

A new route to qualification: New regulations

Consultation responses

November 2017

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2. Your identity

Name of the firm or organisation where you work

AGCAS Legal Profession Task Group

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on behalf of a representative group

Please enter the name of the group.: AGCAS Legal Profession Task Group

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

One of the main concerns is around Regulation 2 which deals with qualifying work experience.

- How is it proposed that the qualifying work experience is 'signed off' where there is no COLP or solicitor in the employing/training organisation able to do this? Will the SRA provide the requisite training for these organisations or will other arrangements be put in place? If so what?
- How 'recent' does this experience have to be in order to qualify?
- Should each period of qualifying work experience be required to develop a minimum number of the prescribed competences?

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Do you have any comments on the proposal for recognition of the knowledge and competences of qualified lawyers?

It is helpful that the proposals will aim to clarify the position of lawyers from other jurisdictions and it is hoped that this will result in transparent routes for different jurisdictions being made clear including guidance on what knowledge and experience (level, type and duration) will be required for recognition/exemptions.

It would be helpful to have guidance on the period of time the process may take and the level of resources the SRA intends to commit to support the demand.



Association of Women Solicitors

Essential for Success

A new route to Qualification: New Regulations

Response - Association of Women Solicitors, London

About Association of Women Solicitors, London

Association of Women Solicitors, London was founded in 1992 and its aims include representing, supporting and developing the interests of women solicitors. Membership is open to all women solicitors and trainees and associate membership to other women lawyers including barristers, legal executives and paralegals. More information can be found on our website <http://www.awslondon.co.uk>

A new route to Qualification: New Regulations

Response

For the reasons given below we advise an amendment to Part 1 Regulation 2.1 (c) concerning Qualifying Work Experience as follows;-

Qualifying work experience

2.1 Qualifying work experience must:

(a) comprise experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitors;

(b) be of a duration of a total of at least two years full time or equivalent;
and

(c) be carried out under an arrangement or employment with no more than four separate firms, educational institutions or other organisations

following recruitment by an open selection process including advertisement.

Whilst the new route to qualification may bring about improved access to the profession for some from less privileged backgrounds and others (for example women starting out on a career after having children) it does not address the current systemic problems of unfairness in the recruitment of interns. Until these issues are resolved the SQE in our view is unlikely to overcome the fundamental barriers to widening access.

We are pleased to see that the definition of Qualifying Work Experience (“QWE”) builds on the existing expectation for aspirant solicitors to have acquired experience from several internships but currently the majority of those placements are both unpaid and unadvertised. You acknowledged in your own SQE Equality & Diversity Risk Assessment that unpaid QWE could advantage candidates able to work without a salary but the absence of advertisement was not considered. This needs to be remedied.

According to a recent* report from the Institute of Policy and Research each year 11,000 internships are advertised but the true number that take place is estimated to be as high as 70,000. Thus seven times as many internships are unadvertised as are advertised. How can a candidate from a less privileged background hope to secure the necessary QWE if he or she is competing with individuals who already have the necessary connections and are able to “snap up” unadvertised positions?

Our view is that if this issue remains unaddressed solicitors will continue to be drawn from the small pool of candidates with the means and connections to obtain QWE. We ask you therefore to take our proposal very seriously.

AWS London
July 2017

* April 2017 The Inbetweeners The new role of internships in the graduate labour market.
<https://www.ippr.org/publications/the-inbetweeners>

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

Broadly, yes. Given the high level nature of the rules, we would be interested to see any additional supporting guidance in due course. For example, we would envisage significant additional guidance being needed to assist those signing off work experience under rule 2.2.

We welcome the commitment to offering an online support package to help candidates and employers to understand the requirements – one key challenge identified by the BSB in this area has been the need to ensure accessible information for candidates (particularly those from under-represented groups) to promote access to the professions.

The BSB is keen to work with the SRA to ensure there is absolute clarity about the equivalence of our training pathways (or parts thereof). We will ensure that our new training pathways, as they develop, are mapped to the SRA's as envisaged by rule 3.2. In addition to recognising fully qualified professionals, it may be possible to recognise those who are part-qualified. It may assist access to both professions if candidates are easily able to transfer between the two training schemes. However, the rules as drafted do not seem to envisage this. Someone who has undertaken training on a BSB-approved training pathway but who has not completed pupillage may well have undertaken assessments that are equivalent to some of the SQE. We would hope that could be recognised by the SRA (similarly, the BSB would envisage recognising the SQE parts 1 and 2 as equivalent to specified portions of our training requirements).

In relation to qualified practitioners, it is proposed that, where the SRA recognises the qualification, the individual would have to meet all of the criteria for eligibility for admission except the qualifying work experience (although it appears that work experience will be a factor taken into account by the SRA in determining equivalence in Annex 2). We note that in such cases, the BSB's training pathway would already have considered the suitability of an individual to be a barrister. We therefore wonder if there might be scope to recognise this, rather than make a judgment afresh under rule 1.1(d).

2. Do you have any comments on the proposals for recognition of the knowledge and competence of qualified lawyers?

As noted above, it may promote accessibility and flexibility if the SRA can recognise parts of a qualification route (particularly for those individuals who are training towards a qualification to practise in England and Wales).

In relation to recognition of professional experience, we note that the SRA would normally expect qualified lawyers to have a minimum of two years' professional experience in order to demonstrate they had met standards equivalent to the SQE. We welcome the suggestion that candidates might be able to show they had met the requirements in less time. For example, newly qualified barristers under our present rules would have been required to undertake one year of pupillage (although we assume the SRA would also consider their time spent undertaking vocational training in assessing whether they have met the SQE requirements). It is likely that pupillage will continue to be the main vehicle for work-based learning when the BSB introduces its new training pathways in due course.

Response to SQE consultation entitled *A new route to qualification: New regulations dated May 2017, closing date 26th July 2017*

Submitted on behalf of the School of Law, Birmingham City University.

Question 1. Do you agree that these regulations implement the agreed policy framework for the SQE?

This question is premature. Although the proposed regulations laid out in Annex 1, and particularly Annex 2, would have the effect of bringing the SQE structure into force, the real question at this stage is what, precisely, will it be that is brought into force? The SRA were urged by the Bridge Group in their recent report, "Introduction of Solicitors Qualifying Examination: Monitoring and Maximising Diversity" (March 2017) to address any misunderstandings amongst stakeholders as to the, "missing detail" (p23) in relation to the current proposals. That opportunity to provide "clear and unambiguous communication that outlines where further detail will be made available, and where it will not be possible to do so", has apparently been missed.

In particular we suggest that the policy framework lacks sufficient detail on the following:

- The exact process by which it was agreed that the provider of the SQE assessments could also be a deliverer of SQE training, which appears to create a monopoly (moreover, confidence in the process of appointing a provider has been compromised by the short window of opportunity for potential assessment providers to submit expressions of interest).
- Transition arrangements for students moving from existing programmes to the SQE framework
- The timescales for the availability of sample SQE questions (for both stages 1 & 2) between now and the proposed start point in September 2020
- The mechanisms and responsibilities for publication of the SQE results

We are concerned that this lack of detail brings into question the extent to which the policy framework, in its current form, can be said to have been 'agreed' to and by whom. It is our view that agreement with the policy framework by potential providers cannot be as informed as it should be for a policy of this importance and seriously compromises the ability of potential providers of SQE training to formulate cost-effective business plans for delivery.

Question 2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Our response to this question is tempered by the same considerations outlined above. The issue is not so much whether the regulations will permit the recognition of knowledge and competences - doubtless they will have that effect. The issue is with the process by which that knowledge and competence has been assessed in the first place and the same lack of detail infects an informed consideration as with question 1.

In short we consider that questions over these regulatory processes are premature while the details of the SQE system remain as obscure as they are at present and would urge the SRA to issue these

details first and then seek consultation responses to the regulation of the SQE once stakeholders are more fully informed.

Submitted by:

Dr. Haydn Davies, Interim Head of the School of Law

On behalf of:

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Date: July 24, 2017.



A new route to qualification: New regulations

SRA Consultation
May 2017

July 2017

**Birmingham Law Society's Response to the consultation:
New Route to Qualification – New Draft Regulations**

Question 1: Do you agree these regulations implement the agreed policy framework for the SQE?

Birmingham Law Society would initially like to say that it is very disappointed that despite its, and others' responses, to the first two consultations on the SQE which were not in support of the majority of the proposals because of the perceived adverse effect they could have on the standing of the profession, the new training scheme is going forward with very little change. We are, therefore, responding to these proposed regulations within this context.

The regulations are very brief and lacking in any substance to analyse, therefore, on a superficial basis it would be easy to say that they do appear to implement the agreed policy framework but more detail is required before we can be assured and positively move forward. We cannot discuss in detail the proposals as we have not been given the necessary information, therefore, our comments are few, not because we are generally content with the proposals but because of the vagueness of the information given. Even on an over-arching basis there are, however, some issues which need to be addressed:

- Regulation 1.1
 - Is there a particular timescale over which a person must have completed the SQE assessments in order to be eligible for admission? E.g. could someone take 10 years from sitting SQE1 to complete their qualifying work experience and pass SQE2? This would not be permitted under the current training scheme and yet it is not made clear for this new training system. We would not approve of such an arrangement if allowed as this would not in our view indicate a competent and up to date professional.
- Regulation.2.1
 - Will there be a minimum period required at a particular firm / educational institution, e.g. would 2 weeks be sufficient if it enable some of the competences to be established albeit unlikely? Also, we are concerned in terms of regulation of the profession that in Regulation 2.1 the 4 periods of the Qualifying Work Experience can be in 4 separate firms, '...educational institutions or other organisations.' This is very vague as to what is meant by the 'organisations' and what experience the individual may receive
- Regulation 2.2:
 - There are a number of concerns in relation to Regulation. 2.2 as set out below:
 - Presumably the prescribed form will set out more detail of what the individual needs to have achieved in order to demonstrate the prescribed

competences. Again this is all very vague and therefore, difficult to comment upon in detail.

- Is it envisaged that the individual completes the prescribed form and this is then signed off by the COLP / solicitor or that the COLP / solicitor completes?
- In relation to the individuals who can sign off the Qualifying Work Experience, Regulation.2.2 firstly refers to a) a COLP having the authority to sign off which is sensible/appropriate, then it states b) a 'solicitor within the organisation' or if neither a) or b) are available then 'a solicitor'. There is no requirement for them to have actually supervised or trained the applicant, but worse in relation to 'a solicitor' there is no specific requirement for it to be a solicitor on the roll, with or without a current practising certificate. This is concerning as someone may not have practiced for years and may not be competent to do so and yet would be able to sign off a student's experience which helps them gain status as a qualified solicitor. It should be someone who has a current practising certificate and is in practice and this would cover a Pro Bono Coordinator so would not be removing one of the elements of these regulations to widen Qualifying Work Experience. However, without the requirements of a practising certificate and being in practice, these regulations vaguely drafted could lead to some exploitation of vulnerable/desperate students. We also, need to ensure that those who are admitted under this new scheme are competent in the eyes of the profession and clients and are employable once qualified.
As Birmingham Law Society we have an obligation to the firms and also to the student members as well as the wider public interest to try and minimize the opportunities to exploit the students and allow entry to the profession from those who may not have had proper qualifying work experience. We want to ensure that all who are admitted are competent to undertake the work of the legal profession locally, nationally and internationally as we have said many times in our responses to these consultations.
- The form will need to enable the individual to clearly identify what competences they have achieved and what are still outstanding, particularly if they are undertaking the qualifying work experience at more than one organisation.
- Presumably it will be the SRA who then checks that, overall, the individual has demonstrated all of the competencies. Again, we want to be assured that suitable monitoring is in place by the regulator.
- Regulation.3.2:
 - This regulation appears to be too vague. It raises issues of uncertainty and could lead to allegations of discrimination if consistency is not applied in terms of when an individual needs to pass the SQE.

Question 2: Do you have any comments or proposals for recognition of the knowledge and competences of qualified lawyers?

This area of the regulations is again very vague and lacks clarity so that we are unable to comment in any detail on the proposals and, therefore, in our view we cannot confirm our agreement.

The SRA produce limited guidance as to which jurisdiction they would recognise as exempting an individual from the SQE. It would be beneficial for the SRA to now produce a list of those recognised jurisdictions from their existing knowledge to provide guidance. There is also a need for more guidance on what exact experience is require as again this is too vague an area to comment on in any detail. For example, we query whether the requirement at paragraph 5 that the individual has a minimum of 2 years professional experience must be pre or post qualification or either.

Conclusion

Birmingham Law Society considers it imperative that we need greater detail in order to be able to comment as to the appropriateness or otherwise of these regulations, to ensure that we protect our reputation as a legal industry. We must be certain that the calibre of individual who practices in England and Wales is maintained as being of high quality and integrity and that the drafting of the regulations does not allow anyone to practice in England and Wales because the regulations are lacking in substance.

Dated 24 July 2017



Andrew Beedham

President

Birmingham Law Society

**Draft response on behalf of BPP University Law School to the SRA Consultation paper:
New route to qualification: New regulations, May 2017**

Introduction

BPP stands by the points made in its response to the previous two SRA consultations. The current consultation involves two broad questions relating to the regulations required to bring the SQE framework into force. BPP's views and suggestions are set out in answer to the consultation questions below.

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

Disagree

These new draft regulations are intended to bring the SQE framework into force and provide a regulatory framework for qualification as a solicitor. These regulations are aimed at clarity, simplicity and a focus on the core requirements for admission as a solicitor, avoiding detailed and prescriptive requirements where they are not necessary. These draft regulations cover key requirements for 'Admission as a solicitor', such as 'Eligibility for admission', 'Qualifying work experience', 'Eligibility for admission of qualified lawyers' and 'Commencement' but the draft regulations are extremely brief.

These new draft regulations do not deal with transitional arrangements. Transitional arrangements are necessary to recognise that candidates will be part way through the qualification process on the date that these regulations are brought into force. The transitional arrangements will be highly complex and must adequately deal with those students who cannot complete the CPE/LPC on a full-time, uninterrupted basis, e.g., overseas students, part-time students, students who have interrupted their studies. BPP understands that these regulations only form part of the wider Authorisation of Individuals Regulations, upon which there will be a further consultation in Phase Two. BPP believes that detailed transitional arrangements will be key to the successful implementation of the SQE framework and BPP will provide comment on whether these regulations will be an effective mechanism for the implementation of the SQE once it has had sight of the full Authorisation of Individuals Regulations.

2. Do you have any comments on the proposals for recognition of the knowledge and competencies of qualified lawyers?

In response to previous consultations BPP has expressed concern about the gap between the requirements and the assessment strategy of the SQE and the personal effectiveness and workplace competencies. BPP stands by its previous comments and suggestions.

Under the SQE model, trainee solicitors will enter the workplace with less legal knowledge and skills than current entrants to the market. Additionally, Regulation 2.1 and 2.2 states qualifying work experience must provide *'the opportunity to develop the prescribed competencies for solicitors'*, over a *'duration of a total of at least two years*

full time or equivalent and to be *'carried out under an arrangement or employment with no more than four separate firms, educational institutions or other organisations'*.

This new model of fragmented work experience, coupled with a lower level of legal knowledge and skills on entering the workplace, could lead to low level, low paid work for future trainee solicitors, rather than the current system of work based learning which includes seat rotation and a mixture of contentious and non-contentious work.

If the SRA is committed to the possibility of future trainee solicitors being able to 'build their own' two year period of qualifying work experience, this does increase accessibility to the legal profession and addresses the 'training contract bottle-neck' but BPP believes that without a proper requirement for recording and reflecting on the work based learning, candidates could find themselves 'signed off' but still lacking in the competences to pass SQE 2 and able to practice as a solicitor to the requisite standard.

On the solicitor apprenticeship route the apprentices have to keep a reflective portfolio mapped to the competence framework signed off by the provider and their supervisor in the firm. There is no equivalent in these draft regulations. By requiring candidates to keep a reflective portfolio of their qualifying work experience, this would ensure that candidates are properly focused on what competences they need to develop, have developed and can demonstrate. It also makes them reflective practitioners which is important for future quality assurance and development. Just having a COLP or equivalent state that candidates have *'had the opportunity to develop'* some or all of the competences, devalues the period of qualifying work experience in terms of it being world class and potentially opens the way for unprepared and ill-informed candidates putting themselves in for SQE 2 incurring that cost when they do not have a good chance of success, especially if they have not reflected on their learning and development towards the competences.

BPP would therefore suggest there is a requirement to keep a portfolio signed off by the supervisor to be submitted with the COLP statement. This would also give more equivalence to the two routes to qualification, as well as ensuring the quality and consistency of qualifying work experience offered by employers.

BPP also believes that there should be recognition of valuable experience gained during pro bono work or a clinical legal education module at university, during which students represent clients and undertake the work of a junior lawyer under the supervision of a qualified solicitor. This work experience may be gained over shorter periods, to fit within an academic calendar, and the SRA needs to provide clarity on whether such work experience would count towards the two year period of qualifying work experience and whether there is a minimum period that could count?

The new model of qualifying work experience proposed under these regulations will result in prospective employers taking a much more forensic approach to a candidate's route to qualification – requiring them to evidence further 'remedial' training undertaken to develop knowledge and skills to competence levels provided by the current route. This will put those students who do not have access to additional funds for training at a disadvantage in the market, which will have a negative impact on EDI.

Cambridgeshire and District Law Society

Question 1.

We would like to respond positively to this question but also need to register some concerns. Our first concern is that solicitors will not be required to have a degree level qualification (or any qualification for that matter). With the Bar maintaining that requirement we have to question this effective 'downgrading' of the solicitors qualification, on what basis is this justified?

Further, so far as the ability to obtain the requisite work experience in up to 4 separate firms this appears too high, in that it could be reflective of an inability to succeed in one firm and thereby moving swiftly on to another, and another and another.

Further, as we read 2.2(c) does this mean that any solicitor (i.e. not one with which the individual has worked) can vouch and if so on what basis is this justified i.e. the solicitor may not have any valid experience of the individual on which to base their recommendation.

Question 2.

Our answer is no.

Cardiff and District Law Society's response to SRA Consultation :

'A new route to qualification: New regulations, May 2017'

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 : New regulations".

Introductory/general comments

Like many organisations that responded to the previous consultations on the SQE in March 2016 and January 2017, we have been critical of certain aspects of the SRA's proposals. In particular, like the majority of respondents to the previous response which closed in January 2017, we do not believe the SQE is needed or, in its current proposed form, fit for purpose. We are disappointed that once again the SRA does not appear to have listened to the weight of opinion which was against introducing the SQE.

As much of this consultation is about implementing a change to which we are opposed in principle, it is difficult to comment on the set of proposed regulations. Any comment we make should be read against our underlying opposition to the SQE.

As before, our main concern with the proposals is that these threaten to dumb down the training process significantly, and thus devalue the qualification of solicitor in England and Wales, and harm the profession's reputation, both domestically and internationally.

In particular, the new proposal to allow overseas lawyers to circumvent the SQE, or substantial parts of it, by qualifications or experience in law 'not substantially different' from English and Welsh law, is of concern. Previously, the SRA has indicated that all overseas lawyers would have to pass SQE, in the same way that they now have to pass QLTS.

Question 1 – Do you agree that these regulations implement the agreed policy framework for the SQE?

We think that the implementation of these regulations is premature, given the lack of certainty over the content and format of the SQE and other aspects of the framework, such as qualifying work experience and the negotiation of the terms on which the UK will leave the European Union, the outcome of which is likely to affect the recognition of the qualifications of lawyers from the remaining EU states. We think it would be better to develop the detail of the framework further before considering the wording of the regulations.

Our comments about the individual regulations are as follows:

Regulation 1

This appears uncontroversial as it requires passing the SQE, holding a degree or qualification which the SRA accepts as equivalent to a degree, the relevant (which is 2 years full time or equivalent) qualifying work experience and satisfying the SRA as to character and suitability. These are the main requirements for admission as a solicitor.

We have a specific concern, though with the wording of regulation 1.1(a) which stipulates that a person will be eligible for admission if they have 'satisfactorily passed' the proposed SQE. We do not understand the reason for including 'satisfactorily' in this regulation and are concerned that this might lead in some way to a dilution or diminution of standards. Surely the regulation should simply require that the person has 'passed', without the qualification 'satisfactorily'.

Regulation 2

This deals with qualifying work experience, but is controversial. That experience, which must be of at least 2 years full time or equivalent, provides the opportunity to develop the prescribed competences for solicitors and is to be carried out in employment with no more than 4 firms, educational institutions or other organisations and signed off by an individual in respect of each of the organisations which provided qualifying work experience.

Our main concern with this is that the quality of work experience may suffer as a result of the new requirements, compared to the training provided under the existing training contract. We are concerned that persons seeking admission will not have received the same standard of training that they currently receive. This could in part be due to the freedom to undertake part or all of the qualifying work experience outside of a law firm/training contract provider. Will aspiring solicitors really obtain the same quality of training and experience working in paralegal roles (perhaps at unregulated legal services providers) or by undertaking pro bono work in law school clinics? The regulation appears to be deficient by not imposing the requirements that currently apply to training providers under the existing arrangements for work based training. Currently there is a structured form of work based learning that is closely supervised. Regulation 12 of the SRA Training Regulations – Qualification and Provider Regulations 2014 requires the provision by the training provider of supervision, regular review, appraisal, development and a record of training. None of these requirements appear in the draft regulation 2.

We understand that the SRA has concerns about instances of poor training by firms, but there is no evidence that the existing training by firms is poor, and the SRA's proposals do nothing to address any existing problems with work based learning – in fact, the SRA's proposals are likely to do the opposite, by creating an environment in which proper training or supervision need not be provided. We recognise that the SRA's view is that SQE Stage 2 will provide the check on quality of entrants to the profession, but we have serious doubts that SQE by itself can provide an adequate and effective check on competence.

The quality of training could also suffer through the period of qualifying work experience being made up of up to four placements with different employers or organisations. With the existing training contract most trainees train with one firm and so spend their entire 2 year training with the one employer. This allows for socialisation within that organisation and the time to develop. This could be lost if a person switches from one employer to another within the course of 2 years, and perhaps spends no more than 6 months at a time in any one organisation.

It is likely that a perception will arise that persons who undertake their qualifying work experience in a variety of placements in paralegal positions will be seen as second-class trainees, in comparison with those who undertake their two years of qualifying work experience at one firm, with all the benefits of the in-house training provided by that firm. This will lead to a two-tier market, with those who have trained under the non-traditional route finding it harder to secure positions (or better positions) as assistant solicitors.

Linked to this is the seemingly low standard of work which is required. Under regulation 2.1, qualifying work experience must provide “an opportunity to develop” the prescribed competences. That is a low level of achievement.

Also, the declaration provided for by regulation 2.2, that a person has had ‘the opportunity to develop *some or all* of the prescribed competences’, is an inadequate check on the quality and effectiveness of the qualifying work experience. It is extremely vague. How many competences constitute ‘some’? In fact, 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, therefore. Having said this, we recognise the difficulties of assessing the period of qualifying work experience. Nevertheless, the proposed certification seems unsatisfactory.

A further problem is who signs off the work. This is to be done by the COLP or a solicitor working within that organisation, but if neither of these is applicable, by any solicitor. That solicitor needn’t have worked in the organisation which provided all the relevant work experience (which could have been obtained at an external placement). S/he needn’t even work in an entity which is regulated by the SRA, assuming the SRA’s Handbook proposals are implemented. This also seems to be unsatisfactory. How will someone external be in a position to make this declaration?

There is also a danger for the solicitor who is being asked to certify a person’s qualifying work experience, particularly if the solicitor is from outside the organisation(s) in which the person claims to have obtained that work experience. What if that solicitor did not feel able to certify the person’s work experience? What if the solicitor’s employer required the solicitor to certify the person’s work experience, despite that solicitor’s misgivings? Alternatively, what if a solicitor certifies a person’s work experience as enabling them to develop the competences, and then that person fails SQE because their work experience has patently not prepared them for the SQE assessments?

On the duration of the qualifying work experience, is the description in regulation 2.1 (b) 'full time' sufficiently clear? We are also concerned by the inclusion of the wording 'or equivalent'. Could someone work one day a week (i.e. on a 20% contract) and, over the period of 10 years, make up the 2 years' equivalence? Is this acceptable? Should someone with such a thin spread of work experience be allowed to qualify? We are also concerned about the possible interpretation of 'equivalent' in future, whereby the SRA might allow persons to qualify without having undertaken 2 years of qualifying work experience, on the basis that a shorter time was 'equivalent'. Such a provision could be open to misuse.

Regulation 3

This covers eligibility for admission of lawyers who are qualified elsewhere. It requires a legal professional qualification which the SRA recognises, plus the SQE, degree or qualification which the SRA accepts as equivalent to a degree and satisfying the SRA as to character and suitability. This appears to allow admission as a solicitor to qualified lawyers who do not know the law of England and Wales (and who have not been assessed by the SQE on the elements of law contained within the SQE). Although a qualified overseas lawyer may have already acquired the skills assessed on the SQE, should a qualified overseas lawyer be allowed to qualify as a solicitor in England and Wales without having demonstrated (through passing the knowledge elements of the SQE) that they have a functioning knowledge of the law of England and Wales in the prescribed SQE subjects?

This also points to the premature nature of these regulations, because with Brexit there are uncertainties over the recognition of foreign qualifications. This issue is thus dependent on events and decisions beyond the control of the SRA and so a premature decision should not be made by the SRA.

Question 2 – Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

We have concerns about the new proposal that qualified overseas lawyers be given exemptions from the SQE. Whilst we can see that a qualified lawyer may have acquired the skills assessed via the SQE, we fail to see how a qualified overseas lawyer will have the functioning knowledge of the law of England and Wales without having passed the functioning legal knowledge assessments in SQE Stage 1. Either someone has that knowledge (as assessed by the SQE) or they do not. We have concerns that the SRA is prepared to say that the relevant competence (i.e. knowledge of the law and England and Wales) can be met by knowledge of 'content that is not substantially different to the areas of English and Welsh law'.

The SRA has already said that it will not allow exemptions from the SQE for domestic students who have sat assessments on the same areas of English and Welsh law as part of their degree or postgraduate studies. Exemptions are thus being denied to students who have already covered (and been assessed on) the relevant (i.e. English and Welsh) law. It defies logic therefore to allow qualified overseas lawyers exemptions on the basis that they have knowledge of overseas law which is 'quite like, but not the same as', English and Welsh law. Either the SRA should allow exemptions from the SQE to both domestic students and qualified overseas lawyers, or it should not allow exemptions from the knowledge aspects of the SQE for qualified overseas lawyers. We can see no justification for not requiring overseas lawyers to pass the knowledge assessments of SQE Stage 1, therefore.

Another concern we have is the SRA's ability to cope with the number of applications by qualified overseas lawyers for exemptions. Will the SRA be able to devote sufficient resources to looking carefully at individual cases where lawyers are claiming they should be exempted from the whole or parts of the SQE ?

Submitted by the Regulatory Issues Sub-Committee of Cardiff + District Law Society

Members : Hugh Price (Hon Sec), Byron Jones, Rachelle Sellek, David Dixon, Clive Thomas, Richard Fisher, Sarah Watkins, Tom Danter, Steve Roberts + Jennifer Perry

A new route to qualification - New regulations

Response ID:76 Data

2. Your identity

Surname

Simmonds

Forename(s)

Christopher David

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**

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

In short, no.

In order to clarify my answer to this question it is important to refer back to the SRA's decisions following the last stage of consultation . In addition, the impact of other consultations, most notably the recent consultation on the SRA Handbook , must be taken into account, as there is a cumulative impact.

The first point to make is that the SRA's policy framework for the SQE is misstated in the consultation document. Following the last stage of consultation, the SRA stated that:

The new qualification will consist of four elements. By the time candidates seek admission as a solicitor, they must:

1. Have passed SQE stages 1 and 2, to demonstrate they have the knowledge and skills set out in the competence statement to the standard prescribed in the threshold statement.
2. Have been awarded a degree or an equivalent qualification, or have gained equivalent experience. By equivalent, we mean equivalent to level 6 of the Framework for Higher Education Qualifications (FHEQ).
3. Have completed qualifying legal work experience under the supervision of a solicitor or in an entity we regulate for at least two years (or full-time equivalent).
4. Be of satisfactory character and suitability, to be assessed at the point of admission.

In the current consultation, point 3 has been altered to read '...they must have completed qualifying legal work experience, for at least 2 years (or part time equivalent), and which can be certified by either a solicitor or a compliance officer for legal practice'. This latter wording is then reflected through the proposed Regulations, in that:

- Qualifying work experience can take place in firms, educational institutions or other organisations. In light of the changes to the SRA Handbook solicitors will be able to work within organisations that are not regulated by the SRA as long as they are not conducting reserved work. This raises concerns as it is not specified whether the solicitor signing the certification should hold a practising certificate, or whether they should have held one within a set period of time. In light of the changes to the keeping of the role, a person may be a solicitor entered onto the roll but may not have practised in some time. They may therefore not be up to date with the requirements of the competency statement.
- The work experience need not be supervised by a solicitor, the only requirement is that the organisation's COLP, a solicitor working within the firm or another solicitor if neither are applicable certifies that the candidate has had the opportunity to develop some or all of the prescribed competences. While I am sure that there are many non-solicitors out there who are legally qualified and exceptionally competent, the lack of clarity in relation to this requirement does raise concerns about the exploitation of SQE candidates. Non-regulated entities could take on high numbers of students for qualifying work experience under minimal supervision and at low cost, which in turn raises concerns about consumer protection.
- There is no provision for a supervisor to indicate a lack of competence in the performance of a role. The SRA's argument that this will be tested under SQE2 in simulated circumstances does not hold up to scrutiny. While a candidate may perform well in mock scenarios, a breach of the Code of Conduct during the work experience requirement (with a real client) should be taken into account and notified to the SRA to help inform the decision as to whether the candidate is competent.
- Finally, there should be a requirement that the work experience supervisor should not have been subject to disciplinary proceedings that have been found proven, nor should there be disciplinary proceedings pending against them.

In light of the above points, the supervision requirements do not reflect the SRA's policy framework as set out in the last consultation response.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

No comments.

A new route to qualification: New regulations

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

26 July 2017



For further details

Should you require any further information, please contact;

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May 2017

Introduction

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

Q1: Do you agree that these regulations implement the agreed policy framework for the SQE?

3. Due to the impact the SQE will have on the qualifications market, making it “more complex to navigate,”¹ CILEx would welcome clarity regarding exemptions from the SQE. Whilst applications for exemptions will be handled by the frontline regulators, we would welcome clarity around the process and criteria for exemptions and likely timescales.

Q2: Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

4. CILEx welcomes the use of outcome-focused criteria on which applicants will be measured and assessed to ensure that individuals have the competence and knowledge required in order to be a solicitor. As a result, we feel these same outcome-focused criteria should be applied to qualifying work experience in order to ensure that the SRA avoids a potential conflict with the LSB and their guidance.

¹ Bridge Group, March 2017 <https://www.sra.org.uk/documents/SRA/research/monitoring-maximising-diversity.pdf>

- 4.1. CILEx notes that the use of inputs to measure the legitimacy of the qualifying work experience aspect of the regulations may conflict with the Legal Services Board's (LSB) Guidance on regulatory arrangements for education and training issues under section 162 of the Legal Services Act 2007.²
 - 4.2. The LSB's guidance calls for "an outcomes-driven approach to regulation," however the use of requirements listed in paragraph 2.1 of Annex 1 which provides measures for whether qualifying work experience can be considered valid or not, appears to conflict with the guidance set out by the oversight regulator.
 - 4.3. The requirements that qualifying work experience must; "comprise experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitors; be of a duration of a total of at least two years full time or equivalent; and be carried out under an arrangement or employment with no more than four separate firms, educational institutions or other organisations," may conflict with the LSB's guidance, but could also be considered unnecessary.
 - 4.4. As a result of the LSB's guidance, the SRA may consider it more appropriate to provide outcome-focused requirements that, for example, require eligible candidates to have reached Level 3 of the SRA's Threshold Standard for solicitor competence, and this could subsequently be confirmed by an appropriate member of the organisation at which the experience was gained.
5. CILEx has concerns over the criteria used in order to list the number, and role of individuals who are able to provide confirmation in the prescribed form of the period of work experience for candidates hoping to qualify as solicitors.
 - 5.1. Paragraph 2.2 of Annex 1 specifies that only, "the organisation's COLP; a solicitor working within the organisation; or a solicitor," are able to carry out the required confirmation.

² LSB, March 2014, http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

- 5.2. The role of overseeing and authorising the work of trainee solicitors is currently performed by Chartered Legal Executives as well as solicitors in firms around the country. They work as training managers, supervisors, heads of learning and development, and of course as partners.
- 5.3. It is entirely consistent therefore to assume that the ability to suitably judge whether an individual has been able to develop some or all of the prescribed competences required of solicitors, can also be conducted by a Chartered Legal Executive.
- 5.4. No evidence of poor practice or inappropriate use of this ability from non-solicitors has been put forward, and so CILEx does not see a justification for a firm to be restricted to only allowing confirmations from solicitors and/or COLPs.
- 5.5. As a result, CILEx recommends that the list of individuals who are able to provide confirmation in the prescribed form of the period of work experience for candidates hoping to qualify as solicitors should reflect current practice and include Chartered Legal Executives.

Solicitors Regulation Authority Consultation on the
rules and principles of the Solicitors Qualifying
Examination

A response by:

CILEx Regulation

26 July 2017

Introduction

1. CILEx Regulation is the regulatory body for the Chartered Institute of Legal Executives (CILEx). CILEx is an Approved Regulator under the Legal Services Act and is able to grant practice rights relating to litigation, advocacy, probate, reserved instrument activities and the administration of Oaths. It has delegated its regulatory functions to CILEx Regulation as it is required to do by the Legal Services Act.

Background

2. The Solicitors Regulation Authority (SRA) is proposing changes to the way in which individuals qualify to become solicitors. Under the proposals, individuals seeking admission as solicitors will be required to demonstrate knowledge and competence through the Solicitors Qualifying Examination (SQE), which will be assessed by an assessment organisation appointed by the regulator. They will also be required to demonstrate a degree (or equivalent), 2 years of qualifying work experience and character and suitability requirements. This is a change from the current requirements, whereby applicants may be admitted if they hold a qualifying law degree (or equivalent), have successfully completed the Legal Practice Course (LPC) and have completed a training contract.
3. Under the current process for admission as a solicitor, Chartered Legal Executives are exempt from the training contract requirements, provided they can demonstrate the equivalent knowledge gained through a qualifying law degree (usually through completion of the GDL) and hold the LPC qualification.
4. CILEx Regulation is keen to ensure that the opportunity for Chartered Legal Executives and CILEx Practitioners (individuals regulated by CILEx Regulation to practice in their specialist area of law independently) to cross-qualify as a solicitor is retained. CILEx Regulation has met with the SRA to have preliminary discussions on the future of the exemptions currently available to the regulated community and is optimistic that exemptions will continue, albeit different from the current exemption arrangements.
5. This response, sets out the views of CILEx Regulation on the SQE and the resulting impact on the current exemption arrangements available to Chartered Legal Executives and CILEx Practitioners.

Question 1: Do you agree that the regulations implement the agreed policy framework for the SQE?

6. The purpose of the new regulations is to implement the SQE, providing the overarching regulatory framework to support that implementation. The regulations do not include the transitional arrangements, which will be consulted upon separately and CILEx Regulation will respond to the consultation on the transitional arrangements once available.

7. The regulations set out the requirements for admission as a solicitor and include separate arrangements for qualified lawyers seeking cross qualification as a solicitor. The accompanying principles provide additional information on the process for obtaining exemptions available from some or all of the qualification requirements.
8. The arrangements appear to be appropriate to enable the SRA to implement the SQE, subject to 2 clarifications:
 - i. The SRA has stated that only a COLP or solicitor is able to confirm the qualifying work experience aspect of the new requirements. This is a change from the current arrangements and CILEx Regulation would suggest that any authorised person as defined under section 18 of the Legal Services Act 2007 should be able to confirm that the qualifying arrangements satisfies the SRA's requirements, whether or not they are the COLP.
 - ii. CILEx Regulation understands that the SRA is not proposing to 'level' the SQE against the national qualification frameworks, but is proposing to assess exemptions for qualified lawyers for both content and standard. CILEx Regulation would like more detail as to how the standard will be objectively assessed for the SQE as against qualification arrangements for other qualified lawyers. This is particularly important to enable the exemptions available to Chartered Legal Executives and CILEx Practitioners to continue.

Question 2: Do you have any comments on the proposals for recognition of the knowledge and/or competences of qualified lawyers.

9. It is noted that the SRA is reserving the right to charge an administrative fee for the recognition of exemptions and CILEx Regulation would be interested to understand more detail in relation to the operation of this fee for:
 - Regulatory bodies seeking exemption for qualified lawyers it regulates
 - Qualified lawyers seeking to cross-qualify using a mapped exemption
 - Individuals seeking qualification as a solicitor using the exemption route
10. CILEx Regulation is keen to ensure that its regulated community are not adversely affected by the introduction of the SQE and that the exemptions available under the current arrangements will have at least equivalent recognition under the new arrangements, taking into account any regulatory risk in so doing.

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Publication

CILEx Regulation is happy for the content of this response to be published and attributed as part of the SRA's response and analysis.

The City Law School City, University of London

Response to: A new route to qualification: New regulations

The City Law School, City, University of London again welcomes the opportunity to present its response to the Solicitors Regulation Authority's consultation on its proposed Authorisation of Individuals Regulations and principles following the decision to introduce the Solicitors' Qualifying Examination.

As stated in previous responses to consultations, we continue to have concerns about both the proposed introduction of centrally set assessments and requirements for vocational and professional evaluation, and the underlying case made for the introduction of the SQE.

The SRA has still not made the case for the SQE's introduction, having ignored concerns raised by an overwhelming number of responses to the SRA's second consultation. The SRA has still to argue its case that the new route to qualification will result in cost savings, widen participation and not risk two divergent routes to be taken by providers of law degrees and so erode the liberality of law degrees by, in effect, narrowing the field of subjects to be studied.

Question 1: Do you agree that these regulations implement the agreed policy framework for the SQE?

Accepting that the SRA is continuing with its decision to introduce the SQE, the proposed regulations do appear to achieve the SRA's intended aim of introducing the SQE as it is currently articulated.

The SRA should however continue to be cautious in its overall approach to the SQE's introduction. It is educationally unsound to introduce the assessment process in the manner the SRA are proposing, namely by setting a syllabus before any assessment regime has been fully formulated. Greater clarity is still required, and soon.

There are significant risks that the proposed methods of testing for SQE 1 will lead to courses that are specifically designed as 'crammers' and will coach candidates towards a final assessment, benefiting only those candidates capable of leading in a vacuum. The SQE 1 is looking to remove the test of the application of knowledge and provision of advice currently encompassed within a degree and the LPC; it is highly unlikely that any computer based MCT assessment will achieve a similar level of demonstration of competence. The current SQE 1 proposal will not provide an adequate pre-legal work experience training for the development of competences needed for a practicing solicitor, such as the analysis and evaluation of practice based problems such that candidates will be capable of demonstrating their ability to formulate sound and robust advice. This will be to the detriment of the candidate and the wider public. The removal of elective subjects from the SQE 1 will result in a lower understanding of key practice areas than currently under the current regime.

One further concern relates to the separation of the provision of training in preparation for the SQE and its assessment. The responsibility for the assessment provision should not be with any organisation that provides training; to be able to provide both is a conflict of interest and the market perception will see such an organisation as being so advantaged and will to the detriment of the student, competition and quality.

Question 2: Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Concern must centre on current proposal that the qualifying work experience need only provide the 'opportunity to develop the prescribed competencies' (2.1).

The need to only have gained the 'opportunity' will not mean that the potential qualifying solicitor has either experienced or gained such prescribed competencies nor indeed learnt from those 'opportunities'. As a consequence, such individuals may still be potentially successful in the SQE 2 but unable to demonstrate the level of competencies that the SRA is seeking to achieve. This is not in the profession's or public's interests.

The removal of responsibility vested with training supervisors is a retrograde step. The SRA criticises the current route for qualification as creating a bottleneck at the LPC, the lack of clarity and the need to only have had an 'opportunity' will surely push such perceived bottlenecks up the chain. The SRA must consider the need to increase the role of the supervisor in both ensuring that such opportunities for gaining experience have been taken and for in their agreeing the competencies attained by the individual; the SQE 2 alone will not be a safeguard to the public at this stage.



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26th July 2017

By e-mail only: consultation@sra.org.uk

Dear Mr Pearce

**CLLS TRAINING COMMITTEE RESPONSE TO THE SRA CONSULTATION: A
NEW ROUTE TO QUALIFICATION: NEW REGULATIONS**

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.

Consultation question 1

Do you agree that these regulations implement the agreed policy framework for the SQE?

As we understand it the agreed policy framework is that the SQE is a centralised and standardised independent assessment with four criteria for eligibility for admission, which are:

1. Passing the SQE;
2. Holding a degree or equivalent qualifications or experience;
3. Completing qualifying experience; and
4. Character and suitability requirements.

The aim of these requirements is to assure the profession, employers and the users of legal services that all qualifying solicitors, regardless of the pathway or background will have met consistent, high standards.

The regulations, a draft of which is set out in the consultation, need to be drafted in a way that ensures that the framework is implemented to reflect the aims of the framework. In some respects, we think that the draft regulations introduce so much flexibility that they will fail to deliver the consistency and certainty that the policy framework has set out to achieve and in other ways, the high standards that they set out to achieve.

It might be argued that the considerable amount of latitude built into the draft regulations risks undermining the requirements themselves.

Our comments on the draft regulations will illustrate this.

Draft SRA Authorisation of Individuals Regulations 2017

Eligibility for admission

1.1(a):

1. What does “satisfactorily” passed add to “passed”? The word “satisfactorily” should be deleted since it appears to suggest that there is an additional subjective element to passing the SQE.
2. Is it still a requirement that SQE1 must be passed in one sitting? There is no reference in the draft regulations to this requirement. On the contrary, we see that in relation to the recognition of qualified lawyers, the notion of components now feature in the recognition of their qualifications. This requirement should be added.

1.1(b):

1. The requirement to have a degree can be satisfied by equivalent qualification or experience. We have emphasised in the past the importance of degree courses for the analytical and problem solving skills that they teach since they are essential skills for solicitors. We have also seen that the SRA has acknowledged this and has recently introduced the requirement. We can see that other qualifications could be treated as equivalent to a degree. However, it is hard to see how equivalent experience can be found to be equivalent to a degree and especially without having another qualification to demonstrate it. We see this option as resulting in inconsistency in the standard setting for those holding a degree and those deemed to be equivalent by reference to experience. We suggest that this option is deleted.
2. The basis on which qualifications will be treated as degree equivalent should be clear and explicitly stated.

Qualifying work experience

2.1(b):

It would appear from the draft regulations that qualifying work experience (QWE) can start and finish at any time before seeking admission. This means that it can accrue any time before SQE1 is taken and be completed any time after SQE2 is taken and passed, in other words without reference to the SQE at all. We question the quality of any work experience before any law studies or training has been undertaken.

The QWE is one of the four criteria for admission and therefore to meet the consistent high standards which is the objective of the policy framework (and applicable to the QWE), there should be more focus on the intrinsic quality of the QWE. This includes the stipulation to undertake QWE once some law has been learned and in a legal environment (see further under 2.1(c) below).

So as to ensure that the QWE is of itself good quality, no more than six months QWE should count towards the two years before SQE1 has been taken/passed.

2.1(c):

1. We remain unconvinced that QWE gained in a number of different organisations will result in the same quality of workplace experience for the reasons given in our response to the previous consultation. These were that the quality of work experience will be better where it is gained consistently and progressively in one organisation without the disruption resulting from starting again at another organisation. We said that short periods of experience are likely to result in a poorer quality of learning by virtue of their disjointed nature.

Therefore, since it is proposed that QWE can be gained in up to four different organisations, we think the regulations should state a minimum duration with each organisation. We suggest that paragraph 2.1 (c) is amended to read: “be carried out under an arrangement or employment with no more than four qualifying organisations and with a minimum duration of six months in each qualifying organisation.” A “qualifying organisation” would be defined as an organisation regulated by the SRA or any other organisation which employs a solicitor under whose supervision the person undertakes qualifying work experience.

2.2:

1. Paragraph 2.2 requires the opportunity to develop some or all of the competences. An *opportunity* to develop competences is not the same thing as developing some or all of the competences because having an opportunity to do something is not the same thing as doing it. It is not therefore, by definition, gaining experience.

It is also not satisfactory to have the opportunity to develop “some or all” of the competences. An aspiring solicitor might only develop a limited subset of the competences on that definition. It might be argued that the person would then fail SQE2. But that is a dangerous assumption and will only be capable of proof long after SQE2 has been up and running.

Paragraph 2.2 should refer to ...”given you the experience to develop the prescribed competences....”

2. The requirement for giving the confirmation under paragraph 2.2 is an onerous one and the consequences of and possible sanctions in connection with giving it should be clear.

2.2(b):

1. The word “organisation” is not defined so whilst the reference to the organisation’s COLP must mean an entity regulated by the SRA, that is not necessarily the case in paragraph 2.2(b). If the organisation in question is not SRA regulated then confirmation from a solicitor working within the organisation is quite different from the requirement that the QWE is undertaken under the supervision of a solicitor. To ensure quality QWE, aspiring solicitors should work under the supervision of a solicitor if the organisation is not SRA regulated. It is inadequate simply for there to be a solicitor in the organisation but who has no day to day responsibility for the experience that is being gained and the supervision of the work being undertaken.

2.2(c):

1. Paragraph 2.2 (c) should be deleted altogether. The SRA has previously stated that the QWE should be undertaken either in an organisation regulated by the SRA or under the supervision of a solicitor (see e.g. para.106 of the second consultation). The invaluable experience of QWE seems now to be universally recognised as a way of aspiring solicitors assimilating learning from their peers.

It is hard to envisage how QWE can take place in an organisation where there are no solicitors. In that situation, it is difficult to see how they could be doing solicitors’ work and therefore gaining relevant experience. It is surely a bizarre notion that experience of solicitors’ work can be gained without learning it from those who are qualified to practise it. Undertaking QWE anywhere and simply being signed off by a solicitor who has not supervised the person concerned nor has the reassurance that the experience was gained in an organisation which understands the codes and ethics of conduct that are required in an organisation regulated by the SRA, falls well short of what the QWE requirements should be.

Additionally, it would appear that the requirement for a Training Principal will be abolished. Under paragraph 2.2(c) it is replaced by the requirement for a confirmation by any individual solicitor. This puts a great deal of additional responsibility (and arguably unfair responsibility) on every solicitor who might be asked to give the confirmation.

Furthermore, the confirmation comes at the end of the QWE which gives no opportunity to put right any shortcomings or omissions from the QWE under paragraph 2.2(c) by contrast to the situation where a solicitor has also been the supervisor throughout or the individual has worked in an organisation regulated by the SRA.

In summary, the draft regulations frame QWE in terms that allow QWE in a form far removed from its essential elements, which are a two year fixed period of quality legal experience in a law firm or other similar legal environment where the experience can properly be learnt from practising solicitors.

We believe that the SRA in its efforts to widen access has gone too far in watering down qualifying work experience.

Consultation question 2

Do you have any comments on the proposals for recognition of the knowledge and competencies of qualified lawyers?

Generally

Annex 2 is not referred to in the draft regulations and so how will the principles set out in Annex 2 apply to the recognition of the knowledge and competences of qualified lawyers? Annex 2 does not seem to have any standing.

The rules for qualified lawyers are markedly different to the rules for the domestic route through the SQE. This will lead to inconsistencies in the qualifications and experience of the domestic route and those of the qualified lawyers' route, which is something the SQE policy framework sets out to eliminate. There are no exemptions for UK law degrees for any part of the SQE, yet there are exemptions for overseas qualifications. It appears possible to determine no "substantive difference" for overseas qualifications but not for components of UK law degrees. Professional experience is capable of satisfying the SQE for qualified lawyers but not for domestic candidates. Domestic candidates will need to undertake two years' QWE, qualified lawyers will not.

We believe that the SRA should look again at the requirements for qualified lawyers.

These observations are also picked up in our comments on the specific provisions below:

3.1(b):

There appears to be no requirement for a qualified lawyer to have completed any period of QWE. We had thought that the SRA intended to require two years' work experience. We see no reason for not making it a requirement in the same terms as the domestic requirement. Not to do so, is further evidence of inconsistency in standards which the SQE standards set out to eliminate.

Paragraph 5 of Annex 2 suggests that qualified lawyers will typically have a minimum of two years' professional experience. But this is not a fixed stipulation and is not a separate requirement but instead a means of gaining exemptions from the SQE. The reference to two years becomes meaningless if expressed as a "typical" requirement and can be less if the candidate can demonstrate to the SRA that he or she has developed the competences in less time.

3.2:

Paragraph 3.2 refers to the SRA being satisfied but no criteria are specified. The consequence is that the requirement is entirely subjective and therefore candidates have no basis on which to determine in advance what criteria will be satisfactory and what the standards are they need to meet. The criteria on which this is based should therefore be specified. The consultation refers to principles in annex 2 but as already noted, there is no cross-reference to the principles in the draft regulations and in any event the principles do not refer to any criteria.

Annex 2:

Paragraph 3:

1. It is not clear what constitutes "an individual component" when referring to the SQE1 or SQE2. This should be defined.
2. It is not clear how the professional qualification must cover content which is not "substantially different". To take property law or contract law as examples, does it mean that the law itself must not be substantially different from the equivalent English and Welsh property or contract law? If so, this means presumably that it will be difficult to satisfy as home qualification law content will need to be virtually the same as English and Welsh equivalent law. This needs further clarification.

Paragraph 4:

Again the expression not "substantially different" is used with reference to acquired professional experience without setting out the criteria on which this will be based. Again, the criteria on which this is based should be specified.

Paragraph 6:

Paragraph 6 provides that where necessary, there will be an English language test requirement imposed for qualified lawyers whose professional qualification(s) or professional experience we have recognised as equivalent to all of SQE 2. This will take place post-admission, at the point applicants apply for a first practising certificate.

There is no information provided on the level of English required, which is unsatisfactory. It is also too late to have a test post-admission. It should be done as part of the requirement to qualify.

Remarks on the consultation paper itself

The consultation paper contains some important issues but it does not have any standing by reference to the draft regulations. We therefore ask how the SRA intends to embed them into the framework: for example, in relation to the “support package” to include case studies and guidance.

Furthermore, it is said that the case studies and guidance will relate to QWE and the SRA policy on recognising qualified lawyers but it should also identify the criteria for determining how the SRA will be satisfied on degree equivalence. These are all equally important.

Finally, we are inclined to think that it would be fair to charge an administrative fee to qualified lawyers applying for admission.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY TRAINING COMMITTEE

Training Committee Members

Chair: Ms H. Kozlova Lindsay (Berwin Leighton Paisner LLP)

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Ms. L. Gerrand (DLA Piper UK LLP)

Ms. R. Grant (Hogan Lovells International LLP)

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21 July 2017

Response of Freshfields Bruckhaus Deringer LLP to the SRA's consultation "A new route to qualification: New Regulations" (the *Consultation*)

Freshfields Bruckhaus Deringer LLP (SRA ID 484861) (*Freshfields*) is an international law firm with over 2,000 lawyers in 28 offices around the world. The Freshfields London office employs approximately 600 lawyers, 160 trainee solicitors and 60 paralegals. We offer approximately 80 training contracts per year. We also have a Legal Services Centre in Manchester, where we employ approximately 50 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 and we also employ a number of lawyers qualified in foreign jurisdictions. 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 a clear regulatory framework for the new process of solicitors qualifying in England and Wales, including that solicitors meet a consistent and high standard at the point of qualification and that individuals have the right knowledge and skills when entering the profession. It is important that all stakeholders, including consumers, clients, education providers, firms and other legal systems, maintain confidence in solicitors qualified in England and Wales. Accordingly, the SRA will need to ensure that all stakeholders have confidence in the regulatory framework by which individuals will qualify as a solicitor under the new SQE regime.

We strongly support the SRA's goal of improving access to, and the diversity of, the profession.

It is critical that the workplace training requirements are capable of producing well-rounded solicitors who have had a range of qualifying work experience, regardless of the context in which they undertake that work experience. 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 remains high, which will become of even greater importance after the United Kingdom's exit from the European Union.

1. Consultation Question One: Do you agree that these regulations implement the agreed policy framework for the SQE?

1.1 To ensure the SRA meets the aims of the Consultation as well the objectives for implementing the new regime set out in the SRA's decision on the SQE consultations published in April 2017 ("*the Decision*"), we consider that it is necessary to make a small number of changes to the Draft SRA Authorisation of Individuals Regulations [2017] ("*the Draft Regulations*") set out at Annex 1 of the Consultation.

1.2 Our proposed amendments to the Draft Regulations are attached at **Appendix One** and we set out our reasoning below.

Draft Regulation 1 - Eligibility for admission

1.3 Draft Regulation 1.1(a) refers to "*an assessment*" rather than the SQE. To avoid ambiguity, we suggest that "*an assessment*" is replaced with "*Solicitors Qualification Examination*".

1.4 Draft Regulation 1.1(d) states that before admission as a solicitor the SRA needs to be satisfied as to the character and suitability to be a solicitor. We agree with the SRA's decision 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.

1.5 Under the current Regulations, the Training Principal is required to declare, as regards to each candidate, that "*to the best of my knowledge the trainee is of proper character and suitability to be admitted as a solicitor*".¹ We consider that, in addition to any declaration by the candidate, those identified at Draft Regulation 2.2(a)–(c) should also be required to make this declaration, to the extent of their knowledge, as this endorsement of an individual's moral and ethical character underpins his or her eligibility to enter the profession. We have suggested wording to this effect by inserting a new paragraph 2.4 into our proposed amendments to the Draft Regulations.

¹ Application for admission as a solicitor and for a practising certificate (AD1 Form), Page 4.

Draft Regulation 2 - Qualifying work experience (“QWE”)

- 1.6 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 support the SRA’s decision to retain a period of QWE as a requirement for admission as a solicitor. The regulatory framework must be clear on what constitutes QWE and who is eligible to confirm this requirement has been satisfied.
- 1.7 Draft Regulation 2.1(a) states that QWE must comprise experience of providing legal services which allows a candidate the opportunity to develop “*some or all*” of the prescribed competences for solicitors.
- 1.8 Ultimately, whether a candidate has developed the competence required of a solicitor will be judged by whether he or she passes the SQE. However, QWE is intended to ensure that all candidates have the skills to practice as a solicitor. In our view, it cannot be right that the QWE covers only some of the requirements set out in the Statement of Solicitor Competence. It is surely not the intention of the Draft Regulations to create a situation where a prospective solicitor could, for example, have the opportunity to develop technical legal skills during his or her period of QWE, but not ethics, professionalism and judgement.
- 1.9 Our view is that as a minimum the Draft Regulations should state that the individual has had the opportunity, over the course of one or more periods of QWE, to develop “*all*” (rather than “*some or all*”) of the prescribed competences. This proposed amendment removes the ambiguity as to the number of competences the individual is required to have had the opportunity to develop and ensures that the individual has had practical experience in all the competences required to be a competent solicitor at the point of admission. It will also focus the minds of those providing QWE (be they law firms, legal advice clinics, education providers or others) on the desirability of providing broad and inclusive training.
- 1.10 In the event that the QWE is undertaken at more than one organisation, the respective declarations should collectively evidence that the individual has had the opportunity to develop all of the prescribed competences, even if the declarations individually only state that the individual has had the opportunity to develop some of these. Accordingly, the prescribed form of confirmation must be adequately detailed to enable the declaring organisation to specify which prescribed competences are in its scope. We have suggested amendments to the Draft Regulations to clarify this.
- 1.11 It will be important that the SRA publishes detailed guidance to enable firms and organisations to make such declarations with confidence. This will also enable firms and organisations to justify to individuals their refusal to make a declaration, or the exclusion of certain prescribed competences from the scope of their declaration, where a period of work experience has not provided adequate opportunity to develop the prescribed competences. Firms and organisations 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 guidelines.

- 1.12 Draft Regulation 2.1(c) states that the QWE can be carried out under an arrangement or employment with an “*education institution*”. We draw from the Decision that the SRA’s intention is that time spent in a range of workplaces under the overall supervision of a university could count as a single placement.² The SRA’s stated purpose of QWE is to “*socialise candidates into the legal profession, expose them to ethical problems and make sure they have the opportunity to develop the competences set out in the competence statement*”. The SRA will need to ensure that QWE undertaken at education organisations meets that objective.³
- 1.13 Draft Regulation 2.2(c) states that in the event that a solicitor or COLP in an organisation cannot confirm the period of QWE “*a solicitor*” can make such a declaration. We agree with the SRA that the requirements should be as flexible as possible to avoid creating unnecessary barriers to qualification.⁴ However, such flexibility should not come at the cost of ensuring that the QWE is substantive and adequately supervised. If work experience is not supervised by a solicitor or COLP, whether that person is an employee or working under an alternative arrangement, for example a volunteer, we do not consider that the work experience would meet the purpose of QWE as set out in the Decision. We cannot envisage a situation where an individual has had the opportunity to develop the prescribed competences, but has not been supervised by a solicitor.
- 1.14 We accept that there may be circumstances where a solicitor who is not employed by the relevant organisation may supervise an individual’s QWE, for example volunteering at a law centre or on a pro bono secondment. However, we think that every organisation which provides QWE should nominate a single individual solicitor to take responsibility for the quality of the work experience provided and we have suggested amendments to the Draft Regulations accordingly.
- 1.15 We have also sought to make it clearer that there may be multiple confirmations given in respect of a given student, which, taken together, will confirm that he or she has had the opportunity to gain experience in all of the prescribed competences (but which, individually, need not certify that he or she has gained experience in all competences over the course of a single period of QWE). It would be for the student to maintain a dossier of those confirmations, which could perhaps be checked by the SRA as a precondition for the candidate’s qualification as a solicitor (although we have not suggested drafting to this effect).

Draft Regulation 3: Eligibility for admission of qualified lawyers

- 1.16 We support the SRA’s decision to exempt foreign qualified lawyers from sitting the SQE upon the SRA being satisfied that the individual meets “*all of the*” prescribed

² The Decision, Page 10.

³ The Decision, Page 9.

⁴ The Decision, Page 9.

competences, rather than “*some of the*” prescribed competences as currently stated in Draft Regulation 3.2.

2. Consultation Question 2: Do you have any comments on the proposal for recognition of the knowledge and competences of qualified lawyers?

2.1 We support the SRA’s decision to exempt foreign qualified lawyers from sitting the SQE upon the SRA being satisfied that the individual meets all of the prescribed competences. The Draft Principles set out a clear framework for enabling this.

2.2 It will be important that any reciprocal qualification arrangements with foreign law societies and/or regulatory bodies are automatically preserved under the new regime, particularly given the United Kingdom’s imminent exit from the European Union.

2.3 It will be important that the SRA publishes detailed guidance to ensure firms, individuals and foreign regulatory/professional bodies have clarity on what information and evidentiary support is required and the form of such an application.

Yours faithfully

Freshfields Bruckhaus Deringer LLP

Appendix One – Proposed amendments to Draft Regulations

Draft SRA Authorisation of Individuals Regulations [2017]

Part 1 - Admission as a solicitor

Eligibility for admission

1. Eligibility for admission

1.1 You will be eligible for admission as a *solicitor* if:

- (a) you have satisfactorily passed ~~an assessment~~ the Solicitors Qualification Examination which is designed to assess your competence against the *prescribed* competences for *solicitors* and is conducted by an assessment organisation appointed by the *SRA* for the purpose;
- (b) you hold a *degree* or qualifications or experience which the *SRA* is satisfied are equivalent to a *degree*;
- (c) you have completed qualifying work experience which meets the requirements of regulation 2; and
- (d) the *SRA* is satisfied as to your *character and suitability* to be a *solicitor*.

2. Qualifying work experience

2.1 Qualifying work experience must:

- (a) comprise one or more periods of work experience of providing legal services which, taken together, provides you the opportunity to develop all of the *prescribed* competences for *solicitors*;
- (b) be of a duration of a total of at least two years full time or equivalent; and
- (c) be carried out under an arrangement or employment with no more than four separate firms, educational institutions or other organisations.

2.2 In respect of each organisation under 2.1(c) above, you must arrange for confirmation in the *prescribed* form ~~of the that the~~ period of work experience ~~carried out that you undertook with that organisation and that it~~ provided you with the opportunity to develop some or all of the *prescribed* competences for *solicitors* ~~;~~

2.2.3 Each conformation referred to under 2.1(c) above must identify which of the prescribed competences for solicitors you had the opportunity to develop during each such period of qualifying work experience and must ~~to~~ be given by:

- (a) where the organisation has a ~~the organisation's~~ COLP, that COLP; or
- (b) where the organisation does not have a COLP, by a *solicitor* working ~~within~~ the organisation who has been nominated for the purpose; ~~or~~

~~(c) — if neither (a) or (b) are applicable, a *solicitor*.~~

2.4 Each confirmation referred to under 2.1(c) must also state, that to the best of the knowledge of the person referred to under 2.3 who is giving the confirmation, you are of proper character and suitably to be admitted as a solicitor.

3. Eligibility for admission of qualified lawyers

3.1 You will be eligible for admission as a *solicitor* if:

- (a) you hold a legal professional qualification which confers rights to practise in England and Wales or in an overseas jurisdiction, that is recognised by the *SRA*; and
- (b) subject to 3.2, you meet the criteria in 1.1(a), (b) and (d).

3.2 If the *SRA* is satisfied that your qualifications or experience demonstrate that you meet ~~some or~~ all of the *prescribed* competences, we may decide you are not required to pass the assessment under 1.1(a) or such parts of it as we consider appropriate.

4. Commencement

4.1 These regulations come into force on a date to be determined in an order made by the *SRA* Board and such an order may bring these regulations into force at different times for different purposes.

To note: these draft regulations form the first part of the wider Authorisation of Individuals Regulations and we will consult on the other parts of these draft regulations in Phase Two of our wider Handbook review.

Glossary for draft SRA Authorisation of Individuals [20XX]

Glossary term

COLP
competences

degree

prescribed

qualifying work experience

Definition

means Compliance Officer for Legal Practice
means the competences in the Statement of
Solicitor Competence

means a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body

refers to mandatory standards which you
must meet in order to qualify as a solicitor
has the meaning set out in paragraph 2.2

A new route to qualification - New regulations

Response ID:74 Data

2. Your identity

Name of the firm or organisation where you work

German Bar Association

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:: German Bar Association

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

We highly appreciate that, according to Annex 2 "Principles ² of the draft, qualified Lawyers of EU Member States other than the UK may seek Admission. We would be highly pleased if such admissions were to be continuously granted after the Brexit.

A new route to qualification - New regulations

Response ID:77 Data

2. Your identity

Name of the firm or organisation where you work

Hogan Lovells International LLP

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

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

We feel it is important that both the structure and content of the regulations are clear and transparent, to assist those considering entering the profession.

We feel that the structure and status of the draft regulations need clarification, in that page 4 of the consultation describes Annex 1 (Regulations as 'broad principles' with the 'principles and policy to support them' set out in Annex 2 (the principles).

We feel that the current wording and its practical impact are not sufficiently transparent and that it may be too early in the process to formulate clear and efficient wording. We feel that clarity of drafting to help both domestic and international applicants will become easier once the final format of the SQE has been agreed between the SRA and the assessor organisation and once international arrangements are more settled. We recognise that the SRA will be providing case studies and supporting information, but we feel that a clearer indication of pathways should be apparent on the face of the regulatory wording. We do not feel that a flowchart of the requirements for a lawyer from a specific jurisdiction could be produced from the proposed wording alone. We feel it is difficult to gauge from the current wording how the SRA would in practice use its wide discretion. We are unclear as to the specific requirements for individual lawyers from particular jurisdictions – and as to how this will differ from the current position.

In relation to pages 5 and 6 of the Consultation together with Annex 1 (clause 3.2 and Annex 2, we would welcome greater clarity in respect of the basis on which qualified lawyers' professional experience and qualifications will be judged to be of 'no substantive difference' or to be 'equivalent to an individual

component' or to 'demonstrate... the prescribed competences', so as to provide a partial or full exemption from the SQE. Annex 1 (clause 3.2) gives a wide discretion to the SRA and we are unsure as to how the principles (Annex 2) are incorporated within the Regulations in Annex 1. We believe that the SRA's aim is to promote a consistent standard. The wording suggests that there will be less consistency of assessment required (and therefore potentially lower standards expected) of non-domestic qualified candidates than of those seeking a first qualification. This would seem to be a significant change from the system introduced by the SRA under the QLTS.

We also feel that the references to recognising 'qualified lawyers' are confusing, in that they appear to include those who are currently practising as SRA solicitors (that is, having already qualified under the current system).

In relation to the proposals for Qualifying Work Experience, we are concerned that the proposed Regulations (and in particular clauses 2.1(c) and 2.2(c)) are too lax for standards to be maintained. We do not feel that it should be open to any solicitor outside the organisation where the work was undertaken to sign off Qualifying Work Experience (QWE). We believe that work should be set and supervised by a qualified solicitor in order to count towards QWE and that it should be for the supervising solicitor (rather than 'a solicitor') to confirm that the QWE provided the opportunity to develop the required competences. We do not feel that a solicitor outside an organisation can have a sufficiently detailed knowledge of the work undertaken to be able to assess whether it gave a student the opportunity to develop the prescribed competences. There may also be issues of client confidentiality that would arise for students in seeking such confirmation.

While we support the aims of the SRA, we feel that the Regulations are creating a system of QWE that will not necessarily provide students with sufficient learning to be ready for practice as a solicitor, due to the risk of a lack of breadth in the competences that may be covered by the QWE and/or a lack of supervision and day-to-day guidance from a practising solicitor in each organisation.

For similar reasons, we feel that QWE should start only after a student has passed SQE Part 1 and obtained a degree (except for those following apprenticeships or other specialist/non-traditional pathways). As the content of SQE Part 2 is still to be finalised, it is too early for us to be confident that the SQE Part 2 examination will be a sufficient safeguard to ensure that students have reached the Threshold Standard.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Please also see our comments in relation to Question 1.

We feel that the status of Annex 2 is currently unclear and that the principles should be more expressly referred to in the Regulations in Annex 1.

As mentioned, we feel the term 'qualified lawyers' is confusing, in that it includes those who are already qualified as SRA solicitors.

We feel that there is a lack of clarity as to the requirements and as to the SRA's approach.

We feel that it is premature to consult on detailed regulatory wording when the individual 'components' (Annex 2, clauses 2 and 3) of the SQE have yet to be established. We are not clear as to the threshold for determining if content is 'not substantially different' (clauses 3 and 4).

We believe from clause 5 that candidates for re-qualification may be able to claim SQE exemptions even where they have not yet achieved two years' professional experience. (We note from Annex 1 (clause 3) that QWE will not be required of those seeking requalification.) Again, this suggests to us that a lower

standard may be required of such candidates than of those following the domestic route, which causes us some concern.

It is not clear to us where exemptions may or may not be available to individual lawyers qualified in other jurisdictions and how the position may differ from the current QLTS model.

In relation to the required processes, the practical impact of clauses 7 to 10 and how these differ from the current QLTS model are also not clear to us.

In relation to clause 6, we feel that any necessary English language tests should take place prior to qualification.

Response to the SRA consultation on "A New Route to Qualification: New Regulations" on behalf of Kaplan

Introduction

Kaplan fully supports the introduction of a Solicitors Qualifying Exam (SQE). We believe that the introduction of a national exam which is reliable, accurate and valid and which sets consistent and appropriate standards for admission as a solicitor is realistic and achievable as well as desirable. Our proposals for change to the Regulations should be viewed within the context of our overall support for the SQE and the approach adopted by the SRA.

1. Exemptions

1.1 Should exemptions be granted for prior education and work experience?

One of the key aims of the SQE is to ensure equivalent and appropriate standards at admission. Kaplan is of the view that any exemptions threaten this aim.

We therefore fully endorse the SRA's proposal to insist on candidates who are not already qualified in a recognised jurisdiction, passing the whole of the SQE to gain admission as a solicitor of England and Wales, irrespective of their qualifications or work experience. As the SRA stated in their October 2016 consultation around 110 Universities assess students on the qualifying law degree, the graduate diploma in law (GDL) and the legal practice course (LPC). And more than 5,000 firms are authorised to take trainees. Ensuring equivalence of standards across these bodies is not possible.

However, these arguments apply to at least the same extent, to those qualified in a recognised jurisdiction¹. At 29 March 2017 there were 170 recognised jurisdictions. We believe it will also not be possible to measure let alone assure equivalence of standards between these jurisdictions and the SQE.

In addition the current proposals lead to some unfortunate contradictions which could give rise to challenges in the courts. Degrees, qualifications and work experience gained in the home jurisdiction pre-qualification can give rise to exemptions. So barristers of England and Wales can claim exemptions for degrees, qualifications and work experience gained pre-qualification in England and Wales, but other candidates cannot.

Further as Annex 2 recognises many lawyers qualified in other recognised jurisdictions have also got relevant degrees, qualifications and work experience gained outside their home jurisdiction (including in England and Wales). It is unclear to us on the current drafting whether those qualified in another jurisdiction can also claim exemptions on the basis of degrees, qualifications and work experience gained pre-qualification in England and Wales, or whether they only can claim for these if obtained in their home jurisdiction. Either of the alternatives seems at some levels unsatisfactory. Either degrees, qualifications and work experience in England and Wales are seen as less valid than those obtained elsewhere. Or exemptions can be obtained for degrees, qualifications and work experience gained pre-qualification in England and Wales for those who later go on to qualify elsewhere but not for other candidates.

There are other difficulties with the current proposals. We heard anecdotally in particular from the New York Bar, that prior to the introduction of QLTS, UK law graduates would

¹ In this response we follow the approach used by the SRA in QLTS and include barristers of England and Wales as qualified lawyers in a recognised jurisdiction

take the New York Bar and then QLTT as a faster and easier route to admission as a solicitor of England and Wales. This practice largely stopped with the introduction of the QLTS assessments. The current proposals around exemptions would seem to encourage a return to this version of “forum shopping” to find an easy route to qualification.

On a practical level we would also point out that the current proposals to allow lawyers qualified in a recognised jurisdiction to apply for exemptions assessed by the SRA on an individual basis would be complex, time consuming and expensive to administer. At present around 1,700 QLTS candidates sit the MCT a year.

Exemptions should be kept to the minimum required by law. Without having taken detailed legal advice we believe for qualified lawyers² these to be those covered by the European Union (Recognition of Professional Qualifications) Regulations 2015. We have never encountered a suggestion that European freedom of movement principles are required by law to be applied to non-European countries. While restricting exemptions to those covered by the EU Regulations will not entirely remove some of contradictions and problems mentioned above, it would considerably reduce them, and the rationale for any resulting contradictions would be clearer.

Recommendation 1

Exemptions should be kept to the minimum required by law which, without the benefit of detailed legal advice, we believe are those covered by European Union (Recognition of Professional Qualifications) Regulations 2015.

1.2 How should the administration of exemptions by the SRA be paid for?

We note that the SRA is considering charging an administrative fee for qualified lawyers who apply for admission on the basis of recognition. We fully support this proposal and would suggest that exemptions, whether restricted to the EU or not, should be made fully self funding to avoid the cost impacting on the fee paid for the SQE by other candidates. This should be the case even if, as we would expect, the fee is considerable.

Recommendation 2

A fee should be charged for applications for exemptions so that they are fully self funding and the cost is not transferred to other candidates.

1.3 Where exemptions are granted should they relate to the whole or part of an assessment?

We fully endorse the SRA’s approach. Exemptions, where granted, can only be from the whole of an exam not part of an exam. And we agree with the SRA’s reasoning as to why this is the case. 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. In addition we would add that exemptions from part of an exam are also disproportionately expensive and time consuming to operate, adding to the overall cost of the assessment.

² As opposed to those covered by the decision in *Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova* [2003] ECR I-13467

We would however suggest a change to the wording where references are made to exemption from the "whole of an individual component of the SQE" as this could be open to misinterpretation. We suggest alternative wording that exemptions can only be granted from "the whole of an assessment which a candidate is required to pass in order to pass the SQE, not from sub-components of such an assessment".

Recommendation 3

We agree that exemptions where granted should be from only a whole exam not part of an exam. However the phrase "individual components" is open to misinterpretation. Where exemptions are granted they should relate to the whole of an assessment which candidates are required to pass in order to pass the SQE, not to sub-components of such an assessment.

2. Drafting points

2.1 Draft Regulations (Annex 1) at 1.1 (a) and corresponding points in the consultation:

Describing what the SQE is examining and who is running it is not necessary in the Regulations and would seem to run contrary to the SRA's principle of avoiding unnecessary detail. What is being examined and the way it is expressed may change over time and as such should be found in subordinate documents. Putting a fuller description in the Regulations also opens up areas for challenge. Certainly the description at 1.1 (a) of what is being assessed is not a full description.

Recommendation 4

Draft Regulations (Annex 1) at 1.1(a) delete "you have satisfactorily passed an assessment which is designed to assess your competence against the prescribed competencies for solicitors and is conducted by an assessment organisation appointed by the SRA for the purpose"; and substitute "You have passed the Solicitors Qualifying Exam". The same change to be made at other points in the consultation.

2.2 Draft Regulations (Annex 1) para 3.1 (a) and corresponding points in the consultation and Annex 2:

The current drafting would seem to exclude Scottish lawyers as neither qualified in England and Wales nor in an overseas jurisdiction. Also the drafting refers to "rights to practise" in general. Is the intention to cover all rights to practise, however restricted, and does this correspond with the list of "qualified lawyers" currently recognised by the SRA?

Recommendation 5

Change the drafting of Draft Regulations (Annex 1) para 3.1 (a) and corresponding points in the consultation and Annex 2 to ensure Scottish lawyers are clearly included. If necessary, change the drafting of "rights to practise" to ensure it covers only those intended.

2.3 Draft Regulations (Annex 1) para 3.1 (b) and corresponding points in Annex 2 and in the consultation:

Our understanding is that for a jurisdiction to be recognised there is a requirement that to qualify as a lawyer in that jurisdiction you have to have a degree equivalent to an English or Welsh Bachelors Degree.

Recommendation 6

Change the drafting of Draft Regulations (Annex 1) para 3.1 (b) and corresponding points in the consultation and Annex 2 to recognise that all candidates who are qualified lawyers from a recognised jurisdiction will hold a degree equivalent to an English or Welsh Bachelors Degree.

3. No work experience requirement for qualified lawyers

As an assessment organisation our primary concern is with the SQE exam, rather than the work experience requirement. In addition, we recognise that there are problems about certifying work experience gained in another jurisdiction. However, we would be concerned that imposing a work experience requirement (in addition to passing the SQE) on those qualifying via the domestic route but not on qualified lawyers could be challenged. Not all qualified lawyers will have two years work experience as part of their route to qualification.

4. Conclusion

We have made some suggestions for change to the Regulations implementing the SQE, particularly in relation to exemptions as well as some drafting points. However, our comments should be viewed within the context of our overall support for the SQE and the approach adopted by the SRA.

27.06.17

A new route to qualification - New regulations

Response ID:82 Data

2. Your identity

Surname

Newton

Forename(s)

Kathryn

Name of the firm or organisation where you work

Manchester Metropolitan University

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.: Manchester Metropolitan University

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

The proposed regulations are clearly drafted and easy to follow but the difficulty in answering this question in any meaningful way is the lack of content behind Reg 1.1(a) and 1.1. (c)

In terms of proposed Reg 1.1.(a) there is still insufficient information about the assessment in terms of its content, cost and methodology.

In terms of proposed Reg 1.1 (c) we remain concerned about

- the lack of information supplied on how developing safe skills for practice would be achieved. There is still no detail about the nexus between workplace training and the s2 SQE assessments. It is still not stated explicitly whether or how workplace training should contribute to the acquisition of Stage 2 competencies
- the lack of detail about the quantity or measurement of supervision and the possibility that this leaves open the risk of poor practice currently found in some areas such as conveyancing and personal injury work. This is potentially more acute as the employer has no obligation to pay the student and risks enabling a two tier system where some will get good quality training and others will not. How will this protect the public?
- 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.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

No

Response to the Solicitors Regulation Authority's Consultation:
A new route to qualification: new regulations

1. Do you agree that these Regulations implement the agreed policy framework for the SQE?

This is the third consultation which the SRA has conducted and this Society responded to both of the previous two consultations.

The SRA has announced that it is pressing on with the introduction of the SQE, as early as 2020, citing the alleged fact that most respondents to the first two consultations agreed with the SRA's proposal. This is untrue. While it is the case that most respondents (including this Society) cautiously supported the idea of a new qualifying examination, nearly 70% of respondents replied that the SRA's proposals for the SQE would not be an effective test of competence or the requirements for being a solicitor. Furthermore, this was not simply the view of universities but also that of the profession. The SRA has therefore ignored the views of most respondents and has decided to press on regardless.

The SRA asks whether their proposed Regulations implement the agreed policy framework for the SQE. On the face of it, they do because there will be a need for:

- (a) a degree or equivalent (not necessarily a law degree or equivalent)
- (b) passing SQE Stage 1
- (c) passing SQE stage 2
- (d) passing the SRA's tests as to character and suitability.

In practice, however, the SRA's proposals are substantially flawed and these flaws were pointed out in this Society's response to the SRA's second consultation on the SQE. In summary, these objections were:

- (1) The SRA has failed entirely to deal with the question of how candidates will prepare for SQE Stage 1. The SRA appears to envisage that SQE Stage 1 will be taken shortly after a candidate takes their final degree exams (in the case of a candidate taking a law degree) but the topics which are to be included in SQE Stage 1 go well beyond the contents of a law degree and include such subjects as ethics, the Code of Conduct and SRA Handbook, money laundering, regulation of financial services, confidentiality, data protection, file destruction, solicitors' accounts, costs budgeting in civil litigation, serving proceedings out of the jurisdiction, practice directions and pre-action protocols. These are areas which a candidate will only encounter once they start work and certainly will not encounter on a law degree. It would obviously be completely impossible for a candidate without proper preparation to take SQE Stage 1. The SRA's clear intention is to do away with the need for the Legal Practice Course and the expense of that, but the SRA has failed to explain how candidates will be in a position to take and pass SQE Stage 1 without a lengthy (and expensive) period of training. This would clearly create a two tier profession between those who do take a preparatory course before taking SQE Stage 1 (like the Legal Practice Course) and those who do not. Furthermore, how will those who do not take such a course manage to pass SQE Stage 1?
- (2) The SRA suggests that SQE Stage 1 could be limited to multiple choice. We do not agree and take the view that candidates should be tested out on their writing skills in particular, bearing in mind that such skills are a requirement of being a successful practising solicitor.

- (3) The SRA proposes that SQE Stage 1 will test out skills in dispute resolution either in contract or tort. In our view, these are such important subjects that contract and tort should both be tested out in the context of dispute resolution.
- (4) We do not agree with the SRA's proposal that a candidate would only have to choose two practice contexts out of five and that it should remain three as at present, at least one contentious and one non-contentious. We also propose that family law and employment law should be added as contexts for assessment under SQE Stage 2.
- (5) Assessing rights of audience skills by computer based assessment is in our view insufficient.
- (6) Although we are pleased to note that the SRA has accepted our suggestion that there should be work based training of at least 24 months after SQE Stage 1 and before SQE Stage 2, we are concerned that the SRA has not addressed the issue as to who would be responsible for signing the candidate off at the end of their workplace experience and what the significance of that would be (if any).
- (7) We are concerned that the SRA is proposing not to monitor courses at all. We take the view that the SRA needs to regulate 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 do not think it is sufficient for the SRA to simply publish results.

In addition, we are concerned that the SRA proposes to allow training in an organisation without a COLP or a qualified solicitor but the SRA fails to explain how this will provide sufficient safeguards as to the training provided.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

In our response to the SRA's second consultation on the SQE, we indicated that we did not see how there could be any exemptions from SQE Stage 1, given the extent of knowledge required by SQE Stage 1. We took the view, therefore, that no-one could be exempted from SQE Stage 1, particularly as it was the SRA's objective to ensure that there was one single gateway into the profession for all.

In relation to the recognition of the qualifications of foreign lawyers or students, in principle the SRA's proposals for testing out lawyers from other jurisdictions are acceptable but, again, more detail is needed as to how the tests will be applied.

26 July 2017

Regulatory Sub-Committee, Kent Law Society



Law Council
OF AUSTRALIA

Office of the President

21 August 2017

Solicitors Regulation Authority
Regulation and Education - Policy
The Cube
19 Wharfside Street
BIRMINGHAM B1 1RN
ENGLAND

By email: consultation@sra.org.uk

A new route to qualification – the Solicitors Qualifying Examination: New regulations

The Law Council of Australia appreciates the opportunity to respond to the Solicitors Regulation Authority's May 2017 consultation paper on proposed regulations to introduce the Solicitors Qualifying Examination (SQE) route to qualification for admission as a solicitor in England and Wales. We note that the new route to qualification will effectively replace the Qualified Lawyers Transfer Scheme, which Australian solicitors now use as a pathway to admission as a solicitor in England and Wales.

For many years the legal professions in both Australia and in England and Wales have encouraged the movement of legal practitioners between our respective jurisdictions, recognising the importance of developing the skills and experience of our legal practitioners, of enhancing the quality and range of legal services available to clients, and promoting the growth of the international legal services market.

While our respective "pathways" to admission to the legal profession and then to practise as a solicitor differ in some ways, the Law Council nevertheless encourages Australian governments and legal profession admitting authorities to adopt policies and procedures that strike a sensible and practical balance in accommodating those differences.

It is our wish that the introduction of the SQE route to admission in England and Wales will not add additional barriers for experienced Australian legal practitioners seeking recognition of their qualifications, training and experience for admission as solicitors in England and Wales. Similarly, our wish is that Australian admitting authorities will give due recognition to the SQE route to admission when considering applications by solicitors from England and Wales for admission to the Australian legal profession, and the Law Council urges the SRA to engage in dialogue with Australian authorities on this issue.

Recent legislative reforms in New South Wales and Victoria (which account for around three quarters of Australian lawyers) have sought to simplify the process for qualified foreign lawyers to gain admission and then practise Australian law. A foreign lawyer (including a solicitor from England and Wales) may for example, now obtain admission subject to appropriate conditions, which might include legal practice under a period of supervision, or

to obtain additional qualifications or training. This is one recent change that is intended to ameliorate difficulties admitted lawyers from England and Wales have previously experienced by being required by Australian admitting authorities to undertake additional studies or training before being considered eligible for admission. Other reforms have sought to expand the basis upon which a foreign applicant for admission might obtain exemptions from the standard academic qualifications and practical legal training prerequisites, based on the person's legal skills and experience in legal practice.

It is against the background of continuing to encourage and facilitate the movement of legal practitioners between our respective professions that the Law Council offers its comments on *Consultation Question 2* and the proposed regulations in Annex 2.

Overarching requirements

Under Regulation 2.1 of the *SRA Qualified Lawyers Transfer Scheme Regulations 2011*, a foreign legal practitioner seeking admission in England and Wales is presently required:

- to be a qualified lawyer in a jurisdiction recognised by the SRA;
- to have followed the full route to qualification in the recognised jurisdiction;
- to be entitled to practise as a qualified lawyer in the recognised jurisdiction;
- to have the requisite character and suitability for admission; and
- to have passed all QLTS assessments (subject to any exemptions granted by the SRA).

The *overarching requirements* for admission of a qualified lawyer under the SQE scheme, set out in Annex 2 are that the applicant:

- has a professional qualification which confers rights to practise in an overseas jurisdiction recognised by the SRA;
- demonstrates that he or she has the competencies set out in the Statement of Solicitor Competence, and the knowledge of English and Welsh law set out in the Statement of Legal Knowledge (which can be assessed either through the SQE or through consideration of knowledge, skills and competencies gained through professional qualifications or experience);
- has a university degree, or equivalent qualifications and experience; and
- satisfies the character and suitability requirements for admission.

The Law Council considers that the proposed requirements of the SQE route to admission will be broadly similar to those under the present Qualified Lawyers Transfer Scheme; i.e.

- Australia will continue to be a recognised jurisdiction;
- an Australian lawyer may be required to acquire additional academic knowledge in specific areas of the law of England and Wales, and/or in particular practice skills and competencies, which might be assessed through the SQE or verified in some other way; and
- all applicants for admission must establish their character and suitability.

Recognition of professional qualifications

The Consultation Paper notes that in order for the SRA to recognise a qualified lawyer's professional qualifications as equivalent to part or all of the SQE, a lawyer will need to demonstrate the extent to which the qualification he or she holds is equivalent to the whole

of the SQE, or to individual components of the SQE. To do this the lawyer will be required to:

1. establish that the *content* of the qualification is not substantially different to the areas of English and Welsh law set out in the Statement of Legal Knowledge and the competencies set out in the Statement of Solicitor Competence; and
2. establish that the *standard* achieved in obtaining that qualification is equivalent to Level 3 of the SRA's Threshold Standard.

The Law Council appreciates the SRA's decision that Australian professional qualifications will continue to receive automatic recognition, thereby alleviating the need for Australian legal practitioners to separately establish equivalence of their qualifications with the SRA requirements.

Recognition of professional experience

The Consultation Paper notes that professional experience in legal practice (which might be obtained either pre or post qualification) will be recognised where the applicant can demonstrate that the skills, knowledge and competencies acquired are equivalent to the corresponding parts of the SQE.

The Consultation Paper also notes the SRA envisages a qualified lawyer will typically need to have a minimum of 2 years' professional experience in order to demonstrate that they have satisfactorily developed these skills, knowledge and competencies to the equivalent SQE standard. Draft Regulation 2 (in Annex 1) provides that in demonstrating qualifying work experience a (local) applicant for admission will be required to arrange for the completion (by an organisation or a solicitor where the applicant has had work experience) of a prescribed form confirming that the applicant has had the opportunity to develop some or all of the prescribed competencies for solicitors.

In our view it will be essential that Australian legal practitioners contemplating admission in England and Wales clearly understand what kinds of documentary or other evidence they will need to furnish to the SRA to demonstrate equivalence of competencies. A prerequisite for admission to the legal profession in Australia is the satisfactory completion of a prescribed program of practical legal training, which focusses on the acquisition of particular knowledge, skills and values considered as essential for effective legal practice by an entry-level legal practitioner. It will be important for Australian legal practitioners contemplating admission in England and Wales to understand the extent to which the knowledge, skills and values obtained through a practical legal training program in Australia will be taken by the SRA to equate to the SQE requirements.

The Consultation Papers do not provide any detailed information about the basis on which the SRA might grant exemptions from some or all of the SQE components on the basis of actual experience in legal practice, or about the evidence that an applicant for admission will be required to provide to establish that they already satisfy some or all of the competencies set out in the *Statement of Solicitor Competence*.

We note, for example, that skills and experience in legal practice can be obtained in a variety of different ways and contexts. These might include completion of a compulsory period of post-admission supervised legal practice, specialist accreditation, experience in courts administration or with government agencies, experience in advocacy and litigation (including alternative dispute resolution), experience in managing or reporting to other lawyers, experience in legal profession regulation and experience in legal practice in multiple jurisdictions and legal systems.

Further, we note that the circumstances of employee legal practitioners will be markedly different to the circumstances of principals of law practices or sole practitioners. While it might be feasible (as contemplated by the SRA) for an employee legal practitioner to complete a prescribed form which can be endorsed by an employing organisation or supervising solicitor, we envisage that experienced legal practitioners, such as sole practitioners or partners of law firms with many years of post-admission professional experience might find it difficult to obtain a “supervisory” focussed endorsement.

The Law Council considers it essential that the SRA specify as soon as possible the kinds of skills and experience in legal practice (and how they might be verified) that will lead to SQE exemptions being granted to experienced Australian legal practitioners. In our view these requirements should be standardised as much as possible to maximise certainty and minimise the burden and cost for Australian legal practitioners in obtaining the verifiable evidence they need to present to the SRA.

The Law Council would welcome the opportunity to collaborate with the SRA as it undertakes its detailed design work on exemptions from particular areas of the SQE and the kinds of evidence an Australian legal practitioner will need to furnish to the SRA when applying for admission in England and Wales.

Solicitors from England and Wales seeking admission in Australia

The SQE system will open the possibility for people with more diverse backgrounds and experience to be admitted as a solicitor in England and Wales, particular for those who do not hold a tertiary qualification in law. We also note that the current training contract system is to be replaced by a period of qualifying work experience under the supervision of a solicitor or in an organisation regulated by the SRA.

The Law Council notes that these changes will diverge from the general approach taken by Australian admitting authorities to applications by solicitors from England and Wales for admission to the Australian legal profession. At present the academic qualifications and practical legal training outcomes for solicitors from England and Wales (and other countries) are assessed for their substantial equivalence to the Australian prerequisites, which are a tertiary qualification involving the equivalent of at least 3 years’ full-time of law (including 11 prescribed areas of academic knowledge) and successful completion of a program of prescribed practical legal training. While recognition can be given to experience in legal practice, it can be difficult for Australian admitting authorities to obtain objective, verifiable evidence of an applicant’s experience in legal practice that demonstrates the applicant’s skills and experience.

As mentioned earlier, legislative reforms in New South Wales and Victoria (which account for around three quarters of Australian lawyers) have sought to ameliorate the constraints imposed by the Australian requirements for admission, by enabling greater recognition of legal skills and experience in legal practice, or through conditional admission of foreign lawyers.

Our preliminary observation is that the SQE might provide a basis for objectively determining the extent of a person’s legal skills and competencies for legal practice and as such is a matter of considerable interest to the Law Council because of the way the outcomes of SQE testing might assist Australian admitting authorities in deciding applications by solicitors from England and Wales for admission to the Australian legal profession.

The Law Council would therefore appreciate an ongoing engagement with the SRA as the SQE testing system is developed and implemented, as well as on the development of SRA policies and requirements regarding recognition of the professional experience of Australian legal practitioners when seeking admission in England and Wales.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Fiona McLeod'.

Fiona McLeod SC
President



LawWorks Policy Consultation Response

A new route to qualification: New regulations **LawWorks response to the Solicitors Regulation Authority**

Introduction

LawWorks is pleased to respond to the SRA's consultation, *A new route to qualification: New regulations*, published in May 2017 ("Consultation"). We are focusing our response mainly on Question 1: "Do you agree that these regulations implement the agreed policy framework for the SQE?"

We share some of the doubts raised by other stakeholders about: the overall framework in respect of limited opportunities to gain study or training knowledge of social welfare law practice and issues (which we believe should be available as part of the foundational mainstream of legal training); the potential impact of the proposed changes on student pro bono work, and the capacity of students to reach high standards and ability to practice law in ways that serve the needs of the most vulnerable consumers. Our main concern is that both social welfare and family law practice, as specialist fields of legal advice and practice work, do require both knowledge-based learning as well as appropriate qualifying work experience, and that the proposed framework might not be able to accommodate the appropriate balance. We also have concerns over how the SRA envisages that law firms and NGOs might develop and fund a new training regime in these areas of law, given both the market restraints and the paucity of public funding in family and social welfare law.

However, we respect that the regulations and draft principles are intended to be a flexible policy framework for developing the SQE qualification route and that it is difficult to predict outcomes at this stage. Much will depend on guidance issued at a later stage.

About LawWorks

LawWorks is the operating name of the Solicitors Pro Bono Group. Our aim is to support access to justice through supporting and developing the contribution of legal pro bono. LawWorks has 20 years of experience in setting up pro bono clinics and has seen the positive impact of good quality, timely legal advice in social welfare areas of law, including housing, welfare benefits, community care, family, employment and mental health. LawWorks supports a growing network of over 220 independent clinics across England and Wales.

COUNSULTATION QUESTION 1

"Do you agree that these regulations implement the agreed policy framework for the SQE?"

We agree that the regulations implement an enabling "*framework*" for the SQE, the general policy for which having been determined following an earlier consultation. Clearly, the regulations do not contain information about much of the detail, with that detail to be handed down by the SRA, for example, in the form of a "*support package*" at a later date. As a consequence, the SRA does not appear to intend to consult further around the detail, say in the form of draft guidelines in respect of elements of the SQE about which stakeholders would be in a position to comment.

Overall, we would have preferred for the SRA to consult further on certain aspects of the SQE (and we would encourage the SRA to reconsider this issue), as it is conceivable that a "*support package*" could risk undermining the broader policy objectives already decided upon in the earlier consultation. Therefore, whilst we welcome the





SRA's decision to issue further information to assist the interpretation of the regulations, we wish to highlight some of the potential pitfalls below and make certain recommendations going forward.

An example of a potential pitfall is the meaning of "qualifying work experience". The SRA has determined in its earlier consultation that it will not be prescriptive or regulate (beyond these framework regulations) the market for "qualifying work experience". However, those responsible for signing off work experience under the regulations will inevitably look to any relevant guidance and/or "case studies," and will have to take decisions within a context and training offer that is shaped by the market of legal training and work experience providers.

The current draft regulations contained in Annex 1 appear to adopt a flexible approach to the issue of what constitutes "qualifying work experience". However the drafting of the regulation is essentially circular and leaves considerable ambiguity (see below). This may not be a problem for those organisations offering traditional training contract type arrangements, under which practitioners and firms will easily satisfy the definition. It is in relation to most novel situations - and a key point of these regulations is to encourage novel ways to gain work experience - that this issue becomes a factual question for individuals and organisations to determine.

As a consequence of the uncertain drafting of the regulations concerning the meaning of "qualifying work experience", practitioners and other individuals or organisations charged with certifying periods of work experience under the regulations could interpret the relevant sections either in an overly cautious and narrow way, potentially defeating their purpose, or interpret them very loosely. There is then a risk, for example, that some legal work experience providers could take advantage of students to perform essentially menial tasks.

Clause 2 states:

"2.1 Qualifying work experience must:

- (a) comprise experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitors;*
- (b) be of a duration of a total of at least two years full time or equivalent*
- (c) be carried out under an arrangement or employment with no more than four separate firms, educational institutions or other organisations....*

2.2 In respect of each organisation under 2.1(c) above, you must arrange for confirmation in the prescribed form of the period of work experience carried out and that it provided you with the opportunity to develop some or all of the prescribed competences for solicitors, to be given by:

- (a) the organisation's COLP;*
- (b) a solicitor working within the organisation; or*
- (c) if neither (a) or (b) are applicable, a solicitor."*

The phrase, "opportunity to develop" in 2.1(a) is ambiguous as to how a student might gain practical experience relevant to the prescribed competences for solicitors. We assume that there is an element of objective benchmarking implied in the phrase, by reference to the prescribed competences for solicitors, as well as the level of experience required; however it is not at all clear. Whilst the phrase appears to be broadly in line with the settled policy's general intention, namely not to regulate or prescribe the work experience stage of the SQE, we would hope that it should not be so loosely interpreted that occasional engagement in administrative support or observation work in a clinics/pro bono context (in contrast to more in-depth engagement in pro bono work) might be taken on its own to suffice as "opportunity to develop the prescribed competencies."

The SRA expressly envisaged in its earlier consultation that law clinics would provide the right





sort of environment for students to gain “qualifying work experience”; we strongly support this and agree that clinics can indeed provide the appropriate experience in the ‘qualifying work experience’ requirement. However, the range and type of law clinics in existence is such that even applying a simple “*duration*” test may not, in every case, be as straightforward an exercise as might appear to be the case at first glance. Student volunteers do not typically spend all their time over the period volunteering at a particular law clinic, not least as there may not be sufficient levels of work or due to the nature of the clinic. It is therefore important that there should be some objective benchmark, so that qualifying work experience in clinics can be well structured and supervised, and add value both to the work of the clinics and students’ competency based learning experience. The SRA should also be clear whether there is a minimum period that could count.

We therefore urge the SRA to adopt guidance that is sufficiently flexible but also clear on the type of work envisaged and its relevance to the prescribed competencies, and backed up by indicative “case studies”. We would like to see a training system emerge which permits and encourages students volunteering in clinics across the country, not just clinics hosted or ran by Universities, as a potentially meaningful way to gain “qualifying work experience.” This would also be consistent with the SRA’s settled policy goal of increasing diversity, reducing cost and opening up pathways to qualification. In that regard, we invite the SRA to work with organisations such as LawWorks in order to ensure that any guidance or indicative “case studies” takes in all relevant considerations and is based upon the best information and evidence available.

COUNSULTATION QUESTION 2

Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Our comments on this question risk covering the same issues that were dealt with in the first consultation, namely whether the SQE route and structure on its own is sufficient to cover the broad range of skills and competences set out in the Statement of Solicitor Competence and the knowledge of English and Welsh law set out in the Statement of Legal Knowledge, especially after the knowledge structure of a qualifying law degree or equivalent is removed as a requirement. We believe that competent legal practitioners need a thorough and in-depth foundation in legal concepts and reasoning, as well as in the social context of law. We hope that there can be further development in the breadth and depth of the proposed curriculum, so that the SQE can provide a satisfactory basis for recognition of professional competence.

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LEEDS LAW SOCIETY

RESPONSE TO “A NEW ROUTE TO QUALIFICATION: NEW REGULATIONS”

This consultation response is submitted on behalf of the members of Leeds Law Society (“LLS”) and is intended to be reviewed alongside our previous responses to the SRA’s consultations on the SQE.

SRA QUESTIONS AND RESPONSES

Do you agree that these regulations implement the agreed policy framework for the SQE?

Regulation 1.1 (a)

LLS has submitted responses to previous SRA consultations on the SQE, and refers to the answers given there.

Regulation 1.1 (b)

LLS considers that clarification and guidance should be given as to the content of the degree and what is considered the equivalent of a degree.

Regulation 1.1 (c)

LLS gives its comments on qualifying work experience (“QWE”) below.

Regulation 1.1 (d)

LLS agrees with this requirement.

Regulation 2.1 (a)

LLS considers that the definition of QWE comprising “*experience of providing legal services*” is too wide and lacks definition. There is a wide variety of legal services and it is self-evident that not all are equal or will result in candidates obtaining inappropriate work experience to enable them to qualify as a solicitor.

Further, the QWE simply has to provide the candidate with “*the opportunity to develop the prescribed competencies*”. There does not appear to be a requirement for the candidate to actually develop the prescribed competencies, or for the firm providing the QWE to ensure that these skills are developed through supervision. Whilst LLS understands that the SQE should test these competencies, it is of course possible and indeed likely that candidates will “cram” for these exams and pass despite not having developed and properly understood the competencies in a way which protects consumers.

Regulation 2.1 (b)

LLS also seeks clarification on the duration of “*at least two years*” for the period of QWE. For example, is there a long stop for this period – e.g. if after four years, a candidate does not have the sufficient two years QWE they must start again?

Regulation 2.1 (c)

LLS is concerned that the definition of organisations who can provide QWE is very broad and does not take into consideration the quality of the work that may be provided. For example, educational establishments often offer pro bono clinics to their local area, which offer an important service to local residents. However, the experience candidates' gain in these clinics is often limited, and a candidate will rarely see a case through from start to end due to the nature of the clinics and the academic terms. This does not seem to have been considered, nor how and by who the candidate would be monitored or assessed in this environment.

It is also important to consider that a candidate whose QWE is only undertaken in limited areas, or outside the traditional setting of a law firm or regulated legal services may find it very difficult to secure employment in any other practice, as employers will always take into consideration past legal experience and will rate some forms of QWE much higher than others.

Further, it appears that unregulated entities could offer QWE under this broad definition. This could result in a candidate undertaking QWE in a company that offers no legal supervision. LLS considers that it should be a requirement of QWE that a candidate is overseen and supervised by a solicitor with at least three years post qualification experience in the field in which the candidate is seeking experience.

Regulation 2.2

LLS repeats its concerns regarding the firm offering QWE simply having to provide candidates with the opportunity to gain experience. LLS considers that the firm should be obliged to take reasonable steps to ensure that the candidate is gaining this experience, and that a record of this is kept. A firm should not be able to simply say it made work available, without ensuring that the candidate was well placed to take advantage of and participate in this work and that the work was undertaken to a reasonable standard.

Regulation 2.2 (a)

Agreed.

Regulation 2.2 (b)

Agreed.

Regulation 2.2 (c)

LLS is concerned that it appears a solicitor outside of the organisation the candidate is working in may be able to offer the candidate QWE. It is unclear how this is workable where the solicitor does not appear to work with the candidate on a day to day basis. Given the proposed changes to the SRA Handbook, this solicitor may not in fact be regulated themselves. It is difficult to see how this can be monitored or how the candidate will receive sufficient supervision to meet the competencies and therefore protect consumers by providing an adequate service.

Regulation 3.1 (a)

See our comments to consultation question two.

Regulation 3.1 (b)

LLS note that the candidate does not have to have met the criteria at regulations 1.1 (c) – i.e. QWE. It is not clear why this has been omitted and LLS considers that the QWE should be mandatory for all solicitors admitted to the roll.

Regulation 3.2

It is noted that a candidate only need meet “some” of the prescribed competencies. It is not understood why the candidate should not have to meet all of these, and LLS considers that this should be the case.

It is also unclear how the SRA will satisfy itself that a candidate has met all the prescribed competencies, given that there will no longer be a training diary for QWE and a candidate’s experience may be signed off by someone who they have not worked with (regulation 2.2(c)).

Further comments

LLS notes that there will no longer be a requirement for candidates to keep a training record. The training record was a useful way of candidates and their supervisors being able to review the work undertaken and what extra tasks and steps should be completed to ensure that a trainee achieves all the targets expected in that department, and reaches their full potential. The removal of a requirement for a training record, particularly when candidates may be moving between firms/companies, does not seem sensible and may mean that information and opportunities to learn and expand on knowledge are lost.

The training record also allows the SRA to inspect a firm to ensure that it is providing adequate training and supervision. This is an important check which should ensure that firms are monitoring the work they are providing to candidates, and its removal may cause firms to stop undertaking these checks and the quality of the experience may therefore decline.

It is also not clear whether these regulations are sufficient to protect the consumers of legal services. It is likely that most firms will take the time to adequately supervise and oversee their candidates. However, there will always be firms that do not take their responsibilities seriously. It is not clear how the SRA will measure whether there is adequate supervision within firms signing off on the periods of recognised training.

This is related to LLS’ concerns regarding the amendments to the SRA Handbook. At present, a solicitor cannot set up and run a firm until they are three years post-qualification, or unless they have special dispensation from the SRA. However, the proposed amendments to the Handbook will allow solicitors to set up a firm immediately upon qualification. LLS is concerned that these firms, run by solicitors with little experience, may then take on candidates and sign off their QWE without providing adequate supervision, as the supervising solicitors are not sufficiently experienced to do so. These candidates may then set up their own firms and do the same. This would not adequately protect consumers of legal services.

LLS acknowledges that the SRA’s intention is that the SQE Part 2 will be sufficiently challenging to

capture any candidates who have not received adequate training. However, LLS considers there should be extra checks and balances in place to protect both consumers and the candidates who may expend time and money working at a law firm or company which does not provide them with adequate experience.

Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

The stated purpose of the SQE is to ensure that all solicitors in England and Wales have passed the same rigorous test before being allowed to practice. LLS are therefore of the view that all candidates intending to practice as a solicitor in England and Wales should be required to take and pass the SQE. To not require this will undermine the SQE as a measure of excellence.

If this is not a requirement, it is likely that people will find loopholes to taking the SQE (as happens now with the New York Bar and cross jurisdictional qualification, for example) which may have less rigorous testing and limited exposure to legal work experience. These loopholes are more likely to be exploited by wealthier candidates, and as such, exacerbate issues with diversity and social mobility within the profession.

It is noted that there may be an English language test requirement post-admission. There is no indication as to how the SRA will decide whether a language test is necessary, or the format it will take. LLS considers that this needs further clarification. A good understanding of the English language test is essential to practicing as a solicitor in England and Wales and it is imperative that all qualified solicitors maintain the standards expected by the public.

It is also unclear how the SRA will assess the qualifications undertaken in other countries. The reputation of solicitors in England and Wales is highly regarded and, should lawyers from other jurisdictions not have to take the SQE and not be subject to such rigorous testing, this may undermine this reputation.

Sent by email only to consultation@sra.org.uk



25 July 2017

Dear Sir/Madam

A new route to qualification: New regulations for the Solicitors Qualifying Examination.

The Legal Services Consumer Panel welcomes the opportunity to respond to the SRA's consultation on regulations to bring the Solicitors Qualifying Examination (SQE) into force. In January 2017, the Consumer Panel responded to the SRA's consultation on the same subject. In that response we raised concerns around flexibility, diversity, funding and the timings for implementation. Some of these concerns remain valid for the Panel, particularly the timing for implementation.

Timings

The SRA has moved the target date for full implementation of the SQE from September 2019 to September 2020. The Panel welcomes this postponement, but continues to believe that this is an ambitious target which risks putting the SQE in jeopardy should it be followed slavishly. We note that the SRA still has to choose an assessor. The procurement process for an assessor, the development of training content, and test setting will require time to get right. Moreover, the SRA, and the assessor would want to consult widely and build in time for testing. Time will also need to be allocated for refinement based on inescapable shortcomings discovered in the piloting phase, or highlighted by stakeholders. We are not convinced that three years is adequate for all the stages outlined above.

Training

We welcome the SRA's proposal to offer online support to help candidates and employers understand the requirements for qualification. We would also recommend online provision of familiarisation tests and stimulations for both stages (SQE1 and SQE2). This would help candidates to prepare better.

This month the Legal Services Board published the research findings into how vulnerable consumers (consumers with mental health problems and dementia) experience legal services.¹ At a roundtable event to launch the report, regulators and consumer groups unanimously agreed that legal services professionals need sound interpersonal skills when delivering services to vulnerable consumers. The Panel strongly encourages the SRA to include mandatory vulnerability training and testing at both stages of the SQE.

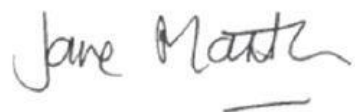
¹ *The LSB launches research into vulnerable consumers' experience of legal services*, 14 July 2017, http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2017/20170614_LSB_launches_research_into_vulnerable_consumers_experience_of_legal_services.html

We would be very happy to meet and discuss any aspect of this response in further detail. Please contact Lau Ciocan for further queries at lau.ciocan@legalservicesconsumerpanel.org.uk.

Yours sincerely

Dr Jane Martin

Chair

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style. Below the signature is a short horizontal line.

LSC SUBMISSION TO THE SRA

Introduction

We welcome the opportunity to contribute to the Solicitors Regulation Authority's (SRA) consultation on the draft Authorisation of Individuals Regulations [2017] and supporting principles.

This Legal Services Council (LSC) response to the SRA's consultation paper has been based on a draft prepared by the Victorian Legal Admissions Board (VLAB) and commented on by the New South Wales (NSW) Legal Profession Admission Board (LPAB). Each of these Admission Boards has eminent, senior lawyers on it as members, including members and former members of the judiciary, Senior Counsel, experienced solicitors, senior academics, Government officials and regulators.

VLAB and LPAB perform functions associated with the admission of lawyers in Victoria and NSW, respectively in accordance with the *Legal Profession Uniform Law 2014* and the *Legal Profession Uniform Admission Rules 2015*. Our Uniform Admission Boards also undertake assessments of overseas graduates and lawyers seeking to be admitted in Victoria and NSW, including those from England and Wales.

In Australia, since 1 July 2015, a new law, the *Legal Profession Uniform Law 2014* (the Uniform Law) has operated in NSW and Victoria. These two states account for 70 per cent of all Australian legal practitioners. The core provisions of the Uniform Law are, for practical purposes, identical in each State. The Uniform Law creates a common legal services market across NSW and Victoria. Those States also operate under the same Uniform Admission Rules, although admission to legal practice as such remains the responsibility of the respective Supreme Courts in each State. The other Australian jurisdictions (that is, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory) have not adopted the Uniform Law, although some are considering doing so.

Overseeing the operation of the Uniform Law is the LSC, comprising five eminent Australian legal and other professionals. The day to day functioning of the LSC is overseen by a Commissioner for Uniform Legal Services Regulation, who is also the CEO of the LSC, and by a small secretariat of four staff.

Consultation questions

The Authorisation of Individuals Regulations [2017] concern admission as a solicitor, including the admission of qualified lawyers from England and Wales, or from an overseas jurisdiction. The SRA has sought a response to two consultation questions about the regulations.

Consultation question 1

Do you agree that these regulations implement the agreed policy framework for the SQE?

We would prefer not to comment directly on the first question but would welcome receipt of information about the results of your deliberations on it, in future. As we see things, whether the regulations will implement agreed policy is a matter for you.

Consultation question 2 – recognition of professional experience

Do you have any comments on the proposals for recognition of the knowledge and competencies of qualified lawyers?

This submission is directed towards consultation question 2, from the perspective of issues potentially arising for Australian lawyers seeking to be admitted in England and Wales, once the Solicitors Qualifying Examination (SQE) comes into effect. Whilst not strictly falling within the purview of the consultation paper, the submission also includes some observations about the implications of the adoption of the SQE for the assessment of English and Welsh practitioners seeking admission in Victoria and NSW.

Based on the information provided by the Admissions Boards in the Uniform Law jurisdictions of Victoria and NSW, the LSC estimates there were approximately 127 UK practitioners seeking admission in 2015-2016 and 120 in 2016-2017 in these two jurisdictions. The LSC would be interested to find out from the SRA, the number of Australian legal practitioners seeking admission in the UK.

To set the context for our comments, some further background is desirable.

Background – Australia and England and Wales compared

Admitting English and Welsh lawyers in Australia

In broad terms, in order to be admitted to the Australian legal profession as an Australian lawyer, a person must have attained specified academic qualifications, satisfactorily completed specified practical legal training requirements, and be a fit and proper person. The specified academic qualifications are colloquially known as the 'Priestley 11' and are:

- Administrative Law
- Civil Procedure
- Contracts
- Company Law
- Criminal Law and Procedure
- Equity (including Trusts)
- Ethics and Professional Responsibility
- Evidence
- Federal and State Constitutional Law
- Property (including Torrens System Land)
- Torts¹

¹ The 'Priestley 11' subjects form the specified academic qualifications prerequisite for the purpose of section 17(1)(a) of *the Legal Profession Uniform Law Application Act 2014* (Vic) and are specified in Part 2 of Schedule 1 of the Legal Profession Uniform Admission Rules 2015.

To be admitted to the legal profession in an Australian jurisdiction on the basis of qualifications obtained outside Australia, applicants must usually have completed a tertiary course leading to legal practice in their home jurisdiction which is substantially equivalent to a three year full time Australian law course, and to have successfully completed subjects which are substantially equivalent to the areas of study which Australian applicants must complete prior to being admitted. There is also a requirement to demonstrate an appropriate understanding of and competence in certain skills, practice areas and values, and to be of good character.

Every lawyer trained outside Australia, save for those from New Zealand, who wishes to become eligible for admission must apply to an admitting authority for an assessment of whether the person's academic and practical legal training qualifications are substantially equivalent to those required of local applicants.

Applicants from England and Wales who have completed a law degree will usually be required to take Administrative Law, Federal and State Constitutional Law, Ethics and Professional Responsibility, and any other prescribed subjects not studied during the degree (although credit may be given in certain circumstances). Applicants from England and Wales who have completed the Foundations of Legal Knowledge subjects ie. those who have completed a non-law degree and a Graduate Diploma in Law will usually be required to study Administrative Law, Federal and State Constitutional Law, Evidence, Civil Procedure, Company Law and Ethics and Professional Responsibility. As far as practical legal training is concerned, English and Welsh applicants will usually only be required to undertake trust accounting and professional ethics.

An admitting authority may dispense with the academic or practical legal training requirements in the case of an overseas practitioner if it considers that the applicant's skills or experience are sufficiently relevant, substantial and current to justify a dispensation.² The legal skills or relevant experience, or both, can be obtained in legal practice, in service with a government authority or in another way considered appropriate by the admitting authority.

We observe that the structure of the SQE assessment tool is similar to that of the Qualifying Lawyers Transfer Scheme (QLTS). However, it appears that there is less rigidity in the testing of knowledge of substantive law, as evidenced by applicants being able to select their practise area in SQE 2. The LSC also notes that Wills, Estates and Trusts appears to have assumed greater prominence in the SQE than in the QLTS, insofar as it appears in the Statement of Legal Knowledge and is the subject of one of the six functioning legal knowledge assessments. Self-evidently, performance to a particular standard (namely, level three of the SRA threshold standard) is a feature of the SQE but not of the QLTS. The LSC considers the imposition of a requirement to demonstrate achievement to that standard is appropriate.

It appears that a significant and important difference between the two schemes, and accordingly the subject of the current consultation, is the proposal to recognise professional qualifications and experience for the purpose of exemption from SQE stage 1 and/or stage 2, in whole or in part. In recognising professional qualifications for equivalency purposes, a qualified lawyer must establish that the qualification covers content that is set out in the Statement of Legal Knowledge and Statement of Solicitor Competence, to the required standard (ie. level three). In recognising professional experience for equivalency purposes, a qualified lawyer must establish that the knowledge, skills and competences acquired through the professional experience covers content

² See clause 18 of Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic).

that is set out in the Statement of Legal Knowledge and Statement of Solicitor Competence, to the required standard.

Recognition of professional qualifications

We understand that the threshold test for obtaining recognition of professional qualifications is being able to establish that the content of a subject studied in Australia is not substantially different to that required in England and Wales. In comparing the SRA's Statement of Legal Knowledge with the Uniform Principles for Assessing Qualifications of Overseas Application for Admission to the Australian Legal Profession (the Uniform Principles), and the Prescribed Areas of Knowledge contained therein, it appears that there is substantial overlap between certain Australian, and English and Welsh, academic requirements. Potential candidates for recognition would potentially include Contracts, Torts, Company Law, Criminal Law, and Equity and Trusts.

We anticipate that there would be no impediment for an exemption to also be sought in respect of mandatory law subjects and electives which extend beyond the eleven prescribed areas of legal knowledge in Australia, and for recognition of subjects studied as part of a Graduate Diploma in Law or through Supervised Workplace Training.³ Potentially therefore, qualified Australian lawyers could receive credit for Wills and Estates, and Taxation, where those subjects have been studied as electives or at graduate level, in order to establish compliance with the Statement of Legal Knowledge.

Recognition of professional experience

We note that the Authorisation of Individuals Regulations draw a distinction between qualifying work experience for the purpose of regulation 1.1(c), which must be of two years' duration, and experience which is relevant to deciding whether or not to grant an exemption for an assessment pursuant to regulation 1.1(a). We are aware that the SRA has explained in its *Summary of Responses and Decisions on Next Steps* (April 2017) why it has retained the two year requirement for qualifying work experience.

According to the Notes on the Principles, the SRA envisages that the length of practical experience required to constitute equivalence against an SQE stage or component is two years, but we note that this is not a mandatory practice period. Further, practical experience is not strictly confined to professional experience as a practising lawyer, or indeed to legal practice at all.

The potential to recognise lifelong learning as contributing to achieving legal competency is consistent with the overall objectives of the SQE, including encouraging greater equality and diversity in the legal profession. Enabling recognition of professional experience that extends beyond the strict bounds of legal practice is also an acknowledgement that the attainment of skills essential to good lawyering, including ethical and professional conduct, can be demonstrated through engagement with a variety of workplaces, disciplines and activities in the public and private spheres.

³ The Practical Legal Training requirements in Victoria can be satisfied by completion of a practical legal training course in the form of a graduate diploma in law, or through Supervised Workplace Training. The requisite competency standards can also be obtained through the completion of a training course other than a graduate diploma that comprises at least 450 hours of programmed training and at least 15 days' workplace experience. New South Wales has determined that, until further notice, supervised legal training may not be undertaken for the purpose of satisfying the Practical Legal Training requirements. The most common way of satisfying the Practical Legal Training requirements is through completion of a practical legal training course conducted by an accredited provider.

We are supportive in principle of the degree of flexibility that the SRA has injected into the SQE, both in terms of the length of the period of practical experience and the type of experience that is capable of recognition and thus exempted from assessment in so far as this may impact Australian lawyers. In the LSC's view, this will potentially particularly assist qualified Australian lawyers working in non-traditional legal environments to be admitted to practise in England and Wales.

We also note that the proposed system for recognition of legal qualifications and experience for the purpose of exemption from the SQE furthers the objective of jurisdictional consistency and reciprocity, insofar as it creates synergies with Australia's Uniform Law.

We hasten to point out, however, that in practice there has been difficulty in Australia in obtaining agreement about exemptions from academic or PLT prerequisites based on a person possessing "sufficient legal skills or relevant experience" as to render the person eligible for admission where the law permits this. There are substantial difficulties associated with finding appropriate and reliable criteria for assessing experience as a threshold for admission. LPAB notes the standards it uses in assessing the experience of overseas lawyers are open to interpretation and have been subject of differing views. For example, Schedule 5(c) of the Uniform Principles in the Law Admissions Consultative Committee's 'Common Considerations Relevant to Experienced Practitioners' (February 2015) states "the duration and currency of the applicant's experience in practice and especially whether the applicant has practised for at least seven years". This consideration has been variously interpreted as dispensation from further study after seven years of *experience in a specific area of law* and dispensation from *any and all further study* after seven years of experience in legal practice.

In the event that the SRA intends to develop criteria for assessing skills and experience, we would be pleased to be involved in any consultation about them, which could in turn further discussion on the question of sufficient legal skills or relevant experience.

Regulatory/professional bodies

We are particularly interested in the proposal that regulatory and professional bodies of a recognised jurisdiction could apply for an exemption from the whole or part of the SQE on behalf of their constituency. We are strongly supportive of this approach, which we believe will avoid unnecessary administrative scrutiny of individual Australian lawyers and facilitate timely entry to the legal profession of England and Wales. As previously mentioned, it appears that those areas of legal knowledge which are pre-requisites for admission in both jurisdictions, and whose elements reveal a high degree of commonality, would potentially be most suitable for recognition.

How the assessment process will work in practice, and the evidence that is required to be submitted to the SRA to satisfy the 'not substantially different' test, are matters of keen interest. We note that the SRA is presaging that recognised jurisdictions undertake a 'mapping exercise', but we are unsure what the SRA anticipates being mapped, and how. In particular, admitting authorities and professional/regulatory bodies would be assisted by the SRA's response to the following matters:

- 1) when a mapping exercise may be undertaken by a recognised jurisdiction;
- 2) what detail and evidence would be required in a mapping exercise;
- 3) when a mapping exercise may be reviewed by the SRA;

- 4) what approach the SRA will take to assessing the evidence submitted and whether that approach will be similar to that which is presumably currently used to assess applications for exemption under the QLTS; and
- 5) precisely what are defined as 'components of the SQE Stage 1 and Stage 2' for the purpose of a mapping exercise.

On this last question, there is a table showing a breakdown of Stage 1 and 2 at <http://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>, but it seems unclear whether the items listed are the 'components' as referred to in paragraph 2 of Annex 2. Alternatively, the 'components' might be every item in the Statement of Solicitor Competence: <http://www.sra.org.uk/solicitors/competence-statement.page>.

We appreciate that these matters may still be under consideration by the SRA, but we raise them at this time to ensure they are taken into account in progressing the development of a mapping process.

We note that the SRA is intending to provide support for candidates and employers on its policy for recognising qualified lawyers, including the development of case studies and guidance. We encourage the SRA to also give consideration to developing materials to assist professional and regulatory bodies to undertake the proposed mapping exercise. A sample 'map' or template would be of particular assistance.

Administration fee

We note that the SRA is considering the imposition of an administration fee for qualified lawyers seeking an exemption from undertaking the SRA assessment, in whole or in part. We understand that the SRA charges between £400 and £600 to undertake assessments under the QLTS. We would be interested to learn whether the SRA is intending to levy a fee for bulk assessments sought by regulatory and professional bodies in recognised jurisdictions. If so, we would be pleased to be consulted on the quantum of the proposed fee.

Related observations – potential impact of the SQE on Australian admitting authorities

England, Wales and Australia are common law jurisdictions which enjoy a relationship founded on a shared history, legal traditions and culture. We are mindful of the need to carefully weigh and balance the need to observe jurisdictional comity, the aspirations of global legal firms and the cost of entry to the Australian legal profession with the very values that underpin the introduction of the SQE in the first place – making sure individuals have the right knowledge and experience at the time of entry into the legal profession.

We recognise that the adoption and implementation of an SQE will have significant implications for graduates and qualified practitioners in Australia and the UK, and for their potential employers. This may require the development of a different approach to that which is currently taken in respect of applicants from England and Wales, and particularly those who have not completed a qualifying law degree.

Our Uniform Law Admission Boards would welcome the opportunity to consult with the SRA when undertaking the task of reviewing the Uniform Principles, and in considering issues around the

recognition of the SQE in Australia, particularly where applicants have not completed a three year full time (or equivalent) law degree.

Conclusion

In conclusion, we congratulate the SRA on its *Training for Tomorrow* initiative, and in adopting a structured consultation process containing regular feedback loops. We appreciate being included in this process and would be pleased to elaborate on any aspect of this response. We remain available to participate in any future consultations the SRA intends to conduct.

The relevant personnel are:

- At VLAB, Kristen Murray, Principal Policy Officer, who can be contacted by email at kristen.a.murray@justice.vic.gov.au.
- At the LPAB, Acting Executive Officer, who can be contacted by email at lpab@justice.nsw.gov.au.
- At the LSC, Sonya Kim, Senior Policy Adviser, who can be contacted by email at sonya.kim@legalservicescouncil.org.au.

Comments from other Australian Jurisdictions and representative bodies

The Queensland Legal Practitioners Admissions Board agrees with this submission. The attention of all other Australian Admission Boards has been drawn to the SRA paper and there were no objections raised with the LSC. Unfortunately, the Legal Practice Board of Western Australia has not had an opportunity to consider it within the timeframe.

Other bodies, namely the Legal Services Commission of Queensland, the NSW Office of the Legal Services Commissioner, the Law Society of South Australia, and Law Firms Australia (LFA), have expressed their support for this submission.

LFA represents Australia's nine of the leading multi-jurisdictional law firms including Allens, Ashurst, Clayton Utz, Corrs Chambers Westgarth, DLA Piper Australia, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison and Norton Rose Fulbright Australia. It is one of seventeen constituent bodies that are members of the Law Council of Australia, the profession's peak representative body, which represents over 65,000 Australian lawyers.

LFA notes two particular points in this submission: (i) the ability of regulatory and professional bodies to apply on behalf of their constituency for an exemption from some or all of the SQE, and (ii) that Australian admissions boards will need to consider how the substantial equivalence test for the admission of foreign lawyers in Australia will apply to English and Welsh solicitors that have not completed a law, or any, degree, and/or have not undertaken a legal practice course, so that barriers to practice in Australia are not unnecessarily increased.

The Council of Australian Law Deans may supply the SRA a submission independently. We understand that the Law Council of Australia and the Australian Bar Association may also lodge separate submissions.

Liverpool Law Society (LLS)

Responses to SRA Consultation – ‘A new route to qualification: New regulations’

Question 1

Do you agree that these regulations implement the agreed policy framework for the SQE?

Broadly but subject to the following comments:

- The LLS observe that under the existing SRA Training Regulations 2014, there is a requirement for trainees to have garnered experience not only in three distinct areas of law (Reg. 5.4), but also in both contentious and non-contentious areas of practice (as set out in the Practice Skills Standards). LLS are unable to identify where this is addressed in the consultation paper or draft regulations and principles, nor whether there is an intention to include a reflective requirement during the two years of practical experience. In LLS' view without such obligations there is risk that trainees may, in effect, be pigeonholed into specific areas of practice at the commencement of their careers, and which could reduce their future employability in the event of a need for change.
- The draft regulations envisage in reg. 2.2(c) a scenario whereby confirmation that the appropriate standard has been met can be given by a solicitor who is neither the organisation's COLP, nor a solicitor who may have overseen the work being carried out. The LLS are of the view that there is a risk that such an individual would not be appropriately placed to sign off such work having seemingly had no contact with the individual concerned, and are unable to envisage circumstances where this may be deemed appropriate.

The LLS are of the consensus that providing the explanatory notes to the regulations to assist with interpretation, would be beneficial in not only dealing the above queries but also generally.

Question 2

Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Yes. The LLS query what the comparable standard of evidence will be for the assessment of qualified lawyers from different jurisdictions. Whilst there is the obligation on trainees under reg. 14 of the SRA Training Regulations 2014 to keep a record of the work performed, skills applied, etc., there is no suggestion of how the required standard can be shown to have been met and/or the materials which will be required of foreign lawyers.

A new route to qualification - New regulations

Response ID:79 Data

2. Your identity

Surname

Wildig

Forename(s)

Lucy

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

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

The regulations appear to set up what the SRA has said they want to happen. I have doubts about them as expressed in previous consultations.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

It is a requirement that qualifying work experience must:

"comprise experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitors."

It is not very difficult to imagine how the word "opportunity" may be abused by various legal work experience providers. It may be that students are taken advantage of to perform menial tasks. I feel that without much greater detail on what is intended, there will likely be a negative impact on "encouraging an independent, strong, diverse and effective legal profession". I also have concerns about the impact on "protecting and promoting the interests of consumers" as there is a risk that people will become lawyers without any meaningful learning opportunity.

It is a requirement that work experience must:

"be of a duration of a total of at least two years full time or equivalent".

An average student on GDL/LPC will spend up to two years of their time at a law school engaging in pro bono sometimes for a few hours a week, sometimes not at all (e.g. during holidays) and sometimes much more. It is worth making absolutely clear that a student can use ALL their pro bono experiences as one period of work based learning whether that be in clinic, shadowing clinic, helping with phonelines or in Streetlaw activities.

The SRA should be clear whether there is a minimum period that could count. For example, a student participating every month for 4 hours? Will this still count as one period of work-based learning? I think the SRA should make clear that it does count to ensure pro bono services continue to be resourced and therefore the regulatory objective of improving access to justice is being met.

Comment Three

SRA supports exposure of students to social welfare law as they are able to gain qualifying legal work experience in any area of law and in pro bono and in law clinics where the focus is often in social welfare law. However, students who spend two years gaining work experience in family law, in employment law and so on, will still have to complete the SQE2 assessment in areas unrelated to their work experience. This presents a barrier to entry into the social welfare sector and, in my view, the number of new lawyers entering the social welfare sector will inevitably fall.

For those that do decide to enter the social welfare sector, who will assist them in feeling confident, prepared and, most importantly, trained sufficiently to meet the SRA's objectives of displaying the highest standards and fitness to practice? The SRA may argue that there is a freedom with firms and education providers to collaborate to provide training but who do they think will pay for this?

My interpretation of the proposals is that students keen to become family lawyers, for example, may have to pay additional money for some extra course providing academic preparation, simply to be the lawyers they want to be and, frankly, that the public need them to be. This when they do not have the same salary curve as their commercial peers. Alongside the additional money, these students will also have to commit additional time not actually earning whilst their commercially focused peers are already in the workplace. Maybe the SRA envisages that the freedom of collaboration will see law firms and NGOs funding a new training regime for their future lawyers? I cannot speak for these organisations but, I've read and heard enough to assume, with some confidence, that there is no money available in these organisations to cover this. The cost of so called 'freedom' will likely have far reaching consequences.

The reality of this additional cost and responsibility on this vulnerable area of the profession might mean that less firms ultimately operate in this area and that less lawyers enter the sector. Knowledge of laws and the specialist skills required will diminish and the most vulnerable consumers of legal services will be left with no guarantees at all of the lawyer they meet having the high standards and ability to practice currently promoted by the SRA as the very reasons for reform. At a time where legal aid is at an all-time low, this has huge potential to impact on access to justice.

Nottingham Law School

A new route to qualification: New Regulations

Response Document

25th July 2017

Consultation question 1

Do you agree that these regulations implement the agreed policy framework for the SQE?

We consider that paragraph 2.2 is inadequately drafted. It is unclear whether the parties listed in sub paragraphs (a) – (c) are responsible for delivering the work experience or simply providing confirmation of the same. Assuming it to be the latter, nothing in paragraph 2.2 mandates the party providing confirmation to have any knowledge of the trainees' work during this time. In particular in relation to (c) it would be open for anyone with the title solicitor to provide confirmation in circumstances when it may be wholly inappropriate to do so.

Consultation question 2

Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

As stated in our earlier response, beyond the transitional arrangements, any exemptions would surely be on the basis of the SQE learning outcomes having already been met, otherwise there seems to be no objective justification for allowing exemptions if one of the prime objectives of the SQE is to ensure consistent standards. Evidence that SQE learning outcomes had already been met would rely on APL (Accreditation of Prior Learning). APL could be either:

- a. APCL (APL based on certified (or certificated) learning - which would include a formal course in a different jurisdiction or in another context); or
- b. APEL (APL based on experiential learning - learning achieved through experience, rather than on a formal course).

APCL would cover solicitor apprentices and lawyers qualified in other jurisdictions but it might also cover those candidates already qualified in other legal service professions in England and Wales (barristers, legal executives, etc.).

APEL would cover those candidates whose status is not necessarily based on accredited qualifications but is based on experience instead (paralegals for instance).

APL is accepted as a central element of all competency-based assessments and therefore it would be difficult for the SRA to ignore. To ignore APL might also leave the way open for challenges by candidates based on restrictive practice.

The SRA is advised, though, that serious investigation would have to be made to ensure that all the SQE learning outcomes have been met to meet the consistency standard that would be accepted by the profession.

Professor Janine Griffiths-Baker
Dean

Associate Professor Matthew Homewood
Head of Postgraduate Programmes

On behalf of Nottingham Law School
Nottingham Trent University
50 Shakespeare Street
Nottingham NG1 4FQ

Dear Sirs,

My name is Nir Chanoch and I am the Managing Director of QLTS School. We have been offering preparation courses for overseas lawyers who take the QLTS assessment since 2011 and has served so far thousands of lawyers from all over the world. We therefore possess extensive experience in this area and are aware of the motivations and expectations of overseas lawyers who look to take this qualification route in order to advance their legal career by becoming dual-qualified English solicitors.

We have carefully read the recent consultation about the regulatory framework of the Solicitors Qualifying Examination (SQE), and would like to share our thoughts about the impact the proposed SQE might have on overseas lawyers and the expansion of English law globally. In general, we are troubled that the current proposals do not properly address or consider matters affecting foreign lawyers.

Maintaining a separate pathway for foreign lawyers

The QLTS is unique and distinct as a highly-regarded and discrete qualification route for foreign lawyers to dual-qualify as English solicitors and is promoted accordingly in the international legal marketplace.

We understand that the new SQE proposal abolishes the separate route or pathway for foreign lawyers and merges the scheme with the UK domestic route to qualification.

In our view, it is imperative to maintain a separate qualification pathway for foreign lawyers, while at the same time continuing to maintain the highest standards expected of candidates taking the QLTS assessments. This is because the QLTS is regarded as a robust and high-stakes examination compared to the current domestic route to qualification, and does not mercenarily warrant any changes.

Anything to dilute the qualification route and the perception and prestige attached to it will have adverse consequences that may radiate beyond the immediate decision to merge the pathways.

Significant risk exists by abolishing the QLTS or merging it with the new examination, as the SQE may be perceived as less attractive, requiring more work and failing to account for the prior qualifications and hard work of international lawyers who have qualified in their home jurisdiction (despite the proposal to allow exemptions) This will reduce the attractiveness of UK qualification and the number of foreign lawyers choosing to dual-qualify as solicitors of England and Wales vs. people taking the New York (which offers the closest equivalent qualification pathway to the QLTS).

The availability of the QLTS helps maintain the perception of English law as the governing law of choice in the international legal marketplace. Removing this unique pathway will therefore erode the influence of English law on global legal transactions as fewer international lawyers will opt for English qualification and firms will promote services that they can resource properly, i.e. New York law.

Pre-qualification workplace experience

The QLTS' predecessor, the Qualified Lawyers Transfer Test (QLTT), required at some point two years' work experience (with supervision) of any candidate taking the exams. This reduced the number of transferees taking the cross-qualification assessments dramatically.

The QLTS' 2010 introduction with its three assessments (MCT, OSCE and TLST) sought to find a suitable replacement for the experience requirement, as it was almost impossible for foreign lawyers to fulfill the practical work experience requirement.

The SQE proposals suggest that all potential solicitors may require pre-qualification workplace experience regardless of the pathway they have followed. It is our understanding, however, that the work experience could be gained outside of England and Wales and would not have to be in English or Welsh law. While this may mitigate the entry requirements, we believe that introducing a work experience requirement to foreign lawyers will undo substantial progress in widening access to and enhancing diversity within the profession recently made by removal of previous barriers to entry (e.g. abolition of the certificate of eligibility and English language test).

In fact, the SRA have already determined at the time the QLTS consultation was conducted a few years ago that evidence provided to the SRA through a work experience requirement is of variable quality and very difficult to verify, whereas the OSCE assessment is a robust, independent and reliable outcomes-based assessment, demonstrating to the satisfaction of the SRA what an applicant can actually do.

We believe that although the work experience could be obtained outside the England and Wales, it is still questionable how the SRA will ensure and verify that a foreign lawyer has indeed fulfilled the experience requirement in their own country. On the other hand, the work experience requirement (which does not exist in New York) may deter people from taking the dual-qualification route in England and Wales.

Format of the assessments

The SRA Statement of Legal Knowledge is broader than the MCT syllabus as reflected in Day One Outcomes A (several areas will be added to the MCT syllabus – probate, civil and criminal litigation). While this is a natural outcome of the Training for Tomorrow initiative, we understand that the multiple choice test and practical assessment components of the SQE may, potentially, be modularised (six separate assessments for the MCQ, and two assessments for the practical elements), and individual modules may be taken over time. This may mean that in order to facilitate such modularity, the scope of the exams (especially Part I) will be significantly comprehensive and complex compared to the current MCT assessment, which consists of 180 questions, divided into two periods of two hours and 45 minutes each, with 90 questions in each session. It also appears that these several areas of law (i.e., probate, civil and criminal litigation) will be tested on both the Functioning Knowledge Test and the practical component, which may create duplication and overlapping in the content of the assessments. We understand that the same standards must be met by both domestic and foreign applicants at the point of admission, however we are concerned that the proposed SQE assessments will create an unduly onerous burden and create accessibility issues which will impact significantly on the number of overseas candidates. For comparison purposes, the New York Bar exam can be completed in one or two days.

We believe that in order to ensure that the QLTS remains attractive, and to maintain the status of English law globally and the competitiveness of the England and Wales solicitor qualification in particular, it is essential to continue to maintain a fast-track route or pathway for foreign lawyers, which would be based on a compressed version of the SQE assessments (and still be part as the SQE as a designated route). This kind of compressed version of assessments, such as the current QLTS, will be much more adaptive to foreign lawyers (as most work full-time) and could still be taken in other locations outside the UK.

A separate English language test

The consultation paper states that where necessary, an English language test will be imposed on foreign lawyers at the point of admission. We consider this as another unnecessary barrier to entry. While no doubt that a foreign lawyer should be able to competently use the English language in practice, their competency can be tested as part of the SQE assessment and not as a separate exam.

In fact, the SRA have already considered this matter in a 2014 consultation where it was decided to remove the English language test imposed on foreign non-EU lawyers taking the QLTS assessments (sections 14, 15 and 16 page 4):

“The OSCEs involve the assessment of the use of language skills in legal writing, legal drafting, interviewing and advising, oral presentations/advocacy and legal research over a period of six days. The criteria applied in assessing the English language skills of the candidates is whether they can demonstrate “appropriate, clear, precise and acceptable English” and overall the standard set is that which is “readily comprehensible to any client from any background.

We consider the standard of English language skills to be sufficiently and reliably assessed in the QLTS assessments and in the light of this we consider a separate and additional requirement of proof of English language ability which can be applied only to a candidate outside the EEA to be unnecessary.

This additional requirement does not manage the risk of poor standards of English in a way that is not already being addressed by the QLTS assessment. The separate English language requirement is disproportionate and an uneven impact of our regulation.

Instead of requiring non-EEA international candidates to provide additional evidence of English language we propose to remove the separate English language requirement altogether and rely on the QLTS assessment.”

It is, therefore, not clear why the SRA have changed their position and place this additional burden on foreign lawyers. The English language test should therefore be embedded within the SQE assessment themselves, as it is today with the QLTS.

Possible equality issues

It is clear that the SQE would be significantly more onerous than the current QLTS since nothing has been shown to be wrong with QLTS. This might be subject to challenge on equality grounds. We suggest to take this into account when developing the SQE. This is clearly another reason to keep the QLTS route separate.

Transitional arrangements

The various SRA consultations on the SQE so far have offered very flexible transitional arrangements for local candidates, who could possibly complete the LPC and their training contract until 2025. No such arrangements are proposed for foreign lawyers. The only reference in the SRA consultations so far in relation to foreign lawyers were that QLTS candidates who had successfully completed QLTS 1 could choose to do either QLTS 2 (subject to availability) or the SQE stage 2. We believe that transitional periods should also be offered to foreign lawyers to complete the QLTS in its current format (should the SRA decide to terminate it), the same way such arrangements are offered to local candidates. At the very least, the MCT and OSCE assessments should become available to candidates for some period after the commencement of the SQE in 2020.

Offering the assessments outside the UK

As of February 2016, the MCT assessment became available online in many locations around the world through Pearson VUE, which administer the exam on behalf of Kaplan. Since then, we have been seeing substantial increase in the number of candidates preparing to take the QLTS assessments.

In our view, it is vital that the assessment organisation would make the necessary arrangements to offer the multiple choice part (and possibly other parts) internationally in order to maintain the attractiveness and accessibility of the assessments to foreign lawyers. We understand this will be addressed in the tendering process and selection of the assessment organisation.

Possible impact of Brexit

Following the decision of the UK to leave the EU and the uncertainty the results have brought into the legal profession, we have been seeing a reduction in the number of new candidates signing up for our QLTS courses. We hear from prospective candidates that they are not sure whether English law will remain the law of choice in cross-border transactions and international commercial contracts following the referendum and the future exit of the UK from the EU.

We have recently learned that the concern that English law will decline internationally due to Brexit has been also raised by the Law Society's October 2015 report 'The EU and the Legal Sector' – please see page 24 at <https://www.lawsociety.org.uk/news/documents/the-uk-legal-services-sector-and-the-eu/>. Furthermore, in an article that was published a few weeks ago, the Lord Chief Justice said the UK need to fight Brexit "lies" from competing jurisdictions:

<http://www.legalfutures.co.uk/latest-news/need-fight-brexit-lies-competing-jurisdictions-says-lord-chief-justice>. In another recent article, Lord Chancellor said that post-Brexit UK can see off foreign courts competition: <https://www.lawgazette.co.uk/law/lidington-post-brexit-uk-can-see-off-foreign-courts-competition/5061897.article>.

Prospective QLTS candidates whom we speak to on a daily basis, raise serious questions whether they should invest in their legal career and become dual-qualified English solicitors, as it is not clear whether the standing of English law would be the same in the years to come.

These are obviously very troubling developments. We believe that the outcomes of Brexit and how it may affect the standing of English law internationally, as well as the motivations of foreign lawyers to dual-qualify as English solicitors post-Brexit, should therefore be considered as part of the SQE consultation.

We also believe that any change in the way foreign lawyers qualify as solicitors should be made following a comprehensive consultation.

I am happy to answer any questions you may have.

Kind regards,

Nir Chanoch

The Society of Legal Scholars notes with concern the decision of the SRA Board to approve proposals in the face of widespread expert criticism that they will not achieve the stated objectives, and will indeed be damaging to those objectives.

The Society's comments on the specific questions are as follows.

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

Yes. However, the drafting gives rise to some concern on some points.

(i). Regulation 2.1 in itself provides wholly insufficient detail on the requirements for "qualifying work experience". Candidates (and certifiers under reg.2.2) need to know (preferably in advance) whether or not work experience a candidate undertakes will be such that the certifier can properly accept it as counting towards meeting the SRA's requirements.

(ii). The definition in Reg.2.1(a) does not make it clear whether overall the totality of the work experience must provide the opportunity to develop *all* the prescribed competences or *most* or *some*. Is the SRA content, for example, that work experience for two years full time addressing a very small part of the prescribed competences is enough to be "qualifying work experience", relying on the SQE to assure standards. If that minimalistic approach is enough for the SRA, it is not clear what the point is of having a formal requirement "qualifying work experience".

(iii). The requirements of reg.2.1(b) and (c) need further clarification. For example, is it intended that the period of two years is continuous or accepted that it may be discontinuous. If a candidate has work experience with say five organisations in a two year period, can he or she rely on the periods with three of the five and then undertake experience with a sixth for long enough to meet the two year/four organisations rule?

(iv). It is not clear whether the definition of "degree" is intended to refer to the Frameworks for both (1) England, Wales and Northern Ireland and (2) Scotland. If it is intended to cover Scotland as well (and it should) then account needs to be taken of the different Levels used in the Framework for Scotland. It would be better for the relevant Framework documents to be identified by name and URL. For the avoidance of doubt it should be made clear by express words that possession of a Graduate diploma or certificate at Level 6 (under the English Framework) or the equivalent in Scotland is not sufficient.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

No.

A new route to qualification - New regulations

Response ID:83 Data

2. Your identity

Surname

Cooper

Forename(s)

Susan

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

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

1. Whilst I appreciate the SRA is seeking to 'avoid detailed and prescriptive requirements where they are not necessary', it is not clear how 'necessity' is being determined. The proposed regulations as drafted are far too light touch (particularly in relation to the period of qualifying work experience) and will cause both confusion and have a negative impact on the quality of training trainees will receive.

Lack of clarity will result in professionals making their own interpretation of what the regulations require and what constitutes 'qualifying work experience' which will have a hugely detrimental impact on graduates. The SRA is seeking to rely on the fact that there will be consistency as everyone will need to pass the same SQE, however what it is completely missing is the impact on graduates who receive inadequate work experience due to the lack of prescription of what is required. Graduates will be relying on organisations and solicitors to guide them on what experience and skills they need to acquire. Where that experience is inadequate, trainees will face the prospect of repeatedly failing SQE part 2 but with little understanding as to why. The alternative is that the SQE part 2 is set at such a low standard that anyone with any type of work experience will be able to pass. Obviously neither scenario is remotely desirable.

Currently the regulations are worded so widely that the quality of training under a proper training contract, with an experienced supervisor who offers consistent guidance, supervision and feedback on a broad variety of work being completed is comparable to a paralegal working in a team with 30 other paralegals with one junior solicitor overseeing repetitive, low level work with little chance of proper feedback. How can this be correct? From considerable personal experience and as a solicitor who works solely with trainees and graduates, I would stress the huge disparity in different types of work experience I hear about from trainees and paralegals. This is something the SRA seems to be completely overlooking in its desire to cut

red tape.

I raised this concern at a seminar with Julie Brannan who, with respect, completely missed my point. Her view was that solicitors will have a vested interest in trainees receiving quality work experience. However, this was at a seminar attended solely by top City law firms where, I concede, that would be the case. I can only hope that the SRA will listen to the warning that this will not necessarily be the case across the profession unless the SRA seeks to safe guard the interests of graduates and ensure that they receive quality training during work experience with greater direction on what is required.

2. As mentioned in previous consultation responses, it is extremely frustrating that the SRA having received a very clear response from the profession on the importance and value placed on the current period of recognised training (both within the UK and internationally), has sought to undermine the 'jewel in the crown of our training process' by essentially watering it down to a clocking on exercise with little attention paid to what actually needs to happen during the two years work experience. Given the response from the profession, it is very difficult to understand the logic to this.

3. The draft regulations make no reference to organisations seconding trainees to other organisations and which, if any, organisation will have overall responsibility to ensure that the trainee is gaining experience in order to develop all the prescribed competencies over the two year period. For example, if a trainee were to work for four different organisations each of which required the trainee to conduct similar work, who is responsible for ensuring that the trainee has by the end of the two years gained some experience in all the competencies in order to pass SQE part 2?

Finally regulation 2.2(c) suggests that the work experience can be signed off by any solicitor. There is no mention of the required proximity the solicitor needs to have had to the work experience or the quality of work produced by the trainee? Does this mean that a trainee can approach any solicitor, explain what they had done and the solicitor is permitted to take the trainees word for it provided it sounds like they have had an opportunity to develop some of the competencies? This can't be right and therefore the regulation as it stands is not sufficiently clear.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

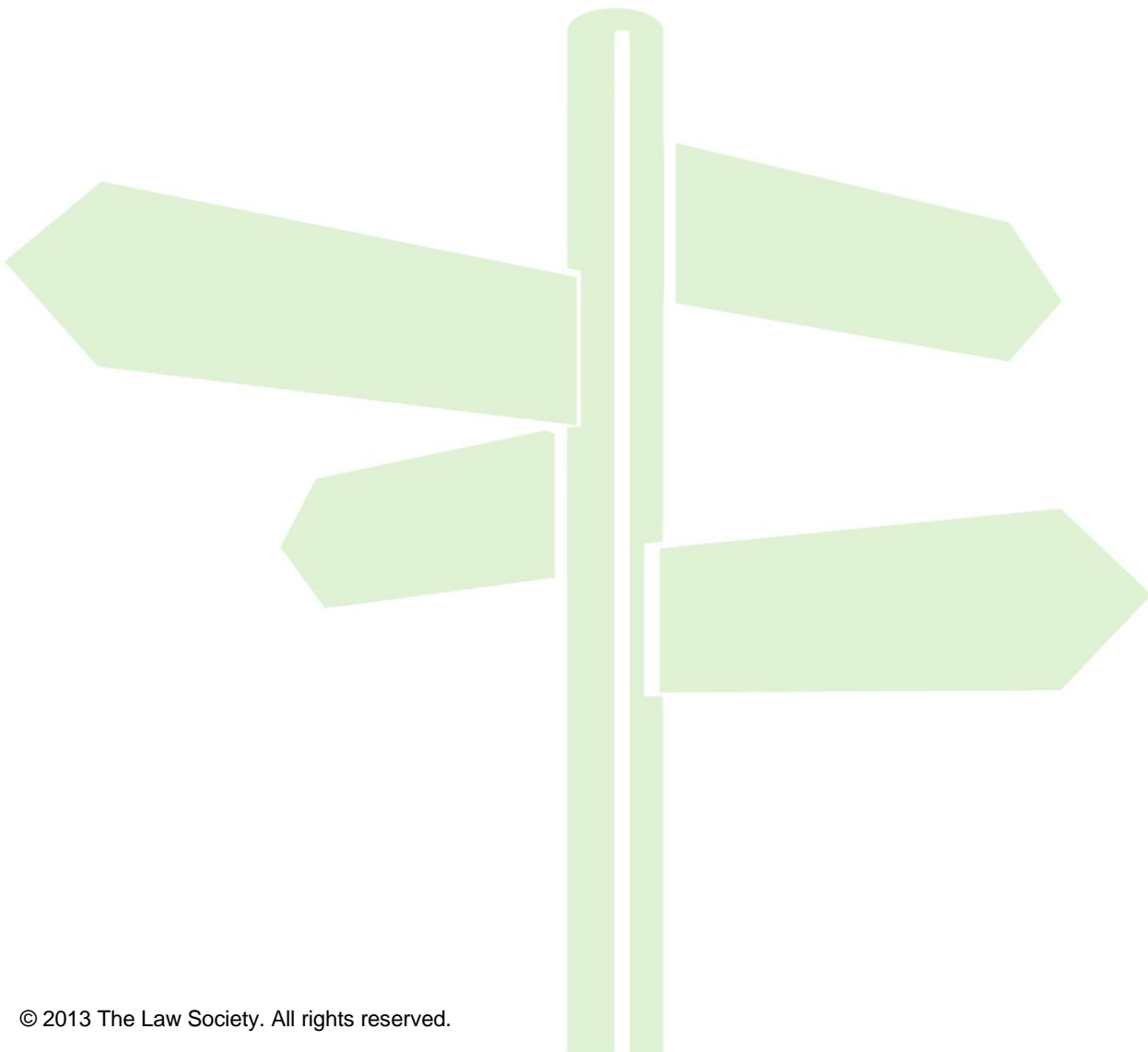


The Law Society

SRA consultation - A new route to qualification: New regulations

Response of the Junior Lawyers Division

July 2017



Response of the Junior Lawyers Division of the Law Society to the Solicitors Regulation Authority (SRA) consultation: A new route to qualification: New regulations published in May 2017

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 approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors and solicitors one to five years qualified.

The JLD considers it appropriate to respond to this consultation in the interests of its members.

As expressed in our response to the initial SRA consultation 'Training for Tomorrow: Assessing Competence', and the second SRA consultation 'A new route to qualification: The Solicitors Qualifying Examination', 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 some of the responses to the previous consultations 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; a system that the JLD believes inspires confidence in the profession with consumers.

In our response to the two previous consultations, 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 options. The JLD ask that the SRA provide this information without delay. In addition, we remain concerned about the quality of qualifying work experience and the lack of regulation of the same.

The JLD has considered each question asked by the SRA in the consultation and provides its answer below.

Consultation question 1: Do you agree that these regulations implement the agreed policy framework for the SQE?

Admission as a solicitor

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.

In respect of part 1(a) of the regulations, the JLD is concerned to learn that there will not be any further consultation on the content of the assessment. We have concerns, for example, regarding the use of multiple choice questions (MCQs) and we wish to stress the importance of the inclusion of ethics questions in the SQE.

The JLD asks that the SRA conduct further a consultation to seek input from stakeholders on the form and content of the assessments and how the preparatory course providers will be supervised/regulated, if at all. The JLD is concerned with the

over-reliance on MCQs when, for the SQE to serve the purpose it intends to, it will need to rigorously test candidates knowledge as well as experience.. Some individuals with disabilities find MCQs very difficult to comprehend and may therefore answer incorrectly as a result.¹ We ask that the SRA publishes its equality risk assessment with its next consultation on the SQE so that stakeholders can be satisfied as to whether the SRA has properly considered the impact of MCQs on individuals with disabilities.

Further, the JLD notes that the SRA has now amended its position so that only those with a 'degree equivalent' may enrol on the SQE. This is welcomed by the JLD, however, we require further clarity regarding paragraph 1(b), as to what will be accepted as 'degree equivalent'. This is an important element of the SQE and we ask that this be defined very clearly so as to avoid any ambiguity. The wording of the 1.1(b) is open to interpretation and the JLD would ask that the SRA clarify at what point they will confirm to a candidate whether their qualification or experience satisfies this requirement as there is a risk that a candidate will only be told at the point of qualification, after sitting the assessments.

Character and Suitability

With reference to regulation 1.1(d) 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 and 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 apply for the character and suitability test so as to ensure that they are not exposed to clients when they do not meet the required standard. 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.

Additionally, the SRA must ensure that prospective candidates do not spend sums of money on the preparatory course/ SQE before being told about the character and suitability test. A failure to do this will result in some aspiring solicitors wasting large sums of money.

We require further information on this point.

Accessibility

The JLD remains concerned about the impact of the new qualifying regime on the accessibility of the profession. Improving social mobility and accessibility is one of the JLD's key priorities. We are disappointed that the SRA has failed to provide information about the anticipated cost of either the SQE or SQE preparatory courses despite the JLD having requested this information in both of our previous consultation responses and numerous meetings with SRA representatives.

¹ http://www.bailii.org/uk/cases/UKCAT/2017/0302_16_2803.html

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 an aspiring solicitor would need to undertake a degree (or equivalent) and it is very likely that all the 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 or qualifying law degree (QLD).

Further, the JLD is concerned that prospective barristers will still be required to undertake a QLD. This would therefore divide the profession and could potentially devalue the solicitor brand and force students to decide whether they wish to train as a solicitor or barrister from an even earlier date.

The JLD asked in our previous consultation response dated January 2017 for the SRA to approach 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 by the introduction of the SQE. We have not heard anything further in respect of this point. 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 also queried in our last consultation response 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. Again further information on this point has not been provided.

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 fulfill the Regulatory Objectives, the SRA should have some oversight as to what is being delivered. Such courses must be marketed responsibly to aspiring solicitors. 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. Without these safeguarding measures in place, and with the possibility that candidates can sit both SQE parts 1 and 2 without undertaking any formal work experience, the JLD fails to see how this will remove the current problem of inconsistencies across LPC providers.

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 a preparatory course in addition to also funding the cost of the examinations. A lack of accessible funding options is likely to result in students from lower socio-economic backgrounds being at a disadvantage. This 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 because they took the preparatory course.

In light of the above, the JLD is concerned that the cost of qualification will remain the same or be more expensive.

The SRA confirmed within the previous consultation that further research will be undertaken into equality, diversity and inclusion (EDI) and will publish a final Equality Impact Assessment. The JLD looks forward to reviewing that information in due course.

Qualifying work experience

Length of time

The JLD is pleased that the SRA has made significant changes to the original proposals and has taken on board the concerns raised within responses to the second consultation. The JLD is pleased to note that there will be a minimum requirement of two years' work experience.

The JLD agrees with paragraph 2.1(b) of the regulations that work experience should '...be of a duration of a total of at least two years full time or equivalent'. We agree that there needs to be flexibility built in to allow for this to be extended, for example if the SQE part 2 is failed on the first attempt. We are however concerned that the 'at least' element may enable employers to take advantage of individuals by refusing to sign them off or permit them to sit SQE 2, especially if a firm is funding the assessment, for the purposes of gaining cheaper labour for an extended period of time.

In respect of the two years' work experience the JLD would be grateful for clarification as to whether this is required to be a continuous period of two years, and if not, whether there is a maximum period of time during which the two years' experience must be gained before qualifying.

The JLD notes that no information has been provided in relation to the expiration date for the work experience element. We consider it important that work experience gained prior to SQE part 1 should count as qualifying work experience, including experience gained prior to the SQE implementation date, so that those who may be about to embark upon such experience are not disadvantaged. The JLD would like further information about the SRA's proposals for candidates who already satisfy the work experience element at the time that the SQE is implemented. Any proposals must take into consideration absences as a result of long-term illness and parental leave.

Although the JLD believes that work experience completed prior to the SQE part 1 should be included, we suggest that there should be a long-stop date for completion of the work experience element of the SQE. We are concerned that, without a long-stop date, candidates would be entitled to use experience gained a number of years ago. To ensure that the work experience is current, the JLD suggests the work experience element should be complete within a 5 year period. The JLD notes that there is no minimum term required for each part of qualifying work experience. Our position is that a minimum of 3 months consistently in each role would be appropriate. In addition, we are of the view that the regulation at 2.1(c) for the work experience element to comprise of no more than 4 separate placements is 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 Period of Recognised Training (PORT).

Finally, the JLD would also like to point out that these proposals are very likely to result in aspiring lawyers undertaking the work experience element at the conclusion of the SQE part 1 and 2. This would be a duplicate of the current qualification process, the training contract effectively being re-named.

Quality

Notwithstanding the above, we remain concerned about several aspects of the work experience requirement. Paragraph 2.1(a) of the regulations states that to qualify, the work must 'comprise experience of providing legal services'. The JLD considers that this requirement is too vague and the threshold too low. Moreover the regulations only require that hosts provide '...the opportunity to develop the prescribed competences for solicitors' (2.1(a)). In other words, the regulations do not require that individuals actually demonstrate competence; they only need to have had the 'opportunity'. The JLD avers that 'an opportunity to learn' should not be the terminology used as employers would effectively be able to say that by merely offering work experience in a law firm they have provided 'an opportunity to learn'. The work experience element needs to be strongly regulated to ensure that aspiring lawyers are given consistent standard of work experience wherever they may take the work experience element of the SQE.

As set out in our previous consultation response, a solicitor's training is what sets them apart and awards them the 'gold standard'. The JLD wishes to stress that the way in which solicitors qualify underpins the reputation of solicitors in England and Wales and, in turn, their reputation throughout the world. It is the JLD's belief that introducing a central curriculum/assessment could bolster this already strong reputation. Our view however, is that in their current form, the regulations will not ensure this high standard. 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 type of work "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 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 suggests that making the work experience requirements more onerous as set out above is in the interests of consumers, as it would ensure that solicitors are actually trained as opposed to being employed to undertake administrative work under the guise of a period of training. It is clear that at present it is commonplace for paralegals to be tasked with significant administrative work despite having already completed a QLD and LPC. The specific requirements of a training contract currently distinguish the role of a paralegal and a trainee by ensuring that trainees are trained. We are concerned that this quality will be lost under the newly suggested regulations.

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 that 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 profession itself.

Qualifying work experience has always encompassed at least three different areas of law including both 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 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. The JLD is concerned that by removing the requirement to be examined in both a contentious and non-contentious context aspiring solicitors will be pigeon-holed into a single area of law. Many solicitors re-train at a later stage in their

career and the SRA must ensure that they have the grounding to do so. In addition, many solicitors who are unable to qualify into their preferred area of law take roles in other areas, on the back of experience gained in their training contract. This would not be an option for those who have had very limited training in one area.

Additionally, the JLD is concerned that there is no requirement to partake in advocacy in the work experience element of the SQE. As a solicitor you automatically receive rights of audience and it is therefore imperative that aspiring solicitors be competent in this. Without training, newly qualified solicitors will be entitled to represent clients in court without any prior experience of advocacy. By not ensuring that aspiring solicitors are trained advocates the SRA is failing to protect the consumer. This is of particular importance as many more solicitors undertake their own advocacy than previously.

The JLD is 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.

Payment

The JLD remain concerned 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 a period in excess of 2 years unpaid. Under these proposals, there is greater scope for individuals 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. For those who are paid, we are concerned that they will be paid low wages, particularly as the Law Society's Recommended Minimum Salary for Trainee Solicitor's would no longer apply.

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. We require guidance on the status of junior lawyers undertaking work experience and the recommend salary.

The JLD recommends that the SRA should reconsider its position with regard to regulating on a minimum salary. Following the de-regulation in 2014, the JLD remains keen for the SRA to include a minimum salary within its regulations to ensure that junior lawyers are not exploited by employers.

“Signing off”

Regarding paragraph 2.2(c) we are concerned about the prospect of solicitors being able to sign off individuals’ work experience if they have not worked with that person. Again, we are worried about how the quality of training will be measured and we are concerned that the current regulations would dilute the quality of solicitors. We question how firms will monitor the consistency of work experience if it is signed off by another firm or a solicitor from outside the work experience organisation.

The JLD requires reassurance that the regulations will offer an adequate explanation of how training will be provided in entities that have neither a compliance officer for legal practice (COLP) or qualified solicitor. We also stress that guidance on “signing off” requirements is urgently required given that individuals undertaking experience now and those who may soon embark upon work experience will need to know how to ensure that their experience will count towards qualification.

We note that there is no specification in respect of supervision within the regulations. The current requirement is that a supervisor must be 3 years’ PQE. We are unclear whether this requirement will continue under the new qualifying regime. Our position is that it should because it is robust and ensures high quality training. Furthermore the regulations do not make any reference to a training record. Again, we consider this is important in terms of demonstrating competence and quality training as well as giving the person being trained an opportunity to reflect. We also stress that requirements should be set out for training records to be reviewed to ensure quality.

Consultation question 2: Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Eligibility for admission of qualified lawyers

We note that regulation 3.1(b) does not include reference to 1.1(c) (two years of qualifying work experience); however we are reassured to an extent by regulation 5 which states that as a starting point, the SRA envisages that qualified lawyers will typically have a minimum of two years’ professional experience. We remain somewhat concerned that there is an exception to the requirement of two years’ work experience if candidates can ‘demonstrate to our satisfaction that they have developed the respective competences to an equivalent standard within a shorter period of professional experience or through lifelong learning (or through a combination of both)’. The JLD suggests that there is no reason that the minimum period of two years’ experience at 2.1(b) should not apply to everyone. 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 and we consider that the requirement of two years’ work experience is reasonable.

The JLD agrees with regulation 3.2 in that there should be flexibility around the need to pass all the elements of the SQE where the SRA is satisfied that a candidates qualifications or experience demonstrate that they meet some or all of the prescribed competences. However 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. It is not within the JLD's remit to comment on the effect of those regulations on CILEX members. A candidate who is already employed as a qualified lawyer should already have the key skills that SQE stage 2 assesses.

The JLD is unclear as to the circumstances in which a candidate would be required to pass an English language test under regulation 6. The JLD would welcome clarity from the SRA as to how they intend on making a decision as to whether a candidate is required to pass a language proficiency test.

In respect of the formal evidence required under regulation 10, we would suggest that the work experience aspect should be evidenced in the same way as any other aspiring solicitor, taking into account our comments above regarding evidencing competence, supervision and keeping a training record.

Commencement

We note at paragraph 4.1 that the regulations will come into force on a date to be determined in an order made by the SRA Board, and that there will be a further consultation in respect of the implementation process and transitional arrangements in due course. We welcome the SRA's commitment to consult further on this point as we are concerned that there remains a great deal of work to be done before the SQE can be launched and its implementation should not be rushed.

Finally the SRA should be mindful that deciding to become a solicitor 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 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. At present it is unclear as to whether candidates who enrolled on a QLD before 31 August 2019 can elect which route to take. This needs to be clarified.

The SRA has 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 students from the 2016 intake will therefore need to take a preparatory SQE course or take the SQE independently. The SRA also needs 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. We are concerned that the transitional arrangements need to ensure that aspiring solicitors do not end up doing a QLD plus

the LPC, only to find there are not sufficient training contracts available and it is therefore impossible for them to elect to remain on the 'traditional' route. The candidate would instead have to undertake qualifying work experience and the SQE, part 1 and 2, perhaps also a SQE training course, at significant additional expense.

The JLD wishes to stress that it is essential that the SRA provides thorough guidance for students having to make decisions now which could be affected by the SQE.

Additional points

1. Reference is frequently made to English and Welsh law as one jurisdiction. It seems that there is increasing divergence between the law in these countries as the consequence of devolution; the Regulations should potentially allow for the creation of two separate legal jurisdictions in the future.
2. Paragraph 1 in both Annex 1 and Annex 2 essentially describe the requirements to be a solicitor in England/Wales, but are worded differently. The starting point should be that they are identical. If the basic requirements are genuinely different then this should be justified; inconsistent wording may suggest different standards are being applied.
3. Annex 1 Regulation 2.1 does not recognise the SRA's intention (as communicated in their Summary of Consultation Responses and Next Steps, April 2017) to consider whether both contentious and non-contentious experience should be gained, which would mean a de facto minimum of two placements.
4. Annex 1 Regulations 2.2(b) and (c) do not specify whether the solicitor should have a certain number of years post-qualification; at present a freshly qualified solicitor could be signing off experience. The JLD would not support this.
5. Annex 1 Regulation 4.1 should be followed by a 4.2 which sets out a long-stop date. The JLD understands that further consultation will take place about transitional arrangements, but a placeholder regulation should be added in the meantime.
6. The Glossary defines a degree and refers to a 'recognised degree-awarding body' but does not say by whom such a body should be recognised.

**Junior Lawyers Division
July 2017**



The Law Society

**The SRA consultation -
*A new route to qualification: New regulations***

The Law Society's Response

July 2017



A new route to qualification: New regulations -

A response from the Law Society of England and Wales

Introduction

The following response contains a summary of the comments of the Law Society (the Society) on the Solicitors Regulation Authority's (SRA) proposed Solicitors Qualifying Examination (SQE) regulations. At this stage, the Society is looking for more detail in order to assess their likely outcome. Based on the limited information available, the Society has focused on two strategic objectives:

- **Maintenance of high standards:** It is important that the requirements set by the SRA continue to ensure the highest levels of challenge and rigour for those entering the profession. The SQE must maintain the strong international reputation of those qualifying in England and Wales in the interest of clients, the profession, students and other stakeholders. This is why we continue to emphasise the importance of ensuring not only that the new tests are developed appropriately, but also that the academic and work experience requirements maintain their credibility by means of appropriate checks and safeguards.
- **Ensuring a diverse profession:** The new system must ensure that the broadest range of applicants can qualify as solicitors, and that there are no barriers excluding candidates from non-traditional backgrounds. In this context, it is important that the new requirements are communicated clearly, simply and widely.

In addition, we would highlight that there is uncertainty as to the impact of SQE among employers, teaching institutions and potential students. For example, educational institutes could face difficulties planning for courses and student numbers. Students may also be deterred from applying to join LLB courses whilst there is a lack of clarity regarding what future career paths may look like. We encourage the SRA to continue to communicate to the fullest extent possible with the institutions and groups affected, in order to minimise uncertainty. Furthermore, from the international perspective, the mutual recognition of lawyers' qualifications is a key issue but it is uncertain how this regime will operate after Brexit. We believe it is necessary to avoid making changes which could make mutual recognition of a solicitor's title more difficult after Brexit.

To determine whether or not the proposed system will support the regulatory objectives we believe more detail will be required. Consultees would benefit from more information on how these rules will be applied in order to scrutinise them in the required detail. The SRA should not be asking for approval of regulations until such time as it has set out the details of the new system in a way which can be properly assessed by stakeholders. We would therefore encourage the SRA to reflect on its proposals further to provide this extra detail, since even minor changes to current arrangements could have a major impact.

We also believe that for a consultation to be truly 'effective and meaningful' - as the SRA guidance on regulation intends for it to be¹ and section 28 of the Legal Services Act requires - respondents must be able to examine any proposed changes to regulations in detail.

As this consultation has insufficient detail we do not believe that it is adequate for the task of determining stakeholders' points of view. To ensure that the consultation is 'open and effective'² we believe it will be necessary to arrange a further consultation, once the SRA's updated regulations are available for stakeholders to properly consider.

Question 1 - draft regulations

Do you agree that these regulations implement the agreed policy framework for the SQE?

The draft regulations set out four requirements that must be met before an individual can be eligible to qualify:

- 1.1 (a) you have satisfactorily passed an assessment which is designed to assess your competence against the prescribed competences for solicitors and is conducted by an assessment organisation appointed by the SRA for that purpose;
- (b) you hold a degree or qualifications or experience which the SRA is satisfied are equivalent to a degree;
- (c) you have completed qualifying work experience which meets the requirements of regulation 2; and
- (d) the SRA is satisfied as to your character and suitability to be a solicitor.

As currently drafted the regulations grant the SRA substantial discretion over interpretation and implementation, which we believe would not be in the interests of the public or other stakeholders. For example, they imply that the SRA has broad discretion to dispense with all academic qualifications for applicants because of their experience, in place of the narrow discretion that exists under the current scheme.

The regulations under question 1 should not be adopted until the SRA sets out in more detail how they are intended to work. Please see below for further specific comments.

Work Experience

We believe that work experience is a crucial element of the SQE and are concerned that the requirements of Regulation 2.2 are not rigorous enough to guarantee a consistent and high standard.

¹ <http://www.sra.org.uk/sra/consultations/consultation-approach.page>

² <http://www.sra.org.uk/sra/consultations/consultation-approach.page>

Regulation 2.2 states:

You must arrange for confirmation in the prescribed form of the period of work experience carried out and that it provided you with the opportunity to develop some or all of the prescribed competences for solicitors, to be given by:

- (a) the organisation's COLP;
- (b) a solicitor working within the organisation; or
- (c) if neither (a) or (b) are applicable, a solicitor.

The wording of Regulation 2.2 requires amendment. Simply confirming that the candidate has had the 'opportunity' to develop skills is insufficient. The solicitor should also be required to confirm that the work undertaken by the candidate has been rigorous enough to prepare the candidate for a career as a solicitor. In addition, the solicitor should confirm that the candidate has carried out work that is sufficiently wide ranging and that it has been competently performed.

Regulation 2.2(c) indicates that confirmation could be provided by entities that have neither a COLP nor a qualified solicitor working within them. We would highlight our strong concerns about such an eventuality, and what this might mean for the level of oversight that candidates are receiving during their work experience. The absence of any input from the profession in training could undermine the relevance of such experience. In addition, it puts the solicitor who is expected to provide confirmation in a difficult position, as they are being asked to provide confirmation about a period of work experience that they may know little about. If work experience is to take place in an institution which has neither a COLP nor a solicitor then the SRA should have to specifically authorise the institution as a training provider.

Furthermore, it is important to gain clarity over the definition of 'solicitor' in the regulations above. For example, are these solicitors to hold current practising certificates, would they just need to have their names on the roll, or have a minimum level of post-qualification experience?

We are concerned that these aspects of the proposals seriously undermine, rather than improve, the objective of the development and maintenance of high and consistent standards across the whole profession.

The new system presents a good opportunity for the SRA to take steps to issue clear guidance to solicitors on meaningful work experience (and enable the profession to apply a common and consistent standard). It is also important to stress that the right balance should be reached between prescriptive and generic guidance, and that the bar on this issue is not set too low.

If the work experience requirements are *not* made more stringent, in accordance with the suggestions above, then two risks will emerge.

The first of these relates to standards. There will be a great deal of flexibility given to candidates about what form the offered work experience takes. This could lead to some candidates having to take on low-quality work experience which is poorly supervised, with a consequent knock-on impact for professional standards and for clients.

Secondly, a social mobility risk arises from such a broad definition of work experience. Some law firms may not be satisfied with a base-level of work

experience, and they may expect something more stretching. There is a high probability that candidates with already established links into the legal sector will be better placed to judge what work experience will meet the needs of employers, and make sure that they obtain it.

The SRA must also ensure that the new regime does not have a negative impact on encouraging a diverse range of applicants into the profession. The lack of clarity pertaining to the costs and funding of the SQE still remains and we would encourage the SRA to undertake a full equality impact assessment to determine the impact of the regulations and subsequent tests.

Question 2

Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

The current arrangements have supported the growth of networks established by English and Welsh firms across the world, and firms from the EU and other jurisdictions to open and practise in, and via, England and Wales. This has helped to create one of the biggest and most diverse legal communities in Europe.

We welcome the fact that the SRA is looking at recognition of qualified lawyers at this early stage, as it is helpful to give an indication to our international partners that we take mutual recognition very seriously and (given Brexit) this is a very important issue for all sides to get right. However, we would stress that further engagement with the profession on the points below will be needed once the outcome of the Brexit negotiations becomes clearer, and early planning for possible post-Brexit scenarios is to be encouraged.

Recognition and Exemptions

The SRA has stated that if a foreign-qualified lawyer can demonstrate that they have the knowledge and/or skills required for the SQE and are satisfied that the foreign lawyer has the qualifications or experience to demonstrate some or all of the prescribed competences, they may be prepared to grant exemptions from parts of the SQE.

There is an excessive degree of uncertainty and subjectivity in the current draft principles. We would request specific and detailed clarification from the SRA as to what criteria would be applied for the recognition and assessment of a foreign jurisdiction, and confirmation of whether (and to what degree) this would constitute a change from current procedures.

We would support the continuation of any existing exemptions pertaining to EEA and Swiss nationals qualified in the EEA or Switzerland, applied through submission of the exemption application form³ (as long as there are no material changes which would warrant a change of the assessment). This point is particularly relevant where there is a common heritage and close ties between two jurisdictions, for example between England and Wales and the Republic of Ireland. (Many City firms are also

³ <http://www.sra.org.uk/solicitors/qlts/apply.page>

keen on increasing ties to Ireland as several of our members have sought admission there to ensure that they are still allowed to address EU courts after Brexit).

We would also be in favour of exempting foreign lawyers with two years' professional experience from SQE 2. This would enable the new system to continue meeting part of the reciprocity requirements set out in the re-qualification framework. (It would also serve to highlight the wider issue that a lack of early clarity or flexibility in the delivery of these regulations may lead to reciprocal steps being taken against our members working abroad).

Brexit

As highlighted above, any SQE regulatory changes must fully take into account the progress and outcome of Brexit negotiations and, ultimately, the nature of the new relationship between the UK and the EU, as well as any transitional implementation arrangements. It is likely that some proposals will have to be reconsidered after the outcome of the Brexit negotiations is known. Under the current regime, Registered European Lawyers can re-qualify on the evidence of three years of regular and effective practice of home state law, including EU law, after establishment and registration in England and Wales. The Law Society is supportive of the continuation of this EU lawyers' framework which has proved very successful.⁴

Administrative Fees

The consultation states that the SRA is considering implementing an 'administrative fee' for qualified lawyers who apply for admission. Early and clear certainty on the new fee regime would be welcome (for example under what criteria would it be set, reviewed, and changed).

Standard of English

We believe that relevant solicitors should be tested at the point of qualification and against clear and recognised standards.

⁴ Further Information on the Law Society's work on Brexit can be found here: <http://www.lawsociety.org.uk/support-services/brexit-and-the-legal-sector/>



26 JUL 2017

CHIEF EXECUTIVE SRA

PP/2504

From: The Chief Executive

Our Ref: AH/AD

Date: 25 July 2017

Mr Paul Philip
Chief Executive
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Dear 

Re: Consultation. A new route to qualification: New Regulations

I am writing in response to the current consultation by the Solicitors Regulation Authority on the draft regulations relating to the proposed new route to qualification.

The Law Society of Northern Ireland is keen to ensure that there is reciprocity of recognition in respect of solicitors whose first place of qualification as a solicitor is Northern Ireland and who are seeking to be admitted to the Roll of Solicitors in England and Wales and, vice versa, for those solicitors whose first place of qualification is England and Wales and who are seeking to transfer and to be admitted to the Roll of Solicitors in Northern Ireland.

Yours 



ALAN HUNTER
Chief Executive



A new route to qualification: new regulations

The Law Society of Scotland response

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 proposed regulations particularly in relation to the qualification into England and Wales by lawyers from other jurisdictions.

We responded to the SRA's first and second consultation. We note that this consultation seeks to address policy detail arising from the first and second consultations.

Question 1: Do you agree that these regulations implement the agreed policy framework?

Yes although that is not necessarily the same as agreeing with the policy framework. We refer the SRA to our previous consultation responses for our views.

We would be interested to see the online support package to help candidates and employers especially how this support package will assist our members looking to requalify into England and Wales. It is likely that such guidance and support will be as important as the regulations.

Question 2: Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

We note that the SRA "will require all qualified lawyers to take the SQE unless they can establish that there is no substantive difference between their qualification and experience and the SQE and parts of the SQE". We believe that this puts the onus on competent bodies rather than individuals. An appropriate mapping exercise undertaken by a competent authority – such as ourselves – would surely be of considerable use to our members who are wishing to qualify in England and Wales and, also, to the Solicitor Regulation Authority who would be able to state with confidence that Scottish solicitors are always exempt from certain elements of SQE 1 and SQE 2.

We understand that it is difficult for the SRA given the construction of SQE 1 to consider partial exemptions from individual legal knowledge areas. We further understand that this will likely mean that there are limited standardised exemptions for Scots lawyers from SQE 1 (other than from the

Company and Commercial knowledge area). This would not preclude individual members from seeking further exemptions due to their own experiences in Scotland or England or Wales (e.g. through further study, experiential learning in Scotland, experiential learning in England and Wales etc).

We would note though that the Outcomes that we set for PEAT 2 (our traineeship¹) are very similar to those that are outlined as competencies for SQE 2. Moreover, PEAT 2 builds upon and hones similar outcomes at the PEAT 1 or vocational stage.

Our reading of this is that our members would – assuming a mapping exercise that the SRA was content with – be entirely exempted from SQE 2. We think this would be a sensible and proportionate approach.

As per our previous consultation responses 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 EU jurisdictions. It is a quirk of European Union law that Estonian lawyers can establish in England and Wales but Scottish lawyer cannot. We would urge again consideration of some form of intra-UK establishment directive in early course and would be very keen to discuss this in depth with the SRA.

¹ <https://www.lawscot.org.uk/media/225803/peat%20%20outcomes.pdf>

A new route to qualification - New regulations

Response ID:65 Data

2. Your identity

Surname

LOWRES

Forename(s)

THOMAS DAVID

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

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

Yes.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

I feel that as someone who has spent 4 years of evening study and over £17,000 in fees, taken from my own personal savings, these changes will work to the detriment of students who have qualified through the traditional route (Law Degree/GDL, LPC).

As many smaller firms and medium firms will opt to train through the more flexible and economically viable 'qualifying work experience', this will mean a substantial number of training contracts will not be available for those who qualified through the traditional route. In effect the number of training contracts will be significantly reduced. This will put those would-be solicitors at a distinct disadvantage, especially unfair as many have paid out a lot of money, put in a lot of work and made sacrifices to achieve this goal. The competition for each available training contract will increase sharply as a result.

Is it fair that the SRA indirectly penalise this group of people and do not make a concession for them?

I would suggest that for a transitional period of around 3 to 5 years from implementation of the SQE in 2020 that those who have taken the traditional route of qualification would be allowed to qualify as a Solicitor by 'qualifying legal work experience', in the same way as those who have the SQE will be able to.

Response to the Solicitors Regulation Authority's Consultation:
A new route to qualification: new regulations

1. Do you agree that these Regulations implement the agreed policy framework for the SQE?

This is the third consultation which the SRA has conducted and this Society responded to both of the previous two consultations.

The SRA has announced that it is pressing on with the introduction of the SQE, as early as 2020, citing the alleged fact that most respondents to the first two consultations agreed with the SRA's proposal. This is untrue. While it is the case that most respondents (including this Society) cautiously supported the idea of a new qualifying examination, nearly 70% of respondents replied that the SRA's proposals for the SQE would not be an effective test of competence or the requirements for being a solicitor. Furthermore, this was not simply the view of universities but also that of the profession. The SRA has therefore ignored the views of most respondents and has decided to press on regardless.

The SRA asks whether their proposed Regulations implement the agreed policy framework for the SQE. On the face of it, they do because there will be a need for:

- (a) a degree or equivalent (not necessarily a law degree or equivalent)
- (b) passing SQE Stage 1
- (c) passing SQE stage 2
- (d) passing the SRA's tests as to character and suitability.

In practice, however, the SRA's proposals are substantially flawed and these flaws were pointed out in this Society's response to the SRA's second consultation on the SQE. In summary, these objections were:

- (1) The SRA has failed entirely to deal with the question of how candidates will prepare for SQE Stage 1. The SRA appears to envisage that SQE Stage 1 will be taken shortly after a candidate takes their final degree exams (in the case of a candidate taking a law degree) but the topics which are to be included in SQE Stage 1 go well beyond the contents of a law degree and include such subjects as ethics, the Code of Conduct and SRA Handbook, money laundering, regulation of financial services, confidentiality, data protection, file destruction, solicitors' accounts, costs budgeting in civil litigation, serving proceedings out of the jurisdiction, practice directions and pre-action protocols. These are areas which a candidate will only encounter once they start work and certainly will not encounter on a law degree. It would obviously be completely impossible for a candidate without proper preparation to take SQE Stage 1. The SRA's clear intention is to do away with the need for the Legal Practice Course and the expense of that, but the SRA has failed to explain how candidates will be in a position to take and pass SQE Stage 1 without a lengthy (and expensive) period of training. This would clearly create a two tier profession between those who do take a preparatory course before taking SQE Stage 1 (like the Legal Practice Course) and those who do not. Furthermore, how will those who do not take such a course manage to pass SQE Stage 1?
- (2) The SRA suggests that SQE Stage 1 could be limited to multiple choice. We do not agree and take the view that candidates should be tested out on their writing skills in particular, bearing in mind that such skills are a requirement of being a successful practising solicitor.

- (3) The SRA proposes that SQE Stage 1 will test out skills in dispute resolution either in contract or tort. In our view, these are such important subjects that contract and tort should both be tested out in the context of dispute resolution.
- (4) We do not agree with the SRA's proposal that a candidate would only have to choose two practice contexts out of five and that it should remain three as at present, at least one contentious and one non-contentious. We also propose that family law and employment law should be added as contexts for assessment under SQE Stage 2.
- (5) Assessing rights of audience skills by computer based assessment is in our view insufficient.
- (6) Although we are pleased to note that the SRA has accepted our suggestion that there should be work based training of at least 24 months after SQE Stage 1 and before SQE Stage 2, we are concerned that the SRA has not addressed the issue as to who would be responsible for signing the candidate off at the end of their workplace experience and what the significance of that would be (if any).
- (7) We are concerned that the SRA is proposing not to monitor courses at all. We take the view that the SRA needs to regulate 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 do not think it is sufficient for the SRA to simply publish results.

In addition, we are concerned that the SRA proposes to allow training in an organisation without a COLP or a qualified solicitor but the SRA fails to explain how this will provide sufficient safeguards as to the training provided.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

In our response to the SRA's second consultation on the SQE, we indicated that we did not see how there could be any exemptions from SQE Stage 1, given the extent of knowledge required by SQE Stage 1. We took the view, therefore, that no-one could be exempted from SQE Stage 1, particularly as it was the SRA's objective to ensure that there was one single gateway into the profession for all.

In relation to the recognition of the qualifications of foreign lawyers or students, in principle the SRA's proposals for testing out lawyers from other jurisdictions are acceptable but, again, more detail is needed as to how the tests will be applied.

26 July 2017

Regulatory Committee, Tunbridge Wells Tonbridge and District Law Society

SRA consultation

A new route to qualification: New regulations

Response of The University of Law July 2017

Consultation question 1: Do you agree that these regulations implement the agreed policy framework for the SQE?

We note the reference in the question to “the agreed policy framework” and, in light of the published responses to the consultation on the SQE, interpret this as “agreed by the SRA Board” when making their April 2017 decision. In responding to this question we are not indicating our agreement to the introduction of the new route to qualification, and reaffirm our responses to the previous consultations.

Qualifying Work Experience

Whilst we welcome the decision that QWE should be for at least two years, as stated in our response to the October 2016 SQE consultation we consider that QWE should be regulated, recorded and assessed. Without regulation of this critical area (recognised as such by the SRA Board in requiring experience of at least two years), the “qualifying” element has very little substance.

The provision for confirmation of QWE appears to require no more than an unsubstantiated statement that there was an “opportunity” to acquire “some” of the prescribed competencies for solicitors. (We note there is a reference to a prescribed form, but in the absence of such a form being provided with the consultation documents we assume it will not include any further requirements as to detail.) In our view this is insufficient to ensure appropriate standards.

We consider the absence of substantive regulation to be detrimental for potential applicants, for employers, and the public.

- Applicants can have no assurance that the experience they gain in the workplace will be at an appropriate standard to help them develop to level 3 of the threshold standard, that it will be comprehensive in covering all competencies, or that they will have adequate evidence to show the scale of the opportunities they have experienced.
- Applicants also appear to have the obligation to obtain the required confirmations of QWE, with no associated requirement for it to be provided by the relevant employer/organisation. If there is no such requirement on the employer/organisation to provide confirmation when requested by an applicant (where the requirements for QWE have been fulfilled), it ceases to be in the applicant’s power to provide the

evidence required for admission. Regulation of QWE could address this issue, and provide both safeguards for those seeking to enter the profession, and clarity for employers/organisations over when they can provide (or withhold) QWE confirmations. This would be particularly important for applicants who have built up QWE from a variety of employers/organisations.

- Employers can have little confidence that a potential applicant will have gained genuinely valuable experience with previous employers or organisations, or what prior QWE covered, given that the evidence will be only confirmation of an “opportunity” to have developed “some” competencies. The likely result is that few employers will rely on confirmations issued by others, and will require the full two year period to be covered with them, notwithstanding any confirmation the applicant might hold from earlier experiences.
- It is difficult to see how the public are better served by the replacement of current regulations around the nature of the experience trainee solicitors must have in order to qualify, with the proposed scheme for confirming that applicants for admission must have had “some” opportunity to develop the skills essential to practice as a solicitor.

We also note the contrast between the situation for solicitor apprentices and others. The solicitor apprenticeship Assessment Plan includes the following requirement:

“Work-based assessment ... will be used to ensure the development and on-programme assessment of the knowledge, skills and behavioural elements of the Apprenticeship standard in the context of the particular practice areas in which Apprentices are employed. Satisfactory completion of the work-based assessment to the level of competence specified in the Threshold standard, certified by the training provider or employer, is however a pre-requisite for taking Part 2.”

In our view it would be a striking anomaly in the admission regulations for employers or training providers to have to certify “satisfactory completion of the work-based assessment to the level of competence specified in the Threshold standard” for an applicant to be able to qualify as a solicitor through the apprenticeship route, but other applicants simply need confirmation that they had “an opportunity” to develop skills during their QWE, with no evidence of which skills nor the level of competence reached.

We therefore urge that this issue be reconsidered, and that QWE be subject to substantive regulation for the benefit of all stakeholders, including the public.

Character and suitability requirement

In relation to the character and suitability requirement, we agree that the SRA need to be satisfied of this at the time of admission. However we would encourage the SRA to provide a definitive mechanism (not merely an ability to seek non-binding advice from the ethics helpline or similar) for potential applicants to use well in advance of admission should they have any potential issues on their records.

It is not appropriate in our view to place applicants in the position of having to complete all the elements required for admission, including the minimum two years of QWE, before being able to verify they meet the character and suitability requirements for issues that arise prior to the admission application itself. This is even more important in the context of the solicitor apprenticeship, with its six year duration.

Including a mechanism for an earlier determination where an applicant is unable to give a completely clean declaration would give both applicants and employers confidence to pursue and support study and QWE. In providing such a mechanism, the SRA would be removing a possible barrier to entry to the profession.

Comments on the draft wording

We have a number of observations on the detail of the draft wording. With reference to the numbering in Annex 1 of the consultation documents:

- 1.1 (a) Given that the SQE will consist of numerous parts, split into two main sections, the language of “passed an assessment” is potentially misleading. Unless there is an intention to move away from the language of “Solicitors Qualifying Examination”, it would seem appropriate to use this term instead, particularly as it is used throughout Annex 2. If “assessment” is to be retained, we suggest it becomes a defined term, where fuller details of the assessment structure can be set out in the definition.

- 2.1 (b) We consider that “at least two years full time” is too uncertain, and requires clarification / explanation. This is particularly so given (i) the rules surrounding apprenticeships, where a full time role includes study release, and (ii) the ability to collect time with different employers / organisations, who will have very different terms around the number of working hours per week, holiday entitlement, flexible working, and unpaid leave.

In the absence of a clearly defined requirement as to what counts as “two years full time”, those seeking admission will be put in a difficult position in assessing when they have accrued sufficient QWE, and those asked to provide confirmation under paragraph 2.2 will also find it hard to assess how much time they can confirm when asked to do so by potential applicants for admission.

We therefore consider that a more precise definition of the minimum length of QWE is needed for the regulations to produce a clear and fair requirement.

- 2.2 (c) This provision seems very wide, and suggests that a solicitor who completes the confirmation does not actually need to have any link with the actual work carried out by the applicant for admission. Is this intended? In our view it would give more confidence in the admission requirements if it

was clear that the person confirming the QWE had a direct link with that work experience.

- 3.1 (a) We find the provision “that is recognised by the SRA” unclear as to whether it refers to the “legal professional qualification”, the “overseas jurisdiction”, or both. Rewording to improve the clarity of meaning would be welcomed.

Consultation question 2: Do you have any comments on the proposals for recognition of the knowledge and competencies of qualified lawyers?

We note that there is a discrepancy between the provisions in section 1.1 of the draft SRA Authorisation of Individuals Regulations and the principles set out in Annex 2, in that there is no QWE requirement for qualified lawyers. It is not obvious to us why the same minimum 2 year period of QWE should not apply to all applicants for admission as a solicitor, and for the same certification requirements to be followed (with the exception of permitting an appropriately wider class of person to be able to provide the confirmation(s)). In our view it would be unjustifiable to deny consideration of “lifelong learning” for a candidate under section 1.1, but to permit it in the case of a qualified lawyer in another jurisdiction.

Annex 2 includes many references to the SQE, sometimes referring to it as a whole entity, and sometimes as “SQE 1 and/or SQE 2”. Given that it appears clear that each individual element of SQE (which we interpret as single assessments, rather than SQE 1 or SQE 2 taken as blocks) is to be treated separately for the purposes of recognition of a foreign lawyer’s professional qualifications or experience, we suggest eliminating use of the “SQE 1 and/or SQE 2” phrasing. It would in our view be clearer to simply refer to the SQE in whole or in part as appropriate. This links to the point made in answer to question 1 above, and the definition of “assessment” in the draft regulations.

In relation to paragraph 6 of Annex 2, it is not clear to us why the most effective point to require an English language test is post-admission at the time of applying for a practising certificate, rather than pre-admission. We would suggest that admission is the more obvious time to test if a candidate for admission does indeed meet all the requirements of the solicitor competencies.

We did find some of the detail around how qualified lawyers could satisfy the requirements difficult to follow (e.g. we did not understand the meaning of footnote 8), and suggest that greater clarity will be needed in this area.

25 July 2017

A new route to qualification - New regulations

Response ID:75 Data

2. Your identity

Surname

Speed

Forename(s)

Victoria

Name of the firm or organisation where you work

BPP University

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 of Pro Bono & CSR (Law School)

1. Do you agree that these regulations implement the agreed policy framework for the SQE?

The regulations appear to set up what the SRA has said they want to happen. I have doubts about them as expressed in previous consultations.

2. Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

Comment One

It is a requirement that qualifying work experience must:

"comprise experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitors."

It is not very difficult to imagine how the word "opportunity" may be abused by various legal work experience providers. It may be that students are taken advantage of to perform menial tasks. I feel that without much greater detail on what is intended, there will likely be a negative impact on "encouraging an independent, strong, diverse and effective legal profession". I also have concerns about the impact on "protecting and promoting the interests of consumers" as there is a risk that people will become lawyers without any meaningful learning opportunity.

Comment Two

It is a requirement that work experience must:

"be of a duration of a total of at least two years full time or equivalent".

An average student on GDL/LPC will spend up to two years of their time at a law school engaging in pro bono sometimes for a few hours a week, sometimes not at all (e.g. during holidays) and sometimes much

more. It is worth making absolutely clear that a student can use ALL their pro bono experiences as one period of work based learning whether that be in clinic, shadowing clinic, helping with phonelines or in Streetlaw activities.

The SRA should be clear whether there is a minimum period that could count. For example, a student participating every month for 4 hours? Will this still count as one period of work-based learning? I think the SRA should make clear that it does count to ensure pro bono services continue to be resourced and therefore the regulatory objective of improving access to justice is being met.

Comment Three

SRA supports exposure of students to social welfare law as they are able to gain qualifying legal work experience in any area of law and in pro bono and in law clinics where the focus is often in social welfare law. However, students who spend two years gaining work experience in family law, in employment law and so on, will still have to complete the SQE2 assessment in areas unrelated to their work experience. This presents a barrier to entry into the social welfare sector and, in my view, the number of new lawyers entering the social welfare sector will inevitably fall.

For those that do decide to enter the social welfare sector, who will assist them in feeling confident, prepared and, most importantly, trained sufficiently to meet the SRA's objectives of displaying the highest standards and fitness to practice? The SRA may argue that there is a freedom with firms and education providers to collaborate to provide training but who do they think will pay for this?

My interpretation of the proposals is that students keen to become family lawyers, for example, may have to pay additional money for some extra course providing academic preparation, simply to be the lawyers they want to be and, frankly, that the public need them to be. This when they do not have the same salary curve as their commercial peers. Alongside the additional money, these students will also have to commit additional time not actually earning whilst their commercially focused peers are already in the workplace. Maybe the SRA envisages that the freedom of collaboration will see law firms and NGOS funding a new training regime for their future lawyers? I cannot speak for these organisations but, I've read and heard enough to assume, with some confidence, that there is no money available in these organisations to cover this. The cost of so called 'freedom' will likely have far reaching consequences.

The reality of this additional cost and responsibility on this vulnerable area of the profession might mean that less firms ultimately operate in this area and that less lawyers enter the sector. Knowledge of laws and the specialist skills required will diminish and the most vulnerable consumers of legal services will be left with no guarantees at all of the lawyer they meet having the high standards and ability to practice currently promoted by the SRA as the very reasons for reform. At a time where legal aid is at an all-time low, this has huge potential to impact on access to justice.



YOUNG LEGAL AID LAWYERS

Response to the Solicitors Regulation Authority Consultation on A new route to qualification: New Regulations

26 July 2017

About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has almost 3,000 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: New regulations. This consultation concerns the regulation of the Solicitors Qualifying Examination (SQE) and the recognition of qualified lawyers under the SQE scheme.

Introduction

3. The consultation poses two questions. We have responded to these below.
4. At the outset YLAL would like to raise a few 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.
5. YLAL has previously stated that we are in theory supportive of a standardised assessment which will ensure high quality provision of legal services to consumers and also provide potential lawyers with a predictable route into qualifying as a solicitor. We have also stated that we support any change to the current scheme which lowers the economic burden currently on those studying the traditional route of Qualifying Law Degree (QLD) or Graduate Diploma in Law (GDL) and then the Legal Practice Course (LPC). However, we remain to be convinced that the SQE is the best way of addressing these issues.

6. YLAL has also previously voiced concerns relating to the effect the proposed changes to the route to qualification will have on accessibility of the profession. To date, the SRA has failed to provide any clear information about how much it expects the SQE to cost. This continues to be the case. YLAL also continues to have concerns about the possible effect of the introduction of the SQE on social mobility and diversity, particularly within the legal aid sector, the lack of transparency regarding possible related costs and a lack of information regarding possible funding options. As previously YLAL requests that the SRA provides clear information about the expected costs of the SQE as soon as possible.
7. YLAL notes the SRA's view that the new rules relating to recognition of qualified lawyers are intended to ensure that they are "consistent in their approach to recognizing the knowledge, skills and competences that qualified lawyers have gained through professional qualifications and professional experience". We further note that the SRA suggests that they will "require all qualified lawyers to take the SQE" unless they are able to show their experience or qualifications are equivalent to the SQE. Though this proposal appears to cover all categories of entrants, YLAL wishes to draw attention again to the lack of clarity and detail within the proposal which prevents us from providing fully informed views and responses to the consultation as it stands. Below we have provided our views based on the information we have available at this present time.
8. YLAL is particularly concerned with ensuring that any proposed changes to the system of qualification do not work in a way which will discourage or deter those who have qualified in different jurisdictions from applying to practise in the UK or those working in the legal sector who are not (or not yet) qualified as solicitors. We continue to support accessibility to work in the legal sector for all those with the requisite skills and knowledge. We do not support any additional costs being introduced for these categories, which are likely to discourage or deter some of those keen to practise in the UK but unable to afford an extra financial burden. We continue to encourage the SRA to ensure that its policy and framework for this new system of qualification helps to improve, rather than hinder, social mobility, particularly within the legal aid sector.
9. Finally, YLAL is also keen to stress that Brexit is an issue which we would expect the SRA to deal with fully and transparently throughout the development of the SQE. Though we welcome the fact that the SRA assure us that they have considered the repercussions of Brexit for lawyers from within the EU and appreciate the reassurance that whilst the UK remains a member of the EU the current situation will continue, we do not consider that enough information has been provided regarding the situation following the UK's withdrawal from the EU. YLAL encourages the SRA to provide clear guidance regarding its suggestion for how lawyers from outside the UK will qualify to practise in the UK both during any transitional arrangements and when the UK is no longer a member of the EU.

RESPONSES TO THE CONSULTATION QUESTIONNAIRE

Question 1: Do you agree that these regulations implement the agreed policy framework for the SQE?

10. In relation to 1.1 (a), YLAL does not believe there has yet been satisfactory information provided relating to the content of the examination and the nature of the assessment itself. We have raised concerns in our previous responses. We continue to be concerned that the way in which competences will finally be assessed through the SQE remains unclear. We also continue to have concerns relating to the use of computer based assessments. Neither of these concerns have been addressed by the SRA.
11. In relation to 1.1 (b), YLAL is concerned that there is no clear indicator of what experience the SRA will be willing to treat as being equivalent to a degree. We find this point to be extremely important for many of our members who have many years of legal experience but are not qualified solicitors. We ask for clarity on this issue, which is extremely important in any drive for social mobility within the legal sector, along with recognition of the complex and important work undertaken by often low paid paralegals and case workers for instance.
12. There are a number of issues YLAL would like to raise relating to 1.1 (c) and 2.1. YLAL has previously expressed concern regarding the proposal that there would be a minimum requirement for legal experience. Though we have previously agreed that an upper limit should be introduced we continue to be concerned that not all aspiring solicitors will need to complete the full two years to meet the requirement. We continue to believe that it would be more appropriate to allow each applicant's legal experience to be assessed on its own merits allowing those who have gained the requisite level of experience in less than two years to qualify at this point. Again, YLAL requests further detail on this issue which is particularly vague in relation to what kind of work will be considered to have allowed the aspiring solicitor to develop the required competences.
13. In relation to 1.1 (d), YLAL agrees that solicitors should continue to be required to meet character and suitability requirements. We request that such matters be dealt with at an early stage in order to avoid those who will be deemed unsuitable working with clients in a legal environment prior to the requirements having been assessed. We also consider it would be unfair to allow those who would be unable to pass the requirements to start down a path which they will be unable to complete following such an assessment being made.
14. YLAL disagrees with the SRA's suggestion in 2.2 that the burden of confirming the period of qualified work experience should lie with the applicant. We believe that this burden should lie with the relevant organisation or alternatively, depending on the circumstances, the training provider. We consider placing the burden on the applicant will likely create further issues with bureaucracy and may lead to delays in such confirmation being provided to the SRA and as a result lead to unfair and unavoidable delays in qualification for the applicant.
15. In relation to the regulations relating to eligibility for admission of qualified lawyers, YLAL has a number of comments to make. YLAL refers you to paragraphs 10-13 of

our response above, the same concerns are raised here in relation to qualified lawyers. In relation to 3.2, YLAL requests that further clarity is provided. There must be more guidance provided on what the SRA will deem to be sufficient qualifications or experience to satisfy this requirement in order to allow qualified lawyers to make an informed decision as to whether they will be able to meet the requirements to have the SQE waived or whether they will in fact have to pay for the assessment in order to cross-qualify. YLAL finds the current formulation to be vague and lacking in detail.

Question 2: Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

16. YLAL understands the need for a consistent approach to be taken when recognising the knowledge, skills and competences of qualified lawyers. However, it is difficult to assess the impact that the SQE will have on qualified lawyers from other jurisdictions until full details of how the knowledge, skills and competences will be assessed are published by the SRA. We consider that an emphasis should be placed on ensuring that the SQE does not deter talent from outside of the UK, particularly where any deterrent would have an adverse effect on social mobility across the legal sector.
17. In relation to 1 a), b) and d), YLAL broadly agrees with the SRA that legal qualifications, suitability requirements and compliance with the Statement of Solicitor Competence and Statement of Legal Knowledge provide the basis of a competent solicitor.
18. In relation to 1 c), YLAL agrees that solicitors should not be required to hold a degree. Many of our members and other junior lawyers have qualified through CILEx and in the future will qualify through legal apprenticeships, and we believe this helps to promote social mobility within the sector. YLAL does not however believe that it is absolutely necessary to establish equivalency with traditional qualifications as is suggested by the SRA. Further, we accept that previous legal qualifications may lead to exemption from part or all of the SQE. We do not however believe that qualifications equivalent to a degree should be a prerequisite where the applicant will be expected to complete the SQE as, if the SQE is intended to test the skills and competences required for work in the law, then this should be sufficient for it to stand alone as a single standardised assessment.
19. The SRA's consultation document states: "qualified lawyers who are seeking admission will have to contact us and demonstrate how their professional qualification or experience is equivalent to the SQE, or part of it". YLAL understands that "professional qualification" refers to the qualifications of those from other jurisdictions however it is less clear what "equivalent experience" refers to. The SRA does not give any examples of what they believe may be equivalent experience. YLAL would encourage the SRA to issue clear guidance on this matter which would give clarity for all qualified in other jurisdictions and professions.
20. YLAL supports the SRA's decision to continue to recognise jurisdictions and professions which have already been recognised under the previous Qualified Lawyers Transfer Scheme. We would appreciate clarity from the SRA regarding which other professional qualifications and jurisdictions they intend to recognise in order to allow lawyers qualified in other professions and jurisdictions to plan ahead.

21. The SRA suggest that:

“qualified lawyers will typically have a minimum of two years' professional experience in order to demonstrate to us that they have satisfactorily developed to an equivalent standard the competences assessed by the part(s) of the SQE for which they are seeking recognition. However, some candidates may be able to demonstrate to our satisfaction that they have developed the respective competences to an equivalent standard within a shorter period of professional experience or through lifelong learning”.

YLAL certainly welcomes this recognition of shorter periods of work experience and commitment to life-long learning but would encourage the SRA to apply this principle to both qualified lawyers from other jurisdictions and prospective lawyers studying and working in England and Wales. As we suggest above recognition of periods of less than two years may be appropriate. We also suggest that recognition of lifelong learning may assist with encouraging a wider range of people to enter the profession and assist with encouraging social mobility.

22. YLAL supports the SRA's decision to apply a qualitative assessment when considering whether a candidate's knowledge, skills and competences meet the prescribed content and standard requirements. YLAL agrees that pre-qualification legal work experience is essential; YLAL also strongly believes that there should be no absolute minimum length of time specified for this by the SRA. We recognise that there are benefits to outlining a minimum starting point of two years' professional experience but submit that it should not be necessary for all candidates to have undertaken this arbitrary period of experience. As we stated in our previous response to the SRA consultation, the period of experience should be as long as is necessary to gain the relevant skills required to be a competent solicitor. Therefore, we support the proposal to consider evidence from candidates who can demonstrate that they have developed the relevant competences in a shorter timeframe or through life-long learning. We consider that the latter in particular will increase social mobility among candidates who have not qualified into the profession through the traditional route. We believe it should be implemented without a required minimum for all qualified lawyers and all aspiring solicitors within the English and Welsh system.

23. YLAL agrees with the SRA's proposal that an English language test should be a requirement. We do however question the decision for it to take place post-admission at the point of application for the first practicing certificate. YLAL suggests it may be a fairer approach if the language test was to take place pre-admission, at the point applicants are asking for previous qualifications and experience to be recognised.

24. Under the current scheme in place for lawyers qualified within the European Union, the qualifications of EU lawyers will be sufficient for recognition purposes unless the SRA can establish that there are significant differences. The SRA confirms this position will continue as long as England and Wales remain in the EU. YLAL agrees with this approach, but we are concerned to see the burden shifting. At present the burden lies with the SRA to prove that qualifications or experience are significantly different from those which would be gained under the English and Welsh Systems. Under the new rules the burden seems to lie with the applicant to prove their experience and skills are not significantly different. We find this to be a heavy burden for the applicant to carry and one which will be difficult to discharge without detailed and clear instructions as to how the knowledge, skills and competences will be assessed and how they may be met through means other than sitting the SQE.

25. The SRA is considering charging an administrative fee to qualified lawyers who apply for admission as a solicitor on the basis of recognition. YLAL is concerned that this additional expense may hinder access to the profession as it is not clear how much the administrative fee, SQE fees or other related costs will be. We would ask that before imposing such a fee the SRA seriously consider the effect it is likely to have on social mobility. We consider that any fee could have an adverse effect on social mobility and deter talented qualified lawyers from applying to practise in England and Wales. This would have a particular impact on candidates who wish to work in the legal aid sector where salaries tend to fall below the average salary to be expected in the legal sector.

CONCLUSION

26. In conclusion, YLAL continues to have some concerns regarding the introduction, implementation and regulation of the SQE. Though some of our previously raised concerns have been addressed by the SRA, we believe a number remain unresolved. As stated previously, YLAL considers that there continues to be a lack of transparency on a number of relevant issues (referred to above). YLAL considers that it is very difficult to provide firm and final views on a matter which will so seriously affect such a large proportion of our members and future members without detail, transparency and clarity being provided on a number of salient points mentioned in our response above.

Young Legal Aid Lawyers

July 2017

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ID anonymous 1

To whom it concerns,

I write to express my objection to Multiple Choice Questions being used as an assessment process within any aspect of the new SQE.

I am a Paralegal who seeks to qualify as a Solicitor as soon as the SQE is launched. I support the reforms it promises to bring, and feel that the reforms have great potential in changing a qualification process that is both unfit for purpose and which has become a profiteering exercise for postgraduate and professional Law schools.

However, I have high functioning Asperger syndrome and, despite having a good level of intelligence and the ability to do the job day to day, I have always struggled with examinations and feel that my exam performance does not reflect either understanding or on the job application. My examination performance has been particularly poor when confronted with MCQs, which obviously involve the on-the-spot selection of one 'correct or most correct' answer out of (say) four options.

I feel that MCQ's are confusing because words, phrases etc are open to interpretation and can be subjective in how the meaning and construction of these phrases communicates to the individual reader. As someone with Asperger syndrome, I hyperfunction when it comes to MCQs. This means that my brain cannot break down MCQ options easily on the spot and I find it immensely challenging to distinguish between any subtleties which the answers purport or attempt to represent. Furthermore, MCQs do not measure the deep thinking processes of the candidate, the candidate's responsiveness to a unique situation, or the necessary ability of a good aspiring Solicitor to see beyond the either/or and maximise the potential of the 'grey zone' which is present in any scenario.

The MCQ style of assessment does not reflect legal practice in any way.

Although there are situations in legal practice where an individual may have to select one of several courses of action in response to a specific set of circumstances, the stark, restricted and subjective nature of MCQs does not mirror these real-life occurrences because, unlike reality where the course of action can be considered and determined based on the facts of the situation, an MCQ is an abstract examination question conceived of and delivered exclusively by the examiner. It is a narrow, highly subjective style which risks jeopardising the future of a candidate simply because of wording, subjectivity in meaning or some other gap.

I feel that the inclusion of MCQs within the SQE assessment process will put huge strain on aspiring Solicitors with learning differences, whose aptitudes might be well evidenced in knowledge and in practice but who may struggle with the nature of formal assessment and the demands of MCQ assessment. The inherent disadvantage this will cause to aspiring Solicitors with learning differences will limit the accessibility of the SQE and curtail the new pathway for good, talented, capable people to qualify as a Solicitor. This would risk putting a needless obstacle in the way of someone who could contribute hugely to the profession and bring a well developed, individual and insightful perspective to their role.

Instead of MCQs, I would ask that assessment is delivered in the form of open, long and/or short answer questions whereby the candidate can answer fully, demonstrating their self-considered and pre-revised application of Law and procedure. This would allow aspiring Solicitors with learning differences to show their understanding and application in a much more objective way.

I realise that there may be practice based assessments, perhaps typical of Stage 2 of the SQE, which might demand drafting/interviewing/alternative assessment methods. However, it is essential for the accessibility of the SQE to candidates with learning differences that these are as transparent and as supported as possible. These assessments should avoid any reliance on the sort

of subjectivity and practical nontransferable irrelevance which is part and parcel of the MCQ style.

I have already raised similar and other queries and concerns with Tim Pearce of the SRA and I was impressed by his polite and considered responses to these. I know that the SRA is keen to ensure that assessment processes are inclusive, and I want to do my best to help support the good intentions of the SRA in designing a suitably inclusive SQE.

I am happy for you to publish my feedback, but ask that you anonymise my name.

I would be keen to discuss the matter further if you would like.