



From The Honorary Secretary
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Response to the Solicitors Regulation Authority Consultation Paper, “Training for Tomorrow: Assessing Competence”

The Society of Legal Scholars is a learned society whose members teach law in a University or similar institution or who are otherwise engaged in legal scholarship. Founded in 1909, and with over 3,000 members, it is the oldest as well as the largest learned society in the field. The great majority of members of the Society are legal academics in Universities, although members of the senior judiciary and members of the legal professions also participate regularly in its work. Many members themselves have professional legal qualifications and have links with, or are active in, legal practice. The Society's membership is drawn from all jurisdictions in the UK and Ireland and also includes some affiliated members typically working in other common law systems. The Society is the principal representative body for legal academics in the UK as well as one of the larger learned societies in arts, humanities and social science.

Question 1

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

No. It will not be possible to assess this matter until detailed decisions are reached on the nature of the assessment of knowledge, in particular of those aspects of the knowledge requirements currently covered in the Foundation Subjects, the vast majority of which are carried forward into the SQE (these are referred to hereafter as the “Foundation Subjects Knowledge”). If this turns out to be as demanding for students as the assessment of those subjects is at present as part of a Qualifying Law Degree or GDL, then the additional burden on students in terms of additional time and cost is likely to be significant. This will make the process of qualifying more difficult for students from poorer backgrounds and thus defeat one of the regulatory objectives. The SRA statement that the whole of the assessment for the SQE should be at least graduate level implies that it will indeed be demanding, a matter discussed further in the answer to Question 2.

A possible response is that Law Schools may choose to provide complete coverage of the SQE Part 1 knowledge in a Law degree, with the SQE assessments running in parallel. The only additional expense would be the fees paid to the SRA for the assessments. It seems that the SRA would welcome that position. If so it would be hoping that the market will deliver, in response to student demand, Law degrees whose entire curriculum would be driven by the requirements of legal knowledge as prescribed by the SRA. There are so many SQE Part 1 subjects that if all were to be delivered properly in a three year Law degree programme, it is difficult to see there would be any room for any other options. So students studying such a programme

would have no time for such subjects as Employment Law, Family Law, Public International Law, Private International Law, Social Welfare Law and Legal Theory to name but a few. It is impossible to predict how many Law Schools would follow that route. Some may well take the view that they are not prepared to see their curriculum dictated (de facto) by the SRA. This would be in the knowledge that their students would need to study some SQE Part 1 subjects outside the Law degree and on the assumption that they would still be able to recruit excellent students on that basis. The more that is the case, the greater are the additional burdens that will be imposed on students by the proposed SRA arrangements.

Question 2

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

No. The proposed model assessment for the SQE on its own cannot demonstrate achievement of the required competences at at least graduate level.

There is a fundamental flaw at the heart of the current proposals. The document rightly says that entrants to the profession (after completing SQE Part 2) should be of postgraduate standard but refuses to accept the possession of a postgraduate or undergraduate degree as any evidence that that standard has to any extent been achieved. The result is that the only assessment relied upon to guarantee a postgraduate standard is the SQE itself. There is no evidence that the assessment of the knowledge requirements for a lawyer by multiple choice or true/false questions can in itself demonstrate that a person who passes that assessment possesses the skills and abilities of a graduate or postgraduate. We refer here in particular to the higher level learning outcomes identified in Bloom's taxonomy – Analysis, Evaluation and Synthesis (see 2.4(ix) of the Law Subject Benchmark and point 4 of the QAA generic bachelors' degree descriptor "*a bachelors' degree is awarded to students who have demonstrated... an appreciation of uncertainty, ambiguity and limits of knowledge*"). The MCQs used to test transferring lawyers test basic knowledge but they manifestly do not test the skills and understanding of a graduate. Indeed they do not need to as the vast majority of qualified lawyers around the world are required by their professional bodies to be graduates. The current MCQs on, say Tort, could not properly be used as the only method to assess the knowledge and understanding of a first year undergraduate in that subject. They do, however, demonstrate an up to date knowledge of the basics where the law is clear.

It may accordingly be that what the SRA has in mind as regards the knowledge element, given its reliance as a model on the Transfer Test MCQs, is simply ensuring up to date knowledge of the basics of the required subjects. This would be less demanding and burdensome for students but it would self-evidently not demonstrate achievement of at least a graduate standard.

Question 3

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

No. There should continue to be exemptions for entrants who have studied the Foundation Subjects Knowledge and indeed any other elements of the SQE Part 1 knowledge in accordance with the prescribed requirements. Exemptions are permitted on such a basis by other professions such as accountancy. It would be for consideration whether additional assurance might properly be required in respect of subjects studied at the equivalent of Level 4 that a pass mark of 50 is required for professional purposes.

Is there a case for requiring all the required knowledge, including Foundation Subjects Knowledge, to be assessed in one centrally assessed examination, with no exemptions?

The reasons given in the Consultation Document at para 45 are:

- 1. The SQE is aligned to our Statement of Solicitor Competence, and is assessing different competences to those examined as part of a degree;*
- 2. This would limit our ability to ensure comparable, high standards between different pathways;*
- 3. It would fail to recognise the concerns about the variability of academic standards expressed by HEFCE and others; and*
- 4. It would make the SQE a less reliable assessment.*

These arguments do not justify the refusal to permit exemptions in respect of Foundation Subjects Knowledge and any other SQE Part 1 subjects actually studied as part of the degree in accordance with SQE requirements:

Reason 1. The competence in question is essentially the same: knowledge and understanding of the subject in question.

Reason 2. There would be sufficient to ensure comparability through a centralised assessment of any remaining required areas of knowledge and the SQE Part 2 legal skills.

Reason 3. HEFCE has put forward proposals for strengthening arrangements for quality assessment in the light of concerns that have been raised over comparability of standards. It also said (para 25 of Future approaches to quality assessment in England, Wales and Northern Ireland: Consultation): “*The proposals should not be seen to cast doubt on the ability of the current system to secure the reputation of the UK higher education system over recent years*”. It accordingly did not say that ‘current quality assurance mechanisms do not ensure consistency of standards across universities’, the view misleadingly attributed to it at para 23 of the Consultation Document. At para 81 HEFCE also said: “*It is important to note that as funding bodies we are not advocating a shift away from the autonomy of degree awarding bodies to set and maintain standards. Nor are we proposing the development of either a national curriculum or a national student examination. Far from it. Rather, we are seeking to develop established elements of the wider quality assurance system so that clearer assurances can be provided to students, governments and other stakeholders on the issues that matter to them.*”

No HE system can guarantee directly exact comparability of standards without such centralised assessments, which would be enormously damaging to UK Higher

Education in stifling creativity and diversity in provision. The fact that there is a case for some strengthening in arrangements does not justify the conclusion apparently reached by the SRA that no weight at all can be attached to quality assessment processes in Universities either now, or as they might be changed as a result of HEFCE's current exercise. Other professional bodies have not taken that view.

A further point is this. The press concerns over grade inflation (mentioned by HEFCE at para 79 of its Consultation Document) is focused on the proportion of 2/1s and 1sts. It is difficult to see how this is of regulatory interest to the SRA. There is no evidence that consumer interests have been or could be prejudiced by uncertainties on this question.

Reason 4. The question is not whether allowing exemption makes the assessment "less reliable". It is whether arrangements that allowed for exemptions could provide sufficient assurance for regulatory purposes. It is submitted that they clearly could.

A further point made by the SRA at para 55 relates to Levels of Study within the QAA's Framework for higher education qualifications in England, Wales and Northern Ireland (FHEQ). The point is made that some Foundation Subjects are studied at Level 4, some at Level 5 and some at Level 6, as part of an undergraduate Law degree that is finally awarded at Level 6, (or indeed at Level 7 as part of a postgraduate qualification). This is true to the extent that an award made to a student who leaves after successful completion of the first year of a three year undergraduate degree would normally be awarded a Certificate of Higher Education, which is located at Level 4 in the Framework. However, it has never been suggested that it is wrong in principle or misleading for employers for the final assessment of a degree to take account of marks achieved in previous years (usually just the second year of a three year programme in addition to the third). And yet the student obtains a Level 6 award. There is also not the slightest evidence that the interests of consumers have been prejudiced by the fact that some subjects required for qualification as a solicitor have hitherto been studied at Levels 4, 5 and 6. If there were evidenced concerns on this point, then it would be open to the professional bodies to impose a higher pass mark, say 50 for professional subjects studied, say, at level 4.

Question 4

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

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

No view.

Question 5

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

Yes. This is only workable if possession of a law degree or a degree in another subject plus something like the present GDL is accepted as some evidence that this has been achieved.

Question 6

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

Yes.

Question 7

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

Yes.

Question 8

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

No view.

Question 9

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

Yes.

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?

Yes

Question 11

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

Not applicable.

Question 12

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

Not applicable.

Question 13

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

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

Yes, for the reasons given above. Recognition of a law degree should remain part of a recognised pathway indefinitely.

Question 14

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

This is a poorly worded and potentially misleading question. The present position gets this right. There should be no downplaying of the importance of a degree. All solicitors should have attained a graduate/postgraduate standard. The possession of a Law degree or non-Law degree plus GDL is by far the best way of doing this. It may be that in a small number of cases (e.g. apprenticeships or legal executives or foreign lawyers) people will be able to show they have achieved a graduate standard by other means. In the vast majority of cases, it is essential that solicitors should have a degree.

Question 15

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

If it can be demonstrated that there is a rational basis for attaching significance to different levels of achievement on the SQE then yes. Otherwise no.

Question 16

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

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

This depends on the nature of the assessments, which remains unclear. See above.

Question 17

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

Entrants from less wealthy backgrounds will be seriously disadvantaged for the reasons given in the answer to Question 1.

Question 18

Do you have any comments on these transitional arrangements?

Given all the uncertainties, these must be kept under review.

Question 19

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

No view.

Question 20

Do you consider that this development timetable is feasible?

No, given that at the time of writing the arrangements for assessment remain very unclear.

Society of Legal Scholars
February 10th 2016