparatory training and the development of the knowledge competences for Stage 1 occur. How and where candidates develop their knowledge competences is as important as how and where they develop their practical skills competences and there are potentially real difficulties that will arise if this is not given further thought.

The **second dimension** to concerns about the qualifying legal work experience was raised powerfully by practitioner stakeholders with whom we engaged. Their strong view was that the current pattern of professional training - i.e. the LPC - enabled trainees (or indeed paralegals possessing the LPC) to make an immediate contribution to the firm's business. They had no confidence that passing Stage 1 SQE would equip a candidate to make this contribution. Thus, the kind of pre-training preparatory course that would be required by firms (particularly those firms paying for it), would require not only preparation for the SQE 1 assessments, but also preparation for workplace training (skills and some elective substantive content). Such a programme of study is unlikely to be too dissimilar in content, duration or, crucially, *cost* to the LPC. The strong message was that firms of all sectors will not be able to devote the resources required to deliver the level of training within the workplace environment. They need 'trainees' able to make a day 1 contribution. This is likely to have the greatest impact on smaller firms that have fewer resources, and firms engaged with social justice issues that will already be adversely impacted by the narrowing of training under the current proposals. Other concerns were also raised about:

- the need for firms to provide release from the business to sit the assessment, and (in all reality) to take additional preparatory courses ahead of the SQE stage 2 assessment.



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- Uncertainty created by the possibility of a candidate not being successful at the end of Stage 2 SQE
- The possibility of paralegals taking Stage 2 and passing, but there not being a NQ position for them. Effectively, the creation of another tier of solicitors within the firm/profession – raising issues in terms of consumer knowledge and understanding of who they were dealing with/costs transparency etc.

While, clearly these concerns raise issues as to firms' business models, rather than being immediately within the SRA's immediate regulatory purview, it strikes us that these concerns are worth further engagement, for four key reasons:

1. While a regulator clearly regulates on the basis of independence from those it regulates, it also needs to regulate on the basis of support and engagement from those it regulates, in order to maintain credibility. This is key to regulatory accountability and legitimacy.
2. If firms make business decisions to restrict the numbers of training positions on the basis of increased cost etc., this will have negative implications for the overall opportunities and the potential diversity of the profession, that we all have a shared interest in promoting.
3. It has been put to us by the profession that the workplace training provided by firms could become narrower and of poorer quality than that currently provided. This has implications for the standing of the profession.
4. The impact on social justice, and consequently the public and consumer interest, is of pressing concern.

### **Consultation question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

The proposed limitations placed on the numbers of different types of placements appear reasonably sensible. A series of fractured short placements, appear unlikely to provide the candidate with the level of immersion required to develop a thorough grounding in a particular area of practice. It should be noted that one major national law firm, with whom we discussed these proposals, made it clear that although they have experimented with different models of training in recent years, ultimately 4 x 6 month seats has been the model to which they have returned.

### **Consultation question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

The SRA's proposals raise fundamental questions about the nature of the relationship between university Law Schools and the profession to which most of our graduates aspire to enter. It is a relationship which ensures that professional standing, practitioner competence and consumer confidence are at the heart of the services that solicitors can provide, and consequences of a purported deregulatory position have to be acknowledged.

The consultation document states, "We continue to view robust and effective training as an essential part of becoming a solicitor" (para 119). Unfortunately, the way that the proposals are currently framed is very likely to lead to a dilution of robust and effective training within the system as a whole. LETR found that the system on the whole works well (2013:ix). The SRA's proposals, as they stand, will mean that *overall* the legal education and training system will not be robust and effective and will not work well.



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Far too great a reliance is placed on the market. In doing so, the deregulatory position that is adopted, is likely to produce a market driven re-regulation of the undergraduate law degree, in a way which the SRA purportedly claims it does not want. The dangers here do need to be addressed to a greater extent than they have been to date.

SRA are clear that they don't want 'Ofsted style inspections', and nor would we. This would add further cost and bureaucracy to a system, particularly within higher education that is also subject to a substantial and rigorous quality assurance regime, with further controls liable to emerge following the passage of the Higher Education and Research Bill. There are a number of regulatory options that lie between 'no regulation' and 'Ofsted style inspections', which would merit further consideration.

The SRA place heavy reliance on market information and open data in shaping student choice (of course, this will be the post-TEF world in which Higher Education generally will operate). However, there are issues in terms of who will be designated as a provider of SQE training? Is this self-reporting from the students' perspective? Does it include all their educational provision to that point, or only a provider that formally identifies itself (or is perceived by the student) to be a SQE training provider? This raises other questions in terms of how far back you should go if there is no formal link to SQE preparatory training. If all previous study is explicitly not preparation for the 'test of professional competence' then why is it appropriate to identify performance from that provider? If, on the other hand, a particular provider's provision is closely associated with SQE preparation, then why, in addition, to making the published data available would it not then be possible to consider either full or partial exemptions? Otherwise, there are concerns about over-assessments. These complexities, and ambiguities leave it likely that established institutional reputations will drive student and recruiter decision-making – see further our concerns under Equality and Diversity.

We have made this point before, but the SRA's proposals, at the moment, seem to attempt to address a number of different objectives, which are not easily reconcilable.

If the SQE Stage 1 is a test 'of professional competence' of material not covered on undergraduate law degrees – i.e. the application of knowledge in practice contexts, running files, knowledge of procedural rules etc., then, of course, the absence of exemptions is justified. Indeed, much of this content looks very similar to current LPC content.

However, if despite adopting a formal de-regulatory position in respect of the preparatory stages, the SRA anticipates UG law degrees incorporating this content (and thus removing the need for an LPC style course to be undertaken), then the result will be the creation of degree programmes that are a narrow test of professional competence. This is far narrower than most credible undergraduate degrees, and will leave those studying them ill-served in the marketplace, in terms of the subjects studied and the skills developed (see below).

In the context of these ambiguities and inconsistencies, if a candidate has been awarded a law degree, then it should be possible to design exemptions from all or some of Stage 1 SQE. If appropriately designed, this could strengthen the connection between academic learning and practical application and reduce the cost and assessment burden for students.

In the absence of mandated pathways, there are also potential concerns around the portability and coherence of different stages of education. Thus, will the extent of SQE prep on one University degree be sufficient for a particular SQE preparatory course at a different provider? What routes will be understood by, and so acceptable to, employers? We have been told by employers that a multiplicity of routes is likely to cause confusion and to lead to employers



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relying on familiar proxies of quality such as the possession of a degree from a narrow group of universities. This potentially reduces student choices and/or forces earlier and less well-informed choice, with attendant Equality and Diversity issues.

## **Proposal 4. Qualification Requirements**

### **Consultation question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

We note the work that the SRA has undertaken in terms of other benchmarked jurisdictions. The SRA lays considerable emphasis on the benchmarked jurisdictions in terms of their use of single examinations, and the requirement of a degree. It is notable that a *law degree* is required in most of the other jurisdictions and that discussion of this requirement is not engaged with at all by the SRA. To meet the need for solicitors to have a robust and broad based understanding of law, legal knowledge could be required at degree level. In order to preserve the possibility of multiple entry points, it would be entirely possible to add 'or equivalent' to such a requirement. To fail to engage with this point would put England and Wales out of line with other jurisdictions, which, as the SRA makes clear in relation to standardised assessment, would be detrimental to the confidence that consumers in England and Wales and internationally would have in the competence of solicitors.

### **Consultation question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

The SRA's current justification for not permitting exemptions is not logically coherent.

If it wishes to maintain the separation between the value derived from the academic study of law at undergraduate stages, and the test of professional competence, then the position of 'no exemptions' is capable of justification. However, in this case, it needs to mandate the stages of preparatory training and education, which will provide a student with a clearly understood, accessible, and pedagogically coherent progression through a robust and effective training regime towards the SQE assessment.

If it is able to justify the dilution of the value of a degree (which the SRA currently signals is important as an entry requirement) through significant integration of training for the test of professional competence, it is hard to see how it can justify maintaining the 'no exemption' position. To do otherwise, will add cost and assessment to the system and leave students multiply burdened – albeit with the possession of a less well-regarded 'degree'.

Again, we must re-emphasise the view that there is a very high probability that major recruiters will not recruit from SQE compliant degrees. They do not anticipate that such degrees will be capable of delivering trainees with the broad based knowledge, skills and attributes that they require.

A more straightforward position could simply be full or partial exemptions from SQE Stage 1 for candidates with 'law degrees or equivalent' (perhaps adopting the BSB's proposed broad definition of a law degree). If appropriately designed, this could strengthen the connection between academic learning and practical application and reduce the cost and assessment burden for students.

### **Consultation question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**



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While the SRA's recognition that transitional arrangements will be required, (because different students will be at different stages of education and training), is welcome, we have serious concerns about the timing of transitional arrangements.

1. It is clear that the SRA have not fully understood the impact of the potential reforms on groups who are already studying.
2. Firms are insufficiently prepared for the changes. There is real concern about the scale of the changes that will need to be made, particularly for those firms involved in the two year training contract cycle. This will inevitably cause delay, a myriad of entry routes/options and further confusion for students/potential candidates.

The SRA must understand that if the SQE is to be available from September 2019 students embarking in 2016 *will have* the choice take the SQE exam (apparently cheaper) or the LPC. This is particularly true for students without training contracts which will fund the LPC.

Students in this cohort will not have had any prior preparation. For the SQE route to be personally viable for them, they will need to follow a new SQE Preparation Course, which may or may not be on the market at that point. Undoubtedly, many established providers may offer something which isn't hugely different in terms of quality, content, length or cost than the LPC. However, it is to be equally anticipated that 'crammer' courses (of the sort available for the QLTS) will emerge.

Students can, of course, continue under existing arrangements. However, this will depend upon there being market demand for LPCs to continue. LPC courses may be withdrawn, leaving new SQE preparatory courses the only real options. According to the SRA this will be cheaper, so students are likely to follow this route in any case (if this does indeed transpire).

It is our responsibility (and that of the SRA) to provide these students with up to date guidance and information about the choices that they have available to them and the consequences of these choices. We cannot do that at the moment. Moreover, universities are currently recruiting for 2017, and have to ensure their course information is CMA compliant. 2018 entry material will be going to press in early Spring 2017. Again, no institution is in a position to provide these students with clarity.

If a University were offering a transformed programme, incorporating (to whatever extent) preparation for 'a test of professional competence' into its undergraduate offering, then it would need to be in a position to have validated and be marketing its 2019 offering to new entrants by around Spring 2018. One issue of concern here is that the Assessment Specification annex indicates that, following the appointment of the Assessment Organisation, further development of the SQE will take place in 2018 and 2019. In the light of this, any provider would need sufficient information about the detail of assessment at an earlier opportunity than this indicates. While, the need for further testing, consultation, reflection and development is, of course, welcome, if a provider is to respond to the new assessment processes in any meaningful way, then there needs to be recognition as to how this can be incorporated into course planning and development.

## **Consultation question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes. We have various concerns about the negative EDI impacts that are likely to arise from the SRA's proposals. We (and others) have raised these previously. The Law Society has



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already raised it in its response and we are very concerned that the SRA has not addressed any of these issues in the second consultation.

A key context for understanding this is that:

- A narrowly focussed SQE prep degree is likely to diminish graduates' capacity to develop the knowledge, skills and attributes that are valued by the recruiting profession and 'that are developed even for the most gifted students through quality academic courses and qualifications and over a period of time'.<sup>4</sup> This preference for the highest quality undergraduate academic programmes has been reinforced to us in discussions with the profession.
- SQE preparation will need additional preparation. Clearly the extent of the preparation required, will be dependent on the extent to which any preceding academic course purports to prepare the students. However, given the SRA's stance in relation to exemptions, the model of assessment structured to be taken in one sitting (presumably at the end of the preparatory training) means that additional preparation will still be required. Moreover, if the recruiting profession also requires some level of pre-workplace training preparation this will add to the overall cost of the education and training prior to the workplace learning.

Our three fundamental EDI concerns are in relation to:

- Costs
- Knowledge Asymmetries and SQE compliant degrees
- The burden of single sitting assessments

There has been no clear indication as to what the **likely costs** will be at different stages. Commercial sensitivity is relied upon to justify the absence of costs for the administration of the SQE. However, experience from other jurisdictions indicates that credible and robust online courses will not be inexpensive.

The most significant basis for assuming a reduction of costs in the system will be if the LPC is replaced by a significantly cheaper SQE preparatory course. This seems unlikely.

It is likely that the Law Schools that are most competitive to enter and highly regarded in both academic and professional circles will continue to deliver programmes similar to those that they have always delivered. Their graduates will remain the most sought after by elite employers, not least because of the skills and attributes they develop. The graduates of these Law Schools will also be students who have both the information to understand the standing of these courses, vis a vis 'SQE degrees', and the financial resources to support further study for the SQE after their degree. Those from non-traditional backgrounds are less likely to be in this position compared with those from more privileged backgrounds.

A **second risk** to diversity arises from the fact that an 'SQE degree' would be narrowly focussed on a profession that will not wish to employ all those graduating with such a degree, yet which does not equip them well for other vocations. This has financial consequences for the students. A cohort of students who could add diversity to the profession will be lost, if they choose not to embark on a degree, without the current safety net of its clear cut value to other sectors. While the removal of a potential route to other professions is clearly not a matter of

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<sup>4</sup> City of London Law Society Training Committee response to the SRA's Consultation on Assessing Competence, 4<sup>th</sup> March 2016.



# UNIVERSITY OF LEEDS

concern for the SRA, the loss of talented potential solicitors on the basis of choices framed by socio-economic background should be. Fundamentally, there may be a growth in degrees which are designed around preparation for a test in professional competence, yet the profession appears unlikely to value those degrees, with subsequent diversity implications. The lack of clarity around the prestige and strength of the multiple routes to qualification is likely to work against those from non-traditional and disadvantaged backgrounds. The 'exemplar pathways' offer a starting point in this regard, but the level of complexity and the real pitfalls of following particular routes could be better addressed by far greater attention paid by the SQE to the mandating of the preparatory stages.

A **third risk** lies in the proposal that all exams must be taken in the same assessment window, but that students can have three attempts to pass. This is exceptionally, and we would suggest, unnecessarily, demanding, and it would be surprising if it did not lead to a significant failure rate. This will discriminate against students from poorer backgrounds who will lack the financial resources for multiple attempts (as no doubt students will seek to attend crammers for second and third attempts). One way to mitigate this problem would be to remove the requirement to sit the assessments all at one time. This would also maintain the present position where those who must work and undertake the degree and LPC part-time can presently gain entry to the profession because they can study and take assessments in stages. Such a route appears to be closed under the current proposals, again with adverse EDI impacts.

We note that an Equality Impact Assessment assessing these concerns has not yet been conducted.<sup>5</sup> We believe that addressing these concerns requires a fundamental rethink of the proposals.

The law degree will continue to thrive at Leeds. Our concerns relate to the risks to diversity, student welfare and social justice and the ability of students from non-traditional backgrounds to succeed under the new regime. Our concern should not be characterised as making a case on the basis of self or special interest. We have very serious reservations that much of the opportunities for improved education and training and, in fact, greater coherence between the educational and professional sectors (and the routes between them) could be lost if the SRA proceeds along the lines set out in the second consultation. There will be serious detriment to the consumer interest in having a robust and effective training regime to support the assessment of the competence of those entering the solicitors' profession if these concerns are not engaged with in a serious manner.

## Conclusion

We are not opposed, in principle, to the notion of a standardised single assessment at point of entry but do not accept that the model currently proposed by the SRA is the appropriate model for assessing competence.

The principle of multiple pathways is also to be welcomed (although, of course, multiple pathways to the solicitors' profession have always existed). However we, and many of those with whom we have engaged, have failed to be persuaded by the SRA that there was a

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<sup>5</sup> We note that the EDI Assessment at the time of the first consultation focussed on whether computer based assessments had EDI impacts, and also on the reduction in the costs to qualification that it anticipated: SRA, *Training for Tomorrow: Assessing Competence* (7 December 2015) at <http://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page> Annex 2.



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problem that required the solution set out in the second consultation. As LETR makes clear, while there is scope for improvement, the system broadly speaking works well. The SRA has still not really provided evidence to justify the scale of the changes proposed.

We hope that this Consultation Response proves useful to the ongoing discussions that are required before a final decision can be reached and hope that it is read in the spirit of constructive engagement and dialogue in which it is offered.

# Consultation questionnaire

Response ID:492 Data

## 2. Your identity

### Surname

du Bois

### Forename(s)

Francois

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
as an academic**

Please enter the name of your institution.: University of Leicester - Leicester Law School

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** See our written submission.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** See our written submission.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** See our written submission.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** See our written submission.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** See our written submission.

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** Exemptions should be investigated. See our written submission.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree

**Comments:** The proposed timescale for launching the SQE is unrealistic in light of the time needed to adjust academic programmes in line with HEFCE and QAA expectations as well as the Consumer Rights Act requirements. See our written submission.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:** There will be positive impacts but these are likely to be outweighed by negative impacts. See our written submission.

# Consultation questionnaire

Response ID:130 Data

## 2. Your identity

### Surname

French

### Forename(s)

Duncan

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: University of Lincoln Law School

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** Without having sight of a detailed curriculum and an understanding of the nature and difficulty of the multiple choice questions to be set, it is not possible to confirm how robust and effective the SQE would be in measuring competence. The Assessment Specification as presently drafted is too broad to ascertain the level of competence required. There is a significant risk that preparation for the SQE1 would be primarily aimed at "passing the exam" and not preparing competent solicitors for practice.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Neutral

**Comments:** The incorporation of work experience is a significant improvement upon the first consultation. We remain concerned however that there won't be sufficient access to QWE and this will remain a fundamental barrier to the profession. The inclusion of work placements / law clinics during the degree as part of the QWE is a potential improvement, but there needs to be clear guidelines as to what constitutes and what doesn't constitute QWE.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** The public perception is important here - anything less than presently required would lose confidence in the profession. Time spent during the degree undertaking QWE should be discounted to take into account the level of experience likely to be gained during this time. Further guidance will thus be essential.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** The absence of any prescriptive guidance on preparatory training is fundamentally

misconceived and will cause a dangerous race to the bottom of standards.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We are not confident that the model proposed will adequately test the requirements necessary to assess the competence of future practitioners. Trainers will invariably "teach to the test" and this remains a fundamental failing in the SQE proposal overall.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:** We would be concerned at the provision of exemptions, which would undermine the basis on which the SQE has been advanced so far.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** While the proposed transitional arrangements are an improvement on the first consultation, we remain concerned that they will still place legal educational providers in a difficult position to accurately advise current and prospective students and to be compliant with the Consumer Rights Act. Moreover, whilst running a tandem system for those students who start before 2019 assumes an LPC will be running in 2021. This is far from guaranteed.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** This proposal does not - despite statements to the contrary - address EDI and indeed will potentially exacerbate them. Securing QWE remains a significant stumbling block for BME and other students. Moreover, students will not have the benefit of belonging to a discreet cohort within an LPC to develop their own networks to help them in the early part of their career. The six year pass period from stage 1 to completion of stage 2 MUST be reviewed in light of the Equality Act.

## **SQE Consultation: A Response from the School of Law at the University of Nottingham**

Please state your level of agreement with each proposal on a scale of 1 (strongly agree) to 5 (strongly disagree)

### **Question 1**

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

We strongly disagree (5).

As proposed, it seems that SQE 1 will test some relevant skills at a relatively low level. To the extent that SQE 1 and SQE 2 are designed to replace the current LPC they appear to be defensible, although we would prefer to leave any detailed judgement to those with more experience of the LPC than we have. On the basis of what we know, we have no strong objections to the centralisation of LPC assessment.

The proposals are unquestionably **not** a robust and effective measure of competence when it comes to assessing whether a candidate has other attributes demanded of a solicitor. In particular, SQE 1 cannot assess whether a candidate has the knowledge and understanding of foundation subjects. The only way for a candidate to demonstrate that he or she has appropriate knowledge is by passing a Qualifying Law Degree (QLD), Graduate Diploma in Law (GDL) or equivalent. More specifically, competence A4(c) would not be assessed adequately as it requires a "broad base of legal knowledge" and the application of "core principles or rules". There appears to be no attempt to assess how students deal with difficult or unclear legal principles. Solicitors need to be able to distinguish case law in a critical manner; to know when not to apply the law as well as when to apply it. QLDs and their equivalents test this; SQE 1 does not. Many laws are nowhere near as clear - or as black and white - as the SRA appears to believe and SQE 1 to imply. Some practitioners may find themselves applying a set of codified standards again and again, but this will frequently not be the case. By removing the QLD/GDL from the process, we would be removing a vitally important competence that is given to solicitors by the QLD. That this is what the degree should be doing appears in the subject benchmark 2.4(viii) which states that a graduate will be able to "recognise ambiguity and deal with uncertainty in law" and 2(x) which states that a graduate will be able to deal with "complex actual or hypothetical problems." SQE 1 is simply not assessing the knowledge and skills assessed by an LLB or GDL. A QLD or GDL must

remain an element of the qualification framework. The QLD would give an exemption from the need to do a GDL.

We fully appreciate that the SRA is concerned to see that all practitioners are competent and fit to a standard necessary to undertake the business of providing legal advice. There is, of course, a vast range of contexts in which that advice is sought and offered. A QLD or GDL grounds students in the core principles of defined legal areas but goes considerably further in terms of dealing with the fact that legal rules and principles are fluid: they are subject to constant evolution, revocation, amendment, and development. We fail to see how SQE 1 can possibly be designed to test candidates' ability to deal with this. A QLD or GDL can and does equip students to develop non-subject specific skills of reasoning and analysis that can be applied in real-world cases; the proposed SQE 1 demonstrably does not.

The necessity for graduate-level competence in law appears to be recognised by the Bar Standards Board, by the vast majority of solicitors and by providers of legal education. It seems extraordinary to argue that someone could be admitted as a solicitor without having been assessed at degree level in the fundamental elements of the law. We know of no reputable jurisdiction which uses centralised assessment but does not require a law degree or equivalent as a prerequisite. To argue that centralised assessment "would bring us into line with other international jurisdictions such as New York, California, Germany, France and India" is highly misleading as none of those jurisdictions would countenance admitting as lawyers those without a QLD or equivalent. It seems extraordinary for the SRA to argue that it is "vital" to have a qualification "that justifies the high reputation of solicitors of England and Wales around the world" and then to advance proposals which are so patently at odds with that.

There are gaps in terms of the Assessment Specification for SQE 1. We offer a few examples. Regarding Commercial and Corporate Law and Practice a number of areas mentioned in the Knowledge Statement do not appear in the Assessment Specification: there is no mention of M&A transactions and the legal structure governing them, and certain cross-border elements of corporate law and practice are absent. Indeed, the notion of "commercial" law seems entirely subsumed within the corporate form. In other areas, omissions include promissory estoppel (SoLK 9(b)), trespass to the person (SoLK 9(d)) and defamation (SoLK 6(e)). No doubt others will be able to spot other omissions. Furthermore, although Nuisance and *Rylands v Fletcher* appear in the Assessment Specification, it is not clear how they fit with the possible scenarios. How, therefore, can SQE 1 demonstrate competence A4(c), because, presumably, you could go into the

exam knowing nothing about these areas and still pass, despite the competence statement, through the SoLK deeming them necessary.

We do not recognise the “procedural vacuum” point. Students are made aware of procedure, and how it impacts on the substantive law. It is true that they do not learn the forms to fill in and how to complete them, but that does not represent a vacuum. In reality, there is no room within a module on, say, contract or tort to deal with matters of legal procedure at the level necessary to pass the equivalent of an LPC. What is necessary is that students learn enough of the substantive law to take forward into a course on procedure.

### **Question 2a**

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

We broadly support the greater flexibility, but as will be apparent with our comments on access (below) we would have concerns if they were introduced as part of this package (3).

### **Question 2b**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

We have no strong feelings and would be content with either 18 months or two years.

### **Question 3**

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

As explained above we disagree strongly with the proposals (5). Candidates for a centralised assessment should always hold an appropriate QLD or GDL or have displayed the same competences through an alternative route such as an apprenticeship (5).

### **Question 4**

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

For the reasons outlined in our answer to question one we strongly disagree with the suggestion that the proposed model is a suitable test of the requirements needed to become a solicitor (5).

**Question 5**

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Our submission has highlighted and justified the inclusion of a QLD in order to deliver the solicitor competences, but we recognise the well-established 'exemptions' to this offered by (1) a degree + GDL, or (2) the newly introduced Apprenticeships. Any centralised assessment should focus on the knowledge currently associated with the LPC.

**Question 6**

**To what extent do you agree or disagree with our proposed transitional arrangements?**

We have no strong view other than that it is vital for students (including part-time students) to have clarity.

**Question 7**

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

We see significant and troubling negative EDI impacts arising from the proposals. A particular concern is access.

The SRA states that:

“[i]t is no longer acceptable or fair for us to force all CPE graduates, and law graduates who do not qualify through ELDs, to take the LPC - an additional

course on top of a degree - at a cost of up to £15,000 (with living expenses on top) when there are other ways in which they could acquire the professional skills and knowledge currently taught on the LPC.”

We recognise that there may be other routes and accept that where a student demonstrates the same level of achievement as someone with a QLD or GDL they should be able to progress to the next stage. We also accept (as we have stated) that there may be room for a centralised assessment of the LPC. However, we are far from convinced that candidates will be able to obtain the skills and knowledge inculcated by the LPC significantly more cheaply than they can at present. We doubt that many law schools (particularly among more prestigious institutions) will offer degrees that are aimed at preparing students for SQE 1 and even fewer will prepare students for SQE 1 and 2. In the latter case, the degrees will surely be at least four years in length if they are to have any credibility.

In reality, most students will still have to undertake study *post* a law degree or GDL in preparation for SQE 1 as it is unlikely that many undergraduate law degrees will be able to cover all SQE 1 subjects. It is difficult to know what the cost of this further study will be, but it is unlikely to be significantly less than that currently charged for an LPC, particularly as the market (in the form of both students and firms) is likely to demand that such study will incorporate some skills training. We believe that the SRA has misjudged the reality of what firms and students will demand and providers will supply. First, it is our opinion that firms will not be willing to take students without QLDs, GDLs or equivalent. The SRA has finally accepted that SQE 1 is not of graduate standard and firms will demand trainees and solicitors who have demonstrated that they are of graduate standard in law. Their credibility depends on that. Second, SQE 2 envisages that firms will be happy to take on trainees without the level of skills which previously would have been demonstrated through passing the LPC. But it seems to us unlikely, that very many firms will be content to take on potential trainees for the period of workplace training before they have passed SQE 2. Those students will need to have done the substantive parts of what was the LPC in order to prepare for SQE 1, but they will not necessarily have had any significant skills training. This is a major risk for firms, as the trainee in whom they have heavily invested may not pass SQE 2. One possibility is that firms will look to recruit students who have already been fully prepared for SQE 2. In other words, trainees may still in reality have to do a QLD plus LPC or a degree plus GDL plus LPC.

An alternative to the above is that firms will look to students who have already undertaken significant work experience (perhaps on a voluntary basis) with them or

elsewhere. Those undertaking significant voluntary work (such as long-term internships) will inevitably be those students who (a) can afford to do that; and (b) (probably) have connections in the profession.

We also believe that by de-regulating certain aspects of legal education and training, the SRA would be opening the door to disreputable providers, in particular in the short term.

### **Further Points**

We wonder when an entity will be classified as a “training provider” about whom data will be published. We anticipate that few leading law schools will want to present themselves as training students for SQE and an institution’s data should surely only be published if they make explicit claims about SQE preparation.

## University of Sheffield

Question 1 – To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Strongly disagree

SQE1

There is no evidence that SQE1 would be more robust or more effective than the current regime. It is difficult to regard the arrangements as being robust in the absence of the QLD/GDL, and it is impossible to come to a favourable view on SQE1 without having seen sample exam papers.

For the bulk of those entering the profession (we exclude those on the apprenticeship route or transferring in from other jurisdictions), it would be far more straightforward to retain the QLD and GDL but to centrally assess the Legal Practice Course. This directly addresses one of the main criticisms of the current regime (the inconsistency between LPCs).

It is difficult to imagine that 120 questions in 180 minutes can assess in any real depth. SQE1 does not test, for example, the ability to explain issues to a client, to construct an argument, or to carry out tasks that often fall within the scope of a solicitor's work. These are tasks that are only tested to a limited extent in SQE2 (and possibly not at all, depending upon the choices that one makes in SQE2). It is surprising that one can qualify without having to be able to draft a simple contract for the sale of a property, or straightforward claim for breach of contract.

It seems from the draft Assessment Specification that, for example, one could sufficiently master the core principles of contract law from a ten page summary document, and without ever having read a law report.

You ask for comments upon whether the regime will be robust and effective without producing sample exam papers as part of the consultation. This makes it difficult to comment and represents a significant flaw in the consultation process.

Our objection to SQE1 would be considerably weaker if the QLD/GDL were retained.

SQE2

We have no objections in principle to SQE2, but we do have concerns about the practicalities (large numbers of candidates being assessed at about the same time in a mostly labour-intensive process; some individuals on placements with clients or in overseas offices) and cost.

We are very concerned about the possibility of small to medium sized firms not taking trainees because of the risk of them not passing SQE2, with the consequence that individuals will seek to make themselves more marketable by going through SQE2 before work-based learning.

We find it difficult to believe that the proposals will reduce the cost of qualifying, especially for those not going to the larger firms (as they will be more likely to have to personally pay the cost of preparing for, and taking, the SQE2 assessments). For that reason, the proposals do not help with the achievement of one of the SRA's original aims; improving access to the profession.

Question 2a - To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Agree

We agree that it shouldn't be formally assessed (it is almost impossible to do it). It should include at least three areas of practice. We would prefer that it includes both contentious and non-contentious work, but this is not a strong preference.

We agree that no more than four periods of experience should be allowed to be stitched together, with each being no less than three months long.

Question 2b – Length of time for work experience?

Two years.

Question 3 - To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

You don't have any proposals, other than not to regulate that training!

The publication of data does not constitute regulation.

If, as we argue, you retained the QLD/GDL, then they should continue to be regulated.

Question 4 - To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Strongly disagree.

We strongly disagree that SQE1, without a QLD/GDL is a suitable test. If you retained the QLD/GDL then the SQE becomes less objectionable, but even in those circumstances we would wish those not to consist entirely of multiple choice questions.

Question 5 - To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2.

Agree.

There have to be some exemptions. Obvious examples are those who are transferring from the Bar or who are qualified in other jurisdictions.

We are surprised that you don't ask about exemptions from all or part of the period of work-based learning; one could imagine examples of where that might be appropriate.

Question 6 - To what extent do you agree or disagree with our proposed transitional arrangements?

Disagree (as to timescale).

It now seems a very tight timescale.

We suggest that you carry out and evaluate a pilot (see para 140), rather than an ex post facto evaluation.

It appears that your timescale is being driven by the fact that assessments need to be in place for those on the trailblazer apprenticeships; we believe that to be a mistake.

Question 7 – Do you foresee any positive or negative EDI impacts arising from our proposals?

It seems to us that it is likely that these proposals will increase the costs of qualifying, and that is likely to have negative EDI consequences.

Andrew Callaghan

Director of the Centre for Professional Legal Education

University of Sheffield

On behalf of the School of Law at the University of Sheffield

6 January 2017

**Response to the Solicitors' Regulation Authority, 'A new route to qualification: The Solicitors Qualifying Examination (SQE)' (October 2016)**

**Submissions by the Law School, University of Southampton**

**General Introduction**

The Law School of the University has provided high quality legal education and scholarship for more than 60 years and is committed to the rigorous education of tomorrow's lawyers, some of whom will seek to join the legal profession as solicitors.

Our concern is that changes should not be made to the training of the profession which would devalue the underpinning academic education which is the basis of the world-wide reputation of the English and Welsh legal profession.

We are equally concerned that training pathways should not be so costly that they limit the career choices of those students who meet the academic thresholds for entry into the profession.

We have limited our comments to Proposals 5 and 6.

**Executive Summary:**

- We urge the retention of the Qualifying Law Degree (QLD) and that the QLD should grant exemptions from all or some of the requirements of SQE1.
- The timeframe for the new regulations is too short, especially in a post-Brexit world.

**Proposal 5: exemptions**

It is short-sighted to devalue the UK law degree by moving away from the QLD which is a well-understood and widely recognised assurance of grounding in the foundations of the discipline. At the moment, graduating students secure a 'qualifying law degree' (QLD) and, with it, the assurance that a QLD equips them for the next stage of their legal training. Removing the QLD runs the risk that some students will obtain a degree which does not actually address in depth the foundations of law in a way that facilitates their successful progression to the profession. They will not be equipped to cross the threshold into the profession nor to sustain their continued professional development as they advance through their career. In effect, they are starting off with a foundational deficiency. It is difficult to see how this can enhance the competence and quality of the profession.

Removing the QLD is a step towards lower and inconsistent standards, and it will probably have to be reinstated in four or five years when the problems begin to become apparent. Removing the QLD

will damage the market for international recruitment and also the reputation of English Law world-wide where external law professions look to the QLD as meeting a certain benchmark requirement.

We strongly urge the retention of the QLD and consider that the QLD should grant exemptions from all or some of the requirements of SQE1. For example, where a student has completed a third year dissertation in their QLD, that element should grant them an exemption from the legal research and writing component of SQE1. By retesting what they have already achieved, the SQE increases the costs of entry into the profession.

### **Proposal 6: timescales and transitional arrangements**

The timeframe for the new regulations is too short, especially in a post-Brexit world where it is not clear what provision is to be made for UK lawyers to work in Europe and vice-versa. Universities will want to see the shape of the post-Brexit qualification framework with a view to making any necessary modifications to degree programmes. Given the resource cost across the higher education sector of constant changes to programmes, it is preferable if the SRA changes could be combined with any necessary Brexit changes.

Professor Brenda Hannigan  
Head of School  
Law School  
University of Southampton

January 2017

# Consultation questionnaire

Response ID:511 Data

## 2. Your identity

### Surname

Smith

### Forename(s)

Christopher

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as an academic**

Please enter the name of your institution.: University of Sunderland

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** • A backward step in terms of teaching and learning methods, encouraging surface , not deep, learning - We refer you to the original ACLEC reports of the 1990's on legal education which criticised the 'artificially rigid ' separation of the academic and professional stages of legal education- the Report called for the adoption of active learning methods and a move away from rote learning towards greater flexibility and diversity of teaching and assessment methods – something which these current proposals appear to reverse. • There is an underlying assumption that the over-riding need is for standardisation, and that this equates to validity. This is not the case, as evidenced by researchers looking at professional learning environments such as the training of doctors. Is consistency being confused with quality? In a professional context, a more complex approach is needed for meaningful assessment. Standardisation does not equate to validity. Are more complex cognitive skills being effectively tested? Stage 1 -There is a risk that people who can retain knowledge can pass the test- but it is the application, critical thinking skills and development of judgement which is more important. Here there appears to be little application, a lack of depth, all in order to standardise the assessment. SQE 1 does not appear to assess or require the development of the higher intellectual skills required by the QAA Law benchmark: It does not appear to address: viii ability to recognise ambiguity and deal with uncertainty in law ix ability to produce a synthesis of relevant doctrinal and policy issues, presentation of a reasoned choice between alternative solutions and critical judgement of the merits of particular arguments SQE 1 is likely to encourage students to focus on the application of straightforward principles of law in everyday practice situations without sufficient regard to complexity and ambiguity as required by the QAA Law Benchmark. Students qualifying without having taken a law degree will be less prepared for practice at the highest standard of competence and students who qualify with a law degree are likely to have engaged in additional time and expense. This is likely to impact on professional standards or diversity or both. This problem is compounded by the fact that the SQE 2, which is taken at the point of qualification, does not purport (despite some ambiguity) to assess legal knowledge at all. Stage 2 assessments- the SQE2 appears to be better founded in the experience of running similar assessments and, provided the proper amount of appropriate work experience is also required, could be a reasonable basis for the demonstration of the necessary outcomes. However there is concern at the areas proposed and impact particularly on access to justice , with a lack of emphasis on some areas, and inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt. Costs-

without more detailed costings for these new proposals, there is no assurance that this reduction in costs will take place. In particular, the SQE 2 requires 10 practical skills assessments with 20 hours of testing, presumably requiring trained clients, and experience legal practitioners to be appointed as assessors. There will also be the costs of assessment awards board using expert panels. The concerns about SQE1 are exacerbated by the fact that it has not been piloted and that there are no plans to pilot it before the decision to adopt it in principle is taken. At the moment the SRA appear to be proposing the adoption of SQE1 and 2 and then piloting it (presumably to adjust and improve it). This is methodologically flawed and (we would argue) irrational. Recommendation - We request that full piloting of the SQE1 be completed before the decision in principle is taken. We urgently need to see example assessments and model answers so that we can develop teaching and learning and assessment resources to prepare our students for the SQE – whether as part of an LLB, or a LLM or dedicated short course. As discussed, the actual scope of the SQE in terms of knowledge and skills is not clear. Students will also need access to exemplar assessments and model answers in order to be able to prepare for the SQE. Our new LLM LPC focuses on the acquisition of development and skills in a live client context and the exams are conducted in a real world office environment to truly assess Day 1 readiness. The proposed SQE would mean that we could not focus on the genuine acquisition of skills and experience, which is what employers tell us they really want, but instead have to teach to assessment and, as we have said, that the exams then assess surface knowledge.

#### 4.

##### **To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Disagree

**Comments:** We support the SRA's recognition that students can develop the skills and competencies needed to work towards qualification as a solicitor in a clinical environment, however we do not agree that this is any substitute whatsoever for the kind of experience currently obtained on a training contract. We consider the two experiences to be very different indeed. We are proud of the role our clinic plays in preparing students for Day 1 readiness (for a training contract) and think that it prepares them very well for that. We do not accept the SRA's suggestion at para 99 that it is difficult to assess work experience on a consistent basis; many academics would tell you that the same issues apply to this form of training as any other kind of assessment in that regard. Ultimately subjective judgments always have to be made. We have developed a rigorous form of assessment of clinical experience with many aspects of quality control. But that, as we say, is in preparation for Day 1 readiness for a training contract rather than as a substitution for one. Clinic at university is all about learning how to learn in a professional environment. All clinic focus to a certain extent on reflection and equipping students with the skills to learn from experience. The fact that students have much lower caseloads than when they start a training contract means that we can really take our time and consider all the issues, practical implications, ethical and professional conduct matters carefully. The focus is very much on that, and learning how to learn, rather than gaining expertise in a particular area of law or type of practice which is the focus of a training contract. Clinic prepares students exceptionally well for a training contract but it is no substitute whatsoever for a training contract.

##### **What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We consider the current two years is appropriate. If the SRA remains minded to recognise clinical experience so as to discount or reduce this period we suggest the maximum discount be no more than 6 months. Clarification is needed on whether any Pre SQE Stage 1 experience could count

#### 5.

##### **To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree

**Comments:** There appears to be little protection for the consumer here – whilst advocating standardisation

and consistency, there is little really detailed guidance on what the tests will entail, to enable providers to provide a quality service. Without assurance or quality monitoring, and a reliance on market forces, consumers who have little experience in selecting providers may be driven by price, and because feedback on course results is likely to lag behind, this will not provide sufficient protection against 'rogue' providers. There is too much emphasis on assessment in exam conditions with too little information on the preparation required for SQE 1 and 2. Lack of regulation of the work experience phase

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** We are concerned that the depth and breadth of legal knowledge, the intellectual skills, the value of qualifying legal work experience and the level of professional practice skills required to pass the SQE will be less than required at present. At a time when employers are requiring more vocational skills from our graduates, which we are able to deliver through live client experience and rigorous practical examinations, we are concerned that the proposals will take us backwards to a time of teaching to assessment, traditional memory-recall examinations that lack practical aspects or which discourage thinking outside the box or giving consideration to practical/commercial/evidential considerations about a given factual scenario in way which develops professional readiness and judgment.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Disagree

**Comments:** We agree that exemptions should be offered and disagree with proposal to offer no exemptions • The six year period may be too short to complete SQE1 and SQE2, if this also includes work based experience to enable students to be prepared for SQE2. • If there are no exemptions for those sitting a law degree, it is difficult to see how this can be cost-neutral when comparing to the existing LPC system. The system should encourage genuine engagement with the learning of law and preparation for legal practice and should not allow for a system of 'short crash courses' specifically aimed at learning how to pass the assessments rather than learning how to be a quality lawyer.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Disagree

**Comments:** • We have concerns that you will not be able to produce sufficient examples/ practice assessments in time for institutions to design appropriate courses and for students to have a sufficient opportunity to prepare for the first offerings of the SQE in 2019.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** The proposed solution will end up costing students a substantial sum for the tests. Our members have estimated that the SQE will cost £6,339 This does not take account of any study costs and assumes that all assessments will be passed at the first sitting. The reality will be that most students (especially those from EDI backgrounds) will require assistance in passing the test – costing further money. Those from upper income bracket backgrounds will still get jobs with the bigger employers who will subsidise or pay for all of this. Those from EDI backgrounds will have to fund themselves. The solution to EDI issues is to force the big employers to genuinely recruit from wider backgrounds and stop the increasing public school concentration of power and money at the top of the big firms. Where is the evidence that these proposals will impact positively on EDI? The SRA appears to believe that this system will prove to reduce the cost of training and so to encourage diversity. We suspect that this will not be the

case. The existing high-status firms will continue to ensure that their entrants receive the training they want. There is a serious risk that a two-tier development of courses will develop with the result that non-standard entrants will tend towards those that develop a lesser reputation. The cost of the centralised assessments will be a considerable burden over and above the costs required for the teaching and learning and assessment necessary for the proper running of university programmes. There is a risk of exploitation of some students through the legal work-based experience as proposed. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

## Training for Tomorrow: Assessing Competence.

### Response of the University Of the West of England to the Solicitors Regulation Authority Consultation exercise on the proposal to introduce the Solicitors Qualifying Examination

#### Question 1 : To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence

*(aspects of this answer overlap with the answer to Q4, regarding the suitability of the SQE as a test of the requirements needed to become a solicitor)*

#### Overview

- 1.1 While this consultation response expresses some concerns about the proposed SQE, should it be introduced UWE will develop new provision to prepare students/practitioners for it. We also look forward to further discussions with the SRA about their proposals and to have further opportunity to provide our thoughts and input on these proposed reforms to the process of legal education and training.
- 1.2 We agree that potential benefits would result from introducing an even more consistent, transparent and (if considered necessary) rigorous measure of competence to be attained by those being Admitted as Qualified Solicitors.
- 1.3 However, it is not possible to evaluate if the proposed SQE will provide an effective and robust measure of competence. Critical to evaluating this question would be provision of exemplars in all 17 assessments (together with marking criteria, the likely pass marks, allocation of marks, etc.). Without this, it is not possible to make any informed response to the question, or indeed this consultation exercise. Ultimately, the devil will be in the detail of the SQE proposal and until this is shared, it is difficult to engage in meaningful consultation about it.
- 1.4 The proposed SQE would amount to a radical change both to the qualification process for those seeking Admission to the Roll, but also for legal educational/training. The radical nature of change reinforces concerns arising from the lack of detail in this second consultation exercise (in particular lack of assessment exemplars) and also the speed with which it is proposed that change should take effect.
- 1.5 There also seems to be little consideration of any alternative to the proposed SQE: the Forward to the Consultation Paper very much reinforces perceptions that the SRA is committed to the SQE as the only option for the reform of legal education/training.
- 1.6 To the extent this proposal is driven by concerns regarding the consistency and rigour of the QLD/GDL/LPC assessment process, these are all matters for which the SRA has/had Regulatory Quality Assurance control through its validation, monitoring and reporting processes (albeit ones which are not as rigorous as they used to be). Could reinforcement of existing

regulatory/QA mechanisms be a more appropriate way to address these perceived concerns, rather than the radical change of introducing the SQE?

- 1.7 Together with more rigorous QA processes, could other less significant change potentially address concerns regarding consistency, standard and rigour: perhaps introduced as interim measures, while there is ongoing consultation and evaluation of the SQE (including a trial/pilot SQE prior to any full implementation).
- 1.8 For example, has consideration being given to:
  - 1.8.1 The introduction of an aptitude test for those wishing to progress from the academic stage of training to undertake the LPC. Prospective LPC students could determine whether they have the capabilities to succeed in the next stage of legal education/training before committing to the cost of undertaking the programme. Further, to the extent the SRA has concern regarding rigour and standards during the academic stage of legal education, the benchmark to be achieved through an aptitude test would inform teaching/assessment standards set by QLD/GDL providers.
  - 1.8.2 The introduction of centralised LPC assessments (perhaps in the Core Subject Areas of Business Law & Practice, Property Law & Practice and Litigation) to ensure a common standard of assessment across all providers.
  - 1.8.3 The introduction of standard skills assessments (akin to those utilised on the QLTS) to be undertaken prior to seeking Admission to the Roll.
- 1.9 It is unclear what the SRA envisages the outcome of the SQE will be in terms of numbers qualifying as solicitors.
  - 1.9.1 A constant theme throughout all consultation has been one of setting high consistent professional standards.
  - 1.9.2 This suggests the SRA believes these are not consistently achieved under the current pathways/training & education regime.
  - 1.9.3 The unstated implication is that the bar to Admission will be raised by the SQE, reducing the numbers attaining Qualification.
  - 1.9.4 If that is the outcome of this reform, how do the SRA's proposals sit with the underpinning theme of the Legal Education Training Review, namely to widen access to the profession and increase the numbers of QLD/LPC students who are able to qualify as solicitors.
- 1.10 If notwithstanding the raising of the qualification standard, the SQE results in greater numbers being Admitted to the Roll, then in the absence of any evidence suggesting significant shortages within the qualified solicitor market, how does the SRA envisage an increased

number of qualified solicitors will be employed within a profession which may not have jobs for them to do?

- 1.11 The ability of legal education/training providers to provide high-quality programmes in preparation for the SQE will be challenging in view of the intended implementation from September 2019.
- 1.12 Once such programmes are in place, there is an unevaluated cost associated with new training programmes and also the costs to candidates of sitting the SQE. There has been no effective cost analysis of the current cost of legal education/training against the proposed regime, because the proposed regime has not been costed. The Equality & Diversity Implications of these proposals can therefore not be properly considered.
- 1.13 How will the Profession to play its part in delivering the training during any period of Qualifying Legal Work Experience.
  - 1.13.1 Will firms take on responsibility for restructuring training opportunities to prepare their employees for SQE Stage 2 in a more focused way? Will some rely on additional externally provided training for their employees?
  - 1.13.2 Will all such work experience provide the necessary opportunities for individuals to develop the skills required to pass the Stage 2 Assessments?
  - 1.13.3 Will some employers arrange for prospective employees to undergo externally provided training and undertake the Stage 2 Assessments before commencing any period of work experience/training contract? To what extent will the focus of an employer's training of their future qualified solicitor workforce, be in bespoke areas of law & practice which align with their business needs, than the generic skills and reserved practice areas assessed through the SQE.
- 1.14 The potential for different legal education/training and work experience opportunities in preparation for the SQE, could generate the diversity of opportunity which the SRA wishes to provide for individuals in the hope of addressing the widening access question. However, it equally raises the prospect of a two tier process both of legal education/training/work experience - with implications for (i) an individual's prospects of passing the SQE and ultimately qualifying but also (ii) an individual's prospects of securing employment upon qualification, depending upon the route which they have taken prior to passing the SQE and being Admitted.
- 1.15 To what extent will these SQE proposals address the concerns of those who have already undertaken a QLD (and LPC) but have not yet qualified as a solicitor because of what the SRA refers to as the "training contract bottleneck"?
  - 1.15.1 How feasible would it be for such individuals to successfully undertake the SQE, particularly Stage 1, which would assesses them on substantive legal knowledge they

may not have studied for some years since graduating from a QLD/LPC and without having studied this substantive law in the procedural context envisaged by SQE Stage 1.

- 1.15.2 For example, an individual who has spent many years working within a particular legal environment since completing their QLD/LPC, will have developed significant knowledge and skills in relation to one practice area (for example personal injury litigation) and in this context would be able to demonstrate the Day 1 Outcomes – but passing assessments in the Principles of Public and Administrative Law might require significant costly refresh of earlier undergraduate studies. They might equally be able to pass SQE Stage 2 skills assessments in their specialist practice area, but not in 2 of those 5 practice areas currently proposed for the Stage 2 assessments.
- 1.16 A significant difficulty of this consultation process is commenting upon the proposal without being provided with exemplars of the proposed assessments. It is therefore difficult to make any meaningful comment on questions about the proposed rigour of the process.
- 1.16.1 Could a three hour assessment of 120 MCQs be appropriately rigorous but impossible to pass within that timescale
  - 1.16.2 or inappropriately easy, without significant facts to evaluate and assess a candidates analytical skills and ability to apply law to a set of facts (mindful also that candidates will be required to initially sit all 6 functioning legal knowledge assessments at the same time, when their study of these subjects will probably have been spread over a 2 – 3 year period).
- 1.17 The proposed structure of the SQE also does not seem to align with the concept that it will assess standards of newly admitted/qualified solicitors at the point of their Admission to the Roll.
- 1.17.1 The Consultation Paper explains that candidates will have 6 years to eventually pass the SQE having undertaken their first period of Assessment. Can anyone relying on the 6 year rule be said to have been assessed at the point of Qualification on the currency of their competence across all 17 assessments?
  - 1.17.2 Where is the consistent standard between the candidates who pass the SQE within a short period of time and those who fully utilise the 6 year window
  - 1.17.3 Moreover, there seems to be no indication of to the currency of the SQE once it has been passed – for example, the candidate undertaking Qualifying Work Experience prior to Qualification who passed all SQE assessments several years before. Where is the currency of the SQE assessment process?

- 1.17.4 Flexibility of the pathways to prepare for the SQE will have benefits, but will there be true consistency and comparability of the standards attained through the SQE and at the point of admission?

**Specific response to paragraphs 26 – 100 of the Consultation Paper**

- 1.18 Paras 28-30 could potentially be addressed through more rigorous regulation/QA processes. The SRA specifically directs that LPC students should be prepared to be assessed on any Outcomes so providers should not be directing students about which areas to revise for assessment; effective QA/external examiner regulation should ensure formative and summative assessments are not similar.
- 1.19 Para 31: Perceived concerns about the tripartite structure of legal education could potentially be addressed other than through the introduction of the SQE and will not necessarily be resolved by it. In particular, will the SQE result in legal education programmes designed to train students to pass a certain type of exam, rather than to develop their analytical skills and prepare them for legal practice?
- 1.20 Para 35: could these concerns be addressed by more specific regulation/guidance by the SRA for those authorised to train solicitors, rather than through the SQE?
- 1.21 Para 36 – 38: There is no evidence whatsoever of a direct link between consumer detriment and inadequacies of the current training regimes. What leads the SRA to conclude that negligence claims and complaints are in the main (or at all) attributable to the work of qualified solicitors who were Admitted under the current Training Regulations and that such claims/complaints are a consequence of the current training system.
- 1.22 Para 39: see above and the suggestion for certain centralised assessments.
- 1.23 Para 41: see the observation above as to whether alleviating the “training contract bottleneck” will necessarily provide effective alternative training opportunities; and whether those who might attain qualification under the new system will necessarily secure employment as a qualified solicitor. Is the “bottleneck” a measure of market supply/demand of the profession’s need for qualified solicitors?
- 1.24 Para 42: in the absence of exemplars it is impossible to comment on whether the SQE would provide a rigorous and appropriate assessment– but will passing the SQE necessarily equate to a consistent standard of admitted solicitors, both at the point of qualification and in future practice?
- 1.25 Para 42: if the (unstated) cost of undertaking the SQE would not be significant, why would this be an expense which would deter candidates from undertaking stage 2 without having secured workplace experience? Is the SRA not promoting flexibility which would allow stage 2 to be passed without undertaking that experience? If alternative workplace experience cannot be secured, will a “training bottleneck” still not exist as a barrier to passing stage 2?

- 1.26 Para 42: is the SRA confident that an unregulated training/education market, where there are competitive pressures to drive down price, will necessarily result in improved quality.
- 1.27 Can meaningful data be produced to inform candidates of their best choice, not only in deciding upon an education/training process which will allow them to pass the SQE but also to formulate the necessary skills and experiences which will allow them to succeed in practice?
- 1.28 Para 45: in the absence of exemplars, it is difficult to evaluate whether the proposed SQE will be a comprehensive assessment of whether a candidate has met the Statement of Solicitor Competence on Admission; and (having regard to the proposed currency of passing the SQE) whether that assessment of competence will still be current as at the point of admission.
- 1.29 Para 46: it is noted that the examination has yet to be designed in detail. This will no doubt explain the absence of exemplars, but how can this proposal be evaluated and consulted upon without these to consider?
- 1.30 Para 47: however detailed an Assessment Specification, this does not equate to the assessment itself, whose rigour and effectiveness can only be considered with the benefit of exemplars. The Assessment Specifications are a vague / incomplete statement of content, not of rigour or level. The Statement of Solicitor Competence and the Threshold Standard are too vague to give any re-assurance as to level and rigour
- 1.31 Para 49 – 51: it is noted that candidates would only be assessed in Contract or Tort, not both obligations. Should any prospective solicitor demonstrate adequate competence in both?
- 1.32 Para 51: will the limited Skills assessment at Stage 1, limit the extent of skills training candidates will possess before (as the SRA envisages) they would then progress to their workplace experience? This would appear to be a regression of the level of skills currently developed by students during the LPC before progressing onto their training contract (or paralegal employment)
- 1.33 Para 52: it is difficult to envisage how a 3-hour 120 MCQ assessment (or 80 MCQs in 2 hours for Wills and the Administration of Estates and Trusts) would be a rigorous assessment, in particular using factual scenarios to test the application of legal knowledge and the candidates analytical skills. Will the assessments be open or closed book, what materials will candidates be permitted to use?
- 1.34 Para 53: will preparing candidates to pass computer-based MCQ tests equip them with the necessary analytical skills required to practice (particularly if the MCQ test itself is not going to test this)?
- 1.35 Para 54: does the Case & Swanson research (in relation to basic and clinical sciences) have applicability in relation to the assessment of legal knowledge and skills? Were the assessments considered in this research part of a wider assessment methodology – noting

that computer -based testing is said to form part of the admission assessment regimes in other jurisdictions?

- 1.36 Para 56. Again, in the absence of exemplars, it is difficult to comment on whether the proposed SQE would provide consistent objective and robust assessment – the suggested structure suggests not, particularly as regards depth of analysis and application.
- 1.37 Para 58 – 59: to what extent is SQE Stage 2 an assessment of skills, which currently form part of the training/assessment of students who undertake the LPC? Will employers require potential employees to have these skills before they undertake workplace experience/training, rather than for such workplace experience/training to provide the environment in which these skills are developed (see our suggestion below about timing the two elements of the proposed stage two assessments prior to commencing work place training/experience and then immediately before the point of qualification).
- 1.38 Para 62-67: the limitation of practice areas (and the requirement to undertake all stage 2 skills assessments in the same 2 practice areas) may not reflect the reality of the workplace experience/training undertaken by the candidate. We would suggest greater flexibility is required.
- 1.39 Paras 72 – 75 the absence of any estimate of the anticipated cost faced by candidates to undertake the SQE and of training programmes to prepare them for it, makes it impossible to make meaningful observations regarding the cost effectiveness of the proposed SQE in comparison to current education/training pathways.
- 1.40 Para 81-83: it is unclear what would amount to a “single assessment window”. Nevertheless, the proposal that candidates would initially have to undertake all Stage 1 assessments could have a very profound impact on the way in which candidates are taught/prepared for this stage of the SQE. In particular, it could result in candidates being formally assessed in some subjects some time after they have covered the relevant material on the programme/course.
- 1.41 As the overall SQE will not assess all Competencies at the point of Admission, is there any particular rationale that requires candidates to initially undertake all Stage one assessments at the same point in time, rather than in a disaggregated manner as initially proposed in the previous consultation paper?
- 1.42 Para 82: what is the implication for a candidate who fails one or more Stage 1 assessments a third time. Would they be able to undertake the SQE afresh? What consideration would be given to reasonable adjustments/extenuating circumstances (a consideration also applicable for Stage 2)?
- 1.43 Para 87: on the one hand, a six-year period to complete the SQE means that a candidate is not assessed in all 17 assessments at the point of qualification. An alternative consideration is whether the six-year period provides sufficient opportunity to pass the SQE for some

candidates, particularly for (say) part-time students from atypical backgrounds studying and working at the same time and with limited means to fund bespoke/specialist training courses.

- 1.44 Paragraph 89 – 92: are we correct in understanding that there would not be a fixed pass mark in each assessment which would apply to every sitting of each Stage 1/2 SQE assessment?
  - 1.44.1 How is a variable pass mark consistent with the stated aim of a rigorous and consistent measurement of competencies?
  - 1.44.2 We would hope that the SRA and its appointed assessment organisation would have sufficient confidence in the SQE assessments to determine a pass mark in advance rather than make a judgement about the difficulty of each individual assessment and the minimum standard of performance in the light of candidate performance?
  - 1.44.3 This suggests significant doubts in the SRA's mind as to whether the assessments might prove to be too easy or indeed too difficult.
  - 1.44.4 Could an individual's prospects of passing the SQE vary depending upon the calibre of the cohort they undertake it with?
  - 1.44.5 How would this approach generate confidence that there was consistency in the SQE assessment process?
- 1.45 Para 93: we have concerns that publishing results data in a particular way will not provide meaningful information to allow candidates to make informed choices for their legal education/training. The way in which such data is published could have seriously adverse implications for the quality of training/education provision and available choice to candidates. The publication of bare pass rates by institution and course taken could result in very misleading information and a distortion of the 'market', and will lead to providers focusing on getting candidates through the SQE, ignoring wider intellectual and practical skills needed by solicitors – ultimately being detrimental to those solicitors, their employers and society generally.
- 1.46 Further, how will data be collated in respect of those candidates who utilise a variety of education/training organisations, or go it alone? Indeed if the SRA is not to regulate legal education/training, how will it obtain performance data from institutions or compel them to disclose/publish it?

**Question 2(a): to what extent do you agree or disagree with our proposals for qualifying legal work experience**

- 2.1 It is difficult to accurately respond to the proposals in the absence of more specific details.
- 2.2 We agree that workplace learning should form part of the requirements towards qualification and admission as a solicitor
- 2.3 It could be argued that workplace learning must be a compulsory prerequisite prior to an individual being entitled to undertake the Stage 2 assessments as they are designed to ensure solicitors have high standards reflecting the Core Competencies when they first qualify
- 2.4 However, this might result in individuals only having limited skills training before their period of workplace experience, having only been trained in the Stage 1 Practical Legal Skills Assessment subjects (Legal Research and Writing) prior to undertaking the SQE Stage 1 assessments. Individuals may not receive adequate training in skills assessed in Stage 2 prior to commencing their period of workplace learning. As a result, they will be less well-equipped to undertake that period of workplace learning and of less value to their employer.
- 2.5 Could there be benefit in the Stage 2 assessments being aligned to the period of workplace training; first, prior to the commencement of the workplace training (to assess competence to engage in that training process), and secondly, at the conclusion of workplace training, and immediately prior to qualification/admission (to assess competence in the day one outcomes).
- 2.6 This would ensure that the final stage 2 assessments are a rigorous measurement of competency at the point of qualification – indeed how can a candidate contemplate (and more particularly be successful) in rigorous Stage 2 assessments having taken them before the period of workplace learning?
- 2.7 It is not clear what the intended purpose would be of employers/supervising solicitors signing a declaration that a candidate had the opportunity to develop some/all of the competencies in the Statement of Solicitor Competence through the required period of workplace experience.
  - 2.7.1 If SQE Stage 2 is to be the means by which a candidate is competent to be a solicitor (with assessment of all day one competencies?) what would be the purpose of the declaration?
  - 2.7.2 What would be the differentiation between a period of work experience providing an opportunity to develop some of the competencies or all of them? Would there be a diminished threshold where only some competencies could be developed through the workplace experience?
  - 2.7.3 In the latter case, would the employer/supervising solicitor be required to certify the extent to which experience had/had not been developed in each individual competence?

- 2.7.4 What would amount to an opportunity to develop competency? How much guidance would be given to employers about this?
- 2.7.5 An employer might provide a candidate with an opportunity to develop competency, whether the candidate actually developed that competency is another matter altogether? How would this be measured?
- 2.7.6 What would be the regime for monitoring, checking and auditing this system?
- 2.7.7 What implications would there be for potential employers? Could this deter the opportunities for workplace learning and the flexible/innovative opportunities which the SRA hopes might be encouraged?

**Question 2(b): what should be the minimum period of WBL**

- 2.8 We do not consider a strong case is being made to change the existing standard two-year period of workplace training and would suggest that it remains as such

**Question 3: to what extent do you agree or disagree with the proposals for the regulation of preparatory training for the SQE**

- 3.1 The SRA's proposals for the (**Non**) regulation of preparatory training for the SQE is a marked departure from the regulatory oversight hitherto exercised by the JASB and SRA in respect of the process of legal education and training in the past 20+ years (albeit with a decreasing regulation and quality assurance oversight in recent years).
- 3.2 If the SRA perceives that the highest standards of legal education, assessment and training to prepare students to a high, consistent and professional standard have not been maintained, could this be a consequence of the decrease in regulation and quality assurance processes in recent years (including the abolition of monitoring visits to LPC/GDL providers – to include observation of teaching; the old grading regime for LPC providers; and more recently the discontinuance of the SRA appointed External Examiner regime).
- 3.3 The appointment of Chief External Assessors may have provided an alternative means of reviewing and if necessary addressing disparity in assessments standard between LPC providers, and providing an opportunity for that quality assurance process to address this perceived concern.
- 3.4 It is not clear why the SRA now seeks to take an entirely different approach, completely divesting itself of regulatory oversight of the legal education/training process. The rationale at paragraph 120 is not particularly comprehensive or convincing.
- 3.5 Para 120 also suggests that course specifications imposed by regulators can stifle training providers' ability to innovate and offer flexible, cost-effective ways to prepare candidates.

- 3.5.1 However, is the draft Assessment Specification and Statement of Solicitor Competencies, materially different in concept to (for example) the LPC Outcomes?
- 3.5.2 LPC providers have been authorised to deliver the course in a number of ways since these Outcomes were published in 2008 – including provision validated by the SRA for online delivery, which ostensibly does not sit with what some might have regarded as the straitjacket of the Information for Providers document published in 2008.
- 3.5.3 The SRA has demonstrated a willingness to allow providers to develop provision and offer it in different ways. To the extent that certain regulatory stipulations regarding course provision are no longer considered necessary, a regulator has the ability and power to change things in response to the needs of training/education providers and the legal marketplace.
- 3.6 We have previously stated (1.43 above) our concerns about the reliability of market information and open data as creating a meaningful basis for students to determine the appropriate pathway for the legal education and training which best serves their purpose both to pass the SQE and succeed in practice: particularly those from less affluent and/or atypical backgrounds, who may be attracted to the shortcut quick fix offering, which ultimately does not stand them in good stead in the context of their long term career aspirations.
- 3.7 It is not clear what information must be prescribed in the publication of data. How would added value be shown, by reference both to the candidate attainment in the SQE, but also by reference to prior academic achievement? Raw pass data could be extremely misleading
- 3.8 A further consequence could be providers becoming selective about who they recruit, so that they only select those most likely to achieve the best pass rates and future demand for their courses. This could again have EDI implications, particularly for those from less affluent and/or atypical backgrounds
- 3.9 Is there also a risk that certain providers will only concentrate on ensuring candidates gain knowledge, skills and competencies needed to pass the SQE at the expense of developing wider intellectual skills (research, critical evaluation, analysis, critical questioning, deep level thinking etc). This could certainly undermine some of the wider intellectual development of students, to their individual detriment and to the detriment of society generally.
- 3.10 Ultimately, this could result in a narrow approach towards training for the SQE and the approach of providers in determining who they choose to participate in their programmes.
- 3.11 The absence of any regulatory oversight would also limit the ability to ensure there is genuine choice of provision and not a situation where 2/3 key players dominate the SQE training market, and are in a position to utilise their monopoly to maximise the financial return of their offering, to the detriment of those less well-placed to pay their course fees.

- 3.12 Overall, we would not welcome complete deregulation of preparatory training for the SQE and would suggest the SRA reflects on the proposals of the BSB to maintain regulatory oversight in their proposed reform of Future Bar Training.

**Question 4: to what extent you agree or disagree that proposed model is a suitable test of the requirements needed to become a solicitor?**

- 4.1 While we note the rationale for requiring new solicitors to have a degree or equivalent qualification, it could be argued this will not address some calls for greater diversity of access to the profession.
- 4.2 An alternative argument might be that if the SQE is an appropriately rigorous and comprehensive assessment of the Assessment Specifications/Statement of Solicitor Outcomes, it will be of level 6/7 equivalence (although the Consultation Paper is of course silent on whether the SQE itself will be at level 4/5/6/7)
- 4.3 Indeed, given the confidence with which the SRA extols the benefits rigour and soundness of the SQE, we are surprised by their suggestion that ***a degree or equivalent qualification is necessary to establish the credibility of the SQE qualification***. If the SQE is to be all about setting and assuring high, consistent, professional standards for the future, would it not have as much (if not greater) credibility and standing than a degree or equivalent qualification.
- 4.4 As to whether the SQE (and associated proposals for workplace training/experience) will be a suitable test of the requirements needed to become a solicitor, then as we have highlighted above, the real evaluation of this is only possible once exemplars of the SQE have been published
- 4.5 A final question could be posed as to whether the education and training which will allow a candidate successfully passed the SQE necessarily aligns with the legal knowledge, analytical abilities and practice skills required for a successful career as a Qualified Solicitor. How many (say) current 1-4 PQE qualified solicitors currently undertake practice in the range of subject areas stipulated for SQE Stage 1 and utilise the range of skills stipulated within Stage 2? Conversely, how many undertake practice (including from day one qualification) in practice areas which are very different from those stipulated for the SQE Stage 1 and utilising a different set of skills from those assessed in Stage 2?

**Question 5: to what extent you are agree or disagree that we should offer exceptions to the SQE?**

- 5.1 We have no substantive observations on this consultation question, other than assuming that any legal requirements for mutual recognition must be complied with.

**Question 6: to what extent do you agree or disagree with the proposed transitional arrangements?**

- 6.1 We do not agree that the proposed timescale and transitional arrangements:
- 6.1.1 will be fair to candidates who will be part way through qualification when the SQE is introduced;
  - 6.1.2 create a “market led” approach to implementation in which these candidates can choose the best route for their particular circumstances (and there is no evidence presented in the consultation document as to why this would be a market led approach, or how candidates can best choose their pathway to qualification), and
  - 6.1.3 allow the education and training market time to adapt to the new landscape.
- 6.2 There are two aspects to the Timescale and Transitional Arrangements (paragraphs 136 – 140)
- 6.3 The first is the intended timescale for the introduction of the proposed SQE.**
- 6.4 The consultation paper suggests that the SQE could first be sat in the period August – December 2019 (although this is not explicitly clear).
- 6.5 Furthermore, individuals intending to pursue a career as a solicitor under the “old route”, would only be able to do so, having commenced the existing QLD/CPE/LPC pathway before September 2019. From September 2019, they would have to embark upon a different pathway (for example those illustrated in the flowcharts at page 25 of the consultation document).
- 6.6 This provides a very narrow window for:
- 6.6.1 Finalising the proposed SQE (including any further consultation process).
  - 6.6.2 The appointment of the proposed Single Assessment Organisation: which we presume would involve a competitive tendering process
  - 6.6.3 The development and trialling of the proposed SQE1 & SQE2 assessments.
  - 6.6.4 Providing Higher Education Institutions and other training organisations with exemplars of the proposed SQE1 & SQE2 assessments (including marking guides / assessment criteria and proposed pass marks, etc.), without which it would be very difficult for such organisations to develop courses to prepare individuals for the SQE.
  - 6.6.5 Providing HEI’s and other training organisations with sufficient time in which to develop new courses.

- 6.6.6 Allowing HEI's and other training organisations to then market their courses and provide individuals with reasonable opportunity to make informed decisions about the appropriate process of preparation for them to undertake in preparation for the SQE.
- 6.7 We would therefore suggest a later implementation would be more appropriate.
- 6.8 We also suggest that the full implementation of the SQE should not take place until a pilot scheme has been trialled and fully evaluated.
- 6.9 **The second is the cut-off date of the proposed transitional arrangements**
- 6.10 It is proposed that the long stop date for qualification under the "old route to qualification" would be 2024. We suggest this is not a realistic long stop date.
- 6.11 Indeed, there are arguments that there should be no cut off qualification date for those who start the existing "route to qualification" prior to the introduction of the SQE. We presume a cut off rule would not be imposed if the SQE was not introduced; even if the SQE is introduced what is the logic of a cut off date for those who commenced their legal education/training under the old system?
- 6.12 Presumably, this 2024 date has been arrived at on the assumption of an individual commencing a 3-year QLD in September 2018 (prior to the September 2019 cut-off); completing a full-time LPC in 2021/2022 (including those who might wish to undertake the LPC on a part-time basis, which must have EDI implications); before immediately progressing to complete a two-year Period of Recognised Training.
- 6.12.1 This would assume a seamless progression through the Academic and Vocational stages of training for those commencing that pathway in September 2018, which will not always materialise.
- 6.12.2 Similarly, a 2024 long stop date provides just a 6 year window for those intending to commence a law degree (or non-law degree with a view to undertaking the CPE/GDL full time) in September 2017, followed by the LPC and their Period of Recognised Training (i.e. one year of leeway for those undertaking the LPC immediately following their degree and on a full-time basis, none for those undertaking the LPC immediately following their degree on a part-time basis).
- 6.13 The proposed 2024 cut-off date therefore has the potential to generate pressures on those considering their choice of qualification pathway from September 2017/18 (whether to do so under the existing pathway; or to await the introduction of the SQE), particularly at a time when HEI's/other training providers will not be in a position to immediately advertise their programmes preparing individuals for the SQE.

- 6.14 Similarly, those who are currently undertaking a QLD (or who have embarked upon a non-qualifying law degree with a view to undertaking elements of the GDL) would also have a limited window to complete their pathway to Qualification by 2024. For example, someone who has just commenced a 3 year QLD in September 2016, would have just two years leeway to complete their LPC and Period of Recognised Training by 2024, just one year if undertaking the LPC on a part-time basis.
- 6.14.1 It is not realistic to assume that such individuals would be equally well-placed to qualify through the SQE route, whether on the basis of their law degree (supplemented by further training in preparation for the SQE) or even having undertaken both law degree and LPC (possibly also some form of legal employment).
- 6.14.2 Although no exemplars of the SQE have been published, the nature of the proposed assessments (in particular the Stage 1 MCQs) indicates a specific process of education/training will be needed for those hoping to successfully pass them.
- 6.15 If there is to be a cut off date for those who have commenced legal education/training before September 2019 (or a late date for introduction of the SQE), it should be much later than 2024 (or 5 years from the eventual implementation date) .
- 6.16 This would also provide greater opportunities for those who have yet to undertake the LPC and/or secure a Period of Recognise Training under the “old route”.
- 6.16.1 Given the potential difficulties of QLD/LPC graduates successfully undertaking the SQE, notwithstanding a long period of paralegal or similar legal employment, should there be greater leeway to allow them to attain qualification.
- 6.16.2 It would be unfortunate if those the SRA have identified as affected by the “training contract bottleneck” (& whose situation was a headline theme of the LETR report) are constrained from qualification under the existing pathways by the proposed 2024 cut-off date; yet who would then face potentially considerable additional cost (in addition to that already incurred during their undergraduate and GDL/LPC studies) in order to attain qualification under the SQE regime, in particular in respect of the Stage 1 assessments.

**Question 7: do you foresee any positive or negative EDI impacts arising from our proposals?**

- 7.1 Paragraph 149 of the consultation paper acknowledges that the ***SQE cannot by itself solve wider issues of social justice and fair access to education and the professions***
- 7.2 **We agree with this statement.**
- 7.3 An underlying theme of the SRA's consultation papers on the SQE has been a suggestion that this will lead to a more rigorous process of assessment prior to an individual qualifying as a

solicitor. The unstated implication of this theme, is the prospect that fewer individuals will qualify as solicitors under the SQE than currently do so through the current pathway.

- 7.4 A fundamental theme underpinning the report of the Legal Education Training Review, was a desire to address concerns about access to the Solicitors Profession and qualification. It is not clear how these concerns will be addressed if the consequence of the SQE is to reduce the number of people qualifying as solicitors because a more rigorous qualification threshold is now imposed.
- 7.5 Moreover, it is conceivable that the nature of the proposed SQE assessments (particularly Stage 1) will require individuals to be taught and prepare for those assessments in a very assessment focused way.
- 7.5.1 This could disadvantage those from less affluent and/or atypical backgrounds, who may undertake a process of training which prepares them to pass the SQE, but does not provide them with a process of training and education to succeed in practice.
- 7.5.2 The ability to achieve a pass threshold in a 3-hour 120 MCQ assessment, does not necessarily mean an individual is equipped with the requisite knowledge and developed thought processes which will enable them to successfully practice as a solicitor.
- 7.5.3 A hugely important issue is whether employers accept that those passing the SQE without a Law degree (or GDL) and undertaking something equivalent to an LPC is sufficient. If they do not, and only recruit from students who have followed a pathway akin to the traditional route, then (i) the overall cost of training will be greater (existing costs plus 17 SQE assessments) and (ii) those not undertaking the traditional route will have lower employment prospects. They would not know that when deciding to go for a cheaper and quicker route to the SQE.
- 7.6 However, we do not agree with the presumption that the SQE ***“could promote fairer access”*** and ***“should not make the current situation worse”***.
- 7.7 We note the SRA does not have sufficient confidence in the proposed introduction of the SQE to state that SQE will (rather than could) promote fairer access; and will (rather than should) not make the current situation worse.
- 7.8 The SRA has made no statement within the consultation paper as to why it disagrees with the many well founded concerns set out within paragraph 143: including the potential additional cost associated with the new pathways to qualification; and in particular, the possibility of a two tier system – not only whereby employers favour those who have followed particular qualification routes; but also whereby particular qualification routes mean it is more likely that a candidate will pass the SQE.

- 7.9 As the SQE is no more than a proposal, it is not clear how the SRA is able to forecast with such certainty that it does not expect the cost of undertaking the SQE and related preparatory training to be equivalent to or greater than the cost of undertaking an LPC. We submit that consultation on any cost benefit analysis is meaningless until there are clear indications of the likely cost of undertaking the SQE and of preparatory courses (particularly those offered to complement students' academic study through a traditional law degree).
- 7.10 We fail to understand the rationale that limiting resit attempts will remove benefit to ***“more affluent candidates who have the resources to continue sitting the exam to improve their pass marks”***.
- 7.10.1 First, this would appear to contradict paras 82/85 of the consultation paper which specifically states that ***“candidates would not be permitted a resit to improve their pass marks. Only candidates who had failed would be allowed to resit”***.
- 7.10.2 Subject to this observation, are those who have passed the SQE realistically going to sit it again in order to improve their marks – what evidence is there that the marks obtained in the SQE (as opposed to passing the SQE) will have material relevance to a candidate's future employment prospects?
- 7.10.3 Is it not more likely that those with more limited resources may face greater risk of failing the SQE having failed just one element on three occasions (which in the absence of detail would appear to be the consequence), having not been able to afford the cost of preparatory courses to help them to prepare for the SQE and/or support them in preparation for a resit?
- 7.10.4 This may be particularly so for those who may require reasonable adjustments for their assessments (there seem to be no proposals as to how they will be catered for) or those whose performance in the assessment is affected by extenuating circumstances (again not addressed in the consultation paper).
- 7.11 Fundamentally, the requirement to take Stage 1 and then Stage 2 assessments within the same sessions, and with limited resit opportunities, would limit flexibility which might benefit those with limited resources and/or from atypical backgrounds seeking to qualify as a solicitor. We are not told when the 2 sessions a year would take place – so institutions could not plan this into programmes (e.g, will they be in May / June and August?)
- 7.12 Finally, we refer to our observations on data publication in paragraphs 1.43 and 3.6 – 3.12 above

**University of Warwick**

**Law School**

**Response to SRA Second Consultation  
“A new route to qualification: The Solicitors Qualifying Examination”**

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**1. To what extent do you agree that the SQE is a robust and effective measure of competence?**

We do not consider that the SQE would be a robust measure of competence. We recognise that objective testing by MCQ and similar objective means can, if deployed with great expertise, test some high level skills. However, we doubt that objective testing is a suitable means of testing competence in applying the law to complex factual situations, or to constructing complex arguments, and we note that solicitors may be required to advise or argue in areas in which there is no objective correct answer. The proposed format which would allow 1.5 minutes per question would not accommodate question requiring detailed analysis of factual circumstances.

Under the current proposals students would not benefit from in-depth study in an academic environment, and would be encouraged to learn large amounts of law by rote, out of context and without developing an over-arching conceptual understanding. The temptation to learn in this way would be exacerbated by the pressure of being required to take exams on 6 extensive topics at one sitting. The SRA contemplates that quality of training would be driven by competition amongst providers (rather than by external regulation) and that the SRA would analyse and publish information about the comparative pass rates of different providers. We suggest that if providers are judged simply by pass rates they will gear their training to what is sufficient to pass rather than by aspiring to excellence.

We have concerns that the SQE part 1 syllabus is both too narrow and too wide. It is too narrow in giving insufficient weight to Trusts and to Constitutional and Administrative Law. By treating Trusts as simply a small element in Wills and the Administration of Estates, the SQE fails to recognise the importance of Trusts in public and commercial life and legal practice. The inclusion of Public and Administrative Law in a module dealing also with professional conduct and the legal system, will not permit the subject to be dealt with in adequate depth.

The SQE is too wide insofar as it prescribes that all intending solicitors will be tested across exactly the same range of legal topics. It is likely that the SQE will dominate the range of topics studied even for students following a traditional law degree route, at the expense of the wide range of optional subjects currently available in English Universities. We consider that the implementation of the SQE will reduce the scope and diversity of English legal education to the cost of the profession.

We welcome the publication of the draft assessment specification but consider that in its present form it lacks sufficient detail to enable providers or students to be certain of exactly what is required.

SQE part 2 is generally well conceived, but it is unfortunate that the range of practice areas in which students will be tested is restricted. If a student is to take SQE after working in Family Law or Shipping Law for two years, it would be counterproductive to require the student to be assessed for part 2 in two unrelated areas of practice.

**2a. To what extent do you agree with proposals for qualifying work experience?**

We strongly agree that legal work experience should be an element in qualification as a solicitor. Whereas, we agree that this might include work in a range of legal environments, we are concerned that without some form of regulation or assessment, there would be no guarantee that the work involved conferred appropriate legal experience. Thus, a trainee might qualify on the basis of 2 years repetitive experience as a legal clerk in a single area of practice.

**2b. Length of time?** We consider that 2 years is about right.

**3. To what extent do you agree with proposals for the regulation of preparatory training for the SQE?**

As indicated in our answer to Q.1, we do not consider that regulation by the market will ensure that students gain a deep conceptual and contextual understanding of law and necessary skills in applying law to complex factual situations.

**4. To what extent do you agree that the proposed model is a suitable test of the requirements to become a solicitor.**

We agree with the requirements for general education to degree level, skills assessment and work experience are appropriate. For reasons given above we do not consider that SQE part 1 will provide a sufficient test of legal competence.

**5. Do you agree that we should offer exemptions for SQE part 1 or part 2?**

We consider that exemptions from some elements of the SQE part 1 should be permitted where a student has passed a corresponding module as part of an approved degree or similar course. We also consider that it should be possible for a student to gain exemption from a modular element of the SQE 1, where the student has passed a module in a *different* module from an approved list in an important area of legal practice. Thus for instance, if Commercial and Corporate Law remains a requirement of SQE, it should be possible for a student to gain exemption from this element by offering pass in a module such as Family Law, Employment Law, Immigration Law or some other important area of practice.

**6. Transitional arrangements.**

We agree that students who have commenced reading for a QLD or GDL before September 2019 should be permitted to complete qualification under the old route.

We are concerned about the availability of LPC courses for students who commence degree studies in 2016, 17 and 18.

We cannot see a rationale for treating overseas candidates differently from other students.

**7. Do you foresee any positive or negative EDI impacts arising from our proposals?**

We envisage that if the SQE is implemented, some Universities will offer degree courses which explicitly prepare students for SQE, whilst others, including the elite Russell Group institutions will offer more traditional academic law degrees. Students who take an “academic” degree may feel the need to take and pay for a course in preparation for the SQE. The effect of this may be to discourage students from poorer socio-economic backgrounds from aspiring to attend the elite Universities, thereby undermining efforts to widen participation in such institutions.

Response prepared by:  
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Deputy Head of School  
Warwick Law School.

January 2017

## University of Westminster

Please see below the response to the latest Training for Tomorrow consultation.

You will see that in response to some questions we are aligned with the views of CHULS, in other areas we have provided a different perspective.

Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

In the previous consultation we stated that most students would wish to study a Law degree and it is likely that the profession will still expect to receive applications from entrants who hold a Law degree. Whilst a law degree is not essential, having the intellectual depth required to study at degree level (or equivalent) are required to cope with the demands of the profession. It is welcome that the SRA has stated that graduate level qualifications will be required before sitting SQE1.

It remains difficult to comment in detail on the proposed SQE1 as we do not have examples of the proposed assessment at both levels.

The proposed methods of testing for SQE 1 are too superficial and, unlike a law degree plus LPC (or degree plus GDL plus LPC), will not permit the testing of a wide range of degree level skills. SQE 1 may provide an adequate test of knowledge (but as mentioned above, we would need to see some examples to be sure), but not of the types of competence needed for a practicing solicitor, such as the ability to analyse situations, to evaluate evidence and make judgements. Paragraph 54 of the consultation paper asserts that computer based testing is successfully used in other professions such as medicine and pharmacy; but this comparison is disingenuous, as the assessments mentioned in those other professions are taken in conjunction with mandatory degree or postgraduate level education.

The consultation paper suggests that candidates may take SQE 1 before completing their work based learning, with SQE 2 being taken at the end of the work based learning period. It is stated that SQE would include a test of legal research and a writing test. At present, it is normally not possible to commence a training contract without completing a law degree or equivalent and the LPC. Many firms require this level of qualification even for paralegal roles. It is therefore unrealistic to expect that

firms will want to take on employees who are even less well educated and trained than at present.

We are concerned that SQE 2 may be too narrow; the removal of electives will mean that successful SQE completers may not have the breadth of knowledge and skills needed for practice. Those wishing to practice in, for example, Family, Consumer, Employment, and Immigration law, to name but a few, will be put to greater expense in paying for additional training in order to gain employment.

Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?

In principle, we welcome the concept of widening the number of contexts in which work based learning can be experienced. However, we are concerned that it appears that there will be no monitoring of qualifying legal work experience (QLWE). There are criticisms that the current training contract is insufficiently supervised or monitored by the SRA but we are not sure that the removal of almost all regulation is the way to improve this situation. We are unsure as to the value of making an entirely unsupervised and unregulated period of QLWE part of the qualification process, and it is our view that the proposals as currently set out do nothing to promote consistency or quality of experience.

It is common ground that there currently is a mismatch between the number of training contracts available and the number of LPC graduates. Allowing would-be solicitors to gain QLWE in other contexts may seem at first glance to be a positive move which would widen access to the profession.

However, our experience is that one of the reasons why firms do not offer training contracts is that they require considerable investment from the firm in terms of time spent in supervision and training. Lack of regulation of QLWE could encourage firms and other bodies to take on 'trainees' with no real commitment to their training and development.

Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace

experience?

The length of time could be flexible to reflect the experience, abilities and qualities of the student preparing for SQE2. Clearly a minimum period should be required with a minimum of 6 months QLWE.

Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

We welcome the flexibility of the training process which will come with the deregulation by the SRA. It is also clear from the two consultation documents that the SRA is determined to reduce the cost of qualification and that this will lead to an increase in the diversity of entrants into the profession. One of our concerns is that some unscrupulous providers may be attracted to delivering these courses with the sole aim of generating profit. The SRA is keen to state that the market will control these unscrupulous providers however it will take several years before the quality of and student performance will become evident to all potential applicants, who are relatively inexperienced or vulnerable 18 year olds.

The intention to reduce the cost of training is not guaranteed as the proposals to allow applicants to take the SQE up to three times could lead to an increased cost of training.

Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

We disagree that the proposed model is a suitable test of the requirements needed to become a solicitor for all the reasons set out above.

Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Whilst we can to an extent see the logic of not offering exemptions, we have concerns that this will result in additional and unnecessary costs to potential solicitors. Education to degree level is a pre-requisite for the SQE, and if that degree happens to be in law, we see no logic in expecting those who have already taken and passed relevant assessments having to take more assessments.

There are also individuals qualified to appropriate levels by recognised and rigorous routes for whom it seems illogical to expect them to take very comparable assessments to those they have already passed; for example, barristers, CILEx fellows, and licensed conveyancers.

Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?

We are concerned that the proposed timescale for change remains very challenging. Many individuals have already embarked on their route to qualification and it is very important that none of the expense and effort that they have already incurred should be in vain, so our main concern about transitional arrangements is that they are both very clearly set out and very clearly communicated to current students.

Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?

Whilst the proposal for widening the scope of QLWE could be (cautiously) welcomed subject to the concerns expressed above, we are concerned that there could also be negative EDI effects to these proposals, as follows:

- \* We are not convinced that the cost of the new scheme will be significantly less than the current regime and we are concerned that lack of regulation of preparatory training could push costs up.

- \* Whilst very highly qualified students from the traditional universities may continue to be employed by the larger city firms, who will continue to provide good, bespoke training, the widening of the scope of QLWE might encourage less diligent employers to take on employees without providing appropriate training, to the detriment of those employees, who may well be from less advantaged backgrounds in the first place.

- \* The proposed lack of exemptions might disadvantage those wishing to enter the profession from non-traditional backgrounds - for example, those lawyers who have qualified as mature students through the CILEx route and now wish to bring their usually considerable experience to the solicitors profession.

There remains the concern that law firms are likely to default to University attended which will

erode the value of the SQE, unless students are given a grade. If they are given their grade it will

be up to the student to disclose it. The concern then is that if they choose not to reveal it, there will be an assumption that students from post 1992 universities who does not reveal their

grade has a very average score without the same scepticism associated with pre-1992 universities. The SQE will not be the egalitarian measure proposed.

# Consultation questionnaire

Response ID:397 Data

## 2. Your identity

### Surname

Speed

### Forename(s)

Victoria

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Director of Pro Bono

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree

**Comments:** I do not agree that the proposed SQE is a robust and effective measure of competence. There are many different kinds of lawyers. The SQE as drafted appears to be wholly inadequate in terms of measuring the competence or otherwise of candidates keen to become specialists in employment, human rights, immigration, housing, family, welfare and debt.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree

**Comments:** Timing As part of their degrees, many students will engage in legal work experience through clinical legal education OR pro bono at university. Clinical legal education is where students take part in either simulated law clinics or law clinics as part of their course. Pro bono is where students participate in a number of different projects in addition to their course. The SRA state "We expect many candidates will take SQE stage 1 before their work-based experience, and SQE stage 2 at the end of their work experience." I have some comments about this: 1. It is not clear whether "we expect" means that candidates "must" take the SQE stage 1 before the work-based experience or whether, in fact, it is possible for some candidates to complete part or all of the work-based experience prior to SQE1. 2. If the SRA intends the terminology to be flexible so that candidates may complete the work-based experience prior to SQE1, they should make this clear. 3. If the SRA intends that work experience must be completed after SQE, I disagree with the proposal as it would not allow for experience gained during university education to count. I believe that there is a real need to acknowledge that some experience gained prior to SQE1 in university pro bono activities, including, but not exclusive to, law clinic, and in clinical legal education should count. I recommend: 1. That the SRA makes expressly clear that experience gained before SQE1 qualifies as work-based experience for the qualification process. 2. SRA should be clear to encourage all pro bono activities including, but not exclusive to, participation in student law clinics as options for gaining work experience. The SRA should be clear to include pro bono AND clinical legal education. Duration SRA states "We are unconvinced that 12 months is long enough to develop the appropriate experience and skills and see significant merit in maintaining the current requirement for 24 months. However, some have made the case for either 18 months or a more flexible approach." Comment: 1. It is not clear from this whether the SRA will allow part

time work experience or just full time. Many students will not be able to afford to gain work experience unpaid for this long without working. 2. Whilst there may be firms willing to pay students to take part in formalised work experience, in a similar way as is currently provided through a training contract, we recommend that it be made clear that students will be able to work part time in jobs other than those offering legal work-based experience. The point of the change in the process of qualification is to open up the profession. If you do not allow students to work to gain an income during this phase, there is a real and substantial risk of failing to meet this objective. 3. There will be many organisations able to provide work-based experience, such as law centres, housing charities, homeless shelters and more. This will likely be experience without payment. 4. If the SRA does not make clear that part-time opportunities are sufficient, there is a real possibility of negative impact on access to justice as organisations offering social welfare will have less appeal than they already do. There will be less people able to pursue this as a career.

Recommendation: 1. The SRA considers measuring duration of work-based experience in terms of hours rather than months. Content As currently defined work experience can be gained in a flexible way. One SRA suggestion is that it can be gained “Through working in a student law clinic”. Comment: 1. Universities run many pro bono projects through which students deliver free advice and education to improve access to justice. These include running telephone advice lines, delivering interactive educational presentations on law, acting as non- advice-giving tribunal friends, volunteering with the Personal Support Unit, assisting in law centres as quasi legal administrators and more. None of these might meet the description of “student law clinic” but all provide opportunities for students to gain valuable work experience allowing them to see law in practice, how it affects lives of the public and enables them to gain vital communication and client skills. Pro bono activities are distinct also from clinical legal education through which students participate in clinic or in simulated clinical learning as part of their course. 2. Student pro bono activity has a real impact on access to justice. There is an ethic of pro bono amongst students and it is important for the future of the profession that students understand from an early stage in their career that volunteering your expertise to improve access to justice is a good thing to do. The SRA should ensure that students are encouraged to continue to volunteer to engage in all available pro bono activity. 3. Clinical legal education modules are extremely expensive to run and usually only small numbers of students participate. SRA should not limit the relevant experience to clinical legal education as many students will gain valuable and relevant experience through pro bono projects in their universities. Recommendation: 1. We recommend that the definition “through working in a student law clinic” be expanded to include “through working in a student pro bono centre either with law clinic or other pro bono projects or through participating in a clinical legal education module”. 2. The SRA make clear that the work-based experience should be gained in the jurisdiction of England & Wales. 3. That The SRA introduce at least some benchmarking of content of work-based experience.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Other, please specify: hours, not months

**Comments:** Recommendation: 1. SRA require hours rather than months. 2. State expressly whether part-time or full-time. 3. SRA should ensure that students with no other means to support themselves other than working in the non-legal sector should not be prevented from entering the profession by a requirement to gain full-time work based experience.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:** I leave this to academics at BPP to comment on.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree

**Comments:** SQE 1 envisages assessment in the following areas: Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales Dispute Resolution in Contract or Tort Property Law and Practice Commercial and Corporate Law and Practice Wills and the Administration of Estates and Trusts Criminal Law and Practice. Comment: 1. There is a whole area of being a lawyer that is not covered by the SQE1 assessment areas including high street practitioners and social welfare lawyers who need expertise in family law, employment law, welfare benefits, debt, immigration, human rights and housing. 2. These areas cover laws that are of fundamental importance to individuals in their daily lives. It is not clear how the SRA propose that lawyers will enter into the profession ready to practise in these areas without any expertise gained at SQE level. It could be envisaged that prospective lawyers gain work experience in these areas. However, as currently drafted, for SQE2, candidates must choose two practice contexts from the following list: Criminal Practice Dispute Resolution Property Wills and the Administration of Estates and Trusts Commercial and Corporate Practice. Comment: 1. By not expressly including areas of social welfare law, some may be put off gaining experience in these areas for fear of being disadvantaged at SQE2 examination. 2. Students keen to pursue a career in social welfare law must wonder how the system as stated prepares them for this as a pathway. 3. NGOs and law firms keen to recruit new lawyers must wonder how, under the new proposed regime, it is possible that students will be ready to work effectively with them from day one. Recommendation SRA should either widen the categories OR make it expressly clear to all that practical experience in these areas is not a prerequisite.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Neutral

**Comments:**

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** I see negative EDI impacts from the proposals. Comment: 1. There is a risk of exploitation of some students through the legal work-based experience as proposed. 2. Organisations offering social welfare advice to the public need lawyers with knowledge and experience of the law they practise. SRA must ensure that future generations have the skillset to advise on all areas of social welfare law to ensure access to justice for all. 3. There is a risk that the proposals fail to address the needs of the most vulnerable in terms of accessing lawyers.

SRA SQE CONSULTATION 2016-17 – WFW RESPONSE

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**Introduction**

Watson Farley & Williams LLP (WFW) is an international law firm specialising in the Maritime, Transport, Energy, Real Estate and Natural Resources sectors, with a particular specialty in finance and corporate work. We were founded in London in 1982 and now have 14 offices in 11 countries. We recruit around 17 trainees a year in London and they work in six 4-month seats, including at least one overseas secondment.

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**(1) To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

The question of whether the SQE is a robust and effective measure of competence, or whether it is a robust and effective mechanism for ensuring solicitors qualify with the requisite skills and knowledge, is a different one. WFW would say that it may be the former but is not the latter.

**SQE1**

There is some force in the argument that a well drafted series of Multiple Choice Questions (MCQs) can be effective in testing pure legal knowledge and possibly its application as well. However, we are concerned that by choosing to use MCQs alone for SQE1, and particular 90 seconds per question, it will not be possible to test legal knowledge with sufficient depth and rigour.

*Studying the law*

No compulsory period of legal study is prescribed in the proposals, so it is reasonable to assume that prep courses will 'teach to the test'. On that basis, we believe that the current proposals would reduce the level and depth of legal study, knowledge and application of the law and thus reduce the overall quality of solicitors qualifying under the new system.

In addition, the proposed merging of certain areas (contract and tort together in the context of dispute resolution, public law with professional conduct) further reduces the depth required for each area. Firms are already concerned about the level of legal knowledge of their prospective solicitors. At WFW we already spend considerable time and energy further developing our trainees' legal knowledge. It would be a huge backward step if their starting point were to be reduced further, let alone the impact that would have on firms with fewer internal training resources than ourselves.

WFW PROPOSAL: We would like to see written answer problem solving tests included as part of SQE1 to enable a more thorough testing of legal knowledge and its application. We would also like to see some prescription of the courses required to study the law in advance of the assessment. Finally, we would like to see key areas such as Contract and Tort given their own distinct study and testing, to ensure that sufficient depth of knowledge is obtained.

*Practical application*

Although the current proposals do not specify when SQE2 (which focuses more on skills) should be taken, it is suggested that the majority of people will take this at their point of qualification or during

their period of Qualifying Work Experience (QWE). SQE1 has been designed to therefore include some elements of what is now the LPC, to help prepare people for starting their QWE.

In our view, SQE1 does not adequately replace the skills and practice knowledge developed on the LPC. Should the proposals remain as they are, we would anticipate, alongside other firms, developing our own course to plug the gap before our 'trainees' start their QWE with us. This will inevitably lead to a two-tier system of legal training and therefore two-tiers of qualified lawyer. Those who have been through these special extra courses and those who haven't.

WFW PROPOSAL: Either prescribe an LPC-type course to be taken before QWE, or further develop SQE1 to include elements currently covered in the LPC. Either of these would need to include problem solving and practical skills exercises, not just MCQs.

## SQE2

We have serious reservations whether the skills and applied knowledge required to qualify as a solicitor can adequately be judged by assessment alone, with no observations of performance in the workplace.

We consider the skills areas to be tested in SQE2 to be the right ones, although we are very concerned about the limited number of 'contexts' in which they will be assessed – see below.

WFW PROPOSAL: Some reporting of performance during QWE should be included as part of the final stage of the qualification process, perhaps as an element of SQE2.

### *Contexts*

There are a number of issues with the five contexts being offered for assessment in SQE2 and we make the following observations:

- It is unfair to assess people on contexts where some have practical experience and some don't
- Many firms will struggle to offer experience in two of the contexts to all of their trainees during their QWE
- If SQE2 can be taken (and passed) in advance of QWE – which in theory it can, then it cannot be at a suitable level for qualification
- If, as the SRA has suggested, people would struggle to pass SQE2 before undertaking their QWE, then allowing people to work in specific contexts would become a major issue
- If it would not make any difference whether someone has experience of working in that context or not, the assessment cannot be at the correct level of complexity to satisfy the qualification standard

WFW PROPOSAL: The number of contexts be increased to include Finance and Employment. We would suggest it include additional contexts relevant to firms other than ourselves, but we are not in a position to say what those should be.

### *Disruption to QWE*

We are also very concerned at the disruption that will be caused to trainees and firms by taking SQE2 during their QWE. We would need our trainees to have passed SQE2 before we make a decision on retention. That means we would require results for all trainees by mid-April at the latest. Based on a 3-month turnaround, that would mean SQE being sat by January in their final year.

In addition, we would require our trainees to undertake a proper course of preparation followed by a reasonable period of study before sitting SQE2. Ensuring that each trainee has the same opportunity and time to do this would be very difficult, especially with people out on overseas - and sometimes client - secondments. This also doesn't take into account the disruption caused to ongoing work by removing key junior team members for a significant period.

WFW PROPOSAL: That four sittings a year be available for SQE2 to allow greater flexibility for individuals and firms.

**(2) (a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

We agree that a minimum time period of QWE is critical to the qualification process.

We understand the reasoning for allowing experience from different periods and environments to count. We, however, would expect all of our trainees to undertake two years of QWE with us regardless of their other experience. Their development over that time is crucial for us to ensure that they have learned to become lawyers in the WFW tradition, that they have experienced the different areas of the firm's business sufficiently to choose where they wish to specialise on qualification, and that they have matured and developed sufficiently to the point where we believe they can fairly be called a practicing solicitor under the WFW banner.

The current proposals for QWE are vague, with the only requirement for the employer to sign a declaration stating that trainees have "had the opportunity to develop some or all of the competencies in the Statement of Solicitor Competence".

Whilst we will continue to offer the high standard of training and supervised experience we have always done to our trainees, we are concerned that other firms with fewer resources will not do so. If the quality of work experience is lower than the current Period of Recognised Training (and the former Training Contract) – both of which have well acknowledged flaws, then we would consider that to be a real risk to the quality and standards of the overall profession. That would not impact our home-grown lawyers, but it would affect the quality available for recruitment and the reputation of the profession at large.

The risk is that we create a two-tier profession, of those who have been through their QWE with a larger firm, and those who have not.

WFW PROPOSAL: We would propose that the SRA take some role in regulating the experience of people during the QWE and that an element of assessment of that experience be incorporated, possibly as part of SQE2 – as suggested above.

**(2) (b) What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

No Min  6m  1y  18m  2y  2y+  Flex  Other

We believe that two years is the minimum and correct length of time for QWE. The variety of work, the opportunity for maturing and developing skills and also to send people on overseas secondments would all make a shorter period almost unworkable. It would also reduce the quality and level of those qualifying.

There is also the practical issue of getting trainees through SQE2 in good time to make decisions on their retention (both for their sake and ours). Any period shorter than 2 years would make this very difficult.

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**(3) To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

The SRA is not proposing to regulate preparatory training for the SQE at all. It is assumed that the detailed assessment specifications will result in courses developed by the market which will be of a high standard and replace or enhance the current QLD/GDL/LPC/PSE courses. This is a big assumption at the heart of the new proposals.

This will probably not be a problem for us, because we will procure and develop courses of a high standard. But this may not be the case for smaller firms. Once again, the prospect of a two-tier system emerges as well funded students with places at bigger firms attend high quality courses with others left to choose courses, possibly based on price.

WFW PROPOSAL: The SRA should have some oversight over preparatory courses for the SQE to ensure a minimum standard.

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**(4) To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

The question here is, can professional competence be measured by the assessment of competencies alone? WFW believes that it cannot.

Only through a combination of prescribed study, varied and rigorous assessment, and supervised and regulated work experience can the full range of knowledge, application and skills required to be a practicing solicitor be fully measured and judged.

The danger with the proposals is that the average standard will be lowered, the brand of solicitor will be damaged, and a two tier profession will emerge. Everyday consumers of legal services will suffer from this, as the lawyers they come across will increasingly have been through a different quality of training than those at the – for want of a better word – Corporate end. But all solicitors and all clients will suffer, as the benchmark quality goes down.

We appreciate this is not the intention of the SRA with these proposals and that they have argued strongly that the opposite impact will result. Respectfully, we do not agree.

WFW PROPOSAL: We have set out specific thoughts above but overall, our view is that the proposals need more rigour in the study and assessment of the law, more practical preparation before people start their QWE, more oversight and regulation of that QWE, and more contexts within the final SQE2.

**(5) To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

We recognise that if one is creating a single system for qualification, then no exemptions should be allowed. However, practicalities mean that this may be too burdensome, especially to overseas lawyers cross-qualifying, which is of particular relevance to us.

WFW PROPOSAL: That there should be a 'lite' version available for lawyers already qualified in certain other jurisdictions – i.e. those in which we recognise the rigour and quality of the qualification.

**(6) To what extent do you agree or disagree with our proposed transitional arrangements?**

Strongly disagree  Disagree  Neutral  Agree  Strongly agree

The timescales are far too tight. We are already recruiting for 2019. Also the opportunities for testing are far too narrow.

WFW PROPOSAL: More testing and piloting should be done. The introduction should be pushed back for 1-2 years, ideally starting in 2021. If not then special pilots for SQE2 especially should be started asap.

**(7) Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes  No

It is difficult to see how the new proposals will not have a negative impact on EDI.

Those with a non-law degree, especially those that include SQE1 prep, will be at a significant disadvantage in terms of both knowledge and financial outlay.

It will also mean that making an early decision about a legal career becomes hugely important. This not only potentially disadvantages people from less connected backgrounds, but also goes against an increasing trend towards trainees on their second careers, of which we now always have several. We should be encouraging people with more experience in the world to become solicitors, not creating further barriers.

As set out above, we also believe that the proposals will lead to a two-tier system, with lawyers who have been through rigorous and specialised training at top firms at a totally different level to the rest. This would, as always, disadvantage those from less privileged backgrounds, with less access to finance and contacts in the legal market.

There is also a good chance that the proposals will end up being much more expensive – certainly in non-SQE1 law degree cases. This again disadvantages those from less privileged backgrounds.

# Consultation questionnaire

Response ID:532 Data

## 2. Your identity

### Surname

Littlemore

### Forename(s)

Sarah Jane

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Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.**

Please enter your firm's name:: Weightmans LLP

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** We agree that a centralised common assessment would be an effective measure of competence. We share the Law Society's views that the assessments must be reliable and valid and do what they set out to do with data being published, analysed and evaluated. This needs to be done to assure the profession that standards are being maintained. We agreed with the proposals that all five stage 2 assessments in one practice context should be taken in the same assessment session. We also agree that a maximum of three attempts should be given with no opportunity for those who pass to resit to improve scores.

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** We consider placements should be no less than three months with a maximum of four placements. It is difficult to see how skills can be demonstrated in any less than a three month period. If employers/supervising solicitors are required to make a declaration that a candidate has had the opportunity to develop competencies in the statement of solicitor competence, then guidance and templates need to be provided to ensure consistency of approach.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** We consider that a minimum of two years is necessary to develop the skills necessary to practise as a solicitor.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Agree

**Comments:** We agree that training providers' data should be available to both employers (who may be

funding the training) and trainees so that there can be an informed choice about which provider to use.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** We agree with the proposals that all candidates would need to have a degree (or equivalent to take into account the solicitor apprenticeship or CILEX route), have had a period of workplace experience (which we consider should be at least two years), have passed SQE parts 1 and 2 and satisfy the SRA's character and suitability requirements. Suitability information needs to be clear and concise and available to all candidates considering qualifying as a solicitor at an early stage.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly disagree

**Comments:** To ensure consistency we do not consider that exemptions should be offered.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:** The transitional arrangements appear reasonable but we would question whether it is now possible to commence the timetable in August 2019.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** We share the Law Society's concerns regarding affordability of the SQE and the need to provide credible funding arrangements to ensure that those students from less affluent backgrounds are able to choose whichever route is preferable to them.

# Consultation questionnaire

Response ID:273 Data

## 2. Your identity

### Surname

Perry

### Forename(s)

William John

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
on my own behalf as a solicitor in private practice**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:** It is important that there be an exam rather than continuous assessment

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:** I broadly agree, but (a) I worry that the student law facility may be insufficiently rigorous or like real practice; and (b) the less formal methods of obtaining experience mean that those firms who commit to full training contracts are doing themselves a disservice due to that long financial and training commitment rather than just hiring paralegals to do the same work. This suggests that formal training contracts will eventually wither and die. This needs to be considered.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Two years

**Comments:** Any flexible systems will be abused, however much we may dislike contemplating that. I do not think 18 months is long enough, having worked with many trainees during my career. It is not just a learning process but a maturing one and cannot be rushed.

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Disagree

**Comments:** I feel that a requirement for a degree shuts out many qualified people. There have always been excellent lawyers who do not have an academic turn of mind. While plainly some examination is right, a degree has a different focus from vocational training. I would keep open a non-degree route of access.

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Agree

**Comments:** Subject to my comments in response to Question 3. It is also important than non-law graduates (like me) get enough legal training; I am not wholly convinced that you scheme does that but I see you are alert to the issue and merely urge more consideration.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Agree

**Comments:** I think it would be safe to exempt law graduates from stage 1.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

No

**Comments:**



## YOUNG LEGAL AID LAWYERS

### Response to the Solicitors Regulation Authority Consultation on A new route to qualification: the Solicitors Qualifying Examination

9 January 2017

#### About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 2,500 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded. YLAL's members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.
2. This is our response to the Solicitors Regulation Authority (SRA) Consultation on A new route to qualification: The Solicitors Qualifying Examination. This response follows our response to the previous consultation on the introduction of the Solicitors Qualifying Examination in March 2016 (Training for tomorrow: assessing competence).<sup>1</sup>

#### Introduction

3. The consultation poses a number of questions. We have responded to these below. We also refer to our response to the SRA's previous consultation on the introduction of the Solicitors Qualifying Examination (SQE) further below.
4. YLAL welcomes the decision by the SRA to engage in a second consultation exercise on its proposal for the SQE, as well as the provision of further information about the proposal and how the SQE would operate in practice. We believe it is possible for the SQE to provide a robust, effective and consistent measure of competence for solicitors. However, at the outset YLAL would like to raise certain key issues in line with our objectives as an organisation, which are:
  - a. To campaign for a sustainable legal aid system which provides good quality legal help to those who could not otherwise afford to pay for it.
  - b. To increase social mobility and diversity within the legal aid sector.
  - c. To promote the interests of new entrants and junior lawyers and provide a network for likeminded people beginning their careers in the legal aid sector.

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<sup>1</sup> Available on the YLAL website [here](#).

5. We note that the purpose of the SQE is to ensure consumer protection, with four in five adults believing that all solicitors should pass the same final exam. As a group of aspiring and practising lawyers working with some of the most vulnerable people in society, YLAL both understands and welcomes any approach that ensures protection for our client group in the delivery of legal services.
6. We also commend the SRA's recognition that the current cost of qualifying is excessive, and welcome proposals that will reduce this cost and level the playing field amongst people of differing socio-economic backgrounds, as we contend that a diverse profession best reflects the needs of our client base.
7. However, we remain concerned that the new proposals will not address the perception that certain routes to qualification as a solicitor are preferable and will therefore perpetuate a 'tiered' system where those who are able to finance the more traditional routes may be preferred by employers over those who gain their skills primarily through work experience. As the consultation states in its introduction, the SRA is legally responsible for the education and training of prospective solicitors.
8. We note that The Law Society has raised this concern in its response to the consultation, stating that "it is clear that some potential employers will continue to regard candidates who qualify through more traditional routes as preferable to those who take newer, potentially shorter routes." Further, we agree with The Law Society that "it is important that the solicitor profession continues to be accessible to applicants from a diverse range of backgrounds, reflecting the makeup of our society." In our view, it is therefore imperative that the SRA takes steps to address the rising cost of law schools and works with prospective employers and candidates to ensure that all routes to qualification are treated with equal respect.
9. We also share the concern, raised by The Law Society in its response to the consultation, about the availability of funding for the new assessments or any preparatory courses which students may be required to take. The Law Society notes that LPC students can currently apply for graduate loans to cover the cost of their courses, and we agree that it is critical that the SRA ensures that similar loan funding will also be available to cover the cost of both SQE preparation and assessments. YLAL believes it is possible for the introduction of the SQE to increase the accessibility of the profession by reducing the cost of legal education, and it is vital that the SRA uses this opportunity to significantly reduce the financial barriers to qualification as a solicitor.

## **RESPONSES TO THE CONSULTATION QUESTIONNAIRE**

1. **To what extent do you feel that the proposed SQE is a robust and effective measure of competence?**

**Neutral** – further information below.

10. YLAL believes that an overhaul of the current route to qualification is desperately needed. The consultation provides some clarity with respect to how the SQE will operate following the first consultation, however the overall effect on the cost of qualifying as a solicitor remains unclear. We refer to our response to the previous consultation by the SRA on the introduction of the SQE (see footnote 1), and in particular paragraphs 7 and 8, which set out the context of the lack of diversity within the profession and the prohibitive costs of entering the profession.

11. YLAL believes it is possible for the SQE to provide a robust and effective measure of competence. However, we remain concerned that the current proposals for the SQE assessment are similar in nature to the LPC, albeit split between Stage 1 (legal knowledge) and Stage 2 (legal skills), and could therefore result in students having to pay similar course fees as they do at present.
  12. YLAL considers that even under the current proposals there is insufficient guidance in relation to the assessment of skills (Stage 2 of the SQE). While flexibility is always welcomed it remains unclear, for candidates and employers, how skills and competency of candidates will be assessed on completion of their final assessment for SQE and their period of recognised training / qualifying work experience. Guidance is crucial to ensure consistency in standards, and also to prevent further exploitation of prospective lawyers by legal education providers starting to advertise SQE preparation courses with increasingly high fees.
  13. YLAL does not consider that a sufficiently compelling argument for the use of computer based assessments has been made, as we cannot see the relevance of the comparison with the pharmaceutical and medical industries. However, we acknowledge the SRA's statement that computer based assessments provide a less expensive method of testing.
- 2. (a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**
- Agree** – further information below.
14. YLAL supports the proposals for pre-qualification legal work experience and agrees with the SRA that this is “an essential part of becoming a solicitor”. YLAL believes this to be the best method for students and trainees to engage with areas of law they may like to specialise in and to gain hands-on legal and client care experience.
  15. YLAL has repeatedly raised concerns (see for example our 2013 report into social mobility within the legal aid sector *One Step Forward: Two Steps Back*<sup>2</sup>) regarding the over-use of junior members of staff by law firms trying to adapt to the legal market of today following government cuts to legal aid. More junior employees such as paralegals and caseworkers are increasingly expected to take on responsible fee earning roles with insufficient support or training. Junior employees are often required to work long hours for inadequate remuneration. In many cases, unpaid legal work experience is seen as a prerequisite to gaining a paid position.
  16. In this context, we believe oversight and regulation of how junior employees are treated and trained by law firms is vital. YLAL considers that it is the role of the SRA to take steps to minimise this on-going ‘paralegalisation’ of the legal aid sector, and considers that if firms are given clear guidance on the assessment process for the SQE, this would help to reduce the increasingly unfair structure of the workforce within legal aid firms.
  17. YLAL also considers that the option of a degree combined with a year in industry would assist candidates to enter the workforce without the need for extensive voluntary or unpaid experience, and would ideally lead to faster qualification periods for those currently working in legal aid practices.

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<sup>2</sup> Available on the YLAL website [here](#).

**2. (b) What length of time do you think would be the most appropriate minimum requirement for workplace experience.**

**Flexible, depending on the candidate's readiness** – further information below.

18. While YLAL believes pre-qualification legal work experience is an essential part of becoming a solicitor, we do not wish to specify a particular minimum requirement. As stated in our response to the previous consultation by the SRA, the period should be as long as is necessary to gain all the relevant skills to be a competent solicitor. We note that the SRA currently favours a period of two years and that The Law Society supports retaining a two year period of work-based learning.
19. In light of the growing amount of work experience that candidates in the legal aid sector acquire prior to qualification, YLAL considers that the fairest approach to a period of recognised training is to base this on a qualitative assessment, ideally led by the employer and regulated by the SRA. This would be intended to prevent employers hiring people as paralegals before undertaking the period of recognised training, as often occurs with the current system of training contracts.
20. YLAL recognises that such a qualitative approach has the potential to be unwieldy and to create a burden on employers. To that end YLAL would agree with a recommendation to employers of approximately 18 to 24 months but believes that this should not be absolute, in order to accommodate candidates who can qualify more quickly and that a bar should be set for a maximum period.

**3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**Agree** – further information below.

21. YLAL submits that there must be robust measures in place to regulate the cost, method of provision and standard of preparatory training for the SQE. We also recognise that flexibility for providers is useful in providing choice to prospective SQE students.
22. We do, however, submit that market pressures alone are unlikely to be sufficient for monitoring and regulating the provision of SQE training. Where institutes are given freedom to set prices, cost will always be an issue, and where pass rates are not scrutinised by an official regulator, there is the possibility that providers with inadequate pass rates will lower the costs in order to encourage attendance. This may therefore result in a two-tier system of education providing a lower quality of education to those prospective lawyers who are least able to finance the route to qualification. Where standardisation of outcomes and costs are not regulated centrally there is also the possibility of the creation of a postcode lottery where those tied to location by family commitments, financial matters or other issues will be forced to choose substandard SQE courses.
23. There must also be regulation of the location of providers, in that provision should be national and accessible for all. In areas where accreditation is compulsory for practice it is unacceptable that examinations or training can only be accessed in certain parts of the country. The SRA must work to ensure that this does not become the case with the SQE as it has with other qualifications and in certain areas of law. This kind of lack of accessibility can lead to advice deserts and a 'brain drain' to places like London, and therefore consideration should be given to strict monitoring of this issue. On a similar point, providers should not be

allowed to monopolise the market of training provision for the SQE, particularly if regulation is eventually left to the market. Although it is not our preferred option, should market forces be expected to regulate provision, this can only be possible and workable where candidates are offered true choice.

24. YLAL agrees that if flexibility and innovation is to be encouraged there must a clear and transparent way for students and prospective students to learn more about the providers they can access the training from. We support the publication of costs, pass rates and outcomes. We also very much support the idea of transparent and accessible statistics being published regarding outcomes in relation to past performance and experience of SQE candidates alongside eventual outcomes. We believe this will be useful not only for prospective students but also as a measure of the impact SQE is having on social mobility, making it possible to review whether or not the revised route to qualification has helped or hindered social mobility and access to the profession for groups such as those with disabilities, from BME backgrounds and from low income households.
25. Though we agree it is useful for training providers to have the ability to review and monitor their own performance, we continue to believe that a centralised, standardised regulatory body should also play a role in the regulation of the provision of training. There is no suggestion that an OFSTED-like inspectorate is necessary; however, it seems cavalier to roll out an entirely new system with the intention of assisting social mobility and access to the profession whilst keeping consumer confidence at the centre and then leaving it to be controlled and regulated purely by the market. YLAL does not believe this would be sufficient or optimal. A centralised body could, for instance, collate the data gathered from the providers on areas such as outcomes, pass rates, cost and methods of provision and use the results to inform and improve policy and provision nationwide creating a system where all prospective candidates have access to high level training at reasonable prices from providers that are rated equally by employers.
26. We welcome the suggestion of publishing pathways to the profession. We welcome new and innovative ways of training and qualification with the hope that a broader section of society will be motivated and able to qualify as solicitors, eventually ensuring the profession is more representative of society as a whole and is not seen as being the preserve of only certain groups of people. However, limiting the pathways which are publicised is likely to cause confusion for candidates who may be taking a different path. It may also cause employers to look upon certain routes as being more acceptable, traditional or impressive than others which are not specifically set out by the SRA. In this vein we would suggest as comprehensive a list as possible to be created and published, and that this should be regularly updated as different pathways are created or recognised. The possibility of perfectly common and respectable routes to qualification being ignored is made clear through the examples set out on the chart provided on page 25 of the consultation: the chart is limited to three options involving QLDs, one involving an apprenticeship and one involving a non-law degree. There is no mention of CILEx, equivalent means or the GDL amongst other routes. Such an approach may make candidates feel excluded or may appear to create barriers to the profession which do not actually exist.
27. Despite our misgivings regarding the limitations of providing only some of the pathways, YLAL is very supportive of the idea of providing information for candidates regarding routes to qualification. We support the provision of case studies, advice and information and believe it will give prospective candidates the information they require to make informed decisions regarding their future career paths.

**4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**Neutral** – further information below.

28. We consider that this question is largely a reiteration of question 1. Solicitors require different skill sets to suit the sector that they are in. We broadly agree that requiring new solicitors to have a degree or equivalent, with qualifying work experience and meeting the character and suitability criteria is a suitable test of the requirements to be a solicitor. Maintaining a similar structure allows candidates to have a full overview of the law, before narrowing their options to the area they are most interested in and best suited to whilst ensuring that they have an adequate grounding in other core legal skills which may also be complementary to their chosen field.
29. In the absence of sample assessments of the proposed SQE exams we are not able to comment fully on whether we think the SQE assessment will be a suitable test of the requirements to become a solicitor.

**5. To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**Agree** – further information below.

30. We agree that some exemptions should be available in appropriate circumstances. The reasoning that exemptions should not be offered for candidates who hold a QLD/GDL on the basis that the SQE is not an academic law degree does not consider the position of candidates who have accumulated substantial legal experience (for example as a paralegal) before embarking on the SQE and can demonstrate the required 'legal knowledge in practical contexts'. This is particularly relevant for the core legal skills examined in Stage 2, which the consultation has identified as the more expensive stage of assessment, such as interviewing clients. We propose that a candidate with demonstrable skills meeting the requirements of an SQE assessment should be able to submit a portfolio of work for consideration in a similar manner to the 'Equivalent Means' route. Without this, aspiring solicitors who have built up extensive experience will face additional bureaucracy and expense with no improvement in accessibility or social mobility.
31. Further, recognising demonstrable work experience as grounds for exemption from the relevant parts of the SQE would reduce the financial burden of SQE training costs for legal aid firms and aspiring legal aid solicitors. Although the consultation states that the SRA does not propose to specify how candidates prepare for the SQE it does suggest that this will be through 'providers', which will clearly incur a cost that will need to be met by either the candidate or their firm. This poses potential problems for smaller legal aid firms with tight profit margins, as has been shown by the lack of funded training routes in legal aid firms under the current training regime.
32. It is unclear how the SQE would integrate with the Legal Apprenticeship scheme and CILEx, but it is important that candidates taking this route to qualification are not required to incur additional expense.

**6. To what extent do you agree or disagree with our proposed transitional arrangements?**

**Agree** – further information below

33. We are broadly supportive of the proposed transitional arrangements, subject to the concerns outlined below. We agree with The Law Society, which in its response to this consultation urges the SRA “to take the necessary time to ensure that the SQE assessments are right, reliable and well tested” and, if there is a risk that the timetable proposed by the SRA does not allow sufficient time for this, the timetable should be extended.
34. While transitional arrangements are essential to protect the position of candidates who are caught in the changeover so that they do not lose the value of their existing qualifications or are required to incur further expense, we would like to draw the SRA's attention to the following potential concerns:
- a. If exemptions are not granted, candidates who have completed a QLD/GDL before September 2019 but have been unable to complete the LPC due to financial or other constraints (a common situation in legal aid work) will be at a disadvantage to candidates beginning their route to qualification after September 2019, as they will either have to continue on the current training route and fund the expensive LPC or incur additional expense by funding the full SQE in addition to the fees already paid for their QLD/GDL. This should be addressed by allowing such candidates to pursue the SQE with appropriate exemptions made for their qualifications and experience.
  - b. As there will be a period from September 2019 when both the traditional and SQE routes to qualification are available, small legal aid firms should be supported to meet the additional administrative considerations and expense of facilitating qualification via dual schemes. Failure to do so may lead to candidates seeking to qualify under a particular scheme being unable to do so at such firms, creating inequality.

**7. Do you foresee any positive or negative EDI impacts arising from our proposals?**

35. The cost of the SQE to students once it has been introduced is still unclear, making it impossible to comment on whether the proposed regime will materially improve the training prospects of candidates from lower socio-economic backgrounds or who have family commitments. We note that the SRA expects the preparatory training and cost of the SQE will be less than the current LPC fees. While this is encouraging, it is at present uncertain, and there must be a significant cost difference in order to provide a viable option for candidates receiving low salaries in the legal aid sector. It must also be closely regulated by the SRA in future to avoid the same spiralling costs that have been evident on the GDL and LPC. The assertion that candidates do not need to pay for SQE Stage 2 until after they have secured a period of workplace experience<sup>3</sup> is irrelevant if the cost remains prohibitive: it is often not a lack of experience preventing legal aid candidates from completing the GDL and/or LPC, but the extortionate fees.
36. Further to the above, legal aid firms will need support in meeting the costs of the SQE to avoid further ‘paralegalisation’ of the profession, as outlined in our previous answers.
37. The non-specification of particular SQE preparation courses is positive, in that it will go some way to avoid the current ‘captive market’ and associated extortionate provider costs of the GDL and LPC. However, to promote true social mobility the SQE assessments should not

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<sup>3</sup> A new route to qualification: The Solicitors Qualifying Examination [SQE], October 2016, page 17

require the completion of any preparatory course: the materials required to study the assessment content should be available to purchase at a non-prohibitive cost and candidates who wish to prepare for the SQE through self-study should be permitted to do so. Preparatory courses will undoubtedly be offered by providers, but this should be entirely optional and the completion of such a course should not be a pre-requisite to sitting the assessments.

38. The six year limit between completing Stages 1 and 2 of the SQE should be flexible to accommodate candidates who can demonstrate sufficient legal knowledge and continual professional development within this period to assure the SRA that their legal knowledge is up to date, for example if they have worked within the legal profession for a significant proportion of this time and can provide confirmation of their state of knowledge from their firm. Failure to provide such flexibility risks discriminating against candidates who cannot complete both stages within six years due to family circumstances, health, financial or other considerations.
39. The recognition of a greater range of work experience in place of a traditional training contract is positive and will assist firms who may not be able to meet the requirements for a training programme, as well as supporting candidates who have taken non-traditional routes into law.
40. As stated above (at paragraph 9), it is vital that the SRA ensures that similar graduate or career development loan funding to that which is available for the LPC will also be available to cover the cost of both SQE preparation and assessments. Any preparatory courses for the SQE and the assessments must be priced in a way that represents value for money, and up-front funding in the form of graduate loans must be available to students who do not have access to capital. The SRA must, in our view, ensure that any new courses or assessments meet the criteria for receiving funding through government-backed graduate loans.

## **Conclusion**

41. YLAL believes that the route to qualifying as a solicitor is in desperate need of improvement. The costs of the current legal education system are prohibitive and training contracts are becoming less attractive for small, nice and legal aid firms to offer and more difficult for graduates to obtain.
42. Social mobility within the profession has improved very little in recent decades. YLAL welcomes the SRA's willingness to consider a new route which, if implemented and regulated efficiently, effectively and fairly, could improve the accessibility of the profession and assist with social mobility. However, YLAL believes this will only be possible if the cost of legal education is significantly reduced, both for students paying independently and for the firms who may be sponsoring employees and offering training and supervision.
43. The introduction of the SQE represents an overhaul of legal education and training, and as such provides a unique opportunity to increase the accessibility of the profession by reducing the cost of legal education, which is a significant financial barrier to qualification as a solicitor. We urge the SRA to consider carefully at every stage the impact of its proposals on the accessibility of the profession, particularly to those from disadvantaged backgrounds.

**Young Legal Aid Lawyers**

January 2017

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# Consultation questionnaire

Response ID:110 Data

## 2. Your identity

**Surname**

**Forename(s)**

**Your SRA ID number (if applicable)**

**Name of the firm or organisation where you work**

**Your email address**

**Would you like to receive email alerts about Solicitors Regulation Authority consultations?**

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

**Please identify the capacity in which you are submitting a response. I am submitting a response...**

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Agree

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

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2004

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

One year

**Comments:**

5.

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Agree

Comments:

6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Agree

Comments:

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Agree

Comments:

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Agree

Comments:

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Comments:

# Consultation questionnaire

Response ID:22 Data

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**3.**

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Neutral

Comments:

**4.**

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Comments:

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

Comments:

**5.**

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Comments:

**6.**

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Comments:

**7.**

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Comments:

**8.**

To what extent do you agree or disagree with our proposed transitional arrangements?

Comments:

**9.**

Do you foresee any positive or negative EDI impacts arising from our proposals?

Comments:

# Consultation questionnaire

Response ID:414 Data

3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

**Comments:** It depends what the detail is in relation to example questions, but overall the SQE looks like a broad, rigorous and fair test, which could be an effective measure of competence. It is difficult to comment further without seeing some example questions. We have some reservations over multiple choice questions (MCQs) for part 1, so would like to see what they would look like. In law, there is often no right or wrong answer particularly where the application of law to factual circumstances is being tested, which we understand is the proposal for SQE part 1. MCQs would need to allow candidates to expand on answers rather than simply being a yes or no answer, or a choice of 4 possible answers. For part 2, we believe that candidates would need to be recorded as part of a quality control measure. The introduction of the SQE is such a huge change, we believe that part 2 in particular would need to be piloted before implementation.

4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

**Comments:** We are strongly in support of maintaining the period of qualifying legal training, however, further clarity is still required in order to be able to comment meaningfully on this question. The SRA must clearly define exactly what type of experience would count as being 'qualifying'. Whilst we might agree that certain types of legal work experience could be recognised, that experience has to be of a comparable standard to that of a trainee solicitor, and that would be difficult to ascertain in all situations. Who would monitor that and decide on a case by case basis? That would be a very costly and time consuming exercise. Under the current system, experience for time to count must be from within the preceding 3 years and is capped at 6 months. These proposals do not mention a time restriction on how far you can go back, or a cap on how much prior experience can count as qualifying legal experience. For instance, would relevant legal work experience undertaken prior to passing SQE part 1 count? Restrictions need to be put in place around this. Our concern is that by allowing experience from a legal advice clinic or during a sandwich degree placement, it could bring too much variation in the quality of experience, leading to inconsistency in the quality of training and lawyers.

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

18 months

**Comments:** We believe that 18 months should be the minimum requirement for workplace experience, of the correct quality. This duration allows trainees to experience a variety of legal work prior to qualification. Our experience indicates that it takes the majority of trainees this length of time to develop the necessary technical and soft skills required to practise as a qualified lawyer. Additionally, enough time needs to be allowed during the workplace experience to successfully prepare for SQE part 2.

5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

**Comments:** The proposals indicate a complete lack of regulation around preparatory training for the SQE and allowing the market to dictate. We have concerns around the lack of control over costs for any preparatory courses which is a major issue. On balance, however, changing from regulation to non- regulation of preparatory training seems the right thing to do.

6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

**Comments:** See answer to question 1.

7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

**Comments:** In order to maintain consistency, we understand and agree that there should be minimal exemptions from stage 1 or stage 2. However, we believe that some exemptions could be considered for both stage 1 and stage 2. For example, foreign qualified lawyers from some jurisdictions (eg Hong Kong) where the route to qualification is very similar and of as high a standard as that of England & Wales, could potentially be exempt from parts of stage 1. We also think it could be unnecessary to test a person qualified in another jurisdiction in two practice areas at SQE stage 2, one area should suffice for such candidates. We would like to see a full list of potential exemptions in order to comment further. We would also like the SRA to publish what other jurisdictions do for foreign qualified lawyers wishing to qualify in their countries, as we would not want our system to appear overly onerous and discourage high quality foreign qualified lawyers from wanting to practise in England & Wales.

8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

**Comments:** The proposed timescales would mean that the new system would be compulsory for Training Contracts starting at the latest in 2022. We are currently recruiting for TCs to start in 2019, so dependent on how long it takes for the consultation process to conclude and details finalised, these timescales could be ambitious. If the SRA is able to conclude the consultation processes, finalise and communicate details to all stakeholders and appoint a suitable provider for the SQE by summer 2017, the timescales are possibly feasible, but otherwise unrealistic. It would be detrimental to all to rush this through. We would need to ensure there is sufficient time to consider how the changes will affect our processes and communicate changes internally and to prospective candidates well in advance.

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

**Comments:** We do not see any positive EDI impacts arising from the proposals and question how the SQE will improve diversity, which seems to be one of its aims. It is stated that it is not expected that the SQE and preparatory training will cost more or even equivalent than the sum of the LPC and PSC, however, no figures have actually been provided to substantiate this. There is no evidence to suggest that this new approach will lead to lower average costs of qualification. The costs of SQE part 2 may in fact discourage smaller firms and organisations from taking on trainees, thus reducing the number of people who can enter the profession. Without regulation around any training providers for preparatory courses, more socially disadvantaged candidates could attend courses with cheaper providers, who potentially may provide lower quality teaching. The policy of allowing 3 attempts to pass the SQE will negatively affect socially disadvantaged candidates who may not be able to afford to retake the SQE. By maintaining the requirement for workplace experience, which we fully support, we fail to see how this will improve EDI within the profession. Until further clarity is given around what will qualify as legal work experience, it is difficult to comment on how this would affect EDI. It is likely that the larger commercial firms will continue to offer a fixed formal training programme. For those who gain their experience as a paralegal or in a legal advice clinic, this could be seen as lower quality training and lead to a 2-tier profession.

**ID-199**

## **Introduction**

We welcome the opportunity to comment on the SRA's October 2016 proposals for the Solicitors Qualifying Examination (SQE).

We are pleased to note two significant changes in the SRA's proposals: the requirement for work experience and the requirement for entrants to the profession to have a degree or a degree-level qualification. We agree with these requirements.

We support the SRA's key aims of ensuring a consistent minimum standard for new entrants to the profession and of encouraging more diversity in the profession by opening new pathways to qualification and we appreciate that there is no intention to lower standards at entry. However, we are concerned that the current proposals will lead to a lowering of standards and to consequent damage to the reputation of the profession.

The SRA's proposals will radically change the main route to qualification. We do not believe that the case for such wholesale revision has been made. We believe that the SRA and other stakeholders should take stock at this point and consider whether such significant change is needed or whether the stated aims can be achieved by making improvements to the existing route. In our responses below we make some suggestions for such improvements.

We are happy for you to name this firm in a list of respondents. We are also happy for you to publish our response but we do not wish you to attribute it.

***Our comments on the questions raised in the consultation document follow. As requested we state our level of agreement with each proposal on a scale of 1 (strongly agree) to 5 (strongly disagree).***

**Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Level of agreement: 5

We have a number of significant concerns about the proposed SQE.

### ***Legal knowledge***

We question whether the proposed SQE will assess legal knowledge sufficiently.

Under the proposal, legal knowledge will be assessed only once: it will be assessed in SQE1 (and will not be assessed again in SQE2). SQE1 will test knowledge of core legal principles and rules (and their application) and candidates will not be required to recall case names or cite statutory authority. This suggests that a basic knowledge and understanding of the law will be sufficient to pass SQE1. Such a level of knowledge will not equip candidates to apply the law to difficult cases or to understand and interpret the impact of future court decisions or statutory developments. For this a more academic approach is required. (It is clear from the consultation paper that SQE1 is not intended to be an academic assessment but rather a test of professional competence, which is why the SRA does not propose to peg it to an academic level description.)

We hope that a detailed comparison will be available (possibly from the training providers) of the syllabus for SQE1 compared with the combined syllabus for the qualifying law degree (QLD) or graduate diploma in law (GDL) and the legal practice course (LPC). We believe that there are significant differences of content and of weighting of content. It is important for the quality of the service provided to consumers that there is no reduction in the legal knowledge required for qualification. The existing route to qualification is already regarded internationally as unusual in not requiring a law degree. The SQE must be no less rigorous than the existing route to qualification. There is a danger that if universities incorporate SQE1 into their law degrees existing content would be removed. This would reduce the legal knowledge of entrants who completed these degrees.

In our view, the legal knowledge covered by SQE1 does not reflect the requirements for practice in many law firms. Currently some of this knowledge is gained in the LPC electives. Legal knowledge which is critical to practice should be included in the examinations for qualification; excluding it seems to us to be a retrograde step. We would like to see SQE1 expanded to include elective subjects.

### ***SQE1: form of assessment***

Although we appreciate that multiple choice questions (MCQs) can be challenging, we are concerned that MCQs will be the only form of assessment of legal knowledge for qualification. MCQs are used as part of the assessment process by legal professions in other jurisdictions but we understand that there is usually also a requirement for candidates to have a law degree. We question whether MCQs can thoroughly assess a candidate's skills in legal analysis and problem solving. These skills are essential for solicitors.

### ***Need for law degree or conversion course***

We agree that assessment of functioning legal knowledge is a valid part of the qualification process. However, in our view, candidates should also be assessed on a detailed knowledge and understanding of the law in a manner which tests their legal analysis and problem solving skills. On this basis, we consider that a test of functioning legal knowledge (such as SQE1) should be additional to a law degree or a conversion course such as the GDL. In our view, a QLD or GDL should be required. If this was adopted, the opportunity should be taken (in discussion with the profession and other stakeholders) for a full review of the subjects required in a qualifying law degree.

In our experience, the LPC has operated as a good bridge between the academic study of law and legal practice. SQE1 could operate in the same way, replacing the LPC examination. This could be centrally set and assessed to meet the objective of consistent standards for entry into the profession.

### ***Not ready for practice***

Essential practical legal skills will be assessed in SQE2. It is indisputable that entrants to the profession need to be competent in these skills at the point of qualification. At present the LPC assesses legal skills at a more basic standard before trainees enter the workplace. We are concerned that trainees who have completed SQE1 may not have developed legal skills to the same level as trainees who (under the existing regime) have completed the LPC. Trainees may not be "firm ready" if all they have done is to prepare for SQE1. We are particularly concerned that the SQE1 assessment of legal research and writing will not test at a sufficiently high level. There will be a single three hour assessment. We understand that it has been indicated that this may, at some time in the future, be marked using artificial intelligence. This suggests a simplistic and formulaic approach.

We expect that the larger City firms will sponsor their own courses for their new trainees to complete before starting work experience, covering (i) gaps in the legal knowledge required for SQE1 compared with legal knowledge gained under the existing route (QLD/GDL and LPC), (ii) the LPC electives and (iii) the legal skills required in the work place during the training contract. This may result in a City firm route to qualification as distinct from the general route to qualification, leading to a two tier profession in which individuals who qualify outside the City are regarded as less well qualified than those who qualify pursuant to training contracts with firms who provide extra pre-qualification training.

Further, it is conceivable that smaller firms would decide not to recruit trainees at all (on the basis that post-SQE1 candidates would lack some of the legal skills currently developed in the QLD/GDL and LPC) but would prefer to recruit paralegals or newly qualified solicitors. This would exacerbate (rather than remove) the "training contract bottleneck".

### **Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

#### Level of agreement: 2

We are pleased that the proposals now include a period of work experience. This has been described as the "jewel in the crown" of the route to qualification as a solicitor in England and Wales and, is, we

believe, important for the standing of the profession. We believe that a fixed period of work experience should be required. An unspecified period would be difficult for law firms to administer; there would be a risk that individual candidates would seek to qualify at different times, making it complicated for firms to plan their candidates' SQE2 assessments and to plan for their staffing needs (they could not predict with certainty how many trainees and newly qualified lawyers they would have).

We believe that the breadth of experience gained during a training contract is valuable, allowing a trainee to develop transferable skills. We think that the requirement for experience in three areas of practice should be retained. A trainee who completed all his or her work experience working in a single area would not be well placed to recognise issues outside of that specialisation, less able to provide the legal service consumers should expect.

We agree that work experience should not need to include both contentious and non-contentious experience. SQE1 will require knowledge of civil and criminal procedure, and we believe that this is sufficient.

We expect to continue to offer formal training contracts, and assume that many other City firms will do so too. We can, however, see that allowing more innovative ranges of experience would make qualification accessible to a wider range of candidate. This may help the "trainee bottleneck", allowing more candidates to qualify. However, we question whether there will be sufficient solicitor positions for all who qualify. The result may be to move the bottleneck from the training contract to the newly qualified level. This would be a worry as candidates who qualify will have spent money on the SQE and undertaken two years of work experience in vain.

Further, law firms seeking to recruit newly qualified and junior solicitor positions may favour candidates who have completed formal training contracts over those whose work experience included some of the less traditional work placements, such as student clinics.

In any event, we believe that some restriction should be placed on the number and length of work placements that can count towards the work experience requirement. We would not generally expect to accept trainees part way through their two years of work experience. However, if we did, we would be concerned for more clarity about the declaration required from each "employer" when a candidate relies on more than one period of work experience to satisfy the requirement for qualification.

**Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

The existing two year period has served the profession well, and we see no reason to change from this. This period allows a trainee to gain experience to become sufficiently competent to be able to provide advice to clients. Trainees develop significantly over the two year training period; most are not sufficiently competent until well into the second year of training. It is in the interest of consumers that those who have the solicitor "badge" are competent from day 1. Further, the two year period allows trainees time to experience different areas of practice, enabling them to make an informed choice about the area into which they wish to qualify (a crucial career decision).

**Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Level of agreement: 5

We are concerned that the SRA's plan not to regulate course provision but to rely on market forces (by publishing pass rates) may disadvantage candidates who are not familiar with the legal sector and are not well advised. First, pass rates will be impacted by the quality of candidates who attend courses run by training providers. Candidates with training contracts are likely to attend courses run by the large training providers, and their results are likely to be good. Secondly, price may (perhaps sub-consciously) be assumed to be an indicator of value but this may not actually be the case.

We note that the SRA plans to make information available on its website for prospective entrants to the profession. This is an excellent idea but we doubt that it would be enough to level the playing field between those with access to informed advice (eg from their schools, family and friends) and those without.

**Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Level of agreement: 5

We do not believe that the proposed model (taken as a whole) is a suitable test of the requirements needed to be a solicitor.

We agree that there should be a requirement for qualifying legal work experience and a requirement for entrants to the profession to have a degree or degree-level qualification.

**Lowering of standards**

We are concerned that aspects of the proposal which are designed to ensure consistency of standards will lower standards and harm consumers. We have expressed concern about the assessment of legal knowledge pursuant to the SQE proposal in relation to Question 1 above.

**SQE2**

We support an assessment of competence in the five practical legal skills as a requirement for qualification. We have the following comments in relation to SQE2.

***Timing of SQE2***

The practical legal skills assessed by SQE2 should develop throughout the period (or periods) of work experience and therefore we would favour assessment after a significant period of work experience (and not before work experience). We think that candidates should be able to present for SQE2 assessment once they have met fifty percent of the work experience requirement (ie from the twelve month point if there is a two year work experience requirement). This would allow a candidate time to re-sit before the end of work experience if s/he failed the assessment.

We are concerned that there may be only two occasions a year when SQE2 assessments can be taken. The profession needs to be given more information on how the assessments will run in practice. For example, if assessments were held in January and June, would there be assessments for all four weeks in each of January and June? When would candidates' marks be available? Would SQE2 assessments be available locally or might candidates need to travel? Could candidates move assessments within an assessment period (e.g. if they were sick or needed in the office)?

***SQE2: contexts***

Many City firms do not have practices which provide work experience in more than one or two of the five contexts in the consultation document. Even firms which have practices covering two of the contexts may have problems giving all their trainees meaningful work experience in the relevant practice areas. We can envisage firms needing to shorten the length of trainee "seats" in relevant practice areas to accommodate all their trainees. Assuming that trainees would take their SQE2 assessments part-way through the period of work experience, firms may also have to offer work experience in the relevant practice areas early in the training contract. These changes would have a significant impact on the practice areas concerned. For example, all our trainees have a six month seat in our corporate department but we ensure that at any time the department has a mix of first, second, third and fourth seaters. If the department had only first and second seaters the service provided to our clients by trainees could suffer.

We are uncomfortable with the possibility that candidates would be assessed in contexts in which they had no work experience. Although the practical skills are transferable skills, candidates without work experience in the context being assessed will be at a disadvantage compared to those with such experience. We can envisage our trainees being anxious about being assessed in contexts with which they are not familiar, and we could imagine having to offer them refresher courses. Although not mentioned in the consultation document, there has been discussion of the possibility that candidates would not select the contexts for SQE2 assessment but would go "blind" into the assessment and the contexts would be allocated randomly. We would not favour this as we believe that it would be unnecessarily stressful for candidates.

We would want to see a broader range of contexts for SQE2 assessments.

On balance, we think that it would suffice for candidates at SQE2 to be assessed in just one context. The legal practice skills being assessed are transferable and so a candidate who passes in one context should be accepted as competent in those skills. SQE2 is not designed to test legal knowledge. (It seems to us (looking at the proposal as a whole) that the SQE proposal contains an inconsistency in not requiring work experience in more than one area but assessing skills in two contexts.)

### ***Impact of SQE on firms***

SQE1:

We assume that candidates are likely to commence their training contracts before receiving their results. It is not yet clear how quickly after the assessment SQE1 results will be available. Firms will need to put in place policies for dealing with any failures.

SQE2:

There will be an inevitable impact on law firms' business as trainees have time out of the office to take SQE2 assessments. City firms such as ours are likely to provide some sort of preparation course for all candidates, so trainees are likely also to be out of the office preparing for the assessments. Firms will need to plan these absences carefully.

Depending when trainees can take the SQE2 assessments and how long it will take for their results to be available, it is possible that firms will need to make offers of qualified solicitor positions to trainees conditional upon their passing SQE2. Trainees who failed the SQE2 assessments could not take up qualified positions. This would leave their firms with fewer qualified solicitors than planned. It is conceivable that firms would not continue to employ trainees who had failed SQE2 and possible that firms would be unable to keep open the offer of a position as a qualified solicitor for when the trainee had resat and passed SQE2. To minimise the disruption of SQE2 it is important that:

SQE2 can be sat early enough to allow a candidate to resit and receive results before the end of the period of work place experience. Assuming a two year period of work experience, we think that candidates should be able to sit SQE2 anytime from after 12 months of work experience;

results are available within a reasonably short period; and

there are sufficient SQE2 assessment places available in each sitting for all who wish to take it.

We would like to see more than two SQE2 assessment windows each year. If there are only two, we think these should be in October and April (to reflect that many firms' trainees start their training contracts in September and March).

### ***Firms as assessment organisations***

We would favour a regime under which law firms could apply to be authorised to act as the assessment organisation for SQE2 for their own trainees. Firms could be required to run assessments on the same basis as the external assessors (using the same guidelines provided by the SRA). The intention (in order to secure consistency) was originally for one provider to be appointed as the assessment organisation. However, we understand that the SRA is already countenancing the possibility that more than one assessment organisation may be appointed. If properly regulated, we believe that having firm assessors should not hinder the aim for consistency of standards.

The benefit of firms being authorised to act as assessors would be as follows:

firms could assess in the context of the work experience undertaken by their trainees; and

firms could be more flexible on timing and carry out assessments more than twice a year.

We would be very happy to work with the SRA to put together a model for such a scheme, including how the SRA could regulate firm assessors to ensure consistency of standards.

**Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Level of agreement: 2

We understand that a few universities are considering introducing SQE1 into their law degrees but that many universities do not plan to do so. Where SQE1 is assessed as part of a law degree, there will need to be an exemption.

We do not believe that an exemption could be available from SQE1 for non-SQE1 law degrees or conversion courses because the content is significantly different.

**Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?**

Level of agreement: 4

We are concerned that it will not be possible to introduce SQE in September 2019. The proposal will not, we understand, be approved by the SRA Board until early summer 2017 and only then will the process of procuring an assessment organisation commence. Even if an organisation is appointed by the end of 2017, that leaves little time for design and development of the assessments and for a pilot to test them. We would hope that, as part of the design and development process, sample questions for both SQE1 or SQE2 would be made available to stakeholders for comment. We would be concerned if introduction of a new regime was rushed without considerable further consideration. In particular, we believe that the requirement for a test for the new solicitor apprenticeship must not be allowed to rush the SQE.

In broad terms, under the transitional provisions the last trainees who can choose to qualify under the existing regime will be:

law graduates who join their firms in September 2022 (having started law degrees in September 2018);

non-law graduates who join their firms in September 2020 (having started the GDL in 2018).

City law firms recruit their trainees whilst they are in their second and third years of university, some two or three years in advance of the start of their training contracts. Our firm is already making offers for training contracts starting in 2019 and 2020 and in November this year we shall start the recruitment process for September 2020 and March 2021. Non-law graduates currently in their penultimate year of study who already have an offer from us for a training contract starting in 2020 will be able to qualify under the existing regime if they start the GDL in September 2018 but will be required to qualify under the new regime if they take any time out between the end of their non-law degree and the start of the GDL. We believe that the transitional provisions do not allow sufficient flexibility and we would suggest that either the cut-off date is deferred or that the ability to qualify under the existing regime is extended to individuals who have accepted a training contract offer before September 2019.

**Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?**

There is a significant risk that the proposed model will have an adverse impact on diversity, contrary to the SRA's stated aim. The risks, in our view, arise as follows.

City firms will offer their own (unregulated) pre-work experience training. Such firms may be loath to recruit junior solicitors who qualified without the benefit of such additional courses.

Small firms may not want to recruit trainees who have passed SQE1 but are not “firm ready”, and so the number of training contracts available may reduce.

If SQE2 can be taken before work experience, individuals without training contracts may incur the cost of studying for this assessment and of the assessment itself but still be unable to secure work experience to qualify.

Solicitors whose work experience is carried out at a mix of student surgeries, pro bono clinics and employer placements may (at least when newly qualified) be treated as less-well qualified than peers who have qualified through a formal training contract with a law firm.

It is not clear whether universities which incorporated SQE1 into their law degrees would do so for all law students, nor whether they would increase the cost of the law degree in consequence. Any additional cost which fell on students could have a negative EDI impact.

It seems likely that university law degrees will fall into two categories: those which incorporate SQE1 and those which do not. From our discussions with universities, we understand that many Russell Group universities do not plan to incorporate SQE1 into their law degrees. If this is the case, then law firms may favour candidates who have studied “traditional” law degrees at these universities over SQE1-inclusive law degrees on the basis that the latter will “teach to the SQE1 test”, producing graduates who have not acquired the same level of analytical skills etc. Our firm seeks to recruit from a diverse range of universities; we are concerned that inconsistency in the skills acquired by graduates of the two different types of law degree could push us (and other similar firms) to favour law graduates from the more traditional universities.

If there is no regulation of training for the SQE, uninformed candidates may not be able to judge which course providers offer good courses and value for money.

9 January 2017

**ID:215**

**A new route to qualification: The Solicitors Qualifying Examination (SQE)  
Consultation response**

*Please state your level of agreement with each proposal on a scale of 1 (strongly agree) to 5 (strongly disagree)*

Question 1: To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Likert Response – 3 (Neither Agree nor Disagree)

A centralised assessment would ensure a consistent measure is applied. The proposed Functioning Legal Knowledge Assessments generally cover those areas presently required across the Qualifying Law Degree (QLD) and Legal Practice Course (LPC), which we consider is a sensible foundation. There are areas which extend beyond the current requirements, which may be considered specialist for some areas of practice. There does appear to be a disparity between some of the units of assessment – for example Commercial and Corporate Law and Practice appears to have a wider syllabus than Property Law and Practice, yet both are assessed on the same basis.

It is difficult to comment on the robustness of the proposed SQE without sight of the proposed assessment. On the information available, the extent of the assessed content within the suggested timeframe in Part 1 appears onerous. The requirement to complete 120 questions, based on Multiple Choice-style Questions (MCQs) within a three hour exam would appear to allow very limited time for reading, consideration and analysis (1.5 minutes per question). It is not clear what the rationale is for such extensive use of MCQs as a practical preparation for practice. Whilst MCQs and the other question types referred to may allow breadth of learning to be assessed, it is not clear that depth of knowledge and understanding can be assessed in this manner. A broader range of assessment techniques would allow better assessment of preparedness for practice.

We would welcome greater clarity as to the rationale for manner and method of assessment and an example of the proposed assessment to be able to properly consider the robustness and effectiveness of the SQE as a measure of competence.

Question 2a: To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Likert Response – 2 (Agree)

We agree that legal work experience is an important component to qualification. It is encouraging that candidates would be able to use experience from different roles over a period of time. We would agree with having a minimum time period and maximum number of placements, as detailed in the Consultation.

We believe that more guidance is needed as to what could constitute qualifying legal work experience. For example, how would work in a student law clinic be quantified as against a sandwich degree placement, where one is part-time and the other full-time? What records would need to be kept to be able to rely on such experiences. Would experience gained prior to the introduction of the SQE be considered, and if so how would this be evidenced?

In addition, over what time period can legal work experience contribute to this requirement? It is proposed that Parts 1 and 2 of the SQE must be completed within a six year period, but work experience during a degree programme would pre-date this period. Would it therefore count, as the Consultation is not clear on this.

Question 2b: What length of time do you think would be the most appropriate minimum requirement for workplace experience?

A minimum of 18 months total experience, made up of placements of at least three months, would seem appropriate. We would suggest that legal employers are best placed to advise on this.

Question 3: To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Likert Response – 5 (Strongly Disagree)

There appears to be a lack of clear regulation of the preparatory training for the SQE. There is no requirement to take or be registered on a specified pathway prior to or at the time of attempting Part 1 of the SQE. This raises concerns given the proposals to drive standards by the publication of “data about training providers’ performance on the SQE” [para 122].

The publication of training provider performance needs careful consideration to ensure that it is representative. There are a number of situations where a candidate’s performance may not bear correlation to the provider’s performance, given that eligibility to attempt the SQE will not be linked to course enrolment. For example:

- If a candidate need not attempt the SQE whilst enrolled on a course, they may choose to attempt the SQE assessments at a later time. Their performance in the SQE may not be indicative of the performance of the training provider, given the time between study and assessment.
- Conversely, if a candidate takes an undergraduate degree designed to prepare them for the SQE, but chooses not to attempt the SQE following that course, they could later enrol on a further short course with another provider as a refresher. In this case, thought needs to be given to which provider would be credited with the candidate’s performance.

Therefore, if the SQE can be taken independently of a training provider, in contrast to the current system, training provider performance would be more difficult to assess.

It is positive that a wider variety of legal work experience will be recognised, but there ought to be some mechanism of regulation to ensure that candidates meet appropriate standards and have a breadth of relevant legal experience that will enable them to meet the competences in the Statement of Solicitor Competence.

Question 4: To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Likert Response – 3 (Neither Agree nor Disagree)

The proposed model will deliver an overall consistency of assessment, enabling a benchmark level of competence to be set. As with the response to Question 1, it is difficult to comment on the suitability of the proposed SQE without sight of the proposed assessments. It is not clear how multiple 3 hour assessments comprising 120 MCQs will properly test the required skill set to a suitable depth, given the time demands and extent of assessable curriculum. A broader range of assessment techniques would allow better assessment of preparedness for practice.

Question 5: To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Likert Response – 4 (Disagree)

Offering exemptions from the SQE would appear to be contrary to the rationale for introducing the new system of qualification.

Question 6: To what extent do you agree or disagree with our proposed transitional arrangements?

Likert Response – 4 (Disagree)

It is proposed that any student commencing a law degree or post-graduate conversion in or after September 2019 would not be able to qualify via the existing route but would need to take the SQE. Given that this second consultation is open until 9 January 2017, there will be very limited time for training providers to react to the Consultation outcomes and guidance in order to properly consider and put in place training provision to start in September 2019 to prepare students for the specific requirements of the SQE. A key pathway would likely be a law degree incorporating SQE preparation. University quality procedures require thorough

planning and pedagogic rationale for the introduction and validation of new course provision, including scrutiny from external partners. Furthermore, programmes starting in September 2019 would be advertised from September 2018 (to correspond with UCAS timeframes), requiring the programme to be clearly developed by this time. This allows very little time for robust programme development.

It is also proposed that the long-stop date for qualification under the existing route would be 2024. We do not consider this to be a long enough period for students on the existing pathways. For example, if a student were to commence the LPC in September 2018 on part time basis over two years, the expected date for completion of the course would be Summer 2020 assuming all assessments were passed first time and none were mitigated. Under current guidance, the student would have until 2023 to complete the LPC within the five year maximum study period. This would then leave insufficient time for the student to complete a period of recognised training. In light of the comments above regarding the timeframe for having courses in place specifically preparing students for the SQE, this would leave students looking to continue their legal education in September 2018 in a difficult position, possibly having to postpone their studies and therefore delay their ability to take a higher level of employment.

We would suggest that the transitional provisions be extended for the reasons highlighted above. We note that in the first consultation, a cut-off date for current qualification routes of 2025-26 was suggested.

There will be difficulties from a provider perspective in providing continuing support, assessment opportunity and ensuring suitable external examiner support for students enrolled on the LPC prior to September 2019 completing within their maximum study period. These need to be carefully balanced against student opportunity.

Candidates would benefit from as much notice as possible in order to ensure that they are able to make informed decisions about their futures and possible training pathways.

Question 7: Do you foresee any positive or negative EDI impacts arising from our proposals?

There are a number of concerns raised by the proposals which we would welcome clarification on.

1. Cost

The cost of the new route to qualification is a concern. It is suggested the by removing the requirement to take the LPC and Professional Skills Course, an average of £12,500 will be removed from the cost of qualification. No guidance is offered as to the cost of the assessments for Parts 1 and 2 of the SQE, save that it is not expected that the cost, combined with preparatory training, would exceed this sum.

It is not clear that this is the case, but importantly there is also the issue of funding the costs of the assessments and associated preparation. For students self-funding the LPC, funding options include professional development loans and the recently introduced Postgraduate Student Loans. It is important that viable and affordable funding options are available for candidates wishing to take the SQE, especially given the requirement that all assessments be taken in one assessment window, which prevents the cost being spread across assessment periods. These issues may present a barrier to entry.

2. Student Choice

Of the exemplar pathways, the most cost effective would appear to be the law degree incorporating SQE preparation (subject to funding the cost of the SQE itself). Given the requirements and demands of the SQE, this would be a highly specialised programme. Presently students choosing to study the LLB which is a QLD will retain the ability to choose between pursuing a career as a barrister or a solicitor. Indeed, the scope in the current QLD curriculum allows undergraduate students to develop knowledge and skills which serve them well in non-legal careers.

It is questionable whether the law degree incorporating SQE preparation would be deemed a QLD by the Bar Standards Board or would allow students to develop knowledge and skills that are as appealing to non-legal employers. If this were the case, it could impact on student decisions to study law or pigeon-hole students into a career that they subsequently decide is not suited to them. Whilst students could therefore opt to take a traditional law degree followed by an SQE preparation course, there would be significant cost implications in doing so which may not be an option for many students.

### 3. Reasonable Adjustments

The SQE will need to be able to accommodate reasonable adjustments for students, where necessary. A centralised assessment regime would ensure that these were provided consistently. The effectiveness of such adjustments would depend on the length of the proposed assessment windows. Students will be expected to take the six Functioning Legal Knowledge Assessments and a Practical Legal Skills Assessment in one assessment period. In light of the breadth of assessable content, this could be increasingly demanding if, for example, a candidate were to be allowed extra time for each assessment, as it would allow for less recovery and preparation time between assessments.

# Consultation questionnaire

Response ID:225 Data

3.

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Strongly disagree

Comments:

4.

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Strongly disagree

Comments:

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

Longer than two years

Comments:

5.

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Strongly disagree

Comments:

6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Strongly disagree

Comments:

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Strongly disagree

Comments:

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Strongly disagree

Comments:

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes

Comments:

|

# Consultation questionnaire

Response ID:300 Data

3.

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Strongly agree

Comments:

4.

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Agree

Comments:

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

18 months

Comments:

5.

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Strongly agree

Comments:

6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Strongly agree

Comments:

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Neutral

Comments:

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Neutral

Comments:

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

No

Comments:

# Consultation questionnaire

Response ID:422 Data

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**3.**

To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

Strongly disagree

Comments:

**4.**

To what extent do you agree or disagree with our proposals for qualifying legal work experience?

Strongly agree

Comments:

What length of time do you think would be the most appropriate minimum requirement for workplace experience?

18 months

Comments:

**5.**

To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

Strongly agree

Comments:

6.

To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Strongly agree

Comments:

7.

To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

Agree

Comments:

8.

To what extent do you agree or disagree with our proposed transitional arrangements?

Agree

Comments:

9.

Do you foresee any positive or negative EDI impacts arising from our proposals?

No

Comments:

# Consultation questionnaire

Response ID:447 Data

## 2. Your identity

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

I/we have a specific confidentiality requirement as follows.: You can publish my response anonymously

**Please identify the capacity in which you are submitting a response. I am submitting a response...  
in another capacity**

Please specify: non-practising solicitor

## 3.

**To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?**

Neutral

**Comments:**

## 4.

**To what extent do you agree or disagree with our proposals for qualifying legal work experience?**

Agree

**Comments:**

**What length of time do you think would be the most appropriate minimum requirement for workplace experience?**

Flexible depending on the candidate's readiness

**Comments:** Any work experience between 18-30 months with the final 6 months contributing to PQE

## 5.

**To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?**

Neutral

**Comments:**

## 6.

**To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?**

Neutral

**Comments:** Changes and improvements are needed but they should be equality assessed and enable reasonable adjustments as required.

## 7.

**To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?**

Strongly agree

**Comments:** Exemptions should be offered especially where they are health conditions and unforeseen lifestyle changes.

## 8.

**To what extent do you agree or disagree with our proposed transitional arrangements?**

Neutral

**Comments:**

9.

**Do you foresee any positive or negative EDI impacts arising from our proposals?**

Yes

**Comments:** Reasonable adjustments for all disabled candidates through all the stages.