The SRA's Application to the LSB for approval of the SQE: Submission to the LSB by Five Law Subject Associations
21 August 2020

This is a joint response of five Law Subject Associations to the SRA's application for final approval of proposals for the SQE. These are the Association of Critical Legal Scholars, the Association of Law Teachers, the Committee of Heads of University Law Schools, the Society of Legal Scholars and the Socio-Legal Studies Association. These Associations have a combined membership of over 4,000 law academics, from probably all UK Law Schools, whose expertise includes academic and vocational legal education, as well as the practice of law. The response distils the essence of our views and focuses on the issues (a) that we believe are most critical; and (b) where we jointly have most experience. It builds on the paper that four of the Associations submitted to the LSB for the SRA's application for preliminary approval, which the LSB granted on 26 March 2018. Developments since then have confirmed our strong reservations as to aspects of the proposed arrangements. The previous paper focussed on SQE1. The present paper addresses all the elements of the proposed qualification arrangements. The individual associations may also be making separate submissions.

Part A: Our views

1. In our view, the application for final approval of proposals for the establishment of the SQE should be refused on the ground that granting the application would be prejudicial to the regulatory objectives (Legal Services Act 2007 Sch.4 Pt 3 para.25(3)(a)) and would be contrary to the public interest (2007 Act Sch.4 Pt 3 para.25(3)(c)). The proposed arrangements are prejudicial to the regulatory objectives in that (1) they will not improve access to justice; (2) they do not protect and promote the interests of consumers (2007 Act s.1(1)(d)); and (3) they do not encourage a strong, diverse and effective legal profession (three of the elements of the 2007 Act s.1(1)(f)). They are contrary to the public interest for the same reasons.

2. Our main concerns (detailed below) are (1) that the SQE in itself, in the absence of a Qualifying Law Degree or Graduate Diploma in Law on the current pattern, is inadequate to provide sufficient protection for consumers and assurance to employers (Quality); (2) that, while there may be some cost saving arising from the reduction in the scope of the assessments required by the SQE by comparison with the LPC, this is more than offset by the fact that no public funding is currently available for SQE preparation outside an undergraduate (UG) or postgraduate (PG) LLM course (Cost); (3) that the increased uncertainty as to employability that arises from the abolition of recognised training routes, when combined with the likelihood of additional real costs, will tend to reduce rather than enhance diversity in the legal profession (Diversity).

3. A major deficiency in the proposed arrangements is that they are wholly inadequate to ensure that candidates demonstrate the understanding and skills needed to advise clients in those many and complex situations where the law is uncertain. This may be because of gaps or inconsistencies in case law or because statutes require interpretation. These are matters that require the deployment of considerable legal skills in analysing case law and interpreting

legislation that go way beyond anything that can be tested in a Multiple Choice Question (MCQ). The necessary understanding and skills would be provided by an English law degree that complied with the Quality Assurance Agency Law Benchmark[1] (as recognised by the Bar Standards Board for purposes of qualification as a barrister) or a Postgraduate Diploma in Law covering the foundation subjects (similarly recognised). But the SRA has steadfastly refused to countenance such a requirement, on grounds that do not stand up to scrutiny.[2] It is now clear from developments since the LSB gave initial approval for matters to proceed that the SQE wholly fails to provide any equivalent assurance. The published model SQE1 questions are in practice entirely focussed on issues where the law is clear (and, in the case of questions on the foundation subjects), very basic.[3] The skills element originally proposed by the SRA for SQE1 has been dropped. The only element involving uncertainty in SQE2 is an exercise where the candidate has to peruse legal materials provided by the examiners and advise a client, an exercise labelled "research" but in truth very limited. This is clearly insufficient to protect the interests of consumers.

4. It seems clear that a person who passes SQE without having studied law at UG or PG levels will be unlikely to find employment as a solicitor unless they can rely on personal contacts. It is likely that most solicitors' firms will require such study even if the SRA does not.[4] Accordingly, there is a hidden de facto hurdle in the way of entrants to the solicitors' branch of the legal profession. It is well known that the less transparent arrangements are and the more that personal connections come into play the more difficult it is for those from more disadvantaged backgrounds to progress.

5. All future solicitors will have to pass SQE1 in order to qualify and this forms a barrier to qualification consisting of one assessment method and with unknown implications. There is a growing body of research into the benefits of cognitive diversity in tackling complex problems.[5] There is a danger that setting up this barrier will reduce the positives from having cognitively diverse legal teams who will bring different perspectives, different blind spots, and enable constructive dissent and innovation. This has the potential to impact the development of a strong, diverse and effective legal profession.

6. The proposed arrangements for SQE2 also give cause for concern:

(1) The SRA has decided that all candidates will take the same tests to demonstrate competence across all the regulated activities, not permitting any choice. The existence of choice would have enabled candidates to focus in SQE2 on areas that reflected their Qualifying Work Experience (QWE). This throws into sharp relief the point that, as is widely recognised, the list of the current regulated activities, and the fact that the status of solicitor entitles any or all to be undertaken, is anachronistic. There is an urgent need for these to be reformed, so as properly to reflect the realities of modern legal practice. Those realities are likely to be subject to further radical change as the result of the current pandemic. Quite apart

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[1] See https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16

[2] See below Part B.

[3] See further the separate submission to the LSB by the Association of Law Teachers.

[4] See further n.11 below.

[5] Matthew Syed, *Rebel Ideas: The power of diverse thinking* (Hachette 2019).

from this, a complete lack of choice risks devaluing candidate experience and career plans, potentially prejudicing competent candidates and discouraging an appropriately professional focus on directly relevant matters.

(2) The SQE2 pilot gave rise to a number of concerns as regards diversity, but also had a worryingly small number of participants, with the consequence that it does not provide robust evidence on which to proceed. A proper pilot with a larger number of participants is needed in order to gain assurance, particularly with regard to what the SRA acknowledges are unexplained awarding gaps for BAME students in that pilot[6].

7. The SRA's position on work experience is incoherent. It imposes it as a requirement but, as the SRA is unwilling or unable to regulate it, it operates on a "time served" basis that would have been recognised in the nineteenth century. Moreover, this work experience requirement forms a second barrier to qualification that will benefit prospective applicants from better connected friends and family networks or with the resources enabling them to move about the country to take up opportunities or to fund such experiences through voluntary work if paid places cannot be found than others from underrepresented groups – the latter are significantly negatively impacted by this change. There is also significant concern about the protection of candidates during this period of QWE. There is little to reassure candidates as to the *quality* of the experience as no standards have to be met in order to 'count' towards a period of QWE. There is a risk that those undertaking the QWE will be open to exploitation or experience that does not adequately prepare them for work as a solicitor. The SRA has pointed to a very broad regulatory power that could be used in such situations but is unable to evidence that it will act as a sufficient safeguard. Additional safeguards should be in place, specifically to protect those obtaining QWE.

8. The SRA hoped that SQE2 would be taken towards the end of the period of work experience so that some of the preparation for it would have been done, reducing the remaining costs of the SQE2 preparation needed. It is increasingly clear that solicitors' firms may well require their trainees to take both SQE1 and SQE2 at the start of their work experience. The absence of any possibility of specialising in SQE2 is likely significantly to reinforce that tendency.

9. Will the new arrangements be cheaper for entrants? They should be, to the extent that the optional subjects required in LPCs are simply omitted in the case of the SQE. (The same change could of course have been introduced by the SRA for LPCs, thus making them cheaper.) However, entrants will have to bear the cost of a degree (or satisfy the SRA as to equivalence). Many of those who choose a non-law degree are likely because of the requirements of employers to have to bear the cost of some equivalent to the current recognised GDL. It is absolutely clear that all candidates will have to bear the uncertain costs of SQE training undertaken by providers who will not be regulated by the SRA. There is at present no public funding available for SQE preparation outside UG or specific eligible PG courses or apprenticeships, making this another barrier to ensuring diversity in entry to the legal profession. Public funding is only LLM courses and it is unclear how many "eligible" courses will be available at the outset of the introduction of the SQE. Consumer choice is likely to be reduced because the number is likely to be smaller than is currently available

[6] Para 143 SRA Application to the Legal Services Board dated 31 July 2020

through the LLM which envelopes an LPC. The SRA's own submission to the LSB shows provider appetite is low (likely, in part, because of the uncertainty and the problem of running an LPC alongside a new programme in the transition period).

10. It should be noted that the removal of options means that there is, for example, no provision for the study at the professional stage of non-business focused subjects such as Family Law, Housing Law, Social Security Law, Immigration Law and Employment Law, thus diluting access to justice in those areas by imposing training costs on law firms and law centres providing legal services in these areas.

11. Overall, the SRA's proposals for a radical overhaul of assessment arrangements for qualification as a solicitor:

(1) are not justified by any significant evidence that the previous arrangements were endangering the interests of consumers or the public interest;
(2) assume (in a way contrary to the interests of consumers) that the application of the law is a purely mechanical exercise of applying rules that are always clear;
(3) are unlikely in practice to be significantly cheaper in real terms than the current arrangements;
(4) involve significant uncertainty for new entrants, which is very likely adversely to affect diversity;
(5) bear little relationship to the realities of current legal practice;
(6) have not, in the case of SQE2, been the subject of an adequate pilot.

12. It is important to remember that the current timescale for introduction of SQE has been driven by the promise to solicitor apprentices that they will be assessed by the SQE. They have a legitimate expectation that that will happen, which should be respected. They are a small and special group,[7] who will have had significant work experience, studied in a law school as part of the programme and who may well be undertaking law degrees. In our view, it would be legitimate to approve the use of the SQE for this small cohort. This would enable further pilots to be run to gauge whether there is sufficient assurance on matters of concern before any extension generally to all entrants.

13. Our concerns are shared by many others. Responses to the SRA's own consultations were strongly negative.[8] Significant concerns are reported among respondents to the recent survey conducted by Antonia Layard and Edward Kirton-Darling for the Socio-Legal Studies Association.[9] A report on this survey will be submitted to the LSB separately.

14. In our view, the sensible way forward for future arrangements would be:

(1) To continue the requirement for entrants to have a law degree that complies with the QAA Law Benchmark or a postgraduate GDL with analogous standards or to demonstrate equivalence; and

[7] The SRA Annual Review for 2017/18 (https://www.sra.org.uk/globalassets/documents/sra/research/annual-review-2017-18.pdf?version=4a1ab9) states at p.49 that there were 25 who started in 2016 and 75 who started in 2017.
[8] See the article by Hall referred to in Part C in comments on para.56 of the SRA's application document.
[9] *The Solicitors Qualifying Examination* by Dr Edward Kirton-Darling (University of Kent) Professor Antonia Layard (University of Bristol) (August, 2020).

(2) To secure reform of the list of regulated activities in the light of contemporary needs and restrict practice on an activity by activity basis to those who have demonstrated competence in that activity.

(3) Then: either (a) to refocus a properly constructed centralised examination on the professional knowledge and activities beyond the foundation subjects (although knowledge of the basics of these will be needed) or (b) engage with providers in developing a revised, probably slimmer, equivalent to the LPC, which can be developed in different forms to reflect modern forms of legal practice.

Part B: Comments on the LSB Final Decision Notice dated 26 March 2018: 14. Removing the requirement for the academic study of law.

The relevant paragraphs here are set out in full in Bold, followed by comments:

49. The SRA's response set out the justification for its approach, identifying how the concerns raised by stakeholders had been considered and addressed through its public consultations. Its explanation included the following points:

• It did not receive compelling evidence, through its consultations, that regulating educational processes would be as effective as setting an end point assessment to check that those who are admitted as solicitors are competent.

This is unconvincing as it fails to separate out for consideration the very different "regulation of educational processes" involved in (1) oversight of the academic study of law (ie the current academic stage) and (2) oversight of the providers of professional training courses. The case for establishing a centralised assessment at stage (2) is completely separate from the question whether there should be a requirement for the academic study of law (stage (1)) and how that is to be overseen. The SRA has expressed concerns at current arrangements for the oversight of standards in Higher Education Institutions, without sufficient acknowledgement of the framework of scrutiny provided by external examiners in compliance with the QAA Code. However, it has failed to explain why completion of a Qualifying Law Degree or Graduate Diploma in Law compliant with the QAA Law Benchmark with a provider regulated by the Office for Students *in combination with* a centralised assessment of additional professional knowledge and skills is not both needed and proportionate in delivering the regulatory objectives. A crucial point is whether the SQE will provide sufficient depth to safeguard the interests of consumers. In our view, it does not.

• The requirements for qualification under the SQE will be based on candidates demonstrating the core competences required for safe practise as a solicitor.

• The SRA's obligation to ensure that regulation is proportionate and targeted means that it cannot justify requiring candidates to take a course of study that would teach them more, or require them to study for longer than is necessary to gain the core competences needed to practise as a solicitor. This could result in unnecessary cost for candidates and act as a barrier to qualification. This overlooks the requirement that a

person seeking a qualification will have to have a degree or the equivalent. Requiring a Qualifying Law Degree will not involve any additional cost for those choosing to undertake a three year degree. Clearly, they may acquire competences above the core competences needed to practise as a solicitor, but these are an inherent part of an undergraduate degree and do not form an additional barrier to qualification.

It is highly unlikely that many persons with a non-Law Degree will be employable as solicitors without a period of academic law study and highly likely that preparation for SQE Part 1 (with its preponderant reliance on MCQs) will not be regarded by employers as sufficient for this purpose.

• **Its approach is intended to promote competition and will allow the labour market to innovate. This could result in lower costs in the training sector and promote international competitiveness by making the English and Welsh market a more attractive one in which to qualify.** This is highly speculative. It is for the SRA to evidence this and there are no examples to support this aspiration. In any event, the point rests solely on international competitiveness based on price, which in our view, if it arises at all, will only have been achieved at the expense of quality.

• **Development of an assessment framework which is valid, consistent, reliable, fair, feasible and encourages innovation and flexibility in legal education and training will provide a high level of protection for consumers of legal services and a high degree of confidence in the profession both in this country and internationally.** This is a laudable ambition but its attainment remains seriously in question. It is for the SRA to support with evidence this aspiration and there are no examples. The adoption of a single method of assessment for SQE1 will not encourage innovation and flexibility in legal education and training. Furthermore, as indicated above, our concern is precisely that the SQE will **not** provide a high level of protection for consumers.

• **Introducing the requirement for a centralised assessment will bring England and Wales in line with other jurisdictions, many of which already have some form of centralised assessment. This should enhance the standing of the profession internationally.** This argument fails to address the point that in the vast majority of overseas jurisdictions centralised assessments are required in addition to possession of a law degree and not in substitution. Where there is a centralised assessment in law – such as in states within the United States – applicants must normally pass a law degree, a requirement that the SRA seeks to end. Therefore, the SRA seeks to break with, not align itself with, the practices of other jurisdictions across the worldto make this change. This will have the effect of reducing the standing of the profession internationally, not enhancing it.

50. In relation to the concern about individuals being able to qualify with less depth of knowledge, the LSB was satisfied with the justification provided by the SRA, as noted in the first three bullet points of paragraph 49 above. It is submitted that the reasons in two of these three bullet points are flawed, for the reasons given above. **Further, the LSB did not consider that there was sufficient evidence of any likely detriment to the regulatory**

objectives resulting from removing the requirement to complete academic study of law. Therefore, this was not considered to be a ground for refusing the application. It is submitted that it is essential that this matter be revisited in the light of developments since the first Decision Notice, in particular publication of the sample SQE1 questions and the removal of the skills element from SQE1.

Part C: Comments on the SRA's application document

This section contains comments on particular points made in the SRA's application.

Para 2. Almost four out of five members of the public said they would have more confidence in solicitors if they passed the same final examination.
Were the members of the public told that the current system was based on examinations closely regulated by the SRA, that the knowledge in the new centralised examination would only be tested in MCQ/Single Best Answer (SBA) tests and that there would be no requirement to have studied for a law degree or postgraduate diploma in law? If they had been, it is to be expected that their enthusiasm would wane. In fact, they were not.[10] In the same poll, 87% of respondents agreed that "As part of the process of qualifying as a solicitor, solicitors should have some training in the workplace". The SRA has not accepted this view, requiring only work experience that comprises "experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitors". Why weight should be attached to the views of the public on some points and not others is not explained.

Para 29. Some stakeholders have suggested that there may be challenges associated with candidates securing QWE in the context of the effects of Covid-19. The Bridge Group commented on this suggestion in their 2020 report. They said that: "overall we do not anticipate these impacts warrant rethinking the proposed arrangements – nor should they delay the current implementation plan. We anticipate that the increased breadth of QWE opportunities that will be available as a result of introducing the SQE will mitigate some of the effects of the pandemic".

This seems very complacent in the light of reports that "Legal advice centres could collapse and about 60 per cent of high street solicitors fear going out of business as a result of the pandemic, MPs have told the government." (The Times 3 August 2020: https://www.thetimes.co.uk/edition/news/half-of-local-solicitors-face-going-bust-n6d6jfknd)

[10] This was a ComRes poll available at https://2sjjwunnql41ia7ki31qqub1-wpengine.netdna-ssl.com/wp-content/uploads/2016/09/Solicitors-Regulation-Authority_Solicitors-Education-Research_September-2016.pdf. The question was: There are a number of different routes to becoming a solicitor, including apprenticeships, university degrees, work-based learning and international transfer schemes. Thinking about the training of solicitors, to what extent do you agree or disagree with each of the following statements? I would have more confidence in solicitors if they all passed the same final exam" It will be noted that no figures were provided as to the numbers on the respective routes.

Para 31. We have decided, therefore, to extend validations of QLD and CPE courses to academic year 2021/22 for students who accept offers before 31 August 2021 and where the course starts by 31 December 2021.

This is a welcome development.

Para 41. We think it is now important that the market has certainty that the SQE has been approved and will be introduced in 2021. This certainty will stimulate the market and encourage more providers to move forward with their plans for the SQE and may support the regulatory objective of encouraging an independent, strong, diverse and effective legal profession. This certainty may also help with wider issues. For example, we are talking to government about additional funding for SQE candidates and they have said that consideration of this issue would be assisted by having final approval.

The need for certainty is acknowledged but is a bad argument for approving a structure that is flawed, particularly as the flaws have regularly been brought to the attention of the SRA during the development of their proposals. The point that final approval would "assist consideration" of the issue of funding by government is so weak that no weight should be attached to this factor.

Para 46. The current system is inconsistent

We know that there is significant, unexplained grade inflation in higher education

How this is relevant to the standards *applied by LPC providers* is not stated. These tend to be part of postgraduate courses, to which the perceived "grade inflation" issue does not apply. Accordingly, it seems to be included simply as a generalised slur on the HE sector. (In any event, steps are already being taken to address this at undergraduate level). There is no evidence that the standards applied by LPC providers (or indeed any HE providers) are such that consumers are at risk.

Para 47. the LPC can cost up to £16,750 with the Professional Skills Course (PSC) costing about £1,500 on top

The reference to costs being "up to £16,750" disguises the fact that LPCs can cost significantly less (eg, for 2020/21: Birmingham City University £9,800; Nottingham Trent University £11,700; BPP £12,290; the University of Law (outside London) £12,750 or £13,600). The extent of any cost saving with the SQE is in practice significantly less than implied. There is potentially a cost saving in that SQE covers less ground than the L and at less depth. However, this cost saving will have been achieved by introducing a qualification with unacceptably low standards. It should also be noted that It was always open to the SRA to reduce the cost of qualifying by reducing the content of the LPC. It chose not to do so.

Para 49. The introduction of the SQE will mean we can assure users of legal services, the profession and employers that all qualifying solicitors, regardless of pathway or background, have met consistent standards. This is in line with the regulatory objectives of protect and promote the public interest and the interests of consumers and encouraging an independent, strong, diverse and effective legal profession. It may also

promote competition in the provision of legal services, by providing a level playing field for individuals entering the market as solicitors.

Having a centralised exam should help ensure that there is consistency among those who pass it in respect of the matters assessed. However, there is a risk of both false positives and false negatives. There is evidence that high marks can be obtained on the MCQs/SBAs (now the sole means of assessment for SQE1) by people with no legal background at all. As regards SQE2, the fact that the content bears little relationship to the likely work experience of candidates leaves them reliant on being able to pay for cram courses in order to acquire the knowledge they need for the assessment and leaves open the possibility that a number of those who do not pass (perhaps because they cannot afford to pay for a cramming course) in fact would be perfectly competent to undertake the legal practice for which they will be employed. Furthermore, passing the SQE in itself, in the form that has emerged, (together with possession of a degree in any subject and QWE) will not in itself satisfy most potential employers that a person is suitable to be trained or employed as a solicitor or provide sufficient protection for consumers. The individuals most likely to obtain employment on this basis are those who come from privileged backgrounds, a factor in tension with the aim of improving the diversity of the profession.

Para 51. the SQE will benefit: law firms and employers of all sizes – who will have a better guarantee that all the solicitors they employ have met the same high standards and could benefit from a potential widening of the talent pool.

There is no evidence that employers will have a greater faith in candidates who have passed the SQE than who have passed through the current arrangements and where there is already a diverse talent pool. The indications are to the contrary. A number of firms have indicated that they would expect non-law graduates to have passed course equivalent to the CPE in addition to passing the SQE.[11] Unless there is government funding for SQE candidates equivalent to the loans (effectively a deferred tax obligation) available to those undertaking a niversity LLM course, the talent pool is likely to be less diverse.

the SQE will benefit: education providers – who can use their own expertise to train SQE candidates effectively. Under the current system, we prescribe the content of the courses, but in the future course providers can respond nimbly to developments in legal services, such as legal tech.

This argument is hard to follow, given that the SRA will continue to prescribe the content of the SQE. The ability of providers to offer non-LPC/SQE training on particular areas of practice or for particular employers remains unaltered. It is not enhanced by introduction of the SQE.

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[11] BPP state at https://www.bpp.com/courses/law/sqe : "According to research 77% of firms say they will still expect their future trainees to undertake additional training, to gain key legal skills and specialist knowledge, before starting their qualifying work experience. The research was commissioned by BPP University Law School and completed online between August and October 2017. Collectively, the law firms who took part in the survey had a combined annual turnover of approximately £15 billion and offer 850 training contracts. This represents about 15% of all the training contracts offered annually in England and Wales. Data collection and analysis were conducted by market research business Trendence."

the SQE will not only validate different routes into the profession, it will also remove the training contract bottleneck (where the number of students completing the LPC is greater than the number of training contracts available).

This is misleading. The SQE will formally remove the "training contract bottleneck" by formally abolishing training contracts as a regulatory requirement, given the decision to water down to virtually nothing the requirements of QWE. This will be replaced by different bottlenecks under which (1) more candidates will pass the SQE than will in practice be accepted as trainees by employers and (2) most candidates who have passed the SQE without a law degree or GDL or a recognised apprenticeship as well will discover that they will not be employable as a solicitor. In the past, there are many people who have passed the LPC who did not find employment as a solicitor. In the future, there will simply be more "solicitors" who do not find employment as a solicitor.

Para 56. We consulted three times on our proposals to introduce the SQE. For damning criticism of the SRA's approach to their consultation on the SQE, see Elaine Hall, "Notes on the SRA report of the consultation on the Solicitors Qualifying Exam: 'Comment is free, but facts are sacred'" https://doi.org/10.1080/03069400.2017.1335977

Paras 95-105. SQE1 skills assessment

The SRA has decided to assess skills only in SQE2. It sets out the advantages and disadvantages of that approach. The key point is that, whichever model is adopted, the proposed arrangements provide inadequate assurance that candidates are competent to deal with the position that commonly arises, namely that the solicitor has to advise on a matter where the law is uncertain. This is a matter addressed in the current arrangements by the need for a QLD/GDL and it is a key issue when considering the protection of the consumer.

Paras 106-117 The FLK Assessments in SQE1 will consist of multiple-choice, single best answer questions. This has been one of the most controversial aspects of the design of the SQE for our stakeholders. Stakeholders are concerned that the use of multiple-choice questions is not an appropriate way to assess candidates' competence and that it will 'dumb down' the solicitors' qualification.

These concerns have been confirmed as valid by the sight of the model questions published by the SRA.[12]

107. Our reasons for wishing to use single best answer multiple choice questions are that they can test the cognitive skills we want to test, can be objectively marked and can test the breadth of the curriculum. Essay-type questions cannot test the breadth of the curriculum and cannot be objectively marked. Short answer questions could test the breadth of the curriculum but could not be objectively marked.

[12] See further the submission to the LSB by the Association of Law Teachers.

108. Some stakeholders suggest that we should not use multiple choice tests because they do not reflect the work that solicitors do. Some stakeholders suggest instead that we should require candidates to demonstrate their functioning legal knowledge through essay-type questions. But we do not think this is a helpful analysis. Solicitors do not write essays in the course of their practice. We want to test specific cognitive skills and the evidence tells us that single best answer multiple choice tests can do this. We will test simulations of solicitor work through SQE2.

The reasoning here is very muddled. On the one hand it asserts that essay-type or short answer questions cannot be objectively marked. It does not say why this is believed to be the case, but the obvious implication is that only points of law on which there is a clear right answer or clear best answer can be assessed "objectively". *But solicitors have often to advise on points that are truly arguable*. Much time on a law degree/GDL course will be spent in enabling students to evaluate such issues. It is not clear how far this will be addressed in SQE2, where model questions will not be published until the Autumn. If questions addressing these kinds of issue cannot (in the SRA's view) be objectively assessed, the chances are that they will not be addressed at all. This helps to explain why passing the SQE alone is not likely to be sufficient for employability and creates a significant gap in protection for consumers.

The fact that there is some expert evidence that MCQs *can* assess higher order skills is not to the point given that the MCQs approved by the SRA clearly in our professional view do not do so in practice.

What is proposed are "Single Correct Answer" and not "Single Best Answer". A true "Single Best Answer" approach means that elements in each of the answers may be "correct" but that there is one "superior" answer. This has the benefit of candidates having to weigh up the merits of different answers and choosing which one best suits the needs of the client (i.e. can test a sense of weighting and judgment). But they are harder to write. What the sample questions show is a methodology of Single Correct Answer – i.e. that there are "wrong" answers and one obviously "right" answer. This does not adequately test judgment.

Para 110. Multiple-choice questions are widely used in assessment in other professions (for example in medicine, pharmacy, accountancy). They are also used in the legal context, both in a university setting and in high-stakes licensing examinations (for example within the LLB, on the LPC, Bar Professional Training Course and US Multi-state Bar Exam, which is used by 33 US states and jurisdictions including New York). These references are misleading in that they fail to note that none of the qualifications to which they refer rely to the same extent on MCQs as the SQE. They are used to a very limited extent for LLB and LPC assessments. The centralised examination for the Bar in England and Wales, which sit alongside subjects assessed by the providers, uses MCQs for two of the three components. The Multistate Bar Examination is one part of the Uniform Bar Examination, the full components of which are: Multistate Bar Examination: 200 multiple-choice questions; Multistate Essay Examination: Six 30-minute essay questions; Multistate Performance Test: Two 90-minute exams. It is important to note that the Bar in England and Wales has retained a requirement for a QLD/GDL and US jurisdictions almost

universally require a law degree, to which the respective Bar Examinations are complementary.

We do not suggest that there is no part that MCQs can properly play. However it is our view that the significant over-reliance on MCQs critically devalues the level of assurance that the SQE can provide. (It is to be remembered that these issues are not problematic for the QLTS given that the candidates are already qualified lawyers, generally in practice under qualification arrangements that are significantly more demanding than the SQE.)

Para 110. It is correct to note, as some stakeholders do, that in the US (unlike in England and Wales), attorneys must hold a law degree. However, it does not have to be from a US jurisdiction, and our requirements for admission include a degree or equivalent. The words "unlike in England and Wales" are tendentious. They ignore the fact that a very high percentage indeed of those currently qualifying as a solicitor hold a QLD or GDL and have passed the LPC, as part of what is by far the major route to qualification.[13] (Note that we have not suggested at any time in the course of this exercise that possession of a law degree should be required in all cases and that the GDL route should be abolished.) Possession of "a degree" cannot make up in any way for the absence of a "law degree/postgraduate diploma". It is also curious that the fact that there is a regulatory requirement for a degree or the equivalent recognises that degree level skills are necessary for qualification as a solicitor, and can be assured by a qualification from a UK HE provider, notwithstanding that (for the most part) the same providers cannot, it is said, be relied upon when it comes to a provision of a QLD/GDL.

As to the position in the US, *The Comprehensive Guide to Bar Admission Requirements 2020* published by the National Conference of Bar Examiners and the American Bar Association Section of Legal Education and Admissions to the Bar (http://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020_021820_Online_Final.pdf)

provides in its Code of Recommended Standards at p.vii:

"Each applicant should be required to have completed all requirements for graduation with a JD or LLB degree from a law school approved by the American Bar Association before being eligible to take a bar examination, and to have graduated therefrom before being eligible for admission to practice. Neither private study, correspondence study, law office training, age, nor experience should be substituted for law school education."

This is a requirement in 23 states and territories. Most other states accept in addition candidates from non-ABA approved US law schools. California, Maine, Minnesota, New Mexico, Oregon, Vermont in addition accept a correspondence law school or an online law

[13] The SRA Annual Review for 2017/18 (https://www.sra.org.uk/globalassets/documents/sra/research/annual-review-2017-18.pdf?version=4a1ab9) states at p.49 that of the 6,785 qualifying in that year, the breakdown was 5,652 LPC; 769 QLTS; 321 CILEx; 35 Other and 8 QLTT.

school. California, Maine, Vermont, Virginia, Washington, West Virginia and Wisconsin accept "Law office study". (*Comprehensive Guide*, p.12).

Graduates of foreign law schools are not eligible for admission by examination at all in 21 states. Where they are eligible, there is normally an additional requirement of additional education at an ABA-approved law school, practice of law in a foreign jurisdiction, determination of educational equivalency or admission in another US jurisdiction. In only 10 states can "legal education in English common law" be sufficient on its own.

The attempt by the SRA to obscure the importance attached in US jurisdictions of possession of a law degree is unfortunate.

Finally, it should be noted that the application document does not repeat claims previously made by the SRA that the SQE overall is a qualification at Level 7 (Master's degrees) in Table 1 in the Quality Assurance Agency's paper on *The Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies*.[14] There is not even a claim that it is equivalent to Level 6 (Bachelor's degrees). It is our view that such claims would be unsustainable.

Para.115. Single best answer multiple-choice questions: can measure the cognitive skills we wish to test effectively23 [23 Developing High Quality Multiple Choice Questions for Assessment in Legal Education, Susan Case and Beth Donahoe, Journal of Legal Education, September 2008.]

Reliance on this article has been criticised by Jenny Gibbons[15] given the "self-reported limited remit" of the article as focussing only on MCQs and essays, a point not mentioned by the SRA.[16] Her overall conclusion in her article was that "It has been found that the SRA has strongly positioned the proposed introduction of the SQE Stage 1 as being better than the current academic route, and founded on a credible evidence base. Of concern is that they have strongly asserted the objective nature of MCT tests used elsewhere (for example, in legal education in the US), without any engagement with the literature on their limitations."[17]

Paras 141-144. Differential attainment

While we recognise that this pattern of differential attainment by ethnicity is consistent with current experience in assessments in the legal sector and more widely it is nevertheless of concern and we plan to commission research to understand better the causes of the attainment gap….Kaplan will be introducing a comprehensive package of

[14] QAA, UK Quality Code for Higher Education Part A: Setting and Maintaining Academic Standards PART A The Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies (October 2014).

[15] Jenny Gibbons (2017) Policy recontextualisation: the proposed introduction of a multiple-choice test for the entry-level assessment of the legal knowledge of prospective solicitors in England and Wales, and the potential effect on university-level legal education, *International Journal of the Legal Profession*, 24:3, 227-241, DOI: 10.1080/09695958.2017.1359611

[16] Op cit p.234.

[17] Op cit p.237.

measures to minimise any risk of unfairness to candidates from minority protected groups.

Given the small numbers in the SQE2 pilot, the significant concerns as regards differential attainment generated by the pilot, and the fact that model SQE2 questions will not be available until the autumn, there is a powerful case for requiring a further pilot of SQE2 before final approval is given. Any approval for SQE1 should likewise be provisional.

Paras 145-165 Conclusions about uniform exam, common core or specialisms

The SRA identifies difficulties with allowing there to be any specialisation in SQE2. There are clearly difficulties in ensuring uniformity where specialisation is allowed. The consequences of prioritising uniformity are that candidates will be less able to rely on QWE as part of the preparation for SQE2, thus increasing costs, and that the matters covered will bear less relationship to the kind of work that candidates will go on to undertake, thus reducing regulatory protection for consumers. A further pilot would provide an opportunity for this issue to be considered further.

Para. 356. we are also aware that early indications suggest that not all universities wish to incorporate SQE preparation into their law degree.

This misrepresents the position. The current indications are that most University law schools have no intention of incorporating SQE preparation into their law degree courses.

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