



**BIRMINGHAM LAW SOCIETY**  
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**T4T – Assessing competence**

SRA Consultation  
December 2015

February 2016

## **T4T - Assessing competence**

### **Consultation questionnaire form**

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

## 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?

Birmingham Law Society (BLS) wishes to express its concerns at the outset of its response to this consultation that it believes the SRA is extending its reach beyond its regulatory powers into controlling entry into the solicitors' profession, standards etc. We are extremely concerned that this consultation as well as other reviews ongoing e.g. the Separation of Powers, 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.

BLS welcomes developments which ensure comparable high standards at the point of admission and ensure the most talented candidates can qualify by encouraging new and diverse pathways into the profession as the term solicitor should signify excellence, integrity and professionalism especially in the eyes of clients and society as a whole. We agree that any artificial and unjustifiable barriers to entry should be removed. We also support the idea of centralised assessments but we are concerned that there is not sufficient detail for us to be able to assert clear, knowledgeable and intelligent views. What is being proposed in this consultation is not sufficiently scoped out to enable anyone to say whether high standards, quality, increased diversity or comparability of pathways will be achieved without fuller detail.

We would propose that a better approach would be for the current system to be retained and improved, with the possibility of carefully managed centralised testing to ensure standards across the board.

As regards a higher standard being achieved because of the proposed assessment changes, BLS in respect of the Competency Statement Consultation expressed its view that the threshold standard for entrance into the profession was set at too low a threshold at level 3, and, therefore, we believe that rather than these new proposals increasing quality, they will actually reduce quality on entrance to the profession as the standards will be watered down in order to enable the flexibility of more pathways to becoming a solicitor.

The centralised assessments covering Part 1 and Part 2 will not increase standards. Part 1 is covering the academic stage by means of multiple choice questions (mcqs) and there is no need for a recognised programme of study via a law degree, or CPE equivalent or CILEX. This will open up crammer courses which will not raise the quality perception of the profession, in fact, quite the opposite. It will also not ensure quality providers or more talented candidates. We are not aware that the degree level stage requires a centralised assessment as we also want to ensure that 'trainees'/solicitors are individuals who are intellectually stretched, enquiring and thinking and creative individuals which we do not think will be achieved by this centralised Part 1 assessment.

Also, as no costing structure or examples have been made available by the SRA we

cannot say that this system will be less costly.



## 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?

The consultation includes very little detail beyond what has already been discussed. The assessments are referred to but there is no detail on how these will be managed or what they will look like. Many of the important elements, such as the requirement for pre-qualification work-experience and the assessment framework, are to be consulted on at a later date, if at all, which renders the majority of the questions put to be answered with limited detail of what is actually being proposed. Therefore, all questions are answered within this context.

When considering whether the proposals are sufficiently robust and appropriate for entry to the solicitor's profession the devil is in the detail and the detail is missing. Without being able to assess the whole, it is difficult to draw adequate conclusions and the SRA should refrain from making any definite decisions on the implementation of these proposals before the future planned consultations have been held and stakeholders have been able to respond to the full scope of them.

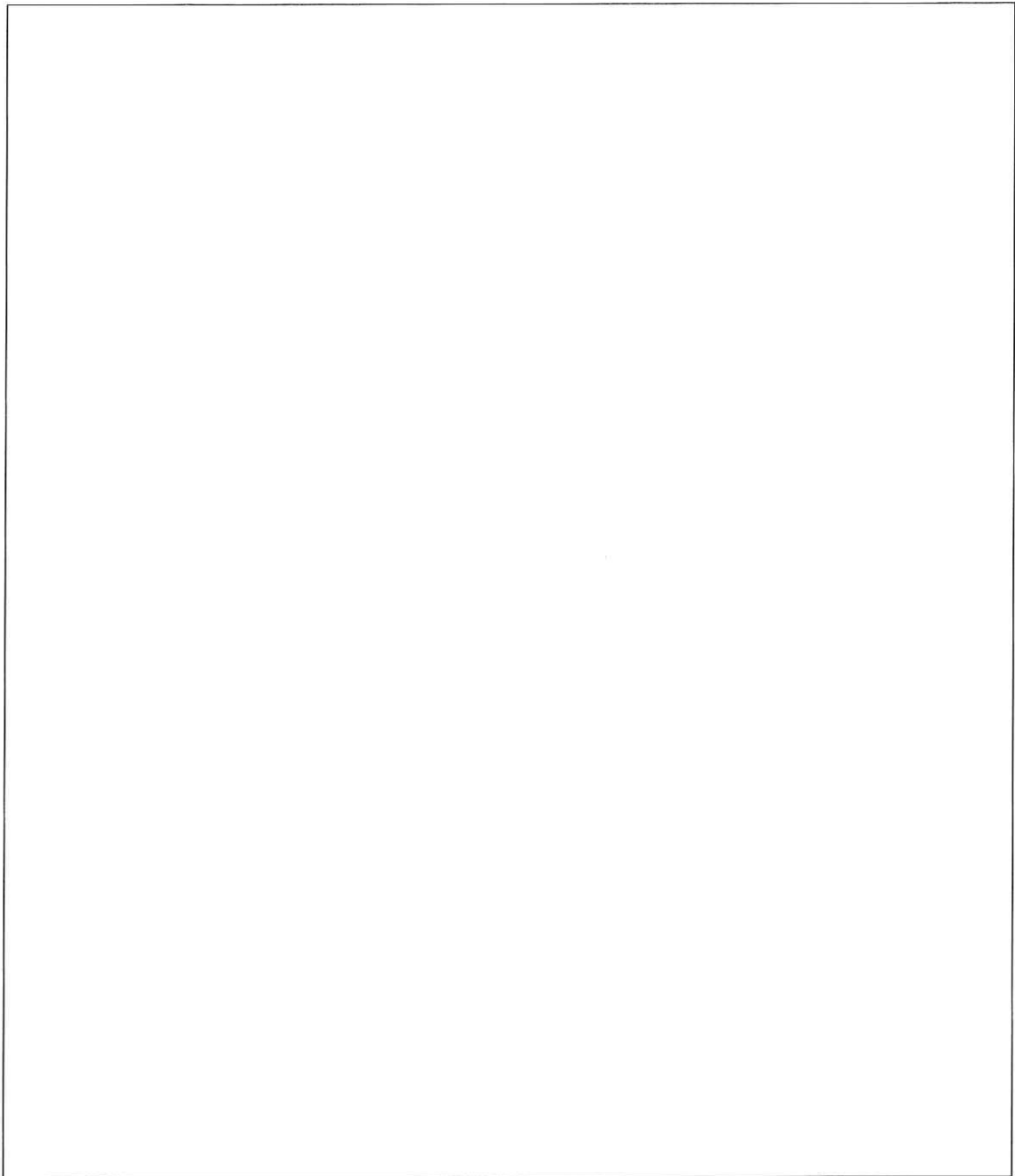
The ability to take the assessments without any restrictions on the number of times an assessment can be retaken, alongside the lack of time restrictions on the completion of all elements, brings into question the rigour and quality of this approach. It could lead to a situation where students can effectively 'bank' elements indefinitely, which they may have no familiarity with by the time they finally manage to qualify. It also means that familiarity with the assessment, question types or scenarios could enable students to gain higher marks than may have been the case on their abilities alone. This does not lead one to feel that standards will be raised but may be the contrary view.

Part 1 as explained in the answer to question 1 will not enable the expected skills of a solicitor to be tested but merely, knowledge questions via rote learning.

Part 2 assessments which are skills based and can be by legal tasks, case studies, role plays etc. will be resource intensive, costly and also sounds like the LPC. We cannot see why if the LPC needs improving which we can appreciate it may do so after 20 years of operation, why the good aspects are not retained and the areas requiring attention are improved. How can skills e.g. advocacy, interviewing be assessed by role play with sufficient equivalent assessment role play cases and sufficient personnel to ensure comparability and consistency of standard.

Also, for the role plays it is important that the non-student individuals taking part in the role playing are of the right standard with the right guidance to ensure consistency of assessment, otherwise, there is no comparability of standard.

We again would say that there is not sufficient evidence base provided for us to agree with the SQE Part 2 to be an effective test of competence needed to be a solicitor.



### 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?

It is felt that if all students undertake the centralised assessments there will be consistency. However, the reservations in 2. above indicate that it will be a lowering of standards.

To require all candidates to undertake the Part 1 and 2 assessments may appear acceptable. However, to offer no exemption from the assessments for those who have completed law degree or postgraduate diplomas in law would be costly and inefficient, as well as there being a real danger of overloading students with multiple assessments. This would create unnecessary cost rather than lightening the financial load. This would mean that students would have to sit assessments from their university as well as those from the SRA. We would suggest that degree modules could be accredited by the SRA and that these would enable the SRA to know that the necessary competencies had been achieved whilst enabling exemption.

## Question 4

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

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

a) above would not be acceptable as the reserved activities are too narrow in their subject coverage to test a trainee's ability or knowledge and wills and criminal law as part of the restricted areas are now only supplied by limited legal organisations, therefore, it would be 5 plus the law of organisations, including areas which a large number of delegate/trainees would have no knowledge of nor should they necessarily be required to do so. Also, the law of organisations is a broad area and again some trainees/delegates would have a focused and intense but limited knowledge.

b) A broader number of contexts would be better but still would be a problem as quite a number of individuals practice in niche areas. Would this be a fair and comparable test especially when based upon work based knowledge. However, out of the three this would be the best.

c) No, we do not agree with this option as we do not think that there will be comparability of areas to test delegates in when they are dealing with such a variety of topics as explained in a) above.

We do not think the options will give delegates from their work based learning the same level playing field for the assessments. At the moment the LPC is normally taken before work based learning of a meaningful fashion and students undertake a programme of study so that there is a level playing field but all 3 options above can create difficulties for the trainee/delegate and the legal organisation in which they are undertaking their work based experience. This again shows a lack of thinking through the impact and effect of changing the existing system and the volume and wide diversity of assessments required to test during and/or at the end of work based learning.



## 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?

We agree that if a Part 1 exists it should be at least at graduate level . However, Part 2 should be at a higher level i.e. masters level as the majority of the LPC is currently otherwise there is a dilution of quality. This will not raise standards or maintain standards which is supposed to be one of the objectives of these changes.

## Question 6

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

We strongly assert that there should be quality work place training to enable an individual to have the knowledge, experience, skills and competences to be able to hold themselves out as a solicitor. We would expect the training period to be 2 years as is the current position , and in some rare occasions because of previous experience, 18 months. Any shorter period would not give sufficient depth of knowledge to operate as a solicitor.

We take issue with the phrase ' some form of ' and the word 'experience'. Some form of indicates that it may not be sufficiently structured training and , therefore, could be misinterpreted. For the protection of the individual and the public, training should be at the right skills and competence level and should be formal structured training not merely work experience of a few days here or a week there, as we know it. We are concerned that a relaxed and unclear training period will lead to confusion and a lowering of standards. Therefore, we feel that the present system of training for 2 years should be retained.

## Question 7

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

As explained in 6 above we do think that the SRA should retain a minimum period of 2 years training in order to retain the integrity of the profession and its high standing not only in England and Wales but the international market where the english system of training is much admired and mirrored.





## Question 8

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

The SRA should give guidance as to the skills and competences required during the 2 year period especially to help smaller firms. The checklists need to be retained for firms for their protection and guidance and the SRA needs to ensure that guidance documentation is available . In order to ensure that standards are maintained the SRA as regulator should help firms to ensure the performance of 'trainees' is of the best quality. Large firms do have their own mechanisms in place but smaller firms need back up and assistance so that the public are provided with the best legal service.

## Question 9

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

It is important that any recognised training consists of meaningful substantive work which is of the level and quality we would require of a trainee in order to achieve the level of competence expected of a solicitor delivering legal services.

The workplace training should be work undertaken under the supervision of a solicitor for it to be acceptable. Small amounts of workplace training should not be recognised. The minimum should be a 3 months training period but we would also require the two year period not to be made up of small amounts acquired over a long period and we would prefer there to be a noticeable long period of training with one employer so that the development of skills and competencies can be ensured.

In order to ensure that the appropriate level is being assessed for the workplace training, the SRA should also give some thought as to the appropriate level at which a trainee should be working during this period. This could be achieved, in part, through the clear specification of competencies to be achieved, although guidance on the sorts of tasks and roles a trainee may undertake would also be welcome.

Unless the degree programme is a sandwich course and involves work as explained above we would not recognise 'work experience' during the degree as work of a substantive legal level acceptable to count to training. Students studying on year 1 would not have the basic skills and unless at level 3 or 4 they have a years experience in a solicitors office of meaningful and certifiable legal work we would not agree to work experience during the degree being acceptable.

Also, pro bono work or CAB work alongside the degree or 'LPC' level of study we would not accept as meaningful legal experience to count towards training but we would consider, as we do now, work experience helpful in enabling an individual to have some experience of legal work. The training needs to be of sufficient length and depth to be meaningful legal training and, again, to ensure that there is not a two tier level of becoming a solicitor and that the consumer is protected as well as the standing of the profession.

## **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?

Without clear guidance and examples of cost and additional cost from the SRA we are not able to make an informed statement in relation to this question.

## 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?

The SRA may need to set a benchmark level in relation to the 'softer skills' which we believe this question to be referring to. Again, it depends on the resources available to the firm. The larger firms will not have a problem as they have resources available. However, smaller firms may not have the time, resource and skill, therefore, such firms may decide to employ only an individual who is qualified or a non-qualified who they will not be able to take on at previously the 'trainee' level. This may affect diversity.

The SRA would need to produce guidance and benchmarking mechanisms to ensure a quality standard, otherwise, how could consistency of level be assumed.



## 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?

If workplace assessment were introduced a toolkit and resources would certainly need to be produced for quality and benchmarking purposes as explained in 11 above.

We cannot comment at this stage whether other support would be required as it will depend upon the quality of the information produced which does not exist. There would be a need for training to be available as some practitioners will not be familiar with all requirements , but again, we cannot say for certain as we cannot comment on unknown or unseen information.

## 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:

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

If the SQE was brought in and we are not agreeing that this should be the case as it is proposed, we would require it to be at graduate level as is currently the case to qualify as a solicitor, therefore, as a prerequisite a degree/GDL or the CILEX route or apprenticeship if at graduate level, is necessary to retain the integrity of the profession as we go forward and to protect the public.

Other professions such as doctors, osteopaths, nursing, require a degree/graduate level qualifications as a prerequisite as does the role of a barrister. The role of a solicitor is as intellectually challenging as that of a barrister or other professionals such as a doctor where a degree is the expectation for entrance.

To reiterate comments in relation to the above questions, the solicitor qualification needs to retain its branding globally. To have expectations below graduate level would affect the role of our solicitors and their work within the increasing international market and would impact on the economy.

## Question 14

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

Please see answer to 13 above where we expect the entrance requirement to be at graduate level. However, graduate level as the academic level requirement, is absolutely essential to maintain intellectual rigour in the profession and for profession to retain its dominant position in the international legal market. The high standing of the profession depends upon it retaining all the high level knowledge, skills and rigour

## Question 15

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

A candidate who sits any assessment should have feedback on their performance and if the SQE were in existence we would expect a candidate to receive their individual performance and comparative performance to enable them to assess how they have achieved, or if they were not successful a clear indication of where they need to improve. This will enable them to determine whether to attempt again the assessment, otherwise individuals will spend money on retaking when their chances of success may be low.



## Question 16

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

- a. overall candidate performance on the SQE?
- b. training provider performance?

As regards overall candidate performance this is important as we will need to know how candidates have performed in respect of each question to ascertain whether the assessment was fair or too easy or too difficult. We also would need to know how many candidates are passing, failing, resitting to enable us to assess whether this system is meeting benchmark requirements.

Also, training provider information is essential to enable candidates to make an informed decision..

We wish to point out that by answering these questions it should not be taken that we agree with the SQE in its entirety as set out in the documentatio.

## Question 17

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

As the SRA has not made available to us any costed out examples we are unable to say whether the cost will impact upon candidates and/or firms.

We would have welcomed a costing out of this new proposed system to compare with the existing system but none has been forthcoming. Therefore, cost may be an issue.

We are still concerned regarding the likely financial impact of these changes which would disproportionately affect poorer students. Part 1 and Part 2 proposed centralised examinations will almost certainly operate within a free market environment of intensive preparatory courses. These courses will not be covered by Student Finance England or Wales, as current required courses are, so will need to be self funded, or funded via commercial loans. This will have an impact upon poorer students who already have financial difficulties in meeting the costs of post-graduate education, both tuition and maintenance, and this would be an additional barrier

## Question18

Do you have any comments on these transitional arrangements?

As regards transitional arrangements, it is important that no student who is currently seeking to qualify by a designated recognised route should be adversely affected. For example, students who are in the process of completing a qualifying law degree should be given a waiver for Part 1 of the SQ, as currently, a qualifying law degree would be the acceptable academic qualifying stage.

## Question 19

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

The transitional arrangements should be worked through for each of the current ways to see if the cut off dates are viable for each route. This is particularly relevant for part-time courses and for CILEX as the duration of such programmes may include time out for illness, family reasons or exceptional circumstances. The SRA should plot out a non-typical student's timeline on such a pathway route .



## Question 20

Do you consider that this development timetable is feasible?

The timetable has challenges . A major one is the appointment of an assessment provider in 2017 and the setting of the assessments for 2018/19 academic year. This does not give a long enough time for the assessments to be created, for there to be sufficient number of questions available as well as a period to test their acceptability.

Also, we question whether there is enough time for providers to create acceptable quality courses if they need to change existing courses or create new courses.

The SQE must be credible and watertight in its first year and ongoing. If the time period is too tight and there are problems arising from the SQE when it starts then it, and the profession, as well as providers will lose their reputation .

It is important that sufficient time is given to enable students, universities, providers and , in particular, the profession to be able to clearly be aware of what is changing and how and to guide new entrants into the profession. Confusion will mean that we will lose good candidates who will enter other professions where the route to qualifying is not so obscure.

With reference to the Draft Assessment Framework document will we be consulted on this?. We would hope so and that sufficient time should be built into the timetable.

**Thank you for completing the** Consultation questionnaire form.

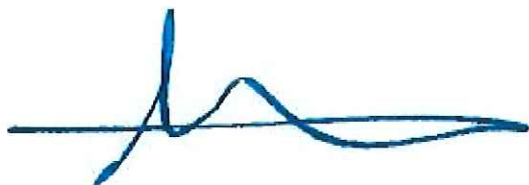
Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to [consultation@sra.org.uk](mailto:consultation@sra.org.uk), by **4 March 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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29 February 2016

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

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Mushtaq Khan  
President  
Birmingham Law Society