



The Law Society

Report into the global competitiveness of the England and Wales solicitor qualification

An investigation into the potential impact of the SRA's Training
for Tomorrow proposals on the global reputation of solicitors of
England and Wales
July 2015

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1. Executive summary

This research sought to investigate the potential impact on the global reputation of the England and Wales solicitor qualification of the changes to the qualification currently proposed by the Solicitors Regulation Authority (SRA). Although the SRA is yet to develop firm proposals in relation to the process by which solicitors qualify, they have said that they are considering a spectrum of options ranging from 'no change' to the replacement of the existing mechanisms (law degree or equivalent, LPC and training contract), with a final assessment.

It was concern about the reputational impact of this further drive to Outcomes Focused Regulation (OFR) which prompted this investigation. Three main themes have emerged from this research:

'UK law' is perceived to be very well used and respected globally (see p17). This reputation has been established over centuries and is based on a number of factors: the courts, judiciary, London as a key financial centre and quality of education. This has led to positive perceptions about those who practise England and Wales law.

The training contract and its contribution to developing practical professionally trained commercial lawyers is viewed globally as the gold standard in terms of legal training and distinguishes the England and Wales qualification from its main rival – the New York Bar. The training contract is viewed very highly by firms as a period of time dedicated to trainees learning how to work with clients and learning ethical judgement from more experienced mentors from within the profession (see p8).

The Legal Services Act, with its separation of the Law Society's regulatory and representative functions, poses challenges to the existing qualification framework as the regulatory objectives do not address the global landscape and international competitiveness of the UK, and do not therefore align with the needs of international law firms, or indeed the government in terms of increasing the export of high quality professional services.

Whilst agreeing that improvements to the current system of qualification should be made, the firms we spoke to were highly critical of the prospect of solicitors qualifying having taken an assessment, with no requirement for a period of supervised work based learning. As one firm said *"There is a danger around the UK's position as governing law if other jurisdictions think there is insufficient rigour"* (see p12).

There is therefore a significant risk that the SRA's proposed changes to the qualification framework may undermine the positive perceptions held in relation to England and Wales lawyers and in the long-term, undermine the global competitiveness of UK law.

The second theme relates to the title of 'solicitor'. Solicitor is not an international brand and international firms tend to hold themselves out as lawyers rather than solicitors. Although firms' brand image is partly attributable to and dependent upon their lawyers' qualifications, firms sell their brand rather than their qualifications which are assumed. The qualification is therefore viewed as an essential building block in the success of UK law, amongst other factors such as the courts and financial sector.

In many ways, and particularly given the importance of where a lawyer completed their training contract to a lawyer's future employability, the firm's brand is more

important than the title and this importance increases as an international lawyer's career progresses. This may in part explain the declining numbers for the Qualified Lawyers Transfer Scheme (QLTS) in a market where you do not need to have a title to provide most commercial legal advice.

Clients are increasingly more interested in a firm's experience and expertise rather than the titles their lawyers hold, *"the brand of solicitor is diminishing over time – ultimately [its survival] depends on what services are available in the market"*.

The role and reputation of the professional qualification of solicitor seems to be in retreat, *"in the longer-term people including clients may not be bothered about title – particularly if we continue down the deregulatory route"*.

There is therefore concern that the SRA's proposed removal of the training contract is a step too far for a qualification which is already viewed as 'light touch' on the global stage. This is particularly so given that this 'light touch' perception has historically been compensated for by the advantages of having a practical professional period of work placed based training as an intrinsic part of the qualification process.

On a cautionary note, whilst firms are generally buoyant about their own future prospects, the global market for law remains highly competitive. Comparative law studies recognize the popularity of UK law, but also assert that there are very few clear distinctions between the world's dominant legal systems, and that clients are just as likely to choose a law based on some conscious (or unconscious) bias related to that jurisdiction, than due to any clear advantage in the law.

The perceptions of client decision-makers in favour or against a particular jurisdiction are therefore as important as the law itself (see p18).

Finally there is no doubt that more international students are studying and qualifying as lawyers in the US (see p31). However it remains to be seen how much of a factor this will be in relation to the position of UK law in the long-term.

2. Introduction

This research into the global competitiveness of the England and Wales solicitor qualification was initiated as part of the Law Society's work to evaluate issues of long-term strategic importance to the legal services industry and as part of the Society's thought leadership remit. In particular, the research project investigated issues around the qualification of solicitor with a view to developing evidence-based recommendations to inform the Society's policymaking and campaigning work.

The main driver for this work was the SRA's Training for Tomorrow agenda¹ which, following the Legal Education Training Review (LETR) in 2013, proposes changes to the competences required of solicitors at the point of qualification, the training which stands behind that, and the means by which the competences are assessed. However it is also envisaged that this research will influence the international work of the Law Society and the broader strategic positioning of the Law Society as a whole.

The solicitor qualification is currently very well respected globally, and whilst exact figures are hard to come by, there is a perception that England and Wales law is one of, if not the, most commonly used law(s) in commercial contracts.

This research has enabled us to gain a deeper understanding of why the solicitor qualification holds this position and what the threats to this dominant position are.

The research also sought to test the validity of the following related propositions²:

- that the New York Bar is more attractive as a qualification for firms and lawyers and
- the notion that the more lawyers that are qualified in a particular jurisdiction, the more the law of that particular jurisdiction will come to be used globally

This research has consciously focussed on the views of City and international law firms. This is because we were particularly interested to explore the potential impact of changes to the qualification and therefore solicitor reputation, on the export of legal services and on UK plc. We are however mindful of the fact that this is an area of interest not only to the Law Society and the firms it represents, but also for government. The Ministry of Justice in its 2013 Action Plan³ states that:

“As a government we recognise the importance of the UK’s legal services sector and the excellent reputation its legal services providers have at home and abroad....It is important that we consolidate the UK’s international standing in what is becoming an increasingly competitive field.”

And the Department for Business Innovation and Skills (BIS)⁴ describes one of the factors leading to the UK's comparative global advantage as being:

¹ www.sra.org.uk/t4t/

² As put forward in Rethink urged on legal training, *Financial Times*, 20 November 2011

³ Ministry of Justice (March 2013), *UK Legal Services on the International Stage: Underpinning growth and stability*

⁴ Department for Business Innovation and Skills (July 2013), *Growth is our business: A Strategy for Professional and Business Services*

“The strength of UK professional institutions, not only in setting the standards of entry to the professions but in maintaining professional development, and ethical as well as technical standards: these institutions have a reputation for promoting and maintaining high professional and ethical standards which others seek to replicate”

The research primarily took the form of qualitative interviews with City and international firms, legal educators, legal academics and recruitment consultants. However we have also collated relevant available quantitative data to triangulate with our qualitative research. We are conscious that most of our interviewees are based in London and that interviews with those based elsewhere might elicit different responses.

The interviews took place between September 2014 and January 2015. In total we interviewed 13 international law firms. These firms were approached because of the global nature of their work and client base which gave them a particular perspective on the reputation of the qualification (see Annex A). The interviews took place with partners and staff with a recruitment and/or learning and development remit, together with individuals who had a broader input into the strategic direction of the firm.

We also interviewed:

- two of the Big Four accountancy firms with large legal teams, one that has become authorised as an ABS by the SRA, and one which has chosen not to
- two academics involved in the field of international comparative law
- five recruitment agencies who service the City firms and have a global footprint
- one education provider which has a strong international presence

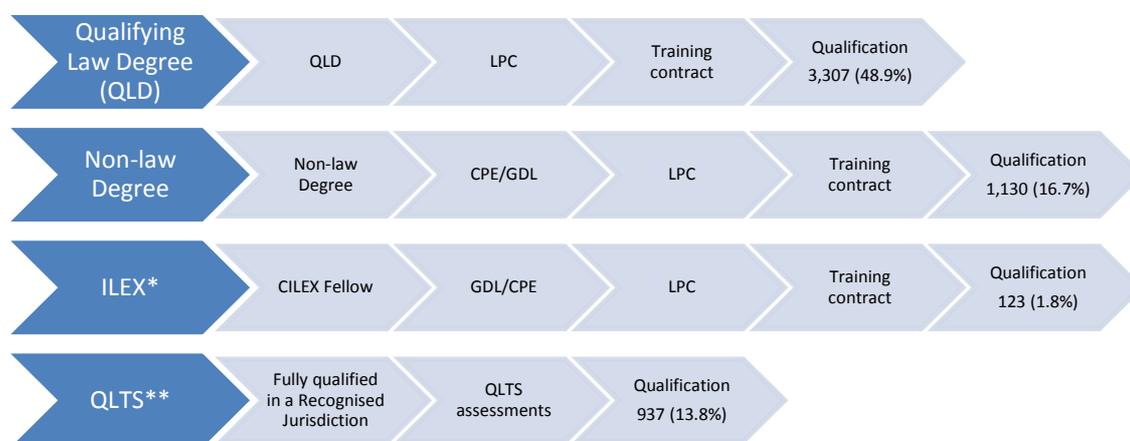
There was a high take-up rate amongst the firms approached, indicating the interest and importance attached to the report’s subject matter.

3. The England and Wales solicitor qualification

Current qualification regime

The solicitor qualification has a long-established reputation. It originated as an unstructured apprenticeship model some 150 years ago, but evolved into something akin to the current model in 1971 following the Ormrod Report. The main subsequent change for the solicitors' profession was the introduction of the Legal Practice Course (LPC) in 1993/4 which replaced the Law Society Finals⁵.

The diagram below sets out the main routes to qualification and the numbers qualifying by each route during 2012/13⁶.



Source: Law Society's Annual Statistical Report 2013

The majority route followed by nearly half of those admitted into the solicitor profession continues to be via a three year Qualifying Law Degree (QLD), followed by the LPC and a two year training contract (now known officially by the SRA as a Period of Recognised Training (PRT)). The requirements of the QLD are agreed in a Joint Statement by the SRA and the Bar Standards Board. There are currently 26 providers offering the LPC. The SRA approves the LPC providers, sets learning outcomes and monitors each provider⁷. There are around 6000 firms or other bodies with SRA registered training principals who are authorised to take trainees and sign them off as having completed their training contract prior to admission by the SRA.

An individual who has taken a non-law undergraduate degree, they can complete the Graduate Diploma in Law (GDL) or Common Professional Examination (CPE) in the place of a law degree.

⁵ Ching J., Maharg P., Sherr A., Webb J. - Legal Education and Training Review, June 2013

⁶ 18.6 per cent of solicitors come through an unknown route. * Alternatively CILEX Members can go straight to the CPE/GDL instead of becoming CILEX Fellows, but they then need to complete a Training Contract

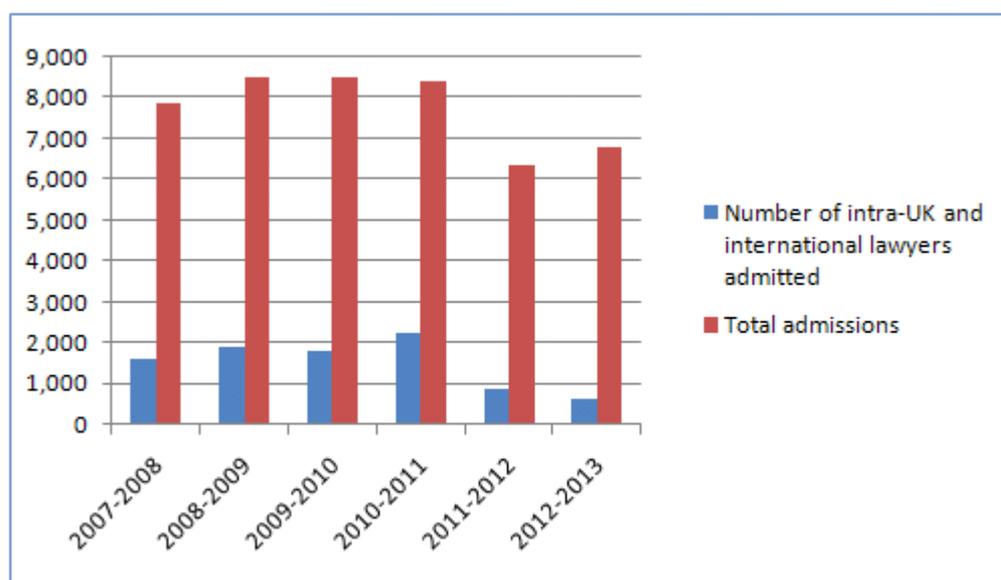
* *326 are transfers from the Bar of England and Wales

⁷ www.sra.org.uk/students/students.page

It is also possible to qualify as a solicitor by first becoming a Chartered Legal Executive and then taking the LPC and, depending on whether or not they are a CILEX Fellow, completing a training contract. This route, whilst more complicated, enables an individual to by-pass taking a degree. Only 123 individuals utilised this route in 2012/13 and it may decline in popularity now that the SRA has introduced its policy of 'equivalent means', which enables applicants to evidence that they have met the knowledge and skills outcomes of the various stages of the solicitor qualification, by alternative means i.e. not necessarily via a traditional law degree and LPC⁸.

Finally, EU, intra-UK⁹ and international lawyers from recognised jurisdictions¹⁰ can requalify as a solicitor of England and Wales by taking the Qualified Lawyers Transfer Scheme (QLTS) assessments. The QLTS replaced its predecessor, the Qualified Lawyers Transfer Test (QLTT) in September 2010. In the years prior to the introduction of the QLTS, around 25 per cent of new entrants to the profession were admitted via this route¹¹.

Although the new scheme is open to a wider range of jurisdictions (most notably the BRIC and MINT countries), the numbers applying via this route have dropped significantly to 13.8 per cent with over a third of those being transfers from the Bar of England and Wales.



Source: Law Society's Annual Statistical Reports. 2008-2013¹²

⁸ www.sra.org.uk/students/resources/equivalent-means-information-pack.page

⁹ I.e. Northern Irish and Scottish lawyers and barristers of England and Wales.

¹⁰ www.sra.org.uk/solicitors/qlts/recognised-jurisdictions.page

¹¹ 2007-8, 24 per cent; 2008-9, 26 per cent

¹² The overseas lawyers figures do not include transferring England and Wales barristers, although they do include transfer from Northern Ireland, Scotland and the Isle of Man.

This appears to be for a variety of reasons: the QLTS is more expensive, more difficult to pass, the financial downturn, the fact that it is not necessary to be a solicitor for most legal work within England and Wales, and the gradual change in clients' and firms' attitudes by focusing on competence and experience rather than title.

Views of the firms on the current qualification framework

All of the firms we spoke to expressed great commitment to the current qualification system. This can be broken down into several different factors:

- the value attributed to a qualification process which combines academic and practical learning
- a particular commitment to a training contract under the supervision of more experienced members of the profession which produces practical lawyers
- the clear recognition that the England and Wales solicitor qualification is an important part of their global reputation

The combined requirements for academic and practical work-place experience prior to qualification was viewed as the unique selling point of the solicitor qualification and the importance of an excellent academic grounding in the core foundation subjects was reiterated by each firm *“the more academic law lawyers learn the better”*.

Firms value the broad basis of the qualification and were almost unanimously in favour of the retention of the reserved areas. Increasingly firms see the value in criminal and civil litigation being studied, as the distinction and overlap between the two areas of practice becomes more blurred and knowledge of criminal law is needed in order to advise on the City-relevant areas of bribery and white collar crime. The only area of law where a number of firms queried its relevance for all solicitors was probate. However, given the reported low profile given to this subject on the LPC, (described as a *“nod to probate”*), this was not viewed as a major concern.

The training contract is considered to be the jewel in the crown *“the hallmark of quality”* of the qualification process: the *“training contract has longevity, it’s an understood, structured, set training period....”* It has two particular attractions to firms:

- (a) It enables trainees to develop legal judgement which comes from working with and learning from more senior lawyers - it teaches trainees how to *“think as lawyers”*. It is a period of time in the development of lawyers where learning is key and when ethics and professionalism can for the first time be observed and learnt in live situations. It therefore serves a particular regulatory purpose in developing ethical, responsible lawyers. One firm told us:

“What we quite like is for people to feel a strong affinity to their professional qualification, it gives you an engagement level around your workforce that is hard to garner. For ethics, you need that sense of profession...”

- (b) The period of practical work-place based training enables lawyers to develop their practical client-facing skills pre-qualification. This is

particularly important to City firms where commerciality and understanding the client's business are fundamentally important.

As one firm observed, *"The commercial antennae [of those who have completed a training contract] are much sharper compared to those who did a short placement or no training contract"*. In an interview with a large multinational client of one of the firms, they described how they wanted lawyers who can apply a practical rather than theoretical knowledge of the law to their business and distil complex issues into something understandable.

The training contract was thought to be particularly important to the brand of the England and Wales qualification precisely because the qualification as a whole is viewed internationally as being 'academically light'¹³.

Firms value the requirements placed on them in terms of the breadth of the training as this helps develop better lawyers *"breadth and depth of a solid training contract is extremely important – responsibility, training and depth of experience"*. One firm remarked that the rotation gave trainees a sense of which part of the firm would suit their interests and skills. It was felt that they were better solicitors for having worked in different areas, having observed different working practices and matched the firms needs to their own. The training contract allows firms to work out whether an individual is going to 'make it as a lawyer'.

"In New York it's different, you're an associate when you come out of law school and yet they are not yet ready"

It was felt to be particularly beneficial to the development of lawyers to be able to do this within the context of a protected training period without being under the pressure of their US counterparts who must justify their salaries of \$160-170,000 per annum from the outset. They also felt that the breadth of training made the trainees better solicitors by being aware of other issues/areas of practice which might impact on the client and by building a collegiate environment across the firm. One firm drew the following comparison with the New York Bar:

"New York Bar is harder than the LPC – a completely different exam, but there's nothing practical about it, it's entirely academic.... One of the issues with the New York Bar is someone can regurgitate information, and as long as they do that, they can pass. But they haven't got a clue as to how to advise a client. The journey of the training contract, the maturity they develop, is great. The maturity we see developing during those two years is key, they get a multi-disciplinary approach, it makes them broader people."

The New York Bar qualification is considered further in Section 6.

The value placed by firms on the training contract period can be inferred from a number of different practices:

- discounting - many firms 'discount' an individual's salary if they have no or little experience pre-qualification. For example, some firms will discount New

¹³ For example, compared to the US, German and Australian models which require longer periods of academic study. See Annex 2 for further details on these qualifications.

York lawyers by a year and Australian/New Zealand lawyers by 18 months-two years. One recruiter described how Australian and New Zealand newly qualifieds are much more likely to gain positions as a legal assistant or paralegal than as a lawyer, if they have little or no post-qualification experience

- several firms operate a two-year training contract rotation in jurisdictions where there is no regulatory requirement to do so, simply because they think it makes better lawyers
- some overseas offices send their new recruits to their London office to participate in the London training contract, before returning to their home jurisdiction – *“Moscow, Tokyo, Hong Kong, Milan, Madrid...all want the England and Wales qualification because of the quality of training.”*

Whilst the firms we spoke to favour the current qualification framework, they did also identify a number of concerns:

- one firm admitted to having identified variations in their own partners' views on the level required to sign-off a trainee at the point of qualification. This concern was reiterated by several other firms who felt that "*The profession had let anyone in*". There was therefore a view that the standard required at the point of qualification could be better articulated
- on a related issue, concerns were expressed about the standard attained on the LPC. Even firms who had developed their own LPCs did not have sufficient confidence in the LPC assessments to enable them to retract offers of training contracts on the basis of poor results. By contrast, they did take that approach when a recruit fails the New York Bar Examination, which indicates the greater confidence that some firms were able to have in that examination. This was felt to have a knock-on effect on recruitment as, due to the lack of value placed on LPC grades, firms tend to ignore grades attained on the LPC, and instead look back at school and university grades. If the LPC was genuinely testing lawyering skills and identifying the best talent, then the firms would be more inclined to recruit on the basis of LPC grades¹⁴
- one firm raised concerns about the regulatory rigour surrounding trainees who are able to complete the entirety of their training contract in another jurisdiction. It was felt that inevitably, the breadth and depth of experience and supervision would be less than in England and Wales, and that this posed a reputational and regulatory risk to the qualification
- one managing partner observed that new entrants to the profession are able to become too specialised too early. He "*winces at lawyers' lack of agility and ability to apply their knowledge and skills to other areas of practice*" and had observed that this becomes a particular problem when a lawyer becomes a client's trusted adviser and is expected to be a more holistic source of advice

Overall however there was a strong view that the current system works well. Whilst a few improvements could be made – in particular in terms of tightening up standards, the firms like the flexibility of the current system and see no necessity for significant reform – "*We needn't change too much, take it slowly, change a few things at a time and see how they go.*"

¹⁴ This is in clear contrast to the professional exams in Germany – see Annex 2 for further details.

4. The SRA's Training for Tomorrow

The SRA's objectives for Training for Tomorrow (TFT) are set out in their policy statement which was released in October 2013. The objectives of these reforms are to:

- focus the education and training system on ensuring that those who deliver legal services meet the SRA's standards, with less emphasis on the process by which high quality outcomes are achieved
- increase flexibility for higher education institutions, vocational training providers and employers to come up with innovative and efficient ways of achieving the necessary outcomes
- ensure that the education and training system can adapt over time to take account of changes in legal services markets
- target the SRA's activities as a regulator on protecting the public interest, including consumer interests, in a proportionate manner

It is anticipated that one of the effects of these proposals will be a widening of access to the profession and entry by those who are less likely to progress through more traditional pathways.

The firms were asked to express their views on the proposals. These were described as being:

- a clarification of what a solicitor needs to be able to do at the point of qualification (the Competence Statement)
- a new statement of the threshold standard expected on qualification
- a reconsideration of the processes which lead to qualification, which could range from no significant changes (other than in relation to the Competence Statement and threshold standard), to the most extreme model which would be the replacement of all the existing processes with a QLTS-style assessment

In particular firms were asked to consider their views with reference to the global reputation of the qualification, of UK law more generally, and also with reference to social mobility and access to the profession.

The SRA consulted on the Competence Statement in October 2014, and a further consultation in relation to means of assessment is expected at the end of 2015.

Views of the firms on the SRA's proposals

There was a sense amongst the firms that we spoke to that the SRA had not thought about its proposals in the context of UK law as a high quality globally exported commodity and service industry. Firms felt that the SRA did not understand the ramifications for UK law firms operating globally of changes to the regulatory requirements:

“SRA has not realised there is an issue with regard to global standing”

“There is a danger around the UK's position as governing law if other jurisdictions think there is insufficient rigour”

“They haven’t really thought about the perception of the England and Wales qualification in the rest of the world”

A number cited the significant repercussions for their global operations in terms of the changes to the CPD requirements which the SRA had dismissed as being a matter for the firms not the regulator. One firm described the SRA as *“Trying to fit everything into a tiny funnel. Grouping magic circle and high street firms is not realistic. The profession is multi-faceted.”*

As a matter of principle, firms welcomed clarification around the standard to be achieved at the point of qualification. There was recognition that there were significant disparities on the LPC and that it was inevitable that there would be variations in standards at the end of the training contract with so many training principals assessing the standard. However many expressed concerns that the standard would be set too low.

“I would welcome an element of standardisation...but that could happen through the LPC.”

Firms were open to the recognition of non-degree routes, as long as the same rigour and standard had been achieved by other means. There was an open-mindedness towards those who had worked their way up through the firm through an apprenticeship type model. One partner remarked that *“the lawyers who had [in the past] come via this route are viewed as the most rounded and useful lawyers to have around.”*

The LPC was seen as an important period of learning by most firms, particularly those with a firm-bespoke LPC:

“If there’s no LPC then universities should make it that all law degrees incorporate the LPC within the curriculum”. However this was not seen as appealing as firms would lose control of the LPC.

“LPC is preparing someone for work, a long induction to starting work as a solicitor.”

Given the concerns which firms had expressed around the minimum standard to be achieved (*“Raise the bar higher, it raises the England and Wales reputation”*), there was cautious support for a centralised assessment. The main concern around such an assessment was logistical and in particular when it would take place. Firms were opposed to a process akin to the traditional accountancy model which took trainees out of the workplace to study and take assessments, which they did not think could work. The training contract is already a period of intense learning and it was difficult for firms to see how further study (potentially irrelevant to their practice) could be built into their training programme. One firm put it bluntly: *“We don’t like the accountancy model of exams during work”.*

Firms like their current flexibility, *“Some people ‘go cold’ at the thought of the qualification involving going to an assessment centre and taking a generic test”.* Interestingly however, the ‘accountancy model’ which the firms dislike has according to the ICAEW, undergone a number of changes in recent year, precisely because the block release process did not work well for the businesses involved. The regulator

now permits much greater flexibility around online assessment and weekend/evening study, which means that individuals can study as well as maintain their caseload.

A centralised assessment taken pre-training contract was viewed as being potentially beneficial to the overall standard and reputation of the profession.

“England and Wales solicitors are some of the best in the world but some people have been allowed to qualify who are not of a good enough standard.”

The major concern expressed by each firm, was the long-term reputational impact on the global brand of UK lawyer, if the training contract were to be abolished. One partner told us:

“Unless you ‘pre-qualify’ people, you potentially devalue the qualification drastically. This would lead to a significant risk of dilution in standards and reputation with potentially catastrophic consequences”

Another said:

“In the international sphere, UK lawyers are already considered less academically trained than other lawyers. If the SRA’s proposals go ahead, you are totally undermining the position of English law as a qualification. If you take away the training contract, what are you left with?”

All the firms we spoke to said they would retain the current system with some kind of practical learning, coupled with a two year rotational training period irrespective of what the SRA decides. However there was concern about the signal such changes would give and the impact this would have on perceptions of the solicitor qualification.

“Dropping the regulatory burden would have an impact on clients. It is easy to underestimate the importance of the structure and the route.”

“SRA proposal leaves too much leeway for firms”

Another expressed concerns at how the UK’s competitors would respond: *“The US would see this as an opportunity to reverse the trend between US and UK law towards the US.”*

A number of firms were concerned that the removal of the training contract as a regulatory requirement, would have an impact in particular on ethical judgement and professional behaviour and client-facing commercial lawyering skills.

“The main concern would be ethics and professionalism and where and how you learn that”

One former training principal at a global firm remarked: *“A lengthier period of legal education is more favourable than QLTS [style assessments]. Students are exposed to history and precedent which make them better able to make judgment calls”.*

An assessment-only qualification, where responses to ethical dilemmas are learnt by rote was viewed as posing a serious risk of devaluing and diminishing the qualification, *“Academic rigour is lost by cramming”.*

There was a strong feeling that legal education could not be short-circuited and that the best way to learn legal judgement and commercial lawyering skills, was by working through a training contract with more experienced lawyers.

“There is a problem with testing when it comes to things such as professional conduct or ethics...It is possible to test these to some extent but traditionally they ought to be ingrained – the idea being that you learn these by being in an environment surrounded by other legal practitioners who lead by example”.

Asked whether it would effect the UK’s reputation, one firm said *“I think it would, our day to day job is to interface with people all over the world, people often mention how good the two year training contract works. I don’t think it would completely change the goalpost, but it would dilute the value.”*

In terms of social mobility and increased access to the profession, firms were unanimous in their view that (a) changes to the qualification would have no impact on social mobility, and (b) that there should be no lowering of standards in order to seek to meet a social mobility agenda. *“Even if we didn’t have [the training contract], there would be the same number of jobs.”*

If the SRA were to remove the process prior to qualification there would be *“no change, we would still want the best, who have been to the best universities with good experience”.*

There was general agreement that law firms needed to be more open and accessible to applicants from a wide variety of social backgrounds and to people changing careers.

“By cutting out that part of society that don’t go through the usual routes, we are not getting the very best. I would feel quite welcoming to alternative routes, but our main stay is the traditional one.”

In terms of international perceptions around flexible routes, one civil law trained lawyer remarked, *“Flexibility to one person is chaos to another”.*

One firm raised concerns about the exclusivity of summer internships, without which obtaining a training contract at a City firm is nearly impossible. The firm expressed the view that social mobility was getting worse rather than better with an *“international elite being able to buy their way onto international courses and internships, which restricts the pool further”¹⁵.*

There are numerous initiatives taking place within firms and more broadly to reach individuals earlier and in particular to raise aspirations about what their future career might look like – *“its about aspirations and getting people into the right universities”.* However, the decision around career choice is taken at an early stage and firms are only now seeing the results of initiatives taken 10 years ago. The qualification process is too far in the future in terms of career aspirations and the view was

¹⁵ 65 per cent of the US International student population paid for their tuition from private or family means. 19 per cent funded their courses through scholarships from US colleges or universities. Source: Institute of International Education, Open Doors Report (2014)

reiterated that whole scale changes to the qualification were more likely to devalue the qualification, than increase access to the profession.

“There is a big issue about loans, some parents [for cultural reasons] won’t let their kids borrow £20k to go to university. The big bar is around the ambition level of those kids in years nine and 10. I’ve never heard anyone say ‘It’s the SRA qualification methodology that is stopping me’, because it’s too far down the track.”

“One of the slight concerns we might have if we dispense with training contract for two years, and leave it to firms, is it gets quite complicated when you try to do lateral hiring. The beauty of the current system is that you know everyone has gone through the two years, even if firms approach it differently. But if different rules apply at different firms, what happens if they haven’t done it [two years training]? We would prejudice that individual, would we demote them, would we not take them on at all?”

5. The UK context

The solicitor profession is one, albeit the largest, segment of providers of legal services in the UK. But it is important to set this in context and recognise the other factors which give UK law its reputation.

The UK¹⁶ has an excellent global reputation for law. This is based on perceptions and experiences relating to the courts, judiciary, the practicality of the law itself, the education system and the calibre of the law firms which operate internationally. The strength of the UK's financial industry is clearly fundamental to the success of UK law, as is its position for the international community as a gateway to Europe¹⁷. The attraction of London and the fact that the English language is so widely used were also cited as reasons for the UK's legal reputation and success.

“London has cultural definition – it's very easy to be a foreigner in London – much more so than any other global city.”

“It is often the bank in the background that chooses the law, insisting that the contract for the transaction they are funding is governed by their own law.”

At a less tangible level, the UK benefits from a reputation built up over centuries as a safe, trustworthy, honest and transparent place to do business with the assistance of highly-trained, competent professionals. In a 2008 study the 'quality of judges and courts' ranked as the most important factor when choosing a dispute resolution forum for cross-border transactions¹⁸, and this is something the UK is seen to excel at:

“The British judiciary may have a reputation of being filled with old white men but it has the advantage that judges are not political appointments and they may therefore be seen as less risky.”

“London's success is down to its legal system (e.g. certainty that if people come and buy property here it will not be appropriated), the reputation of its bankers accountants and lawyers, and the reputation of its courts”

With some notable exceptions, the vast majority of the firms we spoke to felt confident in the dominant position which UK law and law firms hold. One firm told us: *“UK law is clearly the widest applied, has the widest recognition, and inspires the greatest confidence in companies and in people from outside of the UK.”*

¹⁶ The report will refer to the UK and England and Wales interchangeably throughout as most global observers are unaware of the various UK legal jurisdictions and very little data collected at a sub-UK level. It should be emphasised that the primary focus of this report are the international services provided by lawyers based primarily in the City of London, although regional firms with an international focus were also interviewed.

¹⁷ The Law Society is currently carrying out work on the Wider Economic Value of the solicitor profession.

¹⁸ See Vogenauer, Stefan (2008) *Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law*. Oxford Institute of European and Comparative Law and the Oxford Centre for Socio-Legal-Studies. Available online at: <http://denning.law.ox.ac.uk/themes/iecl/pdfs/Oxford%20Civil%20Justice%20Survey%20-%20Summary%20of%20Results,%20Final.pdf> [Accessed March 3, 2015].

Although now five years old, we know from the 2010 International Arbitration Survey by Queen Mary University of London, that London is the preferred seat of arbitration for 30 per cent of their respondents, and that English law is the governing law most frequently used in arbitrations by 40 per cent of the companies surveyed¹⁹. The CityUK Dispute Resolution Report cited the factors motivating parties to choose one of the UK's specialist courts as being: *“specialist judges drawn from the best specialist practitioners in the field; efficiency and speed; consistent decisions; enforceable judgments; and preference for London as a location.”*

Or as one of our interviewees put it:

“The internationally recognised high quality of the courts is a real asset”.

There is a perception that UK firms, to a much greater extent than their US counterparts, have tended to expand globally, even if the reality is more nuanced. Whether this is due to history, geographical status or simply the much smaller size of the UK's domestic market, it has meant that UK firms have tended to establish offices and alliances on a global scale. This has inevitably had consequences in terms of the recognition, use and reputation of England and Wales law and lawyers. One firm told us: *“English firms' global outreach means that UK law continues to be dominant, and continues to create new norms and standards.”*

Some of the partners interviewed felt that the UK government had not capitalised on the strength, resilience and entrepreneurialism of UK law on the international stage. Their view was that by comparison to UK banks, UK law firms are perceived to have retained the leadership of their firms when international mergers have occurred, although the reality is less clear-cut.

“In the 90s, international law firms had two or three offices around the world, but that's it. The UK hasn't recognised how well the magic circle firms have done in a global context.”

However, the UK's global reputation in terms of use of law is complex and hard to measure. A small number of studies have been undertaken looking at the popularity of particular laws for use in cross-border contracts and the reasons why these laws may be more attractive for international business. These employ a range of methodologies, however given the essentially confidential nature of these transactions, empirical data is difficult to obtain and we are therefore largely dependent on surveys such as the 2010 International Arbitration Survey.

“When it comes to choice of law you need to look not only at what is done, but why this is the case. From an objective point of view, it will not always be done for the 'right' reason. Reasons can be emotive and it seems that decisions are often not made rationally. In this sense marketing may actually be better than arguments if you are trying to promote a particular law.”

Although the International Arbitration Survey suggests that choice of law is the result of careful consideration, there is also a body of work that suggests that perception is

¹⁹ The research was based on 136 questionnaire responses and 67 in-depth interviews of General Counsel from a range of geographic regions.

key²⁰. Research by Stefan Vogenauer suggests that even with actors who appreciate the potential benefits of carrying out analysis of the relative merits of particular contract laws, factors such as time and cost will tend to limit their ability to do so. They are therefore likely to resort to alternative methods for choosing a law for their contract which are more time and/or cost effective²¹, for example, they may therefore look to standard form contracts or an industry precedent or standard, rely on the reputation of a particular law, or resort to one with which they are more familiar on the basis that it is less likely to have unexpected negative consequences. This research suggests that claims that English law is ‘better’ or ‘more flexible’ are at best unsupported²².

“It’s to do with how other countries view the UK. It’s not inherently to do with quality”

Linked to this body of research that emphasises the ‘softer’ aspects of perception over concrete differences in different legal systems, is the British Council research on trust. The British Council has conducted research to investigate how international cultural relationships build trust in the UK and underpin the success of the UK economy. The results showed that: *“those who have had involvement in cultural relations – arts, education and English language activities – with the UK have greater trust in people from the UK. They also show that a higher level of trust in people from the UK is associated with a higher level of interest in doing business and trading with the UK.”*

The British Council has been able to ascertain that participation in one or more cultural relations activities with the UK is associated with an increase in the average level of trust in people in the UK of between seven and 26 percentage points. Furthermore it found that increased levels of trust in people in the UK are associated with a significantly higher level of interest in opportunities for business and trade with the UK.

“Economists have long argued that trust is an important factor in international business and trade because it lowers the formal costs of doing business – in simple terms, higher trust means lower risks, transaction costs and contract fees for lawyers.”²³

“The Swedish Institute...are seeking to establish an economic value for trust between countries and resulting increased foreign direct investment, exports and imports. Their work indicates that countries with higher degrees of trust between them invest and trade with each other more in both directions.”²⁴

It is also particularly interesting to note how well the UK compares against international competitors in terms of the level of trust shown towards people from the UK. The chart below²⁵ shows that in the 10 countries surveyed, there was net trust in

²⁰ Vogenauer, Stefan (2013) ‘Regulatory Competition through Choice of Law and Choice of Forum in Europe: Theory and Evidence,’ *European Review of Private Law*, 1, pp.13-78 (see especially pp. 19-20)

²¹ *Ibid* at pp 23-26

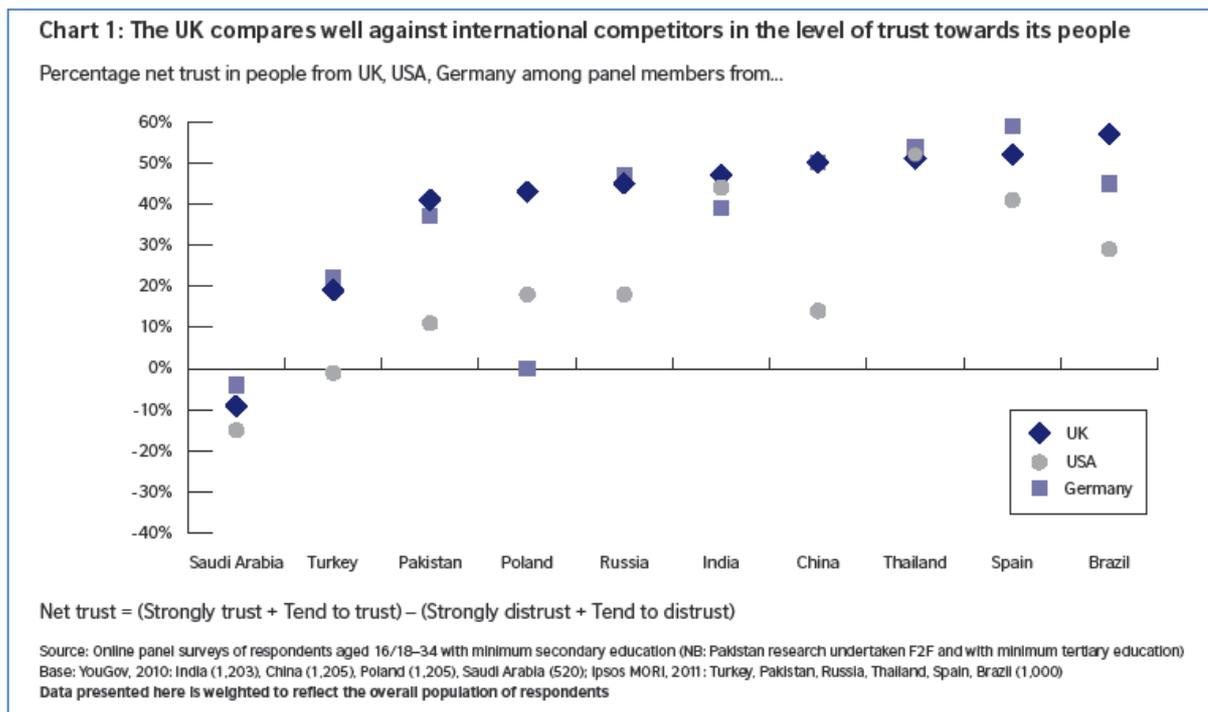
²² *Ibid*

²³ British Council (2012), *Trust pays*.

²⁴ British Council (2013), *Influence and Attraction*.

²⁵ Taken from British Council (2012) *Trust pays*.

the UK from all countries except Saudi Arabia, and that trust in the UK was higher than the US in all countries except Thailand. The report concludes that “Clearly, the UK benefits from its historic connections through the Commonwealth to countries such as India and Pakistan, but high levels of trust among ‘young people with potential’ in a country such as Brazil show that that this is not the only factor at work.”



One of the key ways in which cultural relations and trust are established is through education. A number of firms mentioned they were concerned that the US in particular appears to be stealing a march on the UK in terms of attracting international students, particularly from emerging markets.

“Education exchanges are generally acknowledged to be one of the most powerful and long-lasting influences on attitudes. The US strong commitment to welcoming overseas students correlates with the continued high standing of the US in surveys by the Anholt-GfK Roper Brands Index and the Pew Global Attitudes survey.”²⁶

Or as an academic put it to us:

“The importance of attracting students from abroad for higher education should not be underestimated. NYU has many students from Latin America – something the UK seems to have missed out on.”

Both the academic comparative law research and that carried out by the British Council suggest that choice of law and jurisdiction is bound up with a number of intangible long-term factors which cannot be easily isolated in a very complex global environment. Both strands of research emphasise the essentially arational nature of

²⁶ British Council (2013), *Influence and Attraction..* The report also highlights the effectiveness of long-term funding for the US Fulbright Scholarships, and the recent cuts by the UK Foreign Office to funding scholarships from £31.3 million (2008-9), to £16.9 million (2011-12), and £19 million (2012-13).

even seemingly important decisions and emphasise the potentially significant impact of cultural interventions such as school exchanges and international secondments.

This largely unquantifiable perceived dominance may explain the unease felt by some firms about the long-term stability of this dominant position. The firms we interviewed highlighted a number of perceived threats to the future growth and success of UK law, and these can be broadly categorised as:

- A. Factors which could make London and the UK less attractive to clients (and which the UK has some control over):
- UK courts and/or judiciary becoming less competitive, in terms of costs²⁷ and ease of access as compared to its main competitors²⁸
 - UK immigration rules making it harder for companies, students and other individuals to study and do business in the UK, which might in turn give the impression that the UK is hostile to international investors and students²⁹

“The level of trust in people from the UK is ... highly correlated with perceptions that people from the UK are open, welcoming, tolerant and respectful of difference.”³⁰

- concerns around the gradual erosion of the UK as a safe, trustworthy, transparent, established, place to do business. For example, one firm felt that there were significant reputational risks associated with advising clients in jurisdictions which had significantly lower standards of acceptable practice
- fears surrounding the UK’s potential exit from the EU with its consequent impact on the UK and London as an entry point for EU investment³¹

“We have an advantage in the fact that London is a financial centre, but we might have a problem if we were to leave Europe.”

- finally and most pertinently given the focus of this report, the long-term erosion of the reputation of UK lawyers, due in part to decreasing standards and competence

²⁷ Lein, Eva, McCorquodale, Robert, McNamara, Lawrence, Kupleyants, Hayk and Rio, José del (2015) *Factors Influencing International Litigants' Decisions to Bring Commercial Claims to the London Based Courts*. Ministry of Justice Analytical Series. Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396343/factors-influencing-international-litigants-with-commercial-claims.pdf [Accessed March 3, 2015]. The study reports that 61 per cent of the respondents (97) thought that increased costs could have an adverse effect on decisions to litigate here. The anticipated negative consequences were attributed not only to the increased cost in monetary terms (albeit that this may be particularly relevant in the current economic climate) but also concerns that increased fees might be perceived as "an unjustifiable "tax-like" payment" (see p4), particularly if they were intended to subsidise other parts of the civil justice system (p 24)

²⁸ Britain remains competitive according to the World Bank *Doing Business* report which measures the number of years taken to enforce a contract and resolve an insolvency in key economies.

²⁹ Australia made changes to its student immigration regime in October 2013, explicitly with the intention of boosting student revenue. ICEF Monitor (17 October 2013) *New AEI statistics point to strengthening enrolment trends in Australia*

³⁰ British Council (2012), *Trust pays*.

³¹ <http://www.thetimes.co.uk/tto/law/article4223701.ece>

and

B. Factors which might draw clients away from London/the UK market (and which the UK has little or no control over):

- major emerging economy (e.g. China or Russia) determining for political reasons that their government/state contracts will be governed by their law and litigated in their own courts. *“Local assertiveness erodes the use of English law...state-owned enterprises are under pressure to use Russian court and laws”*
- US financial market recovering more quickly and successfully than the UK market and dominating emerging markets³², with consequent impacts on the City firms who are dependent on London maintaining its position as a key financial centre.

“As the US economy comes back like a lion, we are seeing work being taken away from this jurisdiction, because the US is eating us.”

- long-term impact that the US will have by being more effective at encouraging students from emerging economies to study and qualify in the US, with this having a knock-on effect on perceptions and bias when these individuals become clients and decision-makers themselves.

“The Californian Bar has loosened up its own restrictions [on eligibility], so maybe that would be a new competitor on the market.”

- concerns about firms being squeezed on costs by leaner, perhaps more ruthless US firms who tend to be both cheaper and more profitable. PwC's latest Law Firms' Survey again shows a significant differential between US and UK top tier firms, with US firms showing a net profit margin of 47 per cent as against 37 per cent for the UK³³

“We're not concerned about more people doing the New York Bar and that would reduce the use of English law. We're more aware of US firms being more competitive, but that's nothing to do with qualifications, it's a brand thing. They are so good and aggressive, and challenging what the City does.”

- concerns around other litigation and arbitration centres becoming more attractive e.g. New York, Hong Kong or Singapore.

“The two competitor jurisdictions to watch out for are Singapore and Hong Kong. Not only do they have a strong reputation as financial hubs, but they also hold the advantage of their physical location between China and the West. They are known for having good and reliable courts”.

And in relation to the Vienna Convention. *“The UK has not signed this, possibly because of fears that it would lose its competitive edge if it did*

³²According to the Hong Kong Law Society, in 2014, the number of US lawyers registered as foreign lawyers in Hong Kong outnumbered those from England and Wales by 503 to 305.

³³<http://www.pwc.co.uk/business-services/law-firms/home.jhtml>

so. The flip-side is that English lawyers are likely to be excluded from litigation or arbitration work.”

“At the moment no-one trusts the Chinese court or arbitration system, and that saves us.”

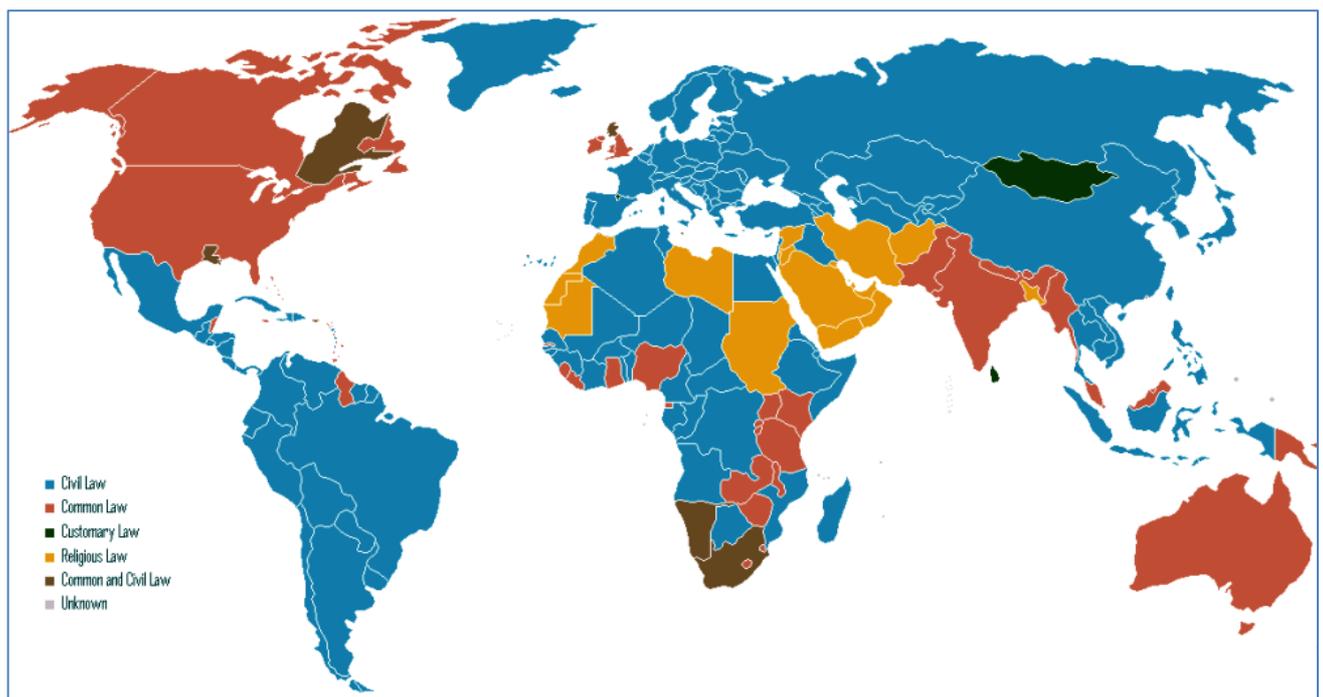
6. The Global context

UK law plays a major role in a highly competitive global market. The question of which laws and legal systems dominate is a subject of much debate, marketing and rhetoric. However given the fears expressed by the firms in the previous section, it is valuable to assess the available evidence and consider what it tells us about the global position.

The global legal market can be assessed in several different ways:

- the distribution of different types of governing law e.g. common or civil
- the dominance of firms with head offices in particular jurisdictions
- the use of law in commercial contracts
- the use of the courts or arbitration centres in particular jurisdictions
- the use of lawyers qualified in particular jurisdictions

As highlighted in the diagram below, in terms of geographical spread, civil law jurisdictions dominate the world.



Similarly, although the world's leading economy (the US) is a common law jurisdiction, seven out of 10 of the world's leading economies are civil law jurisdictions³⁴.

Rank	Country	Legal system	GDP
1	US	Common Law	17,528
2	China	Civil Law	10,028
3	Japan	Civil Law	4,846
4	Germany	Civil Law	3,794
5	UK	Common Law	2,828
6	France	Civil Law	2,827
7	Brazil	Civil Law	2,216
8	Italy	Civil Law	2,127
9	India	Common Law	1,996
10	Russia	Civil Law	1,932

However in terms of firms facilitating international transactions, common law firms, have tended to dominate. In the specific example of global M&A deals, according to Bloomberg³⁵ US firms, dominate the market by volume and market share. However UK firms represent 25 per cent of the market in terms of deal count and Freshfields Bruckhaus Deringer was ranked fourth by deal value in Mergermarket's recently published global league table³⁶, with several other UK firms featuring in the global top 10 by deal count.

In terms of global brand and reputation of law firms, the largest firms based in the City of London consistently rank highly in the Acritas Global Law Firm Brand Index (see below). In 2014 seven out of the top 10 firms, were at first glance UK firms³⁷.

1	Baker & McKenzie	US
2	Clifford Chance	UK
3	Norton Rose Fulbright	UK
4	DLA Piper	UK
5	Linklaters	UK
6	Freshfields Bruckhaus Deringer	UK
7	Allen & Overy	UK
8	Hogan Lovells	UK
9	Jones Day	US
10	Skadden	US

Source: Acritas Global Law Firm Brand Index

³⁴ Figures taken from *The Cebr Global World Economic League Table for 2014*.

³⁵ <http://www.bloomberg.com/professional/content/uploads/sites/2/2015/01/Bloomberg-2014-MA-Legal-League-Rankings.pdf>

³⁶ <http://www.mergermarket.com/pdf/MergermarketTrendReport.2014.LegalAdvisorLeagueTables.pdf>

³⁷ <http://www.acritas.com/GlobalEliteBrandIndex2014>

This table also highlights the increasing blurring of the lines between UK and US firms. Although Baker & McKenzie originated in the US, London is now their largest office. Norton Rose Fulbright, DLA Piper and Hogan Lovells, have all merged with US firms, and Freshfields, through amongst other things, the appointment of key US lawyers to their M&A practice, is reported to be looking to discard its UK 'magic circle' reputation and rebrand itself as a global firm able to take on Wall Street³⁸.

In relation to choice of law and seat of arbitration, the UK's main competitor in the European context, is Switzerland³⁹.

"The Swiss have really good and solid judges... They have a trusted legal system which contributes to the attractiveness of using Swiss law."

Swiss law has a reputation for neutrality which may have arisen for a number of reasons:

- the country's long-standing reputation of political neutrality
- the idea of Switzerland as a neutral arbitration venue because the Swiss courts do not interfere with arbitrations, or
- it may be regarded as 'neutral' because it has traditionally borrowed from other legal systems⁴⁰ and may therefore offer familiar elements to parties from a number of civil law jurisdictions which could in turn make it more attractive

A further factor which could attract European parties to Swiss law, is its trilingual nature. Swiss law is consequently seen as more accessible to parties who are native speakers, or regularly conduct business, in German, French or Italian.

Outside Europe, New York law is the UK's main competitor, indeed in particular areas of law, (e.g. high yield, capital markets), New York law dominates. The 2010 International Arbitration Survey recorded that New York law was the governing law in 17 per cent of the arbitrations of the companies surveyed⁴¹ and six per cent cited New York as their preferred seat.

The New York State Bar Association's recent brochure⁴² makes specific reference amongst other things to the global business reputation of New York law for cross-border transactions, how New York is positioned "*in the great tradition of common law with its emphasis on stability, predictability and incremental development of legal standards in their factual context*", for the expertise of practitioners and its adherence to international standards and agreements.

Opinions expressed in the interviews on the US and New York were not wholly positive however:

³⁸ Freshfields: in a league of its own *The Lawyer* 29 September 2014

³⁹ 2010 International Arbitration Survey

⁴⁰ Cuniberti, Giles (2014), 'The International Market for Contracts: The Most Attractive Contract Laws' *Northwester Journal of International Law & Business*, Volume 4 (Issue 3) at p 485

⁴¹ English & Welsh law accounted for 40 per cent, Swiss law for eight per cent.

⁴² 'Choose New York Law for International Commercial Transactions' (October 2014)

“The perception of the US system is that it’s political. American contracts are very complex and they have mega punitive damages...it has made a lot of enemies over the last decade.”

“People are scared of the US courts. The image of [US] law is affected by what people think of the courts.”

One partner we interviewed identified the extraterritoriality of US law and regulations as being of particular concern. As the territorial reach of certain, especially financial, regulation expands and applies to companies with any registered business in the US, he felt this would increase the demand for advice from US-qualified practitioners outside the US and therefore the influence and use of US law even on transactions ostensibly governed by another jurisdiction’s laws.

It is hard, if not impossible, to disaggregate the value attached to lawyers qualified in a particular jurisdiction, from other defining features of that jurisdiction such as the reputation and standing of the big brand law firms, the reputation of the courts and legal system and financial services and corporate sectors. This theme of how and whether it is possible to distinguish the qualities and value attributed to the qualification, and that attributed to the wider legal sector of a particular jurisdiction, recurs throughout the report. However, what is clear from the firms and individuals we have spoken to, is that for international lawyers or students from emerging markets wishing to qualify in a jurisdiction other than their own, there are two main choices – the New York Bar or England and Wales (solicitor or barrister).

In more localised markets, the qualifications of Hong Kong, Germany and Australia, were also mentioned as being well-respected. These reputations, although influenced by the reputation of the jurisdiction as whole (such as strength and reputation of the law firms and efficiency of the court system) are also influenced by the process which is taken to qualify in each jurisdiction⁴³.

As mentioned, New York is seen as the main international rival qualification to the England and Wales solicitor, *“no other qualifications come anywhere near”* and there has been some pressure in recent years to make the England and Wales qualification more like the New York Bar’s licensure arrangements⁴⁴. For example, in 2011 the Financial Times published an article which *“called for a radical rethink in the way solicitors qualify, to assure London’s pre-eminence as a global law centre”*.

The view taken in this article was that the training contract was acting as a barrier, and that given a choice, aspiring lawyers would choose to qualify in the US instead where there was no such barrier to qualification.

The article quotes the then chief executive of the then College of Law, Nigel Savage saying:

“Under the current regulatory regimes the US model wins hands down given the relative ease of access that enables global students to sit the New York Bar exams”

⁴³ Further details of these qualifications are at Annex 2.

⁴⁴ See Annex 2 for further details. Essentially the New York qualification involves five years of study and no practical experience.

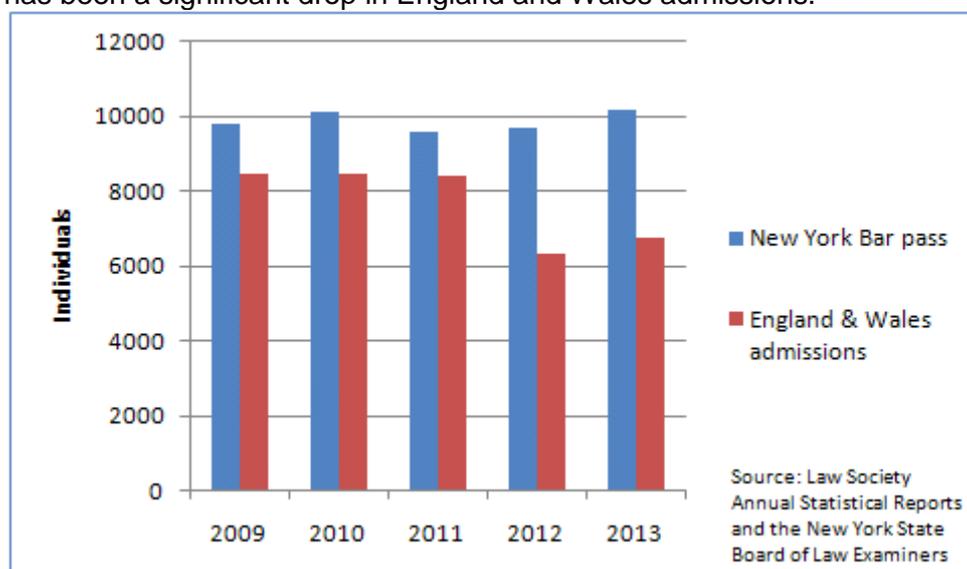
And David Morley (Senior Partner at Allen & Overy) is quoted in the article saying in relation to the attractiveness of the US as a place to study law:

“Unless the UK government and regulators address this issue at the strategic level there is a significant risk that it will erode the influence of English law on global legal transactions”

And this was a view reinforced in one of our interviews:

“If there was a population of in-house lawyers that grew up on the New York Bar, over 20 years they could dominate the market. It would be decades, not years.”

The following table compares the numbers passing the New York Bar Examination with the numbers being admitted in England and Wales. In the last few years there has been a significant drop in England and Wales admissions.



There are two key issues in play in this article, firstly, the attractiveness of the US/New York system of licensure which is exam only and which appeals to international students who want to get an internationally recognised qualification quickly - known as 'international arbitrage'. Secondly, the attraction of US education and, for the reasons mentioned earlier in relation to cultural relations, the impact that may have on the UK legal profession.

To take the first of those issues. Views are divided about the efficacy of the US qualification in producing lawyers ready to work with clients. As a counter to the views expressed in the FT, we were told:

“US newly qualifieds don't know anything about practice and need to train.”

A more nuanced version of this viewpoint is considered in detail in a report by the American Bar Association Task Force which has been tasked with examining perceived problems and conditions in American legal education as a whole. The perceived problems relate primarily to the cost of qualifying which has *“resulted in great financial stress on law schools, damage to career and economic prospects of*

many recent graduates, and diminished public confidence in the system of legal education”⁴⁵. In its January 2014 report the Task Force concluded that:

“The core purpose common to all law schools is to prepare individuals to provide legal and related services in a professionally responsible fashion. This elementary fact is often minimised. The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard ... Yet there is a need to do much more....The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.”

The Task Force has heard from graduates who complained that they had received: *“insufficient development of core competencies that make one an effective lawyer, particularly those relating to representation and service to clients.”* Consequently, the Task Force recommends:

“Shifting bar examination design toward greater emphasis on assessment of skills [which would] tend to encourage greater reliance on experiential learning in law schools.”

It would be fair therefore to say that the jury is out as to whether the New York/US model of qualifying without any stipulated practical experience, is in fact ‘better’ than the England and Wales model. There is certainly a debate to be had in both the States and England and Wales as to whether the qualification is simply a qualification or whether, inherent in any *professional* qualification is the need to be able to competently function as a lawyer in practice.

Turning to the second point raised by the FT article, in terms of the threat which the US poses to the UK by attracting more international students, a number of the firms we spoke to emphasised the importance of the UK’s attraction for international students:

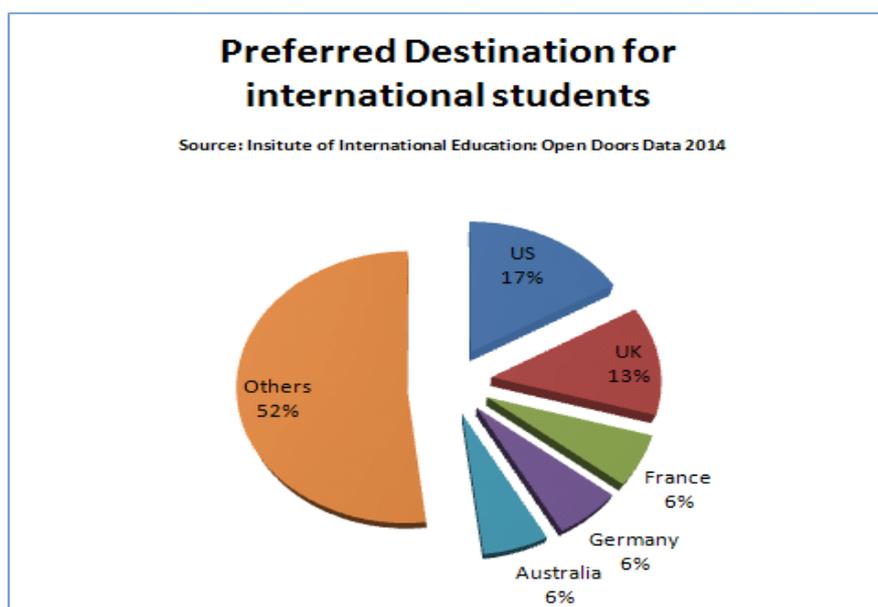
“If we want to keep the UK headquartered law firms as the leading international law firms, we need to continue to attract the best legal talent from around the world.”

“For UK plc we need to do more to have an association with colleges globally so that they know they can come to the UK”

The US attracts the highest numbers of international students each year. The latest figures for 2013/14 showed that 886,052 international students were studying in the US, which is an eight per cent increase on the previous year. However, despite this increase, America’s market share is falling (from about 23 per cent of all internationally mobile students in 2000 to 17 per cent in 2011). This is partly due to the increasing share of other English-speaking destinations, such as the UK, Australia, and Canada. But it also reflects a growing trend to intra-regional mobility – that is, to a growing number of students who study outside their home country but

⁴⁵ Report and Recommendations, American Bar Association Task Force on the Future of Legal Education (January 2014)

within their home region, most noticeably within Asia and is reflected in the sizeable 'others' category in the chart below.



Although the UK has the second largest international student population, that is still approximately half the numbers going to the US⁴⁶ and the Anholt-GfK Roper Nation Brands Index placed the UK fourth in 2013 behind US, Canada and Germany. Furthermore, British Council research results ranks the US as most attractive country for international students (60 per cent), UK and Australia on 36 per cent⁴⁷.

A number of observations can therefore be made in relation to the New York Bar:

- ostensibly, the New York Bar and QLTS compete in attracting lawyers and students from emerging markets. However, it is likely that these decisions are made long before exams are taken, and are influenced by the availability of scholarships, schools, immigration requirements, work permits, and also by softer contacts and influences such as location of relatives, perceptions and views relating to global politics

As the chart below shows, far more 'foreign educated' lawyers are now passing the New York Bar than the QLTS.

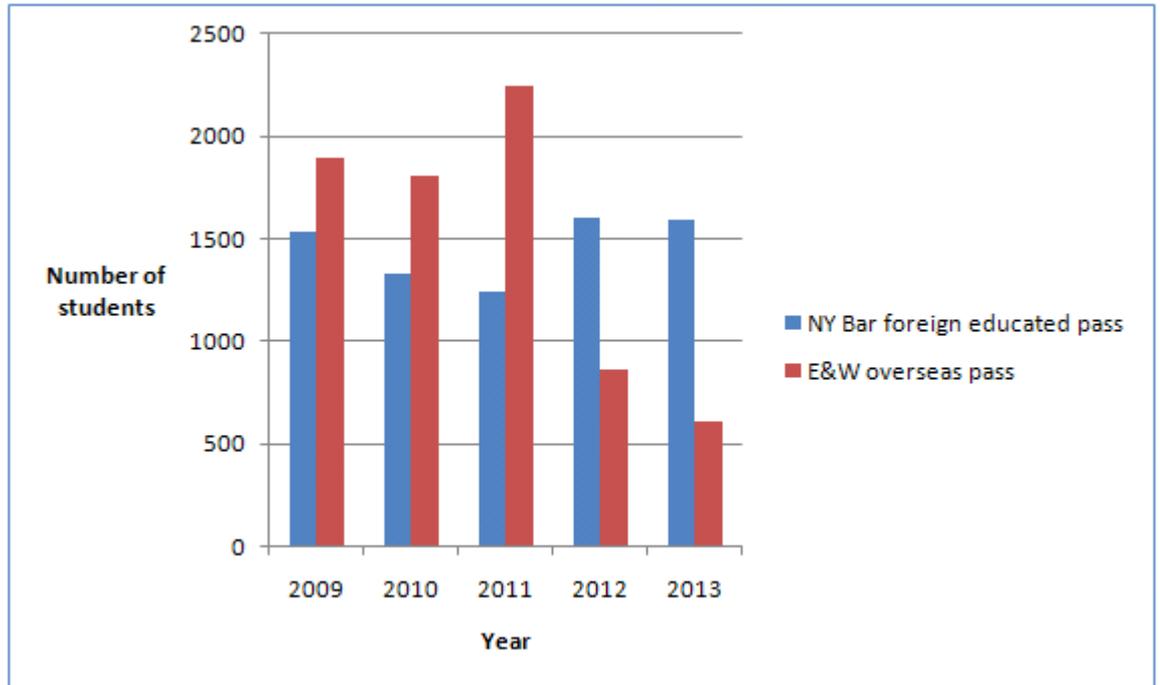
One firm told us:

"We need to be very mindful of the US. In the emerging markets lawyers have two choices, to go to US or UK to do an LLM. The perception is that it's easy to qualify in the US. The problem for us is that lawyers who go to study in the US and do the New York Bar will end up working for US firms, or are more likely to instruct US law firms or use US law documents. It changes the

⁴⁶ 2014 Open Doors Report on International Educational Exchange

⁴⁷ British Council (2014), *As others see us*.

balance. We should market the UK qualification better, otherwise there is risk of US primacy over the UK.”



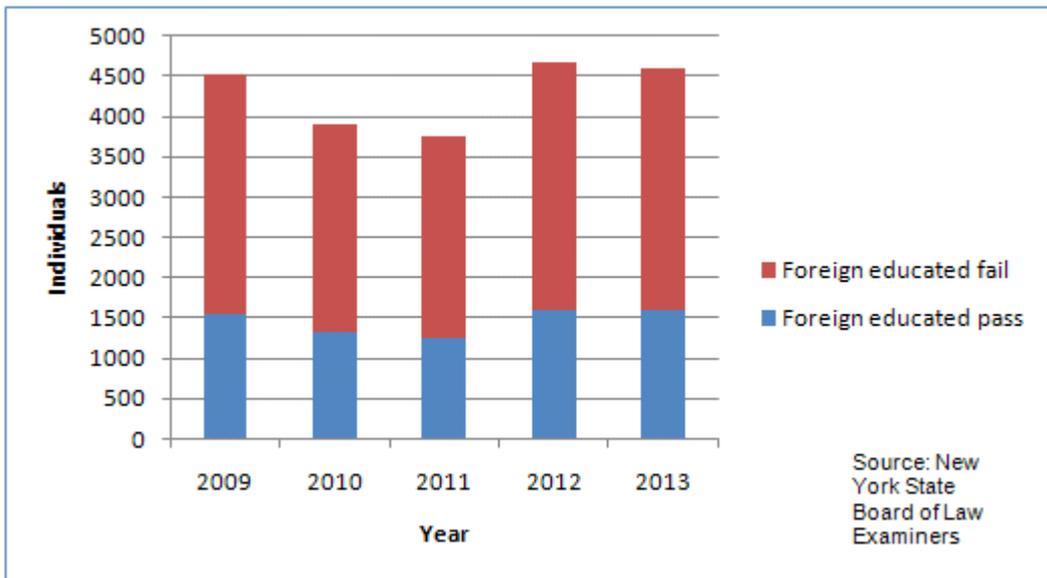
Source: New York State Board of Examiners and Law Society Annual Statistical Reports⁴⁸.

- the New York Bar is well-established but very difficult to pass, especially for individuals educated outside of the US. The figures below show that the pass rate for ‘foreign-educated’⁴⁹ individuals, is slightly over 30 per cent. It is also viewed as protectionist as eligibility is complicated and lacking in transparency.⁵⁰

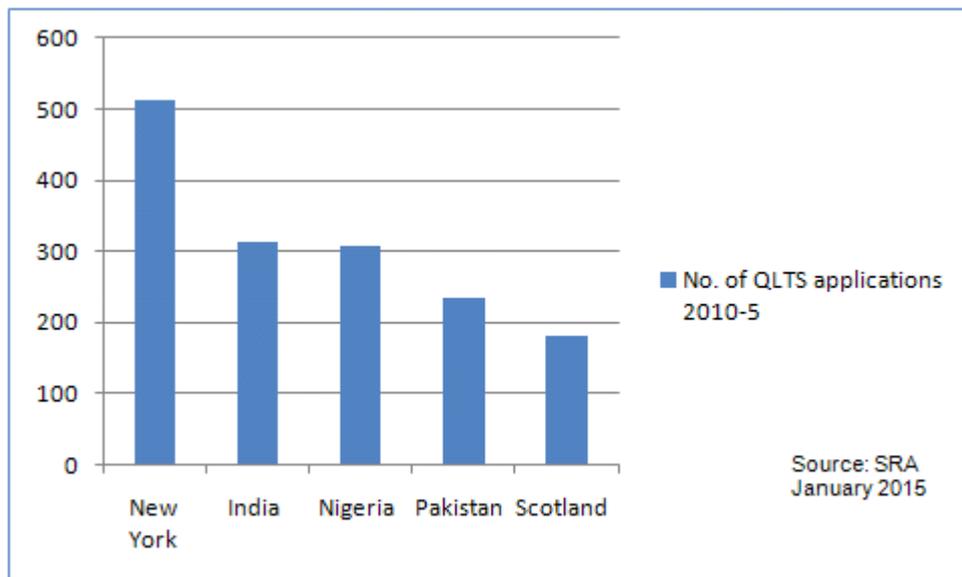
⁴⁸ The figures for England and Wales do not include transferring England and Wales barristers, although they do include transfer from Northern Ireland, Scotland and the Isle of Man.

⁴⁹ ‘Foreign educated’ has a meaning set by the New York State Board of Law Examiners - see www.nybarexam.org/Foreign/ForeignLegalEducation.htm

⁵⁰ Overall JD numbers in the US are dropping, from 145,239 in 2009/10 to 139,055 in 2012/13. Source: American Bar Association.



- those with the New York Bar qualification make up the largest numbers taking and passing the QLTS since 2010, accounting for 11 per cent of those applying⁵¹ and 17 per cent of those admitted.



Given that it is possible to take the New York Bar exams if you have a UK law degree (i.e. an individual need not have qualified as a solicitor), it has been suggested that the New York Bar is being used as a route to circumvent difficulties encountered by England and Wales students in obtaining a training contract. However in 2013, UK candidates accounted for only 566 (3.6 per cent) of the 15,846 candidates taking the New York Bar Exam.

⁵¹ 520 have applied out of a total of 4594, and 121 have been admitted out of a total of 702. Source: SRA, January 2014.

- echoing the ABA Task Force's findings, the New York Bar qualification on its own, without experience, is not viewed highly by London firms, indeed in some cases it attracts a certain amount of suspicion.

Firms and recruiters are sceptical of individuals who appear to be taking alternative routes or circumnavigating the regulatory frameworks of other jurisdictions. At least one firm we spoke to routinely puts New York Bar newly-qualified lawyers through the LPC, and one recruiter reported that UK law graduates who had used the New York Bar to get around the training contract bottle-neck, routinely found themselves working as paralegals in the UK⁵².

A recruiter remarked: *"Firms don't like people circumventing the conventional route, they like to see something interesting on the CV but prefer conventional qualifications and routes to taking them."*

Transfer tests – New York Bar and QLTS

Given the attention paid to the transfer tests as a barometer for the competition between New York and England and Wales law, it seems appropriate to report on the views expressed by firms and recruiters about the tests.

The New York Bar and QLTS are often marketed as offering a rags to riches solution to aspiring lawyers. However not one recruiter or law firm that we spoke to would place any significant value on an individual with one of these qualifications who had no practical experience to back up their qualification. One recruiter told us: *"Nobody requests the New York Bar"*. Both the New York Bar and QLTS are assessment-only qualifications, and the message was clear from both recruiters and firms, that individuals would not be recruited unless (a) the firm had a need for lawyers from their jurisdiction, and (b) they could show them that they had gained practical lawyering skills, preferably with a well-respected law firm, in their own jurisdiction.

One recruiter told us: *"Firms don't look for dual qualified lawyers. If they want a Brazilian lawyer, they will recruit a Brazilian lawyer, the addition of the QLTS won't help. Recruiters and firms don't know which box to put a Brazilian lawyer with a QLTS into. Very few firms would be interested in such a candidate"*.

"We look behind the qualification that they have, so we look at experience and what they have on their CV. If they have the New York Bar, we know that they will be academically grounded, but we'll still want to see if they've got relevant experience. If someone qualified in a more exotic jurisdiction, the most important thing will be their experience and how they fit in with the team".

"If someone has the New York Bar or QLTS but has little experience, we'd be very circumspect about hiring them. But if we had an Australian lawyer who'd

⁵² It is noticeable that BARBRI, perhaps the most well known preparation training for the New York Bar, have now established themselves at Kings College London to cater to this market.

done five years in a top firm in Sydney, we'd be fine with it, QLTS would be OK but not compulsory."

There was a minority view that being dual qualified: *"showed a broader, international perspective"*, however recruiters generally advise potential applicants not to take the QLTS because experience is more important. We were told, *"If firms said they wouldn't recruit without it, then recruiters would advise differently"*. This reflects the change in practice, certainly with London firms, since the more onerous QLTS replaced the QLTT in 2010 – under the QLTT, it was common for international lawyers working in the City to take the transfer test as it was cheap and relatively easy. It also seems to suggest that firms see numbers qualifying into the jurisdiction of limited importance in terms of UK law's global competitiveness, otherwise they would presumably routinely ensure their international lateral hires took the QLTS.

For some individuals in specific circumstances, the transfer test route to qualification does serve a useful purpose. We spoke to a lawyer with one of the large global firms based in Prague who had recently qualified as an English and Welsh solicitor via the QLTS. His motivation for taking the QLTS had been to meet the needs of clients based in Eastern Europe who wanted transactions governed by English law, but had no desire for the increased cost and inconvenience of running a deal through London.

"English law done from London is simply too expensive for the clients in emerging markets, and is not practical."

"Previously there was a clear division of work done from London and those done in the region, this division is becoming smaller. People are able and willing to provide English law capacity in the region"

His firm's policy is to requalify lawyers who will be advising on England and Wales law via the QLTS, and to ensure that they spend 2 years gaining experience as part of that process.

"QLTS in and of itself would not be seen by the client as proof of proficiency in English law. There should be a practical element to it."

"QLTS is a sell for clients...important for client to know that lawyers are England and Wales qualified"

Another firm remarked that: *"The way firms are working, deals are outside London, so [we] are looking for individuals who will go back to their country after gaining UK experience and once they've been trained up to [our] standards"*

There are sometimes calls for there to be a quick 'corporate only' qualification for internationally mobile senior lawyers with no time or interest in a generalist qualification and learning about areas of law which they will never advise on in practice and this was certainly a view voiced by a number of firms when the SRA consulted on the QLTS proposals in 2009. This was echoed by a couple of partners we spoke to:

"If there was a mechanism through which [the best legal talent] could be requalified as lawyers entitled to operate in an English law context, which only tested relevant areas (no probate or real estate) this might help get lawyers to

come to London and work here. This would be recognition that the UK regulators understand the industry they regulate.”

However, most firms we spoke to were in favour of retaining a generalist qualification, and a number voiced concerns about the erosion of the value of the England and Wales qualification by making it too easy to ‘get the badge’.

“There is a risk of people using a particular route to get a badge and then in using that badge, meaning it is devalued if they are not of the same standard.”

7. Conclusions

The legal market is clearly dynamic and constantly evolving. Firms which have historically branded themselves as UK law firms, are now seeing themselves as global and there have been a number of significant US-UK mergers in recent years (Hogan Lovells, Norton Rose Fulbright, Herbert Smith Freehills). This in itself raises questions about the relevance of choice of law and qualification to the major players in the international market, and whether the legal market is now supra-national and determined by firm brand rather than jurisdiction. As one firm expressed to us the qualification is *“important but not part of their brand in a global firm sense”*.

Most firms we spoke to viewed the qualification as a key building block on which their and UK law’s reputations have been built, but it was increasingly the firm’s international brand and what they can offer clients that is of primary importance as opposed to the qualification.

However, despite being quite rightly proud of the global presence of UK law firms, it is clear that firms are of the view that the underlying qualification still forms an important role in that reputation. One partner put it lucidly when he said:

“The regulator must take care of what the title means and what standards are behind it. The international credibility of the qualification is at stake if this is threatened. If you erode the title, you erode English law as a commodity.”

Until 2007 when the Legal Services Act came into force, the Law Society was both the regulator and representative body of solicitors in England and Wales and as such, it monitored the qualification process and processed admissions. However the Legal Services Act required the Law Society to split its regulatory and representative functions. Although, both functions currently remain within the Law Society Group, this led to the creation of the largely independent Solicitors Regulation Authority (SRA), which was allocated responsibility for licensure arrangements.

Seven years on, it is evident that this has brought about the end to profession-led regulation as had existed for the previous 150 years, with consequent implications for the qualification and title of solicitor.

Unlike those jurisdictions whose firms have little or no input into the qualification, due to the key role of the training contract in the England and Wales qualification, the brand and reputation of the solicitor qualification of England and Wales are strongly linked to the firm or body that an individual trained with. The qualification on its own has less impact than the qualification plus the experience in the form of a training contract, at a firm.

This raises interesting and potentially quite difficult issues when it comes to the reform of the qualification, because the priorities of the regulatory body, may no longer align with the priorities of solicitors, or indeed others such as the UK Government who also have an interest in the successful export of UK law high quality legal services.

These competing priorities can most clearly be seen in the tension between the regulator and international City firms. The regulator, in accordance with their statutory

regulatory objectives⁵³, wants to “improve access to justice” and “encourage an independent, strong, diverse and effective legal profession”. Therefore they want to reduce any seemingly unnecessary barriers to qualification to ensure that there is a plentiful supply of solicitors available to service a broad customer base at a cost-effective price to the consumer. The City firms by contrast, have established global reputations on the basis of being high quality providers of legal services, backed by a respected, robust and demanding qualification. Their needs have far-reaching ramifications in terms of the global position, reputation and success of UK plc.

⁵³ <http://www.legislation.gov.uk/ukpga/2007/29/part/1>

Annex 1

List of those interviewed

	Headquarters	Offices	Countries
Law firms			
Allen & Overy	London	46	32
Aughton Ainsworth	Manchester	1	1
Baker & McKenzie	Chicago	77	47
Berwin Leighton Paisner	London	12	
Clifford Chance	London	36	26
Clyde & Co	London	38*	20*
DLA Piper	London	52	32
Freshfields Bruckhaus Deringer	London	27	
Hill Dickinson	Liverpool	9	5
Hogan Lovells	London/ Washington DC	41	25
Linklaters	London	29	
Norton Rose	UK	50+	
White & Case	New York	40	28
Accountancy firms			
Deloitte	UK	100+	
PwC	UK		
Recruitment agencies			
GMK	London	1	1
Heidrick & Struggles	Chicago	51	30
Hydrogen Group	London	10	8
Marsden Group		3	3
SR Search		8	6

Academics

Stefan Vogenauer – Brasenose College, Oxford University

Duncan Fairgrieve – British Institute of International and Comparative Law

Education providers

University of Law

Annex 2

New York/US

The route to qualification in the US consists of an undergraduate non-law degree, a two year Juris Doctorate, followed by the relevant state exams such as the New York Bar. To qualify for admission to the New York Bar, an applicant must pass both the New York Bar exams together with the Multistate Professional Responsibility Examination (MPRE). The assessments required of international lawyers are the same as those taken by domestic applicants, although the eligibility requirements are complex and the Bar's policies widely viewed as protectionist.

Hong Kong

Domestic students must undertake a three year LLB course⁵⁴ followed by the Postgraduate Certificate in Laws (PCLL). The PCLL is an intensive one year full-time (or two year part-time) professional legal qualification programme. It is the HK equivalent of the LPC. After successfully completing the PCLL, prospective solicitors must complete a two year training contract as a trainee solicitor. International students with an LLB only must take the PCLL. International solicitors take the Qualified Lawyers Qualification Examination (QLQE) to qualify.

The Hong Kong qualification has a good reputation with the firms we spoke to. It is increasingly viewed as a good qualification to have in its own right and fewer lawyers are reporting the need to dual qualify (in New York or England and Wales) if they are already qualified in Hong Kong. One firm did report that it was onerous and time-consuming to requalify in Hong Kong and highlighted a key cultural difference in the training: *“there is no acceptance of the importance of business development.”*

Germany

In order to qualify as a German *Rechtsanwalt*, a student must study for around four and a half years at a university. During this time they must pass Staatsexamen 1 as part of University degree. The Staatsexamen 1 has a high fail rate⁵⁵ and is administered by the Ministry of Justice.

Following the Staatsexamen 1, students must complete a two year training course which is paid for by state. Students rotate around various settings, spending time with a civil law judge, a prosecutor (or criminal law judge), in an administration office, and at least nine months of training with a lawyer. Students must then take and pass Staatsexamen 2. There is no 'transfer' procedure for lawyers qualified outside the EU to requalify as a lawyer in Germany.

We spoke to a German in-house lawyer of a large multinational company who described the main distinction between the German qualification and the solicitor qualification, as *“preparation for private practice”*. The German qualification is much more academic and prepares lawyers for a career in the judiciary.

“If a student wants to do corporate work, then they would need to study further in addition to the qualification or on the job, the qualification does not prepare you”.

⁵⁴ Or a JD, or the Graduate Diploma in English and Hong Kong Law

⁵⁵ 30 per cent on the written element

One recruiter told us that in his experience in-house banking departments “*often view EU lawyers less favourably because of their perceived lack of commerciality and legal confidence.*”

However the qualification is clearly well-respected, and opinions seem divided one partner remarked to us that: “*German lawyers are slotted in even higher in terms of compensation because of their great academic standard and also their practical experience. It’s a good mix.*”, which suggests that they have gained commercial experience in addition to the academic rigour of the German qualification. Firms do value this depth in their legal knowledge.

Australia

To qualify as a solicitor in Australia a student must have an undergraduate degree in law (LLB) or a postgraduate degree in law from an accredited university. Typically, the course is four years.

Students must then complete a period of Practical Legal Training during which practical legal skills are taught. Generally, this consists of completion of a Practical Legal Training course at an accredited institution and a period of clinical experience. The length and format of this training depends on the jurisdiction (i.e. state or territory) in which the student wishes to be qualified.

Admission to the profession takes place by application to the Supreme Court of the relevant jurisdiction. Lawyers apply for a Practising Certificate from the Law Society in that jurisdiction. Depending on the jurisdiction, solicitors will be subject to a period of restricted (i.e. supervised) legal practice for a specified period (generally 18 months to two years) after which they can apply for unrestricted practice.