

SRA CONSULTATION PAPER "TRAINING FOR TOMORROW: ASSESSING COMPETENCE"

Published on the 7th December 2015.

Response of the Committee of Heads of UK Law Schools

Introduction

The Committee of Heads of UK Law Schools (CHULS) is an organisation whose members are Heads of Law Schools and Departments across the UK. Membership is open to all Heads of School / Department in institutions which offer higher education programmes in Law. The organisation exists to provide support for Heads, as well as a forum for discussion of strategic issues relevant to managers of Law teaching institutions, and membership includes representatives from pre and post 1992 Universities across England, Wales, Scotland and Northern Ireland.

We have followed the SRA's emerging proposals with a keen interest and members have discussed and commented on the proposals in various forums, including at our recent conference held in February 2016.

Executive Summary

Whilst we understand that it is important to keep under review any system of qualification into a profession, we have identified a number of concerns arising from the proposals. These include:

- We are not convinced that the need for change cited - variable performance in currently used assessment vehicles - is properly supported by evidence.
- One of the SRA's stated aims is to remove unnecessary barriers to qualification. We are concerned that the proposals will actually add cost and therefore increase barriers.
- There is a suggestion that there will no longer be a pre-requisite of a qualification at degree level. We believe this will be damaging to the reputation of the profession, including overseas.
- We are not convinced that the nature of the proposed assessment is appropriate to deliver the depth and breadth of knowledge, skills and abilities needed by a modern solicitor.
- If other branches of the legal profession - such as the Bar - continue to insist on a law degree or equivalent, this will create a two tier system to the detriment of students.
- If the SRA no longer validates / accredits training programmes leading to assessment of competence, this could open the market up to unscrupulous and unregulated training providers, to the detriment of students.

- If these proposals are adopted, Law schools may feel they have to gear their degree programmes towards teaching to the SRA's outcomes, to the detriment of the rich breadth and depth of legal knowledge and research currently produced by Law Schools.
- The suggestion that there should be no exemptions to the SQE may have the effect of placing UK applicants at a disadvantage compared to EU applicants. In addition, we can see no real justification for ignoring an individual's existing accredited learning, and contend that the SQE will in this sense add unnecessary cost.

We urge the SRA to give these issues serious and detailed further consideration before making a final decision.

Our responses to the questions posed by the SRA are below.

Question 1

Do you agree that the introduction of the SQE, a common professional assessment for all intending solicitors, best meets the objectives set out in paragraph 10?

No.

We have a number of concerns relating to this proposed way forward, as follows:

1) The consultation document states "*A strong and respected legal profession is enhanced if unnecessary barriers to good candidates becoming solicitors, regardless of their backgrounds, are removed. The SQE will facilitate the development of more flexible pathways to qualification for those who are able to meet the robust standards of the assessment.*" It is clear therefore that the SRA regards the SQE as a means to widen opportunity. We are unconvinced that it will achieve this effect. Currently, the main routes to qualification are either a law degree + LPC + training contract, or a non-law degree + CPE / GDL + LPC + training contract. Given that most intending solicitors are likely to wish to be educated to degree level (indeed, the job market may insist on this), it is likely that the vast majority will still undertake a degree. The SRA envisages, at paragraph 16 of the Consultation Document, that it could require specific qualifications as a pre-requisite to taking the SQE. Applicants will then need some sort of training in practical law, so an LPC equivalent course will be needed. . On top of this, applicants will have to pay for the SQE, including a potentially unlimited number of further attempts if unsuccessful, so instead of reducing the cost of qualification, these proposals will add to it. Arguably, all the knowledge and skills required to take the SQE could be delivered with a three year degree, but in our view this would be at the expense of student choice and breadth of learning.

It is true that there may be a small number of individuals who will have gained knowledge and experience in other ways for whom the SQE could be a benefit, but they are already provided for under the current system, for example by recognition of CILEX qualifications and by the Equivalent Means Route.

2) The SRA has made assumptions in their proposal about the quality of current provision, which are not necessarily supported by evidence. The foreword to the consultation states;

"...there is no standard basis on which to measure the quality of students who emerge from the education and training process. Some Legal Practice Course (LPC) providers have success rates in excess of 90%, while others are below 50%. Some undergraduate law schools require A and A A-level grades from entrants, others admit students with B, C and D grades:*

Whilst these statements may be correct (although no evidence is cited to support them), they do not show the full picture; for example, in comparing pass rates at LPC institutions, it is also necessary to factor in entry level qualifications. Level of achievement at A level is not necessarily a determining factor to competence as a solicitor, and the SRA should be well aware that certain ethnic and other groups are known to show a poorer performance at school; for example, in the Government's Statistical First Release on GCSE performance for 2013/14, pupils from a black background were the lowest performing group, and were significantly below the national average

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399005/SFR06_2015_Text.pdf). It may be that some Law Schools are doing an excellent job in providing opportunities to certain disadvantaged groups, who then have the opportunity to shine in a University setting. In addition, many Universities are now offering places on an unconditional basis, which may have led, or lead in the future, to lower levels of attainment at A level. The Sutton Trust has published evidence which shows that the more selective Universities have a bias towards independent and selective schools: *"Independent school pupils are more than twice as likely as pupils in comprehensive schools to be accepted into one of the most 30 highly selective universities: 48.2% of independent school pupils in England were accepted by these universities, compared with 18.0% of pupils in non selective state schools, and 47.6% in selective state schools."* (<http://www.suttontrust.com/wp-content/uploads/2011/07/sutton-trust-he-destination-report-final.pdf>). Assumptions about the quality of solicitors, based on A level grades, do a disservice to underprivileged young people and those Universities which are able to see past those grades, through the use of contextual data, to true potential.

A better test of whether the current system is providing appropriately educated and trained solicitors would be to measure the quality of the current cohort of admitted solicitors; and we note in this context that in the Office for Legal Complaints Annual Report for the year ended March 2015, the number of complaints received had shown a steady annual reduction from 22,350 in 2011-12 to 18,185 in 2014 - 15 (<http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Annual-Report-2014-15.pdf>).

Paragraph 23 of the Consultation states:

"The 2015 HEFCE consultation on standards and quality in Higher Education, states that current quality assurance mechanisms do not ensure consistency of standards across universities. HEFCE concludes: 'the current quality assessment system does

not provide direct assurance about the standard of awards made to students, or their broad comparability."

However, it should be noted that the HEFCE Consultation went on to say:

25. The proposals should not be seen to cast doubt on the ability of the current system to secure the reputation of the UK higher education system over recent years, although later in this document we note some concerns expressed during the discussion period about the continuing appropriateness of current arrangements for the future. Our purpose throughout has been to consider what kind of quality assessment arrangements will be necessary as we look towards 2025, rather than to review the effectiveness of the current approach. Throughout the discussions, we have been clear that preserving and indeed strengthening the reputation of the UK higher education system must be an essential component of thinking about future arrangements.

3) If the SQE were adopted, it is likely that candidates would wish to pay for training courses in order to prepare for this assessment. At present, it is unclear whether the SRA would wish to accredit / regulate such training entities. If they chose not to do so, we can envisage the rise of unscrupulous profit-motivated "crammer" style organisations. Pre-admission training is currently delivered almost exclusively by Universities, which are in the main not-for-profit organisations with a declared commitment to educational excellence, and which are closely regulated by the QAA. We are concerned that the current commitment to quality education and training would be diluted, to the detriment of students, in an unregulated environment.

4) Whilst according to the Consultation no decision has yet been made on entry requirements, statements made by senior officials at the SRA over the past few months suggest that there is a preference for having no entry requirements, or at least not at degree level. We cannot envisage a solicitors profession where there is no requirement for graduate level education (though we accept that this can be achieved by means other than the completion of a traditional degree) and we can foresee that the adoption of this approach would result in a) the brightest and best seeking alternative careers, where degree level education is appreciated and b) a diminution in the reputation of the England and Wales Solicitor 'brand', which will discourage the brightest, both at home and from overseas, from applying to join the profession. The Consultation paper makes much (paragraph 72) of the fact that it has never been a requirement that solicitors had to possess degrees, citing five year articles and the CILEx route as examples;

"However, the solicitors' profession has never required all solicitors to have a degree. For many years, solicitors could qualify through a five-year period of articles. Solicitors who are non-graduates can still qualify through the CILEx route. Many solicitors who have qualified through these routes have enjoyed long and successful careers in demanding areas of practice".

What this fails to mention, however, is that in both those cases candidates had to (and still have to) take and pass assessments at degree equivalent level.

Most professions (nursing, midwifery, dentistry, medicine) in England and Wales have a requirement of degree level qualifications.

5) Although the Bar Standards Board has yet to consult in detail, it seems clear that the Bar will continue to require a qualifying law degree. This could place logistical difficulties on Law Schools which are trying to cater for all student needs, but is more likely to have the effect that all school and college leavers who are interested in a career in the law will continue to take a qualifying law degree. This will defeat the SRA's stated objective of creating more flexible pathways to qualification and the addition of the SQE will add to the cost burden for intending solicitors. In addition, students who choose to take a qualifying law degree will be assessed twice, once on the degree and again on the SQE. This seems a waste of time and effort, and may result in additional cost for students taking refresher courses if their degree was completed some time previously.

6) Law Schools may feel under pressure to gear their programmes towards the SQE outcomes. Apart from the obvious pedagogic issues relating to "teaching to the test", many Law Schools (where only 50% or fewer students have the aim of becoming qualified lawyers) will be unwilling or unable to do this. Law Schools have to consider wider issues in devising their programmes, such as the research outputs of their staff, the provision of a wide choice of options in order to remain competitive in the market for students, and teaching and assessing the wider academic and skills outcomes outlined in the QAA Subject Benchmark Statement for Law. Students attending Law Schools who have chosen to maintain a broad curriculum may then have the additional expense of paying for education in subjects not included in their law degree.

7) We share concerns expressed by the Junior Lawyers Division, that career development loans would not be available under banks' current rules for any non-mandatory training course. If the revised regime is introduced, this could deter intending solicitors from less privileged backgrounds.

Question 2

Do you agree that the proposed model assessment for the SQE described in paragraphs 38 to 45 and in Annex 5 will provide an effective test of the competences needed to be a solicitor?

No.

Without sight of at least some sample assessments it is difficult to comment, but we believe that the proposed assessment is based on the Qualified Lawyers Transfer Scheme assessment. This is aimed at lawyers who are already qualified in other jurisdictions and it is therefore designed to test a different type of applicant to those likely to be taking the SQE.

Law / CPE / CILEx graduates at the moment have all had the opportunity to demonstrate their breadth of knowledge and application of the law by degree level

assessments, which are specifically designed to test a range of knowledge, skills and abilities at graduate level. The QAA Law Subject Benchmark Statement, published in 2015, describes a law graduate thus:

A graduate of law with honours has demonstrated:

i) intellectual independence including ability to ask and answer cogent questions about law and legal systems, identify gaps in their own knowledge and acquire new knowledge, and engage in critical analysis and evaluation

ii) self-management, including an ability to reflect on their own learning, make effective use of feedback, a willingness to acknowledge and correct errors and an ability to work collaboratively

iii) awareness of principles and values of law and justice, and of ethics iv knowledge and understanding of theories, concepts, values, principles and rules of public and private laws within an institutional, social, national and global context v study in depth and context of substantive areas of law

vi) ability to conduct self-directed research including accurate identification of issue(s) which require researching, retrieval and evaluation of accurate, current and relevant information from a range of appropriate sources including primary legal sources

vii) ability to work with a range of data, including textual, numerical and statistical

viii) ability to recognise ambiguity and deal with uncertainty in law ix ability to produce a synthesis of relevant doctrinal and policy issues, presentation of a reasoned choice between alternative solutions and critical judgement of the merits of particular arguments

x) ability to apply knowledge and understanding to offer evidenced conclusions, addressing complex actual or hypothetical problems

xi) ability to communicate both orally and in writing, in relation to legal matters, including an ability to listen and respond to written and oral stimuli including questions and instructions

xii) engagement with their own personal and professional development, and academic integrity

All of the above, we are sure the SRA will agree, are desirable and some are essential in a competent solicitor. We are unconvinced that all of this can be assessed by the multiple choice or true / false questions in the proposed Part 1 of the SQE. The Consultation paper notes that such tests are already used in other professions to test high-order skills. However, what it does not say is that in those other professions (for example, medicine), a relevant degree is a pre-requisite.

Question 3

Do you agree that all intending solicitors, including solicitor apprentices and lawyers qualified in another jurisdiction, should be required to pass the SQE to qualify and that there should be no exemptions beyond those required by EU legislation, or as part of transitional arrangements?

No.

There should continue to be exemptions for entrants who have taken and passed appropriate assessments in other contexts. Failure to do so simply adds cost to the qualification process. Exemptions are already a well established feature in other professions - for example, accountancy.

The SRA accepts that it may be obliged to grant exemptions to EU applicants with equivalent qualifications / experience. This could lead to the situation where an EU national who has passed a UK Law degree would be exempted whilst a UK national with the same qualification would not.

Question 4

With which of the stated options do you agree and why:

- *offering a choice of 5 assessment contexts in Part 2, those aligned to the reserved activities, with the addition of the law of organisations?*
- *offering a broader number of contexts for the Part 2 assessment for candidates to choose from?*
- *focusing the Part 2 assessment on the reserved activities but recognising the different legal areas in which these apply?*

We have no strong views on this point and feel it should be for the profession to decide what kind of qualified lawyers it needs.

Question 5

Do you agree that the standard for qualification as a solicitor, which will be assessed through the SQE, should be set at least at graduate level or equivalent?

Yes. We cannot see that an applicant who has not been able to achieve graduate level qualifications would have the necessary skills, attributes and qualities of mind to undertake the complex and technical work required of a solicitor.

However, without a great deal more detail on the proposed assessment, it is impossible to say whether that standard will be achieved. Concerns have been expressed elsewhere about the ability of the type of question proposed to assess graduate level skills, attributes and qualities of mind.

Question 6

Do you agree that we should continue to require some form of pre-qualification workplace experience?

Yes.

We cannot envisage a competent solicitor who has not had this sort of experience.

Question 7

Do you consider it necessary for the SRA to specify a minimum time period of pre-qualification workplace experience for candidates?

Yes.

Whilst it is true that individuals learn and mature at different rates, there does need to be some minimum period of time specified. If there is no minimum requirement, there would need to be an assessment of what has been learned through work experience, which again could add cost to the process.

Question 8

Should the SRA specify the competences to be met during pre-qualification workplace experience instead of specifying a minimum time period?

No - see above.

If the SRA specifies competences, who checks that these have been achieved?

Question 9

Do you agree that we should recognise a wider range of pre-qualification work experience, including experience obtained during a degree programme, or with a range of employers?

Yes.

The current number of training contracts is insufficient to meet demand and there are a number of potential solicitors who are unable to qualify. Expanding the range of acceptable experience (provided it was in a legal context) would be of benefit to these students.

Question 10

Do you consider that including an element of workplace assessment will enhance the quality of the qualification process and that this justifies the additional cost and regulatory burden?

Possibly but we would like to see more detail on this.

Question 11

If you are an employer, do you feel you would have the expertise to enable you to assess trainee solicitors' competences, not capable of assessment in Part 1 and Part 2, to a specified performance standard?

Not applicable.

Question 12

If we were to introduce workplace assessment, would a toolkit of guidance and resources be sufficient to support you to assess to the required standard? What other support might be required?

Not applicable.

Question 13

Do you consider that the prescription or regulation of training pathways, or the specification of entry requirements for the SQE, are needed in order to:

- *support the credibility of the assessment?,*
- *and/or protect consumers of legal services and students at least for a transitional period?*

Yes, for the reasons given above.

Question 14

Do you agree that not all solicitors should be required to hold a degree?

We agree that all solicitors should have qualifications at graduate level, as is the case at present, for the reasons given above.

Question 15

Do you agree that we should provide candidates with information about their individual and comparative performance on the SQE?

Our understanding is that the SQE is designed to be a competence - level assessment. We are not sure, therefore, what would be served by providing candidates with this information.

Question 16

What information do you think it would be helpful for us to publish about:

- *overall candidate performance on the SQE?*
- *training provider performance?*

We feel this is a question which can better be answered if and when the decision to proceed with the SQE has been taken and once we have a clearer view of the nature of the assessment.

Question 17

Do you foresee any additional EDI impacts, whether positive or negative, from our proposal to introduce the SQE?

As outlined in our response to question 1, we have serious concerns about the potential impact on potential solicitors from less advantaged backgrounds, and evidence shows that this affects disproportionately certain BME groups.

Question18

Do you have any comments on these transitional arrangements?

We are concerned that the arrangements are not yet clear to students, who are currently making important choices based on limited information.

Question 19

What challenges do you foresee in having a cut-off date of 2025/26?

An arbitrary cut-off date will always see some difficult cases emerge, where students may have been prevented from progressing due to illness or disability.

Question 20

Do you consider that this development timetable is feasible?

No.

We can envisage difficulties with this timetable as nothing at the moment is certain. Universities, as recognised in the Consultation document, tend to have lengthy lead in times (2/3 years) for the introduction of new programmes. Many Heads are concerned that the current uncertainty will put Law Schools in difficulties with the Consumer Rights Act as prospective students, and current first years, are now entering a law degree on the basis of unclear information as to what the next stage of training is.