****

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

SRA Consultation

October 2016

**January 2017**

**Introduction**

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

**Question 1**



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

* Strongly disagree
* Disagree
* Neutral
* Agree
* Strongly agree

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

Initially, we would say that:

a) The proposed SQE creates a gap between the requirements of the assessment and

the personal effectiveness and workplace competencies required of legal employees in the modern profession;

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

and proposed diet of assessments;

c) The methodology of assessment proposed particularly for SQE1 is not searching enough

and will encourage surface learning rather than deep reflective practice;

d) The timing and practice context areas of SQE 2 takes no account of current recruitment and training practices in the legal profession and poses significant logistical issues;

e) The SQE proposal creates hidden costs and will have unintended consequences.

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

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

**Question 2a**

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

* Strongly disagree
* Disagree
* Neutral
* Agree
* Strongly agree

Comments

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

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

We, therefore, are concerned that the proposals:

i. do not measure the quality of the different experience or experiences in training. This is of serious concern to us as it is not merely the duration of training which is relevant but the quality of supervision, the level of work experienced and the breadth of the training.

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

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

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

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

**Question 2b**

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

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

Comments

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

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

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

**Question 3**

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

* Strongly disagree
* Disagree
* Neutral
* Agree
* Strongly agree

Comments

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

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

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

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

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

**Question 4**

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

* Strongly disagree
* Disagree
* Neutral
* Agree
* Strongly agree

Comments

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

We do not agree that the SQE model proposed is a sufficient test of the requirements to

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

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

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

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

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

for entrance to the SQE. However, it does not specify this should be a law degree or confirm the concept of a ‘Qualifying law Degree’ will survive the introduction of the SQE.

If the SQE is introduced, we strongly support the retention of the requirement to have a law degree or GDL as a pre‐requisite to taking the SQE. An exception for apprenticeships should be acknowledged and also Fellows of the Legal Executives as currently.

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

**Question 5**

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

* Strongly disagree
* Disagree
* Neutral
* Agree
* 

Comment

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

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

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

**Question 6**

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

* Strongly disagree
* Disagree
* Neutral
* Agree
* Strongly agree

Comments

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

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

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

**Question 7**

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

* Yes
* No

Comments

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

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

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

We do not see evidence that the needs of students with disabilities has been sufficiently considered in relation to the type of assessments being proposed or the assessment process.

This will have a negative EDI impact. For example, the SRA proposes that all 6 SQE assessments must be taken in one sitting. It has not proposed what the length of that sitting might be and therefore has not recognised the effect of taking 6 high‐stakes exams over that period of time might impact students with protected characteristics or learning support /disability requirements. As there is no proposal from the SRA it has not identified this as an issue for potential negative impacts on EDI.

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

**In Conclusion**

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

3 January 2017



-------------------------------------

John Hughes

President

Birmingham Law Society