

## **A Competence Statement for Solicitors**

### 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

Does the competence statement reflect what you would expect a competent solicitor to be able to do?

Before addressing the specific questions in this consultation questionnaire form, we wish to make a number of contextual points.

1. 1. While this response represents the views of the SLS, given the importance that the four Learned Associations in Law attach to this matter we have met on several occasions to discuss the proposals and are continuing to meet. You will see that the views of all the Associations are closely aligned.

1.2 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 of Law in the U.K. and Ireland. The great majority of members of the Society are legal academics in universities, although some members are law teachers teaching vocational courses, and members of the senior judiciary and of the legal professions also participate regularly in its work. The Society's rules state that one of its primary aims is the advancement of legal education and its members have extensive expertise in both legal education and training. Given the size and breadth of its membership, the Society is particularly well placed to offer expert opinion on matters of legal education and training.

1.3 We recognise and understand the decision of the SRA, in accordance with the guidance of the LSB, to formulate a Competence Statement for Solicitors against which arrangements for education and training can be established and tested. However, both in drafting the Statement and in developing arrangements for assessment it must be borne in mind that neither the Legal Education and Training Review nor subsequent research has shown that there is a substantial body of evidence that shows the need for radical changes to existing arrangements. Overall, the Society wishes to make the point that there is a danger of over-regulation based on inadequate evidence.

2.1 We note that the SRA has chosen to move first on drawing up the Statement and secondly on arrangements for assessment. However, it is our view that these two aspects are inextricably intertwined. We would welcome a formal commitment by the SRA that both elements will be finalised together, leaving it open for provisional views on the content of the Statement to be modified in the light of the outcomes of the work on assessment. The fact that these two elements cannot be regarded as separate means that a number of the responses in this paper will relate to assessment.

2.2 In the context of assessment, the Society would be very concerned about any intention to introduce a single 'test of competence' to assess day 1 outcomes. Experience in Scotland, where such a test was proposed, but, after much debate, rejected, suggests that this would not be a practicable form of assessment.

3. The SRA must move swiftly to give clarity to future cohorts of students as to when any changes will take effect. This is particularly important in the light of obligations due to the effects of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). Current draft guidance to HEIs from the Competition and Markets Authority stresses that students need to be given clear, timely, accurate and comprehensive information in advance. The Society is strongly of the view that if, in order to give adequate notice of any changes in the legal education and training regime it is necessary to extend the existing guarantee as to the applicability of the current arrangements, then so be it. The Society would urge



## Question 2

Are there any additional competences which should be included?

No



### Question 3

Have we struck the right balance in the Statement of Legal Knowledge between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area?

No

There are problems with (1) the number of areas specified; (2) the amount of detail used in each of those areas and (3) particular aspects of the content.

The draft Statement of Legal Knowledge as it is at present cannot properly be characterised as representing the core of what all solicitors can reasonably be expected to know on qualification, given the increasingly specialised nature of modern legal practice. It is both overly broad and too detailed. A matter should not appear in the list merely because it is a regulated task under the Legal Service Act 2007s12 as currently drafted. It should only appear if it is necessary in order for proper regulation to occur.

The problem with the threshold standard as drafted is that it assumes a particular model of solicitors' work, namely that of the generalist sole practitioner. Consequently there is a danger of over-regulation in these requirements, because there has been strong evidence in existence for many years to suggest that the solicitors' profession is in fact highly specialised, and that as time goes on, the tendency to specialise will increase. There is clear evidence of this, for example, in the study by Chambers and Harwood, published by the Law Society as long ago as 1990.

Serious thought needs to be given to what is needed for the proper regulation of different areas of specialism within and between legal firms. There are many problems with the generalist model of solicitors' working practices that has been adopted. For instance, why should it be assumed that all solicitors need a detailed knowledge of criminal litigation when many solicitors do not represent their clients in courts at all, in either criminal or civil matters?

Clearly, from a regulatory point of view, there needs to be some indication of the legal knowledge needed by solicitors. However, in the view of the Society, all solicitors do not need to know all the content which is currently contained in the draft Statement of Legal Knowledge. Nor is it realistic to expect that in actual fact all solicitors on Day 1 would be able to demonstrate such a broad range of detailed knowledge. And in setting out the requirements in so much detail, there is a clear danger of over-regulation. In addition, the Society is unaware of any evidence that the absence of such detail in the current version of the Joint Statement has caused a problem. In the Society's view, it would be far preferable (and more practical) to retain something akin to the current Joint Statement.

Another issue which concerns the Society is that the current proposals put forward by the SRA differ significantly from those put forward by the BSB. It is the view of the Society that it would be helpful for the SRA to liaise with the BSB in order to align their approaches to regulation. If the current proposals result in HEIs having to deal with two separate regimes, the regulatory burden on Law Schools, where in any case only a minority of law graduates enter the legal professions, will be greatly increased, and it is hard to see how this could be justified.

There is an alternative approach which could have been taken to the Statement of Legal Knowledge, which is that instead of prescribing in detail the areas which need to be covered, the Statement of Legal Knowledge could identify the legal concepts which provide the 'building blocks' of legal knowledge and give lawyers the conceptual knowledge they need to be able to function in any area of law. For example, knowledge of public law might be exemplified by an understanding of







## Question 4

Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

The Threshold Standard is broadly appropriate, but there are aspects which are questionable. For example, the requirement to 'use experience to check information provided and to form judgements about possible courses of action and ways forward'. The emphasis on experience is puzzling, when what would normally be expected of a professional would be the use of their professional expertise and training in such situations. Additionally it would not be reasonable to expect the extent of experience gained at this point to be very great. Consequently this threshold standard looks out of kilter with the others..

The Society is concerned that there will be significant challenges in using the wording of the Threshold Standard as a basis for assessment.

## **Question 5**

Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

No. See the answer to Question 3

## Question 6

Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the Handbook and ensure their continuing competence?

The proposed Threshold Standard, subject to the reservations expressed above, may prove a reasonably useful tool in this context.

However, for the reasons stated above, the Society does not think that the Statement of Legal Knowledge will be helpful in this regard. Indeed, as pointed out above, there is a danger of over-regulation in setting out the different areas of legal knowledge in such detail, and this brings with it the possibility that the development of the solicitors' profession may be unnecessarily stifled.

The Society would also reiterate the point made in answer to question 3 above, that the current proposals appear to differ greatly from those being put forward by the BSB, and there is a danger that Law Schools will be faced with a much greater regulatory burden, without any apparent justification for these differences.

## Question 7

Are you aware of any impacts, either positive or negative, which might flow from using the competence statement as a tool to assist entities and individuals with complying with Principle 5 in the Handbook and ensuring their continuing competence?

Until the questions of levels and of methods of assessment have been clarified, it is impossible to give a definitive answer to this question. As indicated above, the Society has serious concerns that the over-detailed and over-extensive nature of the Statement of Legal Knowledge may in fact damage the solicitors' profession by requiring too broad a range of knowledge.

Further, it is in the view of the Society necessary to be absolutely clear on the part of the SRA that the Statement should not be regarded as finalised for these purposes before the work on assessment for entry has been completed . (The consultation Paper indicates that a second consultation will be issued on this towards the end of 2015 and until that exercise has been completed it is crucial that the Competence Statement should not be regarded as finalised).

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 [trainingconsultations@sra.org.uk](mailto:trainingconsultations@sra.org.uk), by **12 January 2015**.

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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