

SLS Response to

BSB Consultation on proposed amendments to the definition of Academic Legal Training and related exemptions

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 approximately 3,000 members, it is the oldest and 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. The Society's membership is drawn from all jurisdictions in the British Isles and also includes 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 with our proposals for changing the definition of academic legal training as described in above in the first key change?

No, we do not agree with the proposal to amend the definition of academic legal training. There should be no downplaying of the importance of a degree for entry to the bar. Most jurisdictions around the world require possession of a recognised law degree as a pre-requisite to vocational training and qualification. All barristers should have attained a graduate/postgraduate standard. Law is a discursive subject where barristers can reasonably be expected to provide appropriate advice and legal argument for their clients in circumstances where the law is uncertain. The possession of a law degree, or non-law degree complemented with a GDL, is the best way of doing this.

The consultation paper points to a number of problems with the current arrangements, including no clear description of level of competence or outcome, and the Curriculum and Assessment Strategy refers to 'coverage' of FLKs rather than the means by which or the level at which they must be covered. We challenge this position. In our view, sufficient assurance exists through the regulation of QLD and GDL providers by a variety of quality assurance processes and standards, including QAA Benchmark Statements, cross-institutional collaboration and scrutiny during programme validations/revalidations, and external examiner interrogations of assessments and approval of marking standards. The proposed amendments tabled here do not offer a response to these suggested 'problems' in any event.

One suggested rationale for the proposed change is to provide a route into the barrister profession for candidates who have completed SQE. The consultation paper positions SQE as an equivalent to a QLD or GDL. It is not equivalent. The SQE Assessment Framework shows that the proportion of SQE1 assessments directed at knowledge of substantive content of FLKs is

relatively small. This is in no way comparable to the coverage of these subjects by a QLD or GDL offered by providers who are subject to regulatory oversight by the QAA.

Removal of the need for a QLD or GDL means that the profession will become one where a person is able to qualify as a barrister (at least theoretically) without first having studied at degree level and without having been assessed at that level on the core building blocks of the knowledge needed in that profession. To what extent can a consumer have confidence in a barrister whose legal knowledge has only been assessed through SQE? Five of the six knowledge assessments for SQE 1 consist of 120 multiple choice questions, with the sixth being 80 questions. Given this, consumers can, at best, assume that assessed legal knowledge will be superficial only.

There is no evidence that the current arrangements for the assessment of the academic stage have caused problems for consumers or aspirant barristers.

One final point: it is assumed that paragraph (i) of the amended section one of the Curriculum and Assessment Strategy should relate to 'a law degree awarded at Level 6...', otherwise paragraph (ii) ('a degree and a degree conversion programme...') is redundant.

Question 2:

Do you agree with our proposal to remove Part 2 of the Bar Qualification Manual?

Overall, we do not agree with the proposals to remove Part 2 of the Bar Qualification Manual. The delegation of responsibility on matters of admission to the profession risks inconsistent decision making across, and indeed within, AETOs. The suggestion presented in para 36 of the Consultation paper points to BSB monitoring AETOs to ensure that BSB guidance is followed and that AETO decisions continue to meet our standards. Aside from the fact that those standards are not presented here, there is an inherent risk that AETOs may, on occasion, make decisions which fall short of the BSB standard. While the AETO then risks having its authorisation withdrawn, this will be of no consequence for any candidates who have incorrectly been permitted to progress through training whilst falling short of BSB standards.

The current rules provide certainty to candidates on admission to the profession, and it is unreasonable to remove this certainty, thereby increasing enrolment onto vocational programmes, without a corresponding increase in the likelihood of completing training and securing entry into the profession. The current rules help to manage candidates' expectations as they progress through their training and education route as to their eligibility to enter the profession.

Removing the 2:2 minimum requirement is not a positive move as it opens the doors for AETOs to increase enrolments onto their programmes with no corresponding increase in the availability of pupillage, risking an increase in the number of Bar vocational candidates who

have little realistic prospect of entering the profession. Its removal similarly risks raising the failure rate on bar vocational programmes.

The removal of the restriction on stale degrees could be viewed as a positive step, reflecting the fact that candidates may take one of a number of routes into the profession, including pausing their studies for personal reasons, or undertaking further postgraduate academic study. However, there is insufficient detail provided on the extent or nature of guidance that will be provided to AETOs in deciding whether a candidate can be admitted into the profession, which may represent a hidden barrier to entry and risks inconsistency across providers.

Question 3:

Do you agree with our proposal that Authorised Education and Training Organisations make admissions decisions based on the revised definition of academic legal training and in accordance with our guidance?

No. There is insufficient detail provided here on what guidance will be provided to AETOs to support their decision-making. At best, the rules on admission will remain the same with decisions delegated to AETOs. At worst, application of the rules will vary by provider, causing uncertainty and unfairness in the decision-making process. In any event, admissions decisions should sit with the regulatory body to ensure decision making is fair, robust and consistent. Delegating responsibility for admissions decisions to AETOs risks inconsistent – and therefore unfair – decisions being made.

There is a risk that AETOs will be facilitated to increase enrolments onto vocational training programmes with no corresponding increase in the availability of pupillage. Therefore, by delegating admission decisions, this proposed change places the needs of the BSB before the needs of the candidates.

Question 4:

Do you agree with our proposal to no longer require Certificates of Academic Standing?

Yes.

Question 5:

Are there any potential equality impacts that you think we have not considered?

No

Question 6:

If there is anything else you would like to comment on in relation to these proposals, please do so here.

No further comments.