Solicitors Regulation Authority

Consultation

Training for Tomorrow: assessing competence

7 December 2015

Contents

Introducing a common professional assessment for intending solicitors: the Solicitors Qualifying Examination (SQE)

Foreword

The standard expected of solicitors in England and Wales is a high one. We have a duty to ensure that these standards are maintained, against a background of a developing legal and education market and an increasing understanding of the strengths and weaknesses of our current training system. This is why we embarked on our Training for Tomorrow programme.[1] We have recently made significant changes to continuing professional development and launched the Statement of Solicitor Competence. In this consultation we turn to how best to assess the competence of intending solicitors.

While England and Wales are fortunate in having many excellent institutions offering law degrees and professional training, there is no standard basis on which to measure the quality of students who emerge from the education and training process. Some Legal Practice Course (LPC) providers have success rates in excess of 90%, while others are below 50%. Some undergraduate law schools require A and A* A-level grades from entrants, others admit students with B, C and D grades. The Higher Education Funding Council for England (HEFCE), said this year, '*the current quality assessment system does not provide direct assurance about the standard of awards made to students, or their broad comparability*.' [2] It is noteworthy that fewer than 1% of full time students on the Graduate Diploma in Law (GDL) fail and only 2% of those with training contracts are not admitted.

New pathways to qualification such as apprenticeships and 'equivalent means' training are being introduced, overseen by a variety of providers. These are welcome developments, opening up the profession to applicants from varied backgrounds. There are of course perceptions about how such pathways and more traditional routes compare and that makes it all the more important that a mechanism is in place that ensure standards are consistent across all pathways.

With 104 institutions offering Qualifying Law Degrees; 33 offering the GDL; 26 offering the LPC and over 2,000 firms offering traineeships, the lack of a common basis for assessing the quality of output from these bodies, or at the end of the training contract, is a cause of increasing concern. In this document we are consulting on a common professional assessment, the Solicitors Qualifying Examination (SQE), which will ensure that all aspiring solicitors, no matter what institution they attended or pathway they took, are assessed against the same high standard of competence.

[1] http://www.sra.org.uk/sra/policy/training-for-tomorrow.page

[2] HEFCE (2015). Future approaches to quality assessment in England, Wales and Northern Ireland: Consultation. http://www.hefce.ac.uk/reg/review/

While the SQE is focused on ensuring that standards are both high and consistently high, there is an important related benefit. A strong and respected legal profession is enhanced if unnecessary barriers to good candidates becoming solicitors, regardless of their backgrounds, are removed. The SQE will facilitate the development of more flexible pathways to qualification for those who are able to meet the robust standards of the assessment. We shall be consulting further on pathways during 2016.

One of the distinct features of the English and Welsh system is the requirement that all newly qualified solicitors should have undertaken a period of workplace training before they qualify. During discussions leading up to the publication of this document, many within the profession and outside expressed the view that this should continue to be the case. We shall not be taking final decisions on pathways until late 2016, but the evidence from our expert advice is that pre-qualification work place experience has an important role to play in developing the competences of intending solicitors. It is likely that we shall continue to require pre-qualification workplace experience.

It is important that newly qualified solicitors, regardless of the pathway they have followed, should demonstrate a level of intellectual and analytical ability at least equivalent to that of a graduate. This is reflected in the standard we propose for qualification. In the future, as now, there are likely to be some intending solicitors who are able to demonstrate this level of ability without obtaining an undergraduate degree, for example through an apprenticeship scheme in which workplace learning is combined with advanced teaching and learning. There will also be some who, as now, have a degree in a subject other than law.

Regardless of the pathway, the SQE will require all intending solicitors to demonstrate a high level of legal knowledge and practice skills equivalent at least to a graduate. We are very conscious that the process for qualification as a solicitor is key to safeguarding competence and quality, and great care must be taken to ensure that any changes support and strengthen this.

We are also aware of the dangers of complacency and must take action where there is evidence that change is needed. We have held extensive engagement and discussions prior to the publication of this document. We have also commissioned independent expert advice and devised a phased approach to any changes. Responses to this consultation will be critically important as we develop our thinking further. We very much welcome your views on both the case for change and our proposals.

Enid Rowlands **Martin Coleman**

Chair, SRA Board **Chair, SRA Education and Training Committee**

December 2015

Introduction

1. This consultation is part of Training for Tomorrow,[3] our response to the 2013 report of the Legal Education and Training Review (LETR)[4] which called for a greater focus of regulatory attention on the standards we require of solicitors both at qualification and on an on-going basis.

2. On 1 April 2015, we published a new Statement of Solicitor Competence.[5] This defines the standards for practice as a solicitor and therefore the competences that aspiring solicitors need to demonstrate in order to qualify. We said then that the next stage of our work would be to review the process for qualification as a solicitor and to develop a mechanism for assessing the Competence Statement prior to qualification.

3. The purpose of this consultation is to seek views on our proposal, which is to introduce a common professional assessment for solicitors to assess the competence of all intending solicitors. This common professional assessment, the Solicitors Qualifying Examination (SQE), would consist of a Part 1 assessment of knowledge, and a Part 2 assessment of skills.

4. A strong and effective system of legal education and training is essential to make sure that the services offered by those we regulate are of the highest possible quality. That requires a system which:

   - sets a high standard;
   - assures that standard rigorously and consistently; and
   - enables the brightest and best to qualify.

5. Of course, the skills and knowledge that are expected by employers will vary depending on the needs of the business and their clients. But the SQE will ensure that everyone who is granted the title of solicitor has reached at least the required standard of competence, which is a high level of quality.

6. We seek views about whether respondents support the introduction of a common professional assessment as a matter of principle, as well as on a number of specific aspects of our proposed assessment model for the SQE.

7. But the introduction of a common professional assessment also raises questions about the entry requirements for the SQE and about the role of pre-qualification work experience. We consider these issues in this consultation and we welcome your views at this stage. We will publish a further consultation on specific proposals for entry requirements for the SQE and pre-qualification work experience in 2016.

8. This consultation paper is in five sections:

   - Section 1: the rationale, benefits and evidence base for a new common professional assessment for solicitors;

[3] http://www.sra.org.uk/sra/policy/training-for-tomorrow.page

[4] http://letr.org.uk/

[5] https://www.sra.org.uk/solicitors/competence-statement.page

- Section 2: the proposed assessment model for the SQE;
- Section 3: pre-qualification work experience, workplace assessment and entry requirements;
- Section 4: equality, diversity and inclusion; and
- Section 5: transitional arrangements, timetable and next steps.

Section 1: background, rationale, benefits and evidence for a new common professional assessment for solicitors

Background

9. The Legal Services Act 2007 requires the SRA to protect consumers and encourage an independent, strong, diverse and effective legal profession.[6]

10. Our objectives for the new mechanism for assessing competence prior to qualification are therefore to:

- focus our regulatory effort more rigorously than at present on assuring consistent and comparable high quality standards at the point of admission across all pathways to qualification; and
- ensure that the most talented candidates can qualify as a solicitor, by encouraging the development of new and diverse pathways to qualification which are responsive to the changing legal services market and which remove artificial and unjustifiable barriers.

11. In our 2014 consultation on the Statement of Solicitor Competence, we identified three options (or combinations of them) for our new approach to qualification.

- Option 1: Continuing to prescribe a limited number of pathways to qualification, the details of which we specify, which are aligned to the Statement of Solicitor Competence Statement,[7] Statement of Legal Knowledge,[8] and Threshold Standard.[9]
- Option 2: Rather than prescribing a limited number of pathways, authorising any training pathway developed by a training provider which enables a candidate to demonstrate they can perform the activities set out in the Statement of Solicitor Competence to the standard required in the Threshold Standard.
- Option 3: Developing a centralised assessment of competence that all candidates are required to undertake prior to qualification, again aligned to the Statement of Solicitor Competence, Statement of Legal Knowledge and Threshold Standard.

12. We have evaluated each of these alternatives, against our objectives. We attach a summary of the outcomes of that evaluation in Annex 1. Our assessment at this stage is that Option 3 is most likely to meet both of our objectives.

13. Option 1 could most easily accommodate current pathways and so its introduction would minimise uncertainty and disruption. But a distributed

[6] http://www.sra.org.uk/sra/strategy.page

[7] https://www.sra.org.uk/solicitors/competence-statement.page

[8] https://www.sra.org.uk/solicitors/competence-statement/statement-legal-knowledge.page

[9] https://www.sra.org.uk/solicitors/competence-statement/threshold-standard.page

assessment model, such as this, will not achieve consistency (see paragraphs 19 - 30 below) or ensure high standards. Option 1 would also preserve rigid and inflexible pathways and barriers to qualification such as cost of training and the availability of traineeships.

14. Option 2 would be the most flexible model, but it would be more challenging than in Option 1 to ensure consistency. This is because both courses and assessments could vary considerably across different training providers. Further, the cost of an effective system for quality assuring this range of pathways would be high. Option 2 would not provide the assurance of consistently high standards that we need but would result in disproportionately high costs.

15. Option 3 would provide a mechanism to assure solicitors' competence consistently and fairly, regardless of the route taken. It could also enable us to encourage flexible and innovative training, depending on the extent to which we regulated the training needed for the assessment, or specified other entry requirements.

16. As we said in the 2014 consultation, these three options are not mutually exclusive: we could require candidates to have met particular entry requirements, such as specified qualifications, before they take the centralised assessment, or to have completed a period of recognised training prior to qualification.

17. We have not yet undertaken detailed analysis on whether we should set entry requirements for the SQE. However, our current thinking is that a period of pre-qualification workplace learning is likely to be essential for the learning and development of aspiring solicitors and therefore likely to remain as a requirement for qualification as a solicitor.

18. We explore options and invite views on entry requirements for the SQE and the role of pre-qualification work experience in Section 3 of this consultation paper.

What is the rationale for a common professional assessment for solicitors?

19. The SRA's 2014 Training Regulations set out the current routes to qualification as a solicitor.[10] These are:

- through the completion of specified academic and vocational stages of training, described in this report as the Legal Practice Course (LPC) route to qualification;[11] or
- through exemption from all or part of the academic or vocational stages,
- through the process of equivalent means;[12] or

[10] Regulation 2:http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page

[11] To satisfy the academic stage requirements, individuals must complete a Qualifying Law Degree (QLD) or Common Professional Examination (CPE, also known as the Graduate Diploma in Law (GDL)). To satisfy the vocational stage requirements, individuals must complete the Legal Practice Course (LPC) and undertake a two year period of recognised training (PRT), which includes the Professional Skills Course (PSC).

- through the Solicitor Apprenticeship route;[13] or
- for lawyers from other jurisdictions, and barristers of England and Wales, through compliance with Qualified Lawyer Transfer Scheme (QLTS) Regulations.[14]

20. There is a growing body of evidence which highlights concerns about the inconsistency of performance standards both within and across these pathways.[15]

21. LETR found that:

'The current system of [legal education and training] does not consistently ensure that desired levels of competence are reliably and demonstrably achieved. The key weaknesses in the system are...

- *insufficient clarity and consistency around standards at points of entry*;
- *the absence, in general, of robust mechanisms for standardising assessment.'*[16]

It also found *'insufficient assurance of a consistent quality of outcomes and standards of assessment.'*[17]

22. Within the LPC route to qualification, we have a distributed assessment system whereby 104 universities award the QLD, 33 universities award the GDL, 26 providers offer the LPC and over 2,000 firms sign off trainees as ready to practise as solicitors.

---

[12] If individuals can provide adequate and sufficient evidence that they have met our learning outcomes through different training or through workplace experience, they can apply to the SRA for an exemption from all or part of the specified academic or vocational stages of training. Further details are provided here: http://www.sra.org.uk/students/resources/equivalent-means-information-pack.page

[13] Two new apprenticeships leading to qualification as a solicitor were approved by the Department of Business, Innovation and Skills (BIS) and the Welsh government in 2015. Details of the apprenticeship standard (England) are available here: https://www.gov.uk/government/publications/apprenticeship-standard-solicitor. Details of the apprentice framework (Wales) leading to qualification as solicitor are available here: http://www.afo.sscalliance.org/frameworks-library/index.cfm?id=FR03202.

[14] The Qualified Lawyers Transfer Scheme (QLTS) allows those who are already qualified lawyers in other jurisdictions to qualify as a solicitor of England and Wales without having to complete the full education and training requirements currently specified in the SRA Training Regulations 2014.The scheme also applies to barristers qualified in England and Wales who have completed pupillage and want to qualify as a solicitor. This route to qualification is set out here: http://www.sra.org.uk/solicitors/qlts.page

[15] A performance standard sets the minimum level of performance that distinguishes candidates who are minimally competent from those who are not competent. It is different to a content standard, which describes the specific knowledge, skills and abilities to be assessed in a test and that a candidate must master to demonstrate competence.

[16] LETR (2013),report p. xii.

[17] LETR (2013).report, page xii.

23. The 2015 HEFCE consultation on standards and quality in Higher Education, states that current quality assurance mechanisms do not ensure consistency of standards across universities.[18] HEFCE concludes: '*the current quality assessment system does not provide direct assurance about the standard of awards made to students, or their broad comparability*.'[19]

"The pass/fail and 2.i/2.ii line are not the same in different universities."

Russell group university

"I do think degree classifications are absolutely the same between different universities."

Modern university

"We pay attention to A level grades because we are more confident that the standard is the same and has been set nationally."

Employer [20]

24. When the LPC was introduced, it was the only route to qualification. Individuals completing the QLD or GDL or applying through the Chartered Legal Executive (CILEx) route to qualification, all had to sit the LPC. The LPC was highly prescribed and was essentially a course that was franchised to different providers. Now, the LPC has become more diverse, with different length courses, different forms of assessment, varied contexts and firm specific training.

25. A recent report by The Law Society on Global Competitiveness found that stakeholders had concerns about the *'significant disparities on the LPC'* .[21] We have also found that there are varying GDL and LPC pass rates across institutions.[22] There may be many reasons for this - student cohorts of different ability, variable teaching quality, or different assessment standards. But it is very difficult for us to understand clearly the reasons for this variation or whether these variations are justifiable.

26. We have a system where over 2,000 firms recruit, train and sign off trainee solicitors. Only a very small number of trainees fail to be admitted as solicitors following their period of recognised training and there is no external mechanism to enable firms to benchmark the performance

[18] HEFCE (2015). *Future approaches to quality assessment in England, Wales and Northern Ireland: Consultation*. http://www.hefce.ac.uk/reg/review/

[19] HEFCE (2015). *Future approaches to quality assessment in England, Wales and Northern Ireland: Consultation*. http://www.hefce.ac.uk/reg/review/

[20] The anonymised quotations used to throughout this consultation paper come from the stakeholder engagement we conducted during 2015; they are not verbatim quotes, but they accurately reflect the views expressed to us.

[21] The Law Society (2015). Report into the global competitiveness of the England and Wales solicitor qualification. p.13. http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/documents/global-competitiveness-report-2015/

[22] SRA (October 2015). Data on GDL and LPC pass rates.

standards they apply to sign off trainees.[23] This raises concerns about whether or not everyone who qualifies has reached the high standard that we would expect. As the Law Society report on Global Competitiveness pointed out, it is *'inevitable that there would be variations in standards at the end of the training contract with so many training principals assessing the standard.'*[24]

"It is a tick boxing exercise. People don't know what the standard is."

Employer

"I contacted the SRA for advice but was told that just because the trainee doesn't meet your firm's standards, it does not mean that they would not meet someone else's standards. The SRA weren't able to help me to decide whether the standard had been met."

Employer

"There is a need for consistency, regardless of where you trained."

Employer

27. As described in paragraph 19, there are now multiple routes to qualification, in addition to the LPC pathway. There are no common points of comparability and there is no mechanism to compare standards across the different pathways to qualification.

28. We think it is important to set fair and consistent standards, so we need to have a mechanism to assess candidates from all pathways on a comparable basis, at the point of qualification. A common professional assessment for all intending solicitors provides that.

29. We are very aware of the importance of upholding public confidence, both here and abroad, in the solicitors' profession. Consumers are heavily reliant on the solicitor title, largely without detailed knowledge of how it is obtained. They assume the title signals a basic threshold of competence.[25] It is for the SRA, as the regulator, to ensure that the reality behind the title lives up to the reputation and that the regulatory objectives of protecting consumers through a strong, diverse and effective profession are met. As LETR concluded:

[23] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority page 15-16. http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

[24] The Law Society (2015). Report into the global competitiveness of the England and Wales solicitor qualification. p.13. http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/documents/global-competitiveness-report-2015/

[25] http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_QualityinLegalServicesReport_Final.pdf

'*If the public is entitled to expect a single level of competence across at least the range of reserved activities and common core skills, there will need to be some coordination in setting threshold levels of competence.*'[26]

30. It is difficult to establish a direct link between consumer detriment and inadequate training. However there is evidence which suggests the standards of service and quality of legal advice sometimes fall below the level that can reasonably be expected by consumers.[27] In each of the last 4 years, around 18% of firms faced a negligence claim, and about 10% of firms paid out on a claim.[28] In 2014-15, over 800 complaints against solicitors have been upheld by the Legal Ombudsman.[29] The SRA Compensation Fund paid out over £23.8 million in the year to 31 October 2014.[30] We want to ensure that consumers are properly protected by placing a clear focus on competence at the point of qualification.

What is the evidence base for our proposal?

31. Between April and October 2015, we developed a draft assessment model for the SQE and carried out a rigorous programme to test whether the concept of a common assessment, and our particular assessment model, were robust. The testing included:

- extensive engagement with external stakeholders;[31] and
- commissioning independent expert advice into the possible economic impact of introducing a common professional assessment and into the technical validity[32] and reliability[33] of the assessment model. [34] [35]

[26] LETR (2013), report page xiii

[27] http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Consumer%20Impact%20Report%203.pdf

[28] Data collected from solicitors and authorised firms as part of the SRA annual Practising Certificate Renewal Exercise (PCRE)

[29] http://www.legalombudsman.org.uk/raising-standards/data-and-decisions/

[30] http://www.sra.org.uk/sra/news/press/compensation-fund-payout-figures.page

[31] Listed in Annex 4

[32] Validity refers to the appropriateness, meaningfulness and usefulness of the inferences made from test scores. An assessment is valid if it measures what it claims to measure (AERA, APA, NCME. (1985). Standards for educational and psychological testing. Washington DC: American Psychological Association). So, an advocacy role play in a standardised, controlled setting is more valid than writing an essay about what good advocacy involves.

[33] Reliability refers to whether the assessment consistently produces the same results between successive sittings and different candidates and is free from errors of measurement (ibid).

[34] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority. http://www.sra.org.uk//documents/SRA/research/indicative-economic-impact-assessment.pdf

32. This programme of work also included an analysis of the likely impact of this assessment model on equality, diversity and inclusion. An initial assessment is included in Annex 2, and discussed further in Section 4 of this consultation.

33. The testing phase elicited a wide range of views to which we make reference in this consultation and which are summarised in Annex 4. Those we spoke to made clear the importance of careful planning and preparation leading up to the introduction of the SQE and the need to regularly communicate with all stakeholders. They also highlighted the importance of establishing the credibility or face validity of the SQE, in addition to demonstrating its technical validity and reliability.

34. The technical expert advice has confirmed that our model could be developed into a reliable and valid assessment that will deliver the high standards that we expect, on a consistent basis. The indicative economic impact assessment has shown us that the introduction of a new approach to qualification has the potential to encourage innovative, flexible and cost effective routes to training but also that the ultimate success of our reforms (particularly in relation to encouraging a more diverse profession) is dependent on employers, universities and training providers taking advantage of any new flexibilities. We recognise that might take time to happen.

"We would want to design a degree to satisfy both people who wanted to go into the professions and those who didn't. So we would modularise it and give students options. The professional elements would be part of the curriculum."

Russell Group university

"The Qualifying Law Degree is good for us- it is part of our selling card to students. But it is also a constraint on what we teach."

Russell Group university

"We have refined and honed our training processes; there is some nervousness about change and a loss of ownership of the decision-making process."

Employer

35. Our testing has provided evidence which supports the reasons for our proposals, and confirms that our assessment model for the SQE can provide a rigorous and fair mechanism to test intending solicitors. Feedback from stakeholders and recommendations from our independent experts have enabled us to develop and refine our proposals. We list in Annex 3 the organisations we have spoken to in our testing phase.[36] We are grateful to all concerned for giving so freely of their time.

[35] Alpha*Plus* (October 2015). A technical evaluation of a new approach to the assessment of competence of intending solicitors, Report prepared the Solicitors Regulation Authority. http://www.sra.org.uk/documents/SRA/research/Alphaplus.pdf

[36] We also spoke to individuals who were not participating in our research in a representative capacity.

What are the benefits of the SQE?

36. We believe the SQE will deliver a number of key benefits, all of which will strengthen confidence in the solicitor title. It will:

- ensure high standards of practice are attained by all who enter the profession;
- test the competence of all intending solicitors on a consistent and fairer basis across all routes/pathways;
- protect consumers by ensuring that entry to the profession is based on candidates' ability to demonstrate the competences captured in the competence statement;
- provide a better technical assessment, attracting the best examination expertise, keeping abreast of assessment methodologies and best practice, exploiting IT solutions and pooling resources. For example there would be a sufficiently large candidate base to enable the use of modern psychometric standard setting processes:[37] and
- provide objective data on training providers' performance and therefore drive academic quality.

37. This consultation is mainly focused on how the SQE can more rigorously assure performance standards measured against our Statement of Solicitor Competence. However, the introduction of the SQE may also enable us to enhance flexibility because it could remove the need for the SRA to specify particular pathways to qualification (at least to the current level of detail) and therefore remove restrictions which may limit the training market's ability to develop better, innovative, flexible or lower cost training. This will depend on two factors. Firstly, the extent to which we liberalise our requirements in relation to specifying pathways or entry requirements and, secondly, the way the market reacts to our proposals. We explore this issue further in Section 3 of this consultation.

[37] Standard setting refers to the process of determining performance standards by establishing pass scores or scores for grade boundaries for an assessment. Different standard setting processes would be used for the Part 1 and Part 2 assessments. Our expert advice recommended that a Modified Angoff method be used for Part 1. For Part 2, we might used the Borderline Regression or Borderline Groups method. Further details are provided in their report: Alpha*Plus* (October 2015). A technical evaluation of a new approach to the assessment of competence of intending solicitors, Report prepared the Solicitors Regulation Authority pages 46-47. http://www.sra.org.uk/documents/SRA/research/Alphaplus.pdf

"The SRA's proposals provide opportunities for higher education institutions."

Post 1992 university

"If you introduced the common professional assessment, the university would expect me to align the curriculum to it, whether I wanted to or not, because the students would demand this. I am expected to return a profit to the university, some of which is used to cross-subsidise other courses."

Russell Group university

"Firms will have less certainty about what the end product will be if the SRA does not specify training."

Employer

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?

Section 2: the proposed assessment model for the SQE

38. We propose that eligibility for the award of title of solicitor will require candidates to demonstrate they have successfully completed the SQE. It will consist of 2 assessment components, described below.

Part 1 **Functioning Legal Knowledge Assessments**	Assessment of the candidates' ability to draw on sufficient knowledge to practise effectively Through computer-based objective testing, assessing the application of knowledge and legal processes Unflagged ethical questions throughout Modularised assessments which can be taken separately Part 1 must be passed before attempting Part 2

Part 2 **Practical Legal Skills Assessments**	Assessment of the candidates' competence in the following six areas: ▪ interviewing and advising ▪ advocacy/oral presentation ▪ negotiation ▪ writing ▪ drafting ▪ legal research Through standardised practical legal tasks, simulating the real demands of practice Oral skills assessed through live role plays, involving standardised clients Written skills assessed through computer-based applied tasks and case studies Each skill area assessed twice, in two different practice contexts Unflagged ethical questions throughout Modularised assessments which can be taken separately

39. These assessments will assess the competences and knowledge set out in our Statement of Solicitor Competence and Statement of Legal Knowledge, to the standard set out in the Threshold Standard. The assessment methods are already widely used and tested in the context of other high-stakes professional assessments. It will enable us to use best examination practice to identify and select those candidates who can demonstrate the high standards required to qualify as a solicitor.

40. Part 1 will use computer-based objective testing, in secure conditions, to assess the application of legal knowledge.[38] Evidence regarding this form of testing in similar contexts and qualifications is strong. It is used in other professions, including medicine, pharmacy and accountancy, and there is extensive research that it can be used to assess higher order skills.[39]

41. Part 1 will cover: ethics and professional conduct, wills and probate, taxation, business law and practice, property law, torts, criminal law and evidence, criminal litigation, civil litigation, contract law, trusts and equitable wrongs, constitutional law, EU law, human rights, and the English legal system.

42. Part 2 will use standardised practical legal tasks, including role plays with standardised clients for the oral skills and case studies to assess the written skills, to assess the application of knowledge and skills in a range of contexts. The contexts are: civil litigation, criminal litigation, property law and practice, wills and probate, law of organisations. Each skill area must be assessed twice, in two different contexts. Across all assessments, candidates must cover three out of the five contexts, including both contentious and non-contentious elements.

43. The assessments will be modularised so that they can be taken over time.[40] This is intended to enable them to be capable of integration with other education and training programmes. This will make it easier for intending solicitors to combine study and work as they progress to qualification. Part 2 can only be taken when all elements of Part 1 have been passed. This is to prevent individuals from investing time and money working towards Part 2 when they are unlikely to be successful.

44. The SQE will assess all solicitors, regardless of the pathway they have followed. It will provide a common assessment for individuals who have a law degree, are being taught through an apprenticeship or are overseas qualified lawyers. The question of the extent to which we specify these pathways is a separate one, which we explore in more detail in Section 3 of this consultation.

---

[38] Objective testing requires a candidate to choose or provide a response to questions whose correct answer is predetermined. This might include multiple choice questions, true-false questions, matching questions or assertion/ reason questions.

[39] Alpha*Plus* (October 2015). A technical evaluation of a new approach to the assessment of competence of intending solicitors, Report prepared the Solicitors Regulation Authority page. http://www.sra.org.uk/documents/SRA/research/Alphaplus.pdf

[40] BIS has set particular requirements regarding the timing of assessments within the Trailblazer apprenticeships, including the Solicitor Apprenticeship (England). Further details are available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447413/BIS-15-355-guidance-for-trailblazers-standards-to-starts-July-2015.pdf

45. Our intention is that there will be no exemptions from the SQE beyond those required by EU legislation and as part of transitional arrangements. We have considered whether we should grant exemptions from the SQE to individuals who have completed other qualifications in the areas assessed by it, for example a law degree. We have concluded that we should not, for the following reasons:

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

We recognise the need to facilitate progression between qualified legal practitioners in England and Wales, and we plan to develop guidance to support this.

46. A detailed description of the assessment model for the SQE is provided in Annex 5.

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?

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?

Should the Part 2 skills assessments be focused on the reserved activities?

47. The Part 1 assessment will test the full range of knowledge set out in the Statement of Legal Knowledge. The Part 2 skills assessment, as described above, focuses on the reserved activities: probate, property, criminal and civil litigation. Law of organisations (business law and practice) is also included because this covers such a major practice area for solicitors. Relevant experience in these practice areas will help candidates pass the assessments. We recognise that not all firms can offer experience in all five practice areas. Therefore, we propose that candidates can take three out of five contexts, with at least one being contentious and one non-contentious.

48. We have focused the contexts on these areas because they are aligned with the entitlement to practise reserved legal activities conferred by the award of the solicitor title. Limiting assessment contexts in this way also provides a measure of consistency to ensure comparability and fairness, while still encouraging a breadth of practical experience. Our technical research suggests that skills should be assessed in more than one context to demonstrate the transferability of skills. The requirement for three practice areas, including at least one contentious and one non-contentious, provides continuity with traditional training contract requirements.

49. However, some firms and other employers (e.g. corporations with in-house legal departments) have told us they would struggle to provide supporting experience for even three of these assessment contexts. Some have said they would nevertheless support assessment in these core contexts of solicitors' work, and suggested they could provide the necessary experience through reciprocal secondments with other organisations. Others have said this would mean they needed to provide expensive training which would be wasteful because it would be of no benefit to their business.

"Contexts should be focused on the reserved activities, even if this means sending trainees on placements to get breadth."

Employer

"Contexts should reflect practice, eg banking law; it should be relevant to their career."

Employer

"We want trainees to cover a range of contexts so that we can see them perform across the breadth of the role."

Employer

50. It would be possible to develop an alternative model, in which candidates can select from a wider range of assessment contexts (e.g. corporate finance, family, employment) so the assessment is more closely aligned with business need. However, the assessment would be more complex, expensive to administer and less consistent. It would also mean that the assessment was less clearly focused on the reserved activities (although they would all be assessed in Part 1 of the SQE) even though rights to practise the reserved activities are what is conferred by the award of the solicitor title. For this reason, we do not favour this alternative.

51. A further alternative could be to focus assessment on the reserved activities, but to design a range of assessments which recognise the different legal situations in which reserved services may be provided. For example, candidates could take an assessment in criminal litigation which was set in a general context, or in a specific context such as white collar crime. They could take an assessment in property which focussed on domestic conveyancing or commercial real estate. An assessment in litigation could focus on crime, civil, family or contentious probate.

52. As the title of solicitor confers the right to practise in the reserved areas, we believe that any assessment of competence leading to the award of the title should be based primarily on competence in those areas. But, in light of the

feedback from firms during the testing phase, we would welcome your views on this issue.

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?

Should the SQE be at least at graduate level or equivalent?

53. The introduction of the SQE is designed to assure consistently high standards better than in the current system.

54. It is therefore essential that we can communicate the breadth and expected level of difficulty of the assessment. Candidates and training providers need to know what to expect of the assessment in order to understand how to prepare for it. Consumers and the profession need to know it is set at a consistently high standard, in order to ensure credibility in the solicitor title is maintained and the consumer interest is protected - as required by the Regulatory Objectives.

55. Currently the assessments taken by intending solicitors through the LPC route, range from level 4 (end of first year in a degree) to level 7 (post-graduate) in the Framework for Higher Education Qualifications (FHEQ).[41] By the time solicitors reach qualification, their skills and legal ability are further developed through their two year PRT, although the standard required at this point is not aligned to a particular level in the FHEQ.

56. Our intention is to set the standard for the assessment at a level which assures the high quality required for practice as a solicitor. We recognise the importance of solicitors having the higher level cognitive skills that are associated with being a graduate. The SQE will assess these skills. However, it is not appropriate to attempt to benchmark the SQE directly to the level descriptors in the FHEQ because that framework is designed for use in a different context and for a different purpose. However the standard required for qualification as a solicitor through the SQE will be set at least at graduate level or equivalent. The standard of the Part 2 assessment will be comparable to the level trainee solicitors currently reach by point of qualification, therefore higher than the current LPC standard.

[41] A description of the FHEQ is available here: http://www.qaa.ac.uk/en/Publications/Documents/Framework-Higher-Education-Qualifications-08.pdf

57. We have already defined standards more clearly through the Statement of Solicitor Competence, the Statement of Legal Knowledge and the Threshold Standard. In order to communicate the breadth, depth and level of difficulty of the assessment, we will produce an Assessment Framework document. This will set out detailed information about the SQE, including:

- the breadth and depth of the knowledge and skills to be assessed;
- the level of difficulty of the assessments;
- the structure and design of the assessments;
- standard setting and quality assurance processes;
- administrative arrangements; and
- arrangements for candidates with particular requirements.

Subject to the outcome of this consultation, we plan to produce this document in 2016.

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?

Section 3: pre-qualification work experience, workplace assessment and entry requirements

Should we require a period of pre-qualification workplace experience?

58. In a system where there is an oversupply of QLD and LPC places, who gets a traineeship determines who qualifies as a solicitor. There is evidence that the requirement for a training contract or PRT may constrain the diversity of the profession. For example:

- 37% of undergraduate law students and 32% of LPC students but only 24% of entrants to the profession are from BAME backgrounds;[42] and
- 64% of entrants to the profession are women, but only about 50% of trainees in elite city firms are women, even though they obtain disproportionately more distinctions on the LPC than men.[43]

59. It is therefore important, that we give careful consideration to the role of pre-qualification workplace experience in the new approach to qualification and this is an issue that we have begun to explore in our testing phase.

"My in-box is full of emails from black students who can't get training contracts."

Representative body

"The training contract enables us to get to know the trainees better - it is an extended recruitment process."

Employer

"I only learnt how to become a solicitor during my training contract."

Solicitor

60. The evidence from our expert advice is that pre-qualification workplace experience has an important role to play in developing the competence of intending solicitors. Further, it is clear that some form of pre-qualification workplace experience has a significant role to play in assuring both the credibility of the new approach to qualification and of the solicitor brand.[44]

61. We agree with these findings. The period of pre-qualification workplace experience is an important rite of passage for all trainees. It exposes them to the realities of working as a solicitor and gives them the opportunity to practise their skills before being granted the title of solicitor. In principle, therefore, it is likely that we will continue to require some form of pre-qualification workplace experience. However, we need to give careful

[42] The Law Society, Annual Statistics 2014, pages 36 and 50: http://www.lawsociety.org.uk/policy-campaigns/research-trends/annual-statistical-reports/

[43] SRA (October 2015). Baseline attainment data: legal education, training and post-qualification page 4. http://www.sra.org.uk/documents/SRA/research/baseline-attainment-data-report.pdf

[44] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority page 56. http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

consideration to whether the current approach remains appropriate given that we know it acts a significant barrier to qualification for some.

62. There are a number of issues for us to consider. For example, should we continue to specify a minimum time period in practice? Or, recognising that individuals make progress at different rates, should we instead specify the outcomes which would have to be reached through workplace experience rather than the minimum time period? Specifying pre-qualification workplace experience by outcome might enable us to recognise experience obtained over a period of time, perhaps during a degree, or with a number of employers. This might enable us to recognise a wider range of experience than at present, including the experience of paralegals.

"A trainee needs two years uninterrupted experience in a single organisation to develop the necessary skills."

Employer

"Greater weight should be given to time spent in paralegal roles for those who move onto a training contract. That experience should count."

Employer

"Specifying two years of training for all trainees is lazy regulation."

Employer

63. Another key consideration is whether or not we should seek to assess trainees' competence during the period of pre-qualification workplace experience. Our expert advice suggests that, although most of the Statement of Solicitor Competence can be assessed through either the Part 1 or Part 2 of the SQE, there are some competences which cannot.[45] It suggests that a competence-based approach should assess all the professional competences identified because, if we have identified an area of competence as necessary for practice, it is important enough to be assessed.[46] The advice also suggests that assessing competences demonstrated during the period of pre-qualification workplace experience will enhance the validity of the new approach to qualification as including observation of candidate behaviours in the work place by an experienced professional will make the overall assessment of competence more robust.

64. Work-place assessment could take a number of forms, from supervisor appraisal to compilation by the trainee of a portfolio of evidence demonstrating that they have met the relevant competences. Evidence from the SRA's work-based learning pilot from 2008-2011 suggests that workplace assessment is valuable and can enhance trainees' learning. On the other hand, it is time consuming and can be costly for employers. The pilot also raised issues of consistency and quality assurance. Some consistency could be achieved through benchmarking or standard setting processes. But these

[45] For example it might be difficult for either the Part 1 or Part 2 assessments to assess Competence D2 (keep, use and maintain accurate, complete and clear records) or D3 (a) (managing available resources and using them efficiently).

[46] Alpha*Plus* (October 2015). A technical evaluation of a new approach to the assessment of competence of intending solicitors, Report prepared the Solicitors Regulation Authority pages 40-41. http://www.sra.org.uk/documents/SRA/research/Alphaplus.pdf

would impose further cost and time and might still not provide a sufficient level of assurance of consistent standards.

"If there was workplace assessment, we would not want it to turn into extra bureaucratic hoops to jump through."

Employer

"If we had workplace assessment, how would we benchmark the standard? How does it fit with the argument for consistency and comparability?"

Employer

65. We will do more work to consider all of these issues and will consult on a formal proposal about pre-qualification work experience in 2016. But we would welcome your early views on this issue.

Question 6

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

Question 7

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

Question 8

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

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?

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?

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?

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?

Should we specify training pathways or entry requirements for the SQE?

66. We have made clear that the introduction of the SQE is separate from continuing to regulate teaching leading up to the assessment. In our October 2013 Training for Tomorrow position paper, we said that we would consider carefully how far there continues to be a need for us to concern ourselves with prescribing the content and structure of the various stages to qualification.[47] We said that if we were clear about the outcome to be demonstrated at the point of qualification and targeted our regulatory

[47] http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page

resources at putting in place appropriate mechanisms for assessing whether that outcome has been met, there may not be a need for us to specify, or even recognise, pathways to qualification.

67. Our expert advice has suggested that proposed assessment model for the SQE is capable of ensuring that only competent candidates are accepted into the profession. But the research suggests that having some form of pre-entry requirements in addition to the requirement to pass the SQE would provide some additional safeguards whilst the new examination is becoming established.

68. If we introduce the SQE, data about providers' performance will be available in due course to drive academic quality and shape students' choices. But it will take some time for this data to emerge and to present a clear picture. This too suggests there may be a case for some sort of regulation of training, at least for an interim period.

69. There are a number of approaches we could take, some of which have been considered by our expert advice. These include authorising, kitemarking or recognising particular training courses or setting particular qualifications or other requirements as eligibility conditions for taking the SQE.

70. The prospect of the SRA not regulating training has caused concern to some stakeholders. The Law Society and the Junior Lawyers Division have argued that a common professional assessment should be introduced in addition to the existing LPC route to qualification. This could certainly be an effective way of assuring consistent standards. But it would also add to the existing cost of qualification and constrain the development of innovative, flexible and more affordable training.

"There is risk of taking away from the benefits of the common professional assessment, if we don't have entry requirements for credibility."

Employer

"The LPC is a dog that has had its day."

Modern university

" We would probably still require a LPC and run the PSC - we have invested a lot of time in developing our training programme and are happy with the quality of the trainees we are turning out."

Employer

71. Were we to set entry requirements for the SQE, it would be possible to include a requirement that all solicitors must be graduates.

"A degree is just a requirement for recruitment - it does not make trainee a lawyer."

Employer

"All LLBs are slightly different. Some are very academic and focus on topics like jurisprudence. Students don't always know what the best choices are for their career."

Employer

"We teach students to do what we do - i.e. become legal academics, not to be a professional lawyer."

Russell Group university

72. As we have already said, we recognise the value which comes from having a degree, and we expect that most solicitors will continue to be graduates, just as most, but not all, are at present. We have also already indicated that the standard for qualification will be set at least at graduate level or equivalent. However, the solicitors' profession has never required all solicitors to have a degree. For many years, solicitors could qualify through a five-year period of articles. Solicitors who are non-graduates can still qualify through the CILEx route. Many solicitors who have qualified through these routes have enjoyed long and successful careers in demanding areas of practice.

73. Experience therefore demonstrates that a degree is not an essential pre-requisite for safe practice as a solicitor and we can see no regulatory justification for requiring all solicitors to be graduates.

74. Again we have further work to do to evaluate all the options in relation to specifying or regulating pathways and setting entry requirements for the SQE. We plan to consult formally on them in 2016. We would however welcome early feedback on the questions below.

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?
- protect consumers of legal services and students at least for a transitional period?

Question 14

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

Section 4: equality, diversity and inclusion issues

75. The Equality Act 2010 and in particular the Public Sector Equality duty impose obligations on us to eliminate discrimination and promote equality of opportunity by removing barriers to entry to the profession, where they cannot be justified. There is evidence, identified in our Risk Outlook 2015/16, that there is still work to be done within the legal services market to achieve the strong, diverse and effective profession envisaged in the Legal Services Act.[48] We acknowledge that the introduction of the SQE alone cannot address all concerns about recruitment and progression within the profession.[49] But we believe that it has the potential to remove barriers and drive forward the development of flexible and cost effective training, whilst ensuring fair and consistent standards of assessment for all candidates.

"Pathways narrow because gatekeepers become lazy. It is easier to require everyone to take a homogeneous route. It takes hard work to find a jewel not dressed up in the same way as others."

Russell Group university

"How will I pay for this new assessment if my employer has had legal aid rates slashed and I am being paid the national minimum wage?"

Solicitor

76. During the testing phase, stakeholders raised a variety of equalities concerns about a common professional assessment which can be grouped into two categories:

- whether the assessment design, methods and arrangements (including re-sit policy) proposed for the SQE will discriminate against particular groups; and
- whether the introduction of the SQE will increase the cost of qualification and thereby create a new additional barrier to qualification.

77. These issues have been examined by our independent experts and we have also commissioned a baseline study of attainment within the existing qualification framework, which could be used to measure the impact of the SQE in the future.[50]

[48] https://www.sra.org.uk/risk/outlook/risk-outlook-2015-2016.page

[49] The training and assessment of intending solicitors comes at the end of their educational experience; recruitment and progression decisions are not made by the SRA and are outside our direct control. Problems of diversity and equality are not just about the selection and education of solicitors - they are society wide and exist at all stages of the educational process, at stages that precede the SQE.

[50] SRA (October 2015).Baseline attainment data: legal education, training and post-qualification. http://www.sra.org.uk/documents/SRA/research/baseline-attainment-data-report.pdf

Will the assessment design, methods and arrangements for the SQE discriminate against particular groups of candidates?

78. The technical expert advice we commissioned concluded that there is nothing in the proposed structure or assessment methods for the SQE (or the associated Statements of Solicitor Competence and Statement of Legal Knowledge or Threshold Standard) which suggests that it is predisposed to cause bias in the assessment of candidates with protected characteristics and that there is nothing inherent in the assessment methods proposed that would prevent reasonable adjustments being made for candidates with disabilities undertaking the assessments.[51]

79. The Equality Act 2010 requires bodies which award qualifications to make reasonable adjustments where individuals with disabilities would be at a substantial disadvantage in undertaking an assessment. We will ensure that any assessment organisation we appoint to deliver the SQE complies with this Act and implements policies to ensure that the assessments are free from bias and allow reasonable adjustments.

80. The baseline attainment assessment found that participation and attainment in the current framework of legal education vary by ethnicity, gender and disability status, and by mode of study. Areas of difference include pass rates for the GDL and LPC, including numbers who defer or take re-sits; and the scores obtained, e.g. pass versus distinction.[52]

81. Our understanding of the reasons behind this difference is limited by gaps in data and by the variety of assessments and organisations involved.

82. The introduction of the SQE can help us to focus attention on candidate performance across protected characteristics and ensure fairness and consistency of assessment experience in a way which is not possible in the current system, where assessment is distributed across a large number of organisations and individuals.

83. All candidates would sit the same, high quality assessment. The assessment would be subject to statistical monitoring of performance. Whilst the assessment could not remove prior educational and social disadvantage, our control would enable us to shine a light on any differences in achievement across particular groups. It would also enable candidates who came through different routes (such as an apprenticeship) to demonstrate they had met the competences to the same standard as others.

84. One way to help candidates who may have been disadvantaged in terms of prior educational or social background would be to provide details of candidates' individual performance on the SQE. It would provide objective evidence of the quality of a candidate and their suitability to be a solicitor. It could provide a means by which employers could target their recruitment.

---

[51] Alpha*Plus* (October 2015), A technical evaluation of a new approach to the assessment of competence of intending solicitors, Report prepared the Solicitors Regulation Authority pages 60-63. http://www.sra.org.uk/documents/SRA/research/Alphaplus.pdf

[52] SRA (October 2015). Baseline attainment data: legal education, training and post-qualification pages 10-25. http://www.sra.org.uk/documents/SRA/research/baseline-attainment-data-report.pdf

85. For these reasons, in principle, we are in favour of providing candidates with information about how their performance relates to other candidates, rather than just telling them whether they have passed or failed the assessment. However, we are aware that there are a number of concerns which need to be considered. Our expert advice suggests, for example, that designing an assessment which ranks candidates according to a score rather than a pass/fail is more complex to design (and therefore more costly) and has the potential to be less reliable. In addition, there is a risk that candidates with more resources could afford to pay for additional re-sits to improve their scores.

86. We intend to do more work to explore what information we might provide about candidates' performance on the SQE and whether we should also publish data on the performance of training providers preparing candidates for the SQE. We will consult on this in 2016 but we would welcome your early views on these issues.

Question 15

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

Question 16

Q16. What information do you think it would it be helpful for us to publish about:

a) overall candidate performance on the SQE?

b) training provider performance?

Will the SQE increase the cost of qualification?

87. We know that the cost of training is one of the barriers to qualification for many individuals, who are not funded by employers and who cannot afford to self-fund.

88. The introduction of the SQE undoubtedly separates out the cost of assessment from the process of qualifying as a solicitor. Whether it leads to an overall increase in the cost of training, however, depends on the extent to which pathways to qualification are liberalised and the extent to which training providers develop (and students choose) new, lower cost courses.

89. We expect that many candidates will still wish to study for a degree and that many employers will still expect their trainees to have a degree, even if we no longer require it. Although some employers have suggested that they may continue to require their trainees to follow the existing LPC route, we do not expect all candidates to continue to take the current LPC or PSC, if we cease to specify them.

90. By not requiring candidates to take the LPC or PSC, we would be removing an average of £12,500 from the cost of qualification.[53] Candidates may need

[53] The average LPC cost is £11,000 but it can cost as much as £15,000.The cost of the PSC ranges from £1,000 to £1,500.

alternative training, particularly if they choose not to study a degree which incorporates preparation for the Part 1 of the SQE. We recognise that this would incur a cost, as would any off-the-job training required for the Part 2. But if we did not specify pathways, or continue to prescribe the LPC or PSC, education and training providers could develop new and innovative training at lower cost. In an effective training market, competitive pressures would drive cost down and drive quality up.

91. Although, as now with the LPC and PSC, public funding is unlikely to be available for the SQE, the modular structure of the SQE could enable individuals to spread the cost of assessment over time and to combine work and study more easily, making the qualification more affordable.

92. As part of our testing work, we have modelled the impact of the introduction of the SQE on the cost of qualification.[54] This shows that the SQE is only likely to add cost if a candidate follows the existing LPC pathway to qualification in full. All other routes are cheaper, even taking into account the cost of the SQE.

93. Further details of our initial equality, diversity and inclusion (EDI) impact assessment are provided in Annex 2.

Question 17

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

[54] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority pages 38-41. http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

Section 5: transition, timetable and next steps

Transitional arrangements

94. We know that some aspiring solicitors might be part way through their route to qualification at the time when the SQE and new regulations come into effect. In July 2015, we published the principles which would underpin our approach to transition for the domestic routes to qualification.[55] Our statement made clear that candidates will not have to repeat a stage of training they have already completed.

95. These principles were deliberately designed to be applicable to any new assessment approach, not just the SQE. Applying them to the proposal to introduce the SQE, at the point that any new regulations are introduced, would mean that individuals:

- who have started or are part way through a QLD or GDL would be able to finish those qualifications and so complete the academic stage of training. They must then transfer to the new regulations to complete their training. This would mean that a candidate would be exempt from the corresponding parts of Part 1 of the SQE but would need to pass any remaining parts of the Part 1 assessment and Part 2 of the SQE.

- who have started or are part way through their LPC, or PSC and PRT, would be able **either** to complete their vocational training stage and qualify under the existing assessment requirements, **or** to transfer to the new regulations. This would also apply to candidates who have started or are part way through an exempting law degree.[56]

96. The same arrangements would apply to domestic candidates wishing to qualify through the process of equivalent means. For example those who have completed a QLD and the LPC, but not yet a PRT, would have the choice of completing their vocational training stage using the equivalent means mechanism and qualifying under the existing system or transferring to the new regulations.

97. The Solicitor Apprenticeship route for domestic candidates already requires apprentices to pass a centralised assessment to qualify and so no transitional arrangements are required. The apprenticeship assessment would be merged into the SQE.

98. Similarly, the QLTS assessment would be merged into the SQE. Candidates who had successfully completed the multiple choice test (MCT) component of QLTS would be able to complete their qualification by taking Part 2 of the SQE. Candidates who had attempted but not successfully completed either the MCT or the Objective Structured Clinical Examination (OSCE) component of QLTS would instead take Part 1 or Part 2 of the SQE.

99. Once we have completed this consultation and the further consultation planned for 2016, we will publish full transitional arrangements and will

[55] http://www.sra.org.uk/sra/policy/training-for-tomorrow/Resources/transitional-arrangements-statement.page

[56] An exempting law degree meets the requirement for the QLD and the LPC.

develop guidance showing how the new regulations compare to current requirements.

100. Assuming that the new regulations come into effect during 2018, we propose that the cut-off date for admission as a solicitor under the existing regulations will be the end of academic year 2025/26.

Question 18

Do you have any comments on these transitional arrangements?

Question 19

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

What are the next steps?

101. Providers, particularly universities, have stressed that it can take them 2 to 3 years to develop new courses. They cannot start this work until:

- there is a decision on the introduction of the SQE;
- detailed information is available about the breadth, depth and level of difficulty of the SQE so they can devise a curriculum. This would be available in the Assessment Framework document, which could be published by the end of 2016; and
- decisions are made about entry requirements or training which candidates for the SQE must follow, including the place of pre-qualification workplace experience or assessment.

102. At the same time, an organisation to deliver the assessment must be identified. In parallel with this consultation document, we are carrying out a Market Sounding Exercise to obtain the views of potential assessment organisations on the feasibility of our proposal to introduce the SQE.[57]

103. Subject to the outcomes of our consultations, we would expect to appoint an assessment organisation in summer 2017. Once appointed, it would need to develop and test the assessment. Examiners would need to be recruited and trained. A question bank would need to be populated for the Part 1 assessment. Venues would need to be arranged for the Part 1 and Part 2 assessments.

104. Time would be needed for training providers to prepare their courses, as well as for the assessment organisation to test and develop the assessment, and we would not wish to rush this process. On the other hand, the longer it takes to move to the new system, the longer the period of uncertainty and disruption for training providers and students.

[57] SRA (December 2015).Training for Tomorrow: assessing competence; Market Sounding Exercise http://www.sra.org.uk/sra/news/common-professional-assessment.page

105. We therefore propose the following programme of work leading up to the possible introduction of the SQE:

December 2015	Publication of the Market Sounding Exercise
June 2016	Publication of the response to SQE consultation: decision point on introduction of SQE
Summer 2016	Subject to the outcome of this consultation, publication of second consultation on entry requirements and pre-qualification work place experience/assessment
End 2016	Publication of the response to second consultation: decision point on entry requirements/regulation of pathways and on place of pre-qualification work place experience or assessment
End 2016	Subject to the outcomes of the consultations, publication of draft Assessment Framework document
End 2016	Subject to the outcomes of the consultations, commencement of tender process to procure an assessment organisation to run the SQE
Early 2017	Subject to the outcomes of the first two consultations, publication of third consultation on changes to regulations, including transitional regulations (if regulations are not included in the second consultation).
Mid-2017	Subject to the outcomes of the consultations, appointment of the assessment organisation to deliver the SQE
During 2017 and 2018	Subject to the outcome of the consultations, development and testing of the SQE
Not before the start of academic year 2018/2019	Subject to the outcomes of the consultations, introduction of the SQE

Question 20

Do you consider that this development timetable is feasible?

Consultation questions

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?

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?

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?

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?

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?

Question 6

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

Question 7

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

Question 8

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

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?

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?

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?

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?

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?

Question 14

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

Question 15

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

Question 16

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

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

Question 17

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

Question 18

Do you have any comments on these transitional arrangements?

Question 19

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

Question 20

Do you consider that this development timetable is feasible?

Annex 1

Summary evaluation of qualification options

Option	Description	Consistency	Flexibility
Option 1 - prescribed stages	Status quo: continue to prescribe pathways required to be completed in order to qualify as a solicitor but amend requirements to align them with new Competence Statement	Significant difficulties in assuring reliability and consistency - poor mechanism for ensuring that the standard of competence is achieved Does not provide mechanism for comparing standards between pathways HEFCE, HEA, LETR have raised concerns about whether external examiner system assures comparable standards between providers Requires prescriptive processes and bureaucracy that do not directly assure quality Small numbers in many providers prevent use of modern psychometric standard setting processes to assure consistent standards between candidates and successive sittings	Detailed specification of pathways through what are essentially franchised courses (e.g. LPC) limit innovation and flexibility Artificial split remains which limits integration of academic, vocational and work-based stages of training Teaching highly specified course not of interest to significant numbers of HEIs, restricting student choice

Option 2 - authorised pathways	Authorise any training routes or pathway or combination of pathways that enable a candidate to demonstrate that they have met the standards of the competence statement	Wider flexibility and innovation would make assuring consistent standards between courses even harder than in Option 1. Duplicates other difficulties in measuring consistency from option 1	Enables maximum flexibility and innovation Providers could respond flexibly to student demand Providers and business could collaborate on courses which meet the needs of particular sectors or individual employers
Option 3 - centralised assessment	Develop a centralised assessment of competence that all candidates are required to undertake at the point of qualification, regardless of the training they have undertaken	Assessment at point of qualification directly against the Competence Statement demonstrably maximises consumer protection Provides mechanism to assess different pathways on consistent basis Standard setting processes can maximise reliability and consistency between candidates and between sittings Standard of competence, and the level to be attained would be clearly communicated to training providers and candidates	Targeted and proportionate: could permit flexibility and innovation of pathways, depending on decisions about entry requirements Requirements of a common professional assessment would constrain what had to be taught But a common professional assessment would not necessarily constrain how content was taught – e.g. when/how long/order/teaching methods/use of IT

Annex 2

Initial equality, diversity and inclusion (EDI) impact assessment

Scope

1. This initial EDI impact assessment relates to our proposal to introduce a common professional assessment for all solicitors, the Solicitors Qualifying Examination (SQE), on which we will consult in December 2015.

2. Our functions are subject to the duties and provisions contained in the 2010 Equality Act. The purpose of this EIA is therefore to consider the potential equality implications of our proposed changes to the current qualification requirements on groups that exhibit protected characteristics. The nine protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity.
- race
- religion and belief
- sex
- sexual orientation

Background

3. The SRA's Training Regulations 2014 set out the current routes to qualification as a solicitor.[58] These are:

- through the completion of specified academic and vocational stages of training, described here as the Legal Practice Course (LPC) route;[59] or
- through exemption from all or part of the academic or vocational stages,
- through the process of equivalent means;[60] or
- through the Solicitor Apprenticeship route;[61] or

[58] Regulation 2: http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page

[59] The academic and vocational stages required for qualification as a solicitor are set out here: http://www.sra.org.uk/students/resources/student-information.page

[60] An explanation of the process of equivalent means is provided here: http://www.sra.org.uk/students/resources/equivalent-means-information-pack.page

[61] Details of the apprenticeship standard leading to qualification as a solicitor (England) are available here: https://www.gov.uk/government/publications/apprenticeship-standard-solicitor

- for lawyers from other jurisdictions, and barristers of England and Wales, through compliance with Qualified Lawyer Transfer Scheme (QLTS)Regulations.[62]

4. We are reviewing these requirements as part of Training for Tomorrow,[63] our response to the 2013 report of the Legal Education and Training Review (LETR)[64] which called for a greater focus of regulatory attention on the standards we require of solicitors both at qualification and on an on-going basis.

What are we trying to achieve?

5. We want to:

   - focus our regulatory effort more rigorously than at present on assuring consistent and comparable standards at the point of admission across all pathways to qualification; and

   - ensure that the most talented candidates can qualify as a solicitor, by encouraging the development of new and diverse pathways to qualification, which are responsive to the changing legal services market and remove artificial and unjustifiable barriers.

6. We believe that the introduction of a common professional assessment for all intending solicitors, to be called the Solicitors Qualifying Examination (SQE), is likely to realise both of our objectives. It would provide a mechanism to assure solicitors' competence consistently and fairly and, depending on what, if any, training pathways or entry requirements we specified for the assessment, it could also enable us to encourage flexible and innovative training.

7. We believe the SQE will deliver a number of key benefits, all of which will strengthen confidence in the solicitor title. It will:

   - ensure high standards of practice are attained by all who enter the profession;

   - test the competence of all intending solicitors on a consistent and fair basis across all routes/pathways;

   - protect consumers by ensuring that entry to the profession is based on candidates' ability to demonstrate the competences captured in the competence statement;

   - provide a better technical assessment than what is currently on offer, attracting the best examination expertise, keeping abreast of

---

Details of the apprenticeship framework leading to qualification as a solicitor (Wales) are available here: http://www.afo.sscalliance.org/frameworks-library/index.cfm?id=FR03202

[62] Details of the QLTS regulations are available here: http://www.sra.org.uk/solicitors/qlts.page

[63] http://www.sra.org.uk/sra/policy/training-for-tomorrow.page

[64] http://letr.org.uk/

assessment methodologies and best practice, exploiting IT solutions and pooling resources; and

- provide objective data on training providers' performance and therefore drive academic quality.

What will the SQE look like?

8. We propose that eligibility for the award of title of solicitor will require candidates to demonstrate they have successfully completed the SQE. The SQE will consist of 2 assessment components:

   - Part 1: Functioning Legal Knowledge Assessments; and
   - Part 2: Practical Legal Skills Assessments.

9. These assessments will assess the competences and knowledge set out in our Statement of Solicitor Competence and Statement of Legal Knowledge, to the standard set out in the Threshold Standard.[65]

10. Part 1 will use computer-based objective testing, in secure conditions, to assess the application of legal knowledge.[66] This will cover: ethics and professional conduct, wills and probate, taxation, business law and practice, property law, torts, criminal law and evidence, criminal litigation, civil litigation, contract law, trusts and equitable wrongs, constitutional law, EU law, human rights, and the English legal system.

11. Part 2 will use standardised practical legal tasks, including role plays and case studies, to assess the application of knowledge and skills in the following skill areas:

    - interviewing and advising
    - advocacy/oral presentation
    - negotiation
    - writing
    - drafting
    - legal research.

12. Further details of the SQE are provided in Annex 5 of the consultation document.[67]

How have we identified any potential equalities issues?

[65] https://www.sra.org.uk/solicitors/competence-statement/threshold-standard.page

[66] Objective tests require a candidate to choose or provide a response to questions whose correct answer is predetermined. This might include multiple choice questions, matching questions, or assertion/ reason questions.

[67] SRA (December 2015).Training for Tomorrow: assessing competence, Consultation,Introducing a common professional assessment for intending solicitors: the Solicitors Qualifying Examination (SQE), Annex 4

13. Between April and October 2015, we developed a draft assessment model for the SQE and carried out a rigorous programme to test whether the concept of a common assessment, and our particular assessment model, were robust and to identify any equalities issues arising from the introduction of the SQE. This included:

- engagement with a wide range of stakeholders (listed in Annex 4 in the consultation document);
- commissioning two independent pieces of expert advice; one considering the likely economic impact of a centralised assessment and one evaluating the technical validity and reliability of the proposed assessment model for the SQE. Both pieces of work examined equalities impacts, including those raised through our stakeholder engagement; and
- commissioning a baseline study of attainment within the existing qualification framework, that will be used to measure the impact of the SQE going forward.

What issues have been raised by stakeholders?

14. Stakeholders raised a variety of issues which fall into two categories:

- whether the assessment design, methods and arrangements (including re-sit policy) proposed for the SQE will discriminate against particular groups; and
- whether the introduction of the SQE will increase the cost of qualification and thereby create a new additional barrier to qualification.

15. These issues have been examined by the independent advice we commissioned and are discussed below.

Will the proposed assessment design, methods and arrangements for the SQE discriminate against particular groups?

16. We envisage that the delivery of the SQE would be delegated to an assessment organisation, who would be appointed and quality assured by the SRA.

17. Any assessment organisation we might appoint would also be subject to the duties and provisions contained in the 2010 Equality Act and must ensure that the SQE is designed in such a way that the assessments do not bias any particular groups of candidates, and that they are accessible to as wide a range of candidates as possible. In particular, an assessment organisation must make reasonable adjustments to assessment arrangements which place disabled candidates, as defined under the Act, at a substantial disadvantage. It is important to note than an adjustment may not be considered reasonable if it involves unreasonable costs or timeframes, or affects the security or integrity of the assessment.

18. The expert technical advice concluded that there is nothing in the proposed assessment design for the SQE (or the associated Statement of Solicitor Competence, Statement of Legal Knowledge or Threshold Standard) which suggests that the assessments are predisposed to cause bias in candidates with protected characteristics.

19. Stakeholders expressed the view that different assessment methods can be biased in favour of different groups. For example, it is often said that multiple choice questions (MCQs) favour men/boys. If true, this would have implications for Part 1 of the SQE. However, although there is some evidence that different assessment methods may be biased towards certain groups of candidates, the expert advice did not find it be conclusive. They advised that any risk could be mitigated through testing prior to live assessments and by post-test analysis of candidate performance to ensure that no bias arises.

20. The expert technical advice found that any risk of bias in the judging of candidates is most likely to occur in respect of Part 2 of the SQE, particularly with the role play, OSCE-style assessment of the skill areas of interviewing and advising, advocacy/oral presentation and negotiation, as human judgement is being applied.[68]

21. However the expert advice identified a number of practices that should be adopted by the SRA and the assessment organisation to minimise this risk, including:

    - formal reporting by the assessment organisation of their approach to minimising the risk of bias;
    - recruitment of examiners from diverse backgrounds that are representative of the overall candidate cohort;
    - training and retraining in recognition of bias for both question writing teams and actors and markers for the Part 2, delivered by expert trainers and supported by video material;
    - scrutiny of role play/OSCE-type assessment (questions, mark schemes and scenarios) specifically to look for evidence of any unintentional bias by a SRA appointed External Examiner, independent of the assessment organisation; and
    - post-assessment analysis and research, including:
        - statistical reviews of assessment performance information to look for bias in both Part 1 and Part 2 of the SQE; and
        - feedback questionnaires from/interviews with candidates.

[68] The use of Objective Structured Clinical Examinations (OSCEs) is an approach widely used to assess the competence of medical practitioners and which is used in the centralised assessment for the Qualified Lawyers Transfer Scheme (http://qlts.kaplan.co.uk/the-assessment/osce).

22. The expert technical advice also concluded that there is nothing inherent in the assessment methods proposed for the SQE that would make it impossible to make reasonable adjustment for disabled candidates; for example the use of large screen monitors for candidates with visual impairment in computer-based tests. Again, they identified that there is a range of practice we can draw upon to inform our policy in this area.

23. We recognise that implementing reasonable adjustments for the role play assessments within Part 2 raises some complex administrative issues, such as the time period for pre-notification of the need for an adjustment, the requirement to consider each case on its merits (rather than taking a stock approach) and the fact that adjustments might need to vary from one skill area to another. These issues will require further investigation with the appointed assessment organisation in due course.

24. The expert technical advice also recommended that the reasonable adjustments policy operated by the assessment organisation is audited by the SRA appointed External Examiner, to ensure that there is no evidence of unfair advantage.

25. Some stakeholders suggested that allowing unlimited re-sits for SQE would be discriminatory and would favour more affluent candidates or candidates funded by their employer. The expert technical advice concluded that, from an assessment perspective, there is no reason to limit the number of re-sits, but that we may choose to do so for other reasons. We intend to undertake further work to consider the equalities implications of unlimited re-sits in more detail before we make a final decision regarding our policy.

Will the introduction of the SQE increase the cost of qualification?

26. Many stakeholders expressed concern that the introduction of the SQE would increase the cost of qualification as a solicitor by adding the cost of the SQE on top of the existing training costs. The expert advice we commissioned into the potential economic impact of introducing the SQE has considered this issue.

27. We know that the cost of training through the LPC route is a barrier to qualification as a solicitor for those individuals who are not sponsored by an employer and who cannot afford to fund the training themselves. The current average cost of the formal stages of qualification is estimated to be:[69]

[69] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority pages 26 http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

	QLD/LPC route	CPE (GDL) /LPC route
Undergraduate degree	£27,000	£27,000
CPE (GDL)		£7,250
LPC	£11,000	£11,000
PSC	£1,500	£1,500
Total	**£39,500**	**£46,750**

28. In addition to the cost of training itself, individuals also need to be able to fund ongoing living expenses. LPC courses are not eligible for HE student loans for tuition fees or maintenance costs, although some other sources of funding are available.[70]

29. We have not yet made a decision on whether we will require candidates to have followed a specified training pathway or taken any particular qualifications before they can sit the SQE. However, we expect that many candidates will still wish to study for a degree and that many employers will still wish to recruit staff with degrees. During the testing phase, some London based employers suggested that, regardless of our regulatory approach, they would still expect their trainees to follow the existing LPC route to qualification, whilst others welcomed the possibility of new flexibilities.

30. Without the final detail of the assessment framework for the SQE, it is not possible to be conclusive regarding the expected cost of the SQE itself. However, the modelling undertaken as part of our indicative economic impact assessment suggests that the SQE is only likely to add costs if candidates continue to take the existing LPC route, whether or not we, as the regulator, require it.[71]

31. If we took the decision to no longer specify pathways, this would enable education and training providers to develop new and innovative training at lower cost, and in an effective training market, competitive pressures would drive cost down and quality up. If we no longer required intending solicitors to take the LPC or the PSC, we would be removing an average of £12,500 from the cost of qualification, although we recognise that alternative training will be required to prepare candidates for the assessments.This is likely to result in a reduction in the cost of qualification even with the additional cost of the SQE.

32. We accept that, as is the case now with the LPC and PSC, there will be limited access to public funding of the SQE, unless the cost is absorbed within the price of a degree or LLM eligible for HE student loans. It appears

[70] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority pages 28-29. http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

[71] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority page x. http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

unlikely that many universities will be willing to do this, certainly in degree courses where fee levels are set by the government. However, we believe that the modular structure we are proposing for the SQE will enable individuals to combine work and study more easily, making the cost of qualification more affordable.

What did the baseline attainment study tell us?

33. The study found evidence of an attainment gap across groups of intending solicitors at all stages of legal education and training, and thereafter, once they joined the profession.[72]

34. There is an attainment gap between white and Black, Asian and minority ethnic (BAME) students at every level of legal education – white students have a higher pass rate and higher scores, and on average are paid more during their training contract.[73] The attainment gap is particularly pronounced for Black students, who as a group have lower scores and lower pass rates than white students, Asian students, and students of mixed ethnicity. There is a substantial difference between the proportion of individuals from ethnic minority backgrounds who study a law degree (37%) or take the LPC (32%),compared to those who end up admitted to the roll as a solicitor (24%).[74]

35. A substantially higher proportion of women than men are currently entering legal education and training. The pass rates of women law students and male law students are very similar for both the GDL and LPC, although there are proportionately more women obtaining distinctions than men. Once solicitors are qualified, men are conversely more likely than women to be working in higher paid roles in the larger firms, and more likely to be partners.[75]

36. The LPC and GDL pass rate for students with a disability is lower than those students who do not. Evidence also suggests that of those students that do pass the LPC, students who declare a disability are less likely to have a training contract. However, due to the fact that the majority of people taking legal qualifications choose not to state their disability status, we cannot know whether this is due to genuine disproportionality, or because many students with disabilities choose not to disclose this.

37. Understanding disproportionality in educational attainment related to social background is difficult, due to the different proxy measures used by different agencies, and no data is available for legal education specifically. However, there is overall evidence suggesting an educational attainment gap between those with wealthy backgrounds and those from poorer backgrounds,

[72] SRA (October 2015). Baseline attainment data: legal education, training and post-qualification page 34. http://www.sra.org.uk/documents/SRA/research/baseline-attainment-data-report.pdf

[73] We recognise that there is a large variation in attainment across the different ethnic groups contained within the catch-all of 'BAME'.

[74] The Law Society, Annual Statistics 2014, pages 36 and 50: http://www.lawsociety.org.uk/policy-campaigns/research-trends/annual-statistical-reports/

[75] The top 100 firms by turnover : https://www.sra.org.uk/solicitors/diversity-toolkit/diversity-toolkit.page

beginning early in education.[76] We also know that, post-qualification, solicitors who attended fee-paying schools are over-represented in the profession in general,[77] and even more so at partner level, in larger firms and in corporate work.[78]

38. The attainment gap is also present when we consider the mode of study for the LPC. Full time students are by far the largest group of students, and for the sake of mode of study analysis can be described as the 'norm'. Accelerated full time study has a high pass rate compared with the norm.[79] A smaller proportion of female students, BAME students and students with disabilities are entered on accelerated courses compared to full time courses. A larger proportion of female students, BAME students and students with disabilities undertake part time study, and part time courses have a lower pass rate than the norm.[80]

39. There is also variation in the career development of solicitors depending on their ethnicity, gender and disability status. BAME solicitors, women solicitors and solicitors with disabilities are under-represented at partner level, and BAME solicitors and solicitors with disabilities are proportionately more likely to work at a smaller firm.[81]

40. We cannot easily ascertain to what extent these inequalities are directly related to the current qualification system and the legal sector itself, and to what extent they are directly related reasons leading to attainment gaps present in education in general. This is partly due to gaps in data and partly due to the number and variety of organisations and individuals engaged in the assessment of intending solicitors in the existing qualification framework.

41. We believe that the introduction of the SQE would enable us to ensure consistency of assessment experience for all intending solicitors and would therefore help us to focus attention on candidate performance across protected characteristics.

42. We recognise that it is likely that the legacy of prior educational and wider socio-economic disadvantage in the education system will limit the impact that the introduction of the SQE can have on inequality of attainment. This does not mean that there is no benefit in attempting to shine a light on this

---

[76] Sirin, S. R. (2005). Socioeconomic status and academic achievement: A meta-analytic review of research. Review of Educational Research, 75, (32), 417-453.

[77] Ashley, L. et al. (2015). A qualitative evaluation of non-educational barriers to the elite professions. London: Social Mobility and Child Poverty Commission.

[78] The Sutton Trust (2005). The Sutton Trust Briefing Note: The Educational Backgrounds of the UK's Top Solicitors, Barristers and Judges. London: The Sutton Trust.

[79] The accelerated LPC 'accelerated LPC' is a fast track course, covering the syllabus of a full-time LPC in 7 months rather than the usual year. Trainee solicitors taking this course are more likely to be sponsored and employed by large city firms.

[80] SRA (October 2015). Baseline attainment data: legal education, training and post-qualification page 18. http://www.sra.org.uk/documents/SRA/research/baseline-attainment-data-report.pdf

[81] SRA (October 2015). Baseline attainment data: legal education, training and post-qualification page 19. http://www.sra.org.uk/documents/SRA/research/baseline-attainment-data-report.pdf

disparity in attainment, but it does mean we should be realistic about the change we can achieve through changing one stage of the educational journey.

43. We note the impact of mode of study on pass rates within the existing qualification framework. We do not believe however that this is a reason not to proceed with a modular assessment structure for the SQE, where there is a greater likelihood of combining employment with on- and off-the job study to qualify as a solicitor. The introduction of common approach for all intending solicitors, unlike now where education requirements have largely been based around the expectation that candidates will study full-time, will be fairer for candidates and will again enable us to monitor performance across protected characteristics.

Conclusions and next steps

44. We believe that the introduction of the SQE will ensure fairness and consistency of standards and assessment experience for all intending solicitors. It will enable us to focus attention on candidate performance across protected characteristics in a way which is not possible in the current qualification framework, where assessment is distributed across a large number of organisations and individuals.

45. All candidates would sit the same high quality assessment which would be subject to statistical monitoring of performance. Whilst the assessment could not remove prior educational or social disadvantage, our control would enable us to shine a light on any differences in achievement across particular groups. It would also enable candidates who qualified through different routes, such as the new Solicitor Apprenticeships, to demonstrate they had met the competences to the same standard as others.

46. The expert technical advice found no evidence to suggest that the SQE or the associated Statement of Solicitor Competence, Statement of Legal Knowledge and Threshold Standard are pre-disposed to cause bias in the assessment of candidates, and identified ways of mitigating any risk.

47. The expert technical advice also found nothing inherent in the proposed assessment methods which would prevent reasonable adjustments for disabled candidates.

48. We believe that the introduction of the SQE, alongside some liberalisation or de-regulation of qualification pathways, will facilitate the development of innovative, flexible and cost effective training, targeted to the requirements of our Statement of Solicitor Competence. We have seen evidence that universities and other training providers are already exploring how they might develop new courses to prepare candidates for the SQE, including embedding Part 1 preparation within degree programmes.

49. Thus, although the SQE introduces a new qualification cost, other changes in our requirements have the potential to drive down the cost of training, and hence the overall cost of qualification, whilst the modular structure of the SQE makes the cost of qualification more affordable by enabling candidates to combine study with employment and spread the cost of assessment over time.

50. One way to help candidates who may have been disadvantaged in terms of prior educational or social background would be to provide details of candidates' individual and comparative performance on the SQE. It would provide objective evidence of the quality of a candidate who had, for example,

attended a less prestigious university. It could provide a means by which employers could target their recruitment. We intend to do more work to explore what information we might provide about candidate performance on the SQE, whilst maintaining the reliability, validity and manageability of the assessment, and we will consult on this in 2016.

51. We have included a question in this consultation, asking respondents to identify any additional equalities impacts, positive or negative, arising from the introduction of the SQE, and will update this initial impact assessment accordingly.

52. During the testing phase, a number of potential equalities impacts were identified related to other aspects of our new approach to qualification, such as whether we should require a period of pre-qualification workplace experience prior to qualification and what the impact would be on particular groups of students should we decide not to specify or regulate qualification pathways.

53. Feedback from the majority of stakeholders to-date has been strongly in favour of retaining some form of pre-qualification work-based experience. However we know from our baseline study and other research that the lack of availability of training contracts (or period of recognised training) is a major barrier to entry into the solicitor profession for some groups.[82] Some stakeholders have argued that retaining a requirement for pre-qualification work place experience in our new qualification framework could perpetuate this inequality of opportunity.

54. Some stakeholders suggested that, by not regulating training pathways, we risk the creation of a two tier educational system, in which a more expensive and more highly regarded pathway emerges as the 'gold standard' and gives candidates a better chance of passing the SQE. The alternatives may be cheaper, and therefore more attractive to poorer candidates, but their chances of passing the SQE may be worse through these routes, and also lead to poorer employment prospects. In particular, candidates without contacts within the legal profession may make poor decisions about training which do not enable them to pursue a career as a solicitor.

55. These aspects of the new approach to qualification are explored in Section 3 of the consultation document, with the intention of consulting on specific proposals regarding the role of pre-qualification work experience and the specification of pathways or entry requirements in a second consultation in summer 2016. This initial equalities impact assessment will be updated to fully consider the implications of our proposals at that point.

[82] Malcolm, K (October 2015). Indicative economic impacts of a new qualification framework for solicitors, Report prepared for the Solicitors Regulation Authority page 56. http://www.sra.org.uk/documents/SRA/research/indicative-economic-impact-assessment.pdf

Annex 3

Summary of challenges raised during the testing phase

Challenge	Response
Case for change not made out: what is the problem we want to fix?	We have refined our rationale to make clear we have concerns both with the risk of inconsistent standards within HE and that we cannot measure consistency of standards across the range of pathways to qualification we currently specify.
Our proposal will be expensive.	We have modelled range of possible pathways to qualification under the new approach. All are cheaper than current model, except continuing with traditional route and introducing a common professional assessment on top.
Our proposal will damage the solicitor brand because the common professional assessment has no credibility.	The credibility of the assessment is critical. Consumers don't know and don't care how the solicitor title is acquired and so the title "trumps" how it was acquired, including issues around consistency of current pathways. As regulator, the SRA must make sure that the reality behind the title is sound. Our proposals are designed to ensure that.
The proposed common professional assessment has no credibility because anyone can take it.	Setting eligibility requirements and introducing a common professional assessment are two separate considerations. We are exploring options around entry requirements for the assessment and expect to consult on a formal proposal in summer 2016.
Our proposal has no credibility because it does not require intending solicitors to have a degree.	The solicitors' profession has never been an entirely graduate profession and there are many examples of solicitors without degrees operating at the highest levels. There is no empirical evidence that a degree is required.

The proposed common professional assessment has no credibility because It is not set at degree or equivalent level.	We know we will need to provide guidance about the level of difficulty of the assessment. This will make it clear that it is intended to replicate the level of difficulty of the current system.
The proposed common professional assessment has no credibility because it includes MCTs.	There is a large body of research (and evidence of use of objective testing, including MCQs, in other high stakes professional assessments) which shows MCTs can be used to test higher level cognitive skills. MCTs would not be the only assessment tool.
Stakeholders are fearful that we may cease to continue to specify a period of recognised training (PRT), which they value and which they think contributes to solicitors' international standing.	We have rightly needed to make sure that requiring a period of recognised training can be justified, given that it constitutes a significant restriction and barrier to access in the current system. The independent expert advice shows that workplace assessment of some of the competences is needed and that some form of workplace experience is needed to give the assessment credibility. We will explore regulatory options in the December consultation and consult on a proposal in mid-2016.
Pre-qualification training experience is used by firms to train their trainees in the jobs the firms want them to do, which vary from sector to sector. So a standardised professional assessment at point of qualification will be misaligned with experience during the training contract.	This is a challenge for us because, unlike medical education for example, specialisation begins before qualification with the choice of training provider. At same time, entry confers entitlement to practise all reserved activities. Only a minority of trainee solicitors will gain pre-qualification experience across all the reserved activities. This creates a tension which is hard to resolve. We will explore a range of options in the December consultation.

Criticisms from universities are:	
a) Universities need detailed syllabus to understand what to teach for the common professional assessment and this constrains academic freedom.	a) We will provide detail. It doesn't constrain academic freedom because universities can choose whether or not to teach it
b) The separation of teaching and assessment will result in poorer quality training.	b) We will provide guidance on breadth and level of difficulty of the assessment.
c) Providers need a long time to develop new courses. Academic year 2018-19 is too early. Without detailed knowledge of level of demand and breadth of coverage providers cannot prepare courses.	c) We will keep the timescale to introduce a common professional assessment under review.
d) BSB and SRA approaches are not coherent and so universities unable to devise curricula which address both.	d) BSB are at early stage of developing a knowledge statement, similar to ours. We will map the SRA and BSB versions to identify similarities and differences to enable education and training providers to develop courses which meet demands of both or either professions.
e) The academic rigour of degree is essential to develop skills to be effective solicitor.	e) A degree is not a current requirement to qualify; many senior solicitors did not go to university, but qualified on basis of old 5-year articles. There is no empirical evidence to support claim that a degree is essential for safe practice as a solicitor.
f) Removal of QLD status will damage universities' ability to recruit in the domestic market and, more significantly, in international market.	f) We do not regulate the QLD. Nor do we prescribe with any detail the academic content. All LLBs are regulated by the QAA. The QAA is consulting on a proposal to establish a Quality Kite Mark, to be used for international purposes, which would include confirmation that academic standards are set and maintained appropriately. This would therefore provide information about the quality of provision (which QLD status does not).

Annex 4

Stakeholder engagement during the testing phase

During the testing phase, we discussed our draft assessment model with a wide range of solicitors, employers, training principals, learning and development staff, trainers, lecturers, representative and professional groups, including:

- Association of General Counsel and Company Secretaries working in FTSE 100 Companies (GC100)
- Association of Graduate Careers Advisory Services
- Association of Law Teachers
- Black Solicitors Network
- Chartered Institute of Legal Executives (CILEx)
- City of London Law Society
- Committee of the Heads of University Law Schools
- General Medical Council (GMC)
- Junior Lawyers Division of the Law Society
- The Law Society
- The Law Society EDI Committee
- Lawyers with Disabilities Division of the Law Society
- Law Central Applications Board
- LawNet
- LawSouth
- Legal Education and Training Group (LETG) - London and Birmingham
- Society of Legal Scholars
- Socio-Legal Studies Association
- SRA's Equality, Diversity and Inclusion Committee; Sole Practitioners Reference Group; Small Businesses Reference Group
- universities in England and Wales

- Young Legal Aid Lawyers

Annex 5

The Solicitors Qualifying Examination (SQE)

Below, we describe the assessment model we are proposing to take forward for the SQE. We anticipate that this model will evolve as we develop a more detailed assessment specification and, in due course, begin to work with an appointed assessment organisation to develop the first assessments.

1. Key features

1.1. Competence will be assessed through a common professional assessment for solicitors, the SQE, delivered by an assessment organisation, appointed and quality assured by the SRA.

1.2. The SQE will assess competence as defined by the Statement of Solicitor Competence, the Statement of Legal Knowledge, and the Threshold Standard.

1.3. The competence of all candidates, including EU or international solicitors and those following a Solicitor apprenticeship route, will be assessed through the SQE.

1.4. There will be no exemptions from the SQE beyond those required by EU legislation and as part of transitional arrangements.

1.5. The SRA will publish a detailed Assessment Framework document, derived from the Statement of Solicitor Competence, the Statement of Legal Knowledge and the Threshold Standard, to communicate the level of difficulty of the assessment and to inform the design of education and training programmes.

1.6. Candidates who have been assessed as competent by their performance in the SQE will be eligible to apply to SRA to be admitted as a solicitor, subject to character and suitability tests.

2. Structure of the SQE

2.1. The SQE will consist of 2 assessment components:

- Part 1: Functioning Legal Knowledge Assessments; and
- Part 2: Practical Legal Skills Assessments.

2.2. The components will be equally weighted and both components must be passed for a candidate to be able to qualify. Part 2 can only be taken when Part 1 has been passed.

2.3. All assessment components will sample the knowledge and skills set out in the Statement of Solicitor Competence and Statement of Legal Knowledge to the level required by the Threshold Standard.

2.4. Both assessment components will be modularised and individual modules can be taken over time.

3. Assessment methods

3.1. The components will be assessed using the following assessment methods.

3. 2. Part 1: Functioning Legal Knowledge Assessments

3.2.1. These assessments will use objective testing[83] to assess candidates' ability to draw on sufficient knowledge to practise effectively and will assess the application of knowledge and legal processes specified in A1, A4, A5, B7 of the Statement of Solicitor Competence and Statement of Legal Knowledge.

3.2.2. Questions will require candidates to identify relevant legal principles and apply them to factual issues to produce a solution which addresses a client's needs. Ethical questions requiring candidates to demonstrate that they can spot these issues and understand and apply the rules of professional conduct will be embedded within the assessments.

3.2.3. All assessments will be computer-based and will take place in timed conditions at secure assessment centres.

3.2.4. Pass marks will be set through the use of standard setting procedures designed to ensure appropriate level of difficulty and consistency of standard within and between successive sittings.

3. 3 Part 2: Practical Legal Skills Assessments

3.3.1. The assessments will assess the application of knowledge and skills, in the following areas:

- interviewing and advising
- advocacy/oral presentation
- negotiation
- writing
- drafting
- legal research.

These map to A1, A4, A5, B1, B2, B3, B4, B5, B6, B7, C1, C2 and C3 of the Statement of Solicitor Competence.

3.3.2. The skill areas of interviewing and advising, advocacy and negotiation will be assessed through practical role plays with standardised clients. The role plays will simulate, through high quality scripts and scenarios, the core activities of the solicitor's practice.

[83] Objective testing requires a candidate to choose or provide a response to questions whose correct answer is predetermined. This might include multiple choice questions, matching questions, assertion/ reason questions or single best answer.

3.3.4. The skill areas of writing, drafting and legal research will be assessed through computer-based tasks in which candidates must respond to legal case studies and scenarios. The task may be to write a letter of advice to a client, to draft a legal document or part of a legal document, or to research the answer to a legal problem using legal databases. The candidates' responses will be completed online.

3.3.5. The assessments will simulate the real demands of practice. Ethical questions requiring candidates to demonstrate that they can spot these issues and understand and apply the rules of professional conduct will be embedded within the assessments.

3.3.6. All assessments will take place in timed conditions at secure assessment centres.

3.3.7. Each skill area must be passed in twice, in different legal contexts. The different contexts in which candidates must be assessed are: probate, property, criminal and civil litigation, and the law of organisations (business law and practice). Across all assessments, candidates must cover three out these five contexts, with at least one being contentious and one non-contentious.

3.3.8. All assessments will be independently marked and moderated by the assessment organisation.

3.3.9. Pass marks will be set through the use of standard setting procedures designed to ensure appropriate level of demand and consistency of standard within and between successive sittings.

How to respond to this consultation

Online

Use our online consultation questionnaire to compose and submit your response. (You can save a partial response online and complete it later).

Email

Please send your response to consultation@sra.org.uk. You can download and attach a consultation questionnaire. Please ensure that you:

- add the title "SQE" in the subject field
- identify yourself and state on whose behalf you are responding (unless you are responding anonymously)
- attach a completed About You form.

Please note we will be publishing all responses, unless a respondent indicates that they do not wish their response to be published.

By post

If it is not possible to email your response, hard-copy responses may be sent instead to:

SQE consultation

Regulation and Education

The Cube

199 Wharfside Street

Birmingham

B1 1RN

Deadline

Please send your response by 4 March 2016.

Confidentiality

A list of respondents and responses may be published after the closing date. Please express clearly if you do not wish your name and/or response to be published.