The Law Society

SRA Training for Tomorrow

Towards a new assessment framework for legal education and training

Response of the Law Society of England and Wales

September 2015

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Introduction

The Law Society ("The Society") is the representative body for over 165,000 solicitors in England and Wales. It presents the policy of its Council made on behalf of the solicitors' profession as a whole, to regulators, Government and others. It also works closely with stakeholders to improve access to justice for consumers.

The Society has viewed with increasing concern the indications of the SRA's thinking on an assessment framework, which have emerged over recent months. Whilst a formal consultation is expected in the autumn, the Law Society has noted the SRA's intention that this will focus on their preferred option, resulting from their current round of engagement. The Society is of the view that it is inappropriate to so narrow the range of options on the basis of such engagement, without formal consultation. This issue is so important and the approach so far, so lacking, that Council has agreed that the Society should respond to that initial engagement document, in which the SRA sets out a number of options but explicitly states its preference for option three. This being similar in form, with a series of centralised assessments, possibly encompassing some form of work-based learning, but with no other pre-requisites, as that which the Society has previously specifically opposed.

The Law Society would instead propose that the current system of legal education and training could be updated to include measures that would offer assurances of the standards attained prior to qualification. The SRA's proposals for a centralised assessment may be appropriate in some form in conjunction with quality assured pathways to qualification. The Society opposes any system which could end up with people becoming solicitors with no mandatory education requirements at all, either tertiary or vocational, and no work experience in a legal environment. The Society believes that this would be extremely damaging to the profession and the public.

Background

The SRA introduced their Competence Statement for Solicitors on 1 April 2015, of which the Society has previously stated its broad support for in terms of a recognisable standard for entry to the profession. However, the Society noted that it would be the detail around the assessment of the Competence Statement that could be problematic. In particular this focussed on our concerns regarding the SRA's initial high level proposals for the assessment of this statement for entry to the profession, particularly stating that a centralised assessment with no pre-requisites is unthinkable.

The engagement document itself shows a significant preference towards the SRA's preferred option, with unbalanced criticism of the current routes to qualification and a lack of any hard evidence presented to support the view that option 3 would solve any of the issues identified or provide an optimum route to qualification. The SRA have stated that their impetus for change comes from the LETR, which suggested that the current training framework focused too much on process and not enough on

'assuring consistent standards'. However, this ignores entirely the primary finding of the LETR though, which was that the current system is broadly fine and fit for purpose and recommendation that small scale changes could bring the required improvements.

The problems identified by the SRA are not as insurmountable or serious as is suggested by the engagement document. The current issues with assuring standards have been exacerbated by the abolition of the Joint Academic Stage Board (JASB) and by the SRA's decision to step back from any meaningful form of quality assurance for legal education and training. The Society believes that the current regime is capable of adapting to meet demand, as has been seen with the 'equivalent means' provisions, whereby potential entrants can show that they have met the requirements for entry in ways other than those specified by the SRA, and in the recent approval of the apprenticeship route. The system in England and Wales is also very highly regarded internationally, particularly in respect of the training contract, as recent research by the Law Society into global competitiveness has shown. It seems counterproductive, in the pursuit of securing standards, to destroy a system which works well.

Key Principles

The Law Society has set out in its policy for assessing the appropriateness of any assessment options that the SRA develop in an Assessment Criteria Policy document in a document. This is based on the principle that any assessment system the SRA introduces should support learning and innovation in teaching, and also reflect the reality, and accommodate the diversity, of legal practice whilst, of course, being fair, transparent, rigorous and justifiable. Solicitors are respected, in part, based on the value of their education and training, elements of which are useful throughout their careers, in ways that are not necessarily straight forward. This document is attached at Annex A.

The Society is of the view that any route to entry should encompass a level 6 qualification, as set out by the National Qualifications Framework, as a minimum standard. The current routes to entry all meet this requirement, whether through CILEx, apprenticeships or the qualifying law degree. Level 6 qualifications recognise a specialist high level knowledge of an area of work or study to enable the use of an individual's own ideas and research in response to complex problems and situations. Learning at this level involves the achievement of a high level of professional knowledge and is appropriate for people working as knowledge-based professionals or in professional management positions. This description expresses clearly why such a level of attainment should be a prerequisite for qualification as a solicitor.

The Society also strongly supports the importance of tertiary education in terms of the cognitive training it provides and the way in which it equips people with the ability to work throughout their career as solicitors, taking onboard changes in law and practice. This ability to adapt and fold new developments into the existing scope of their knowledge and skills is something which might not accrue to someone who was educated solely or primarily to pass the relatively narrow exams that are proposed.

A system of vocational training is necessary to make sure that standards are achieved and to support access to the profession for those seeking to qualify. It creates a strong foundation of skills in a number of areas, which can then be built

upon during work-based training and provides an essential bridge between the theoretical knowledge stage and the practical work-based stage of training or practice.

A substantial period of supervised work-based training is also essential to gaining competence as a solicitor. A trainee can only demonstrate fully that they are able to apply knowledge, skills, and professional judgement consistently within their working environment, only by having learnt to apply these same elements in that environment. The Society's view is that it is unthinkable that a solicitor could qualify without having undergone a period of supervised work-based experience. It is also important that students have gained the necessary legal knowledge and vocational skills prior to beginning their work-based learning, in order to ensure that it is of the requisite value.

The current staged pathways to qualification enable students to make informed choices regarding which pathway best suits their circumstances and preferred learning methods. Removal of approved pathways carries a significant risk of adversely affecting less-advantaged students who do not have access to those within the profession already, or to the best-informed sources of careers advice.

There is also a risk of employers being faced with a number of applicants who have all followed distinctly different pathways, with no clear and coherent information on the quality, breadth or depth of any of the courses undertaken. With no assurance of consistency it seems more than likely that employers will stick to what they know and that those students who have taken alternative routes to qualification will find themselves at a disadvantage to those who have followed something akin to the current routes to qualification.

SRA's Proposals for Assessment

The Society believes that it is unacceptable that the SRA should apparently have chosen a preferred option for assessment, without having provided adequate detail on the possible options and consulted on them. For example, it remains unclear exactly what form the assessments would take, when they would be taken or where the vocational skills, currently assessed through the LPC, would be assessed. The lack of an equality impact assessment is also of concern and this is addressed more fully below.

As a result of these factors, the Society finds it difficult to consider and critique the options fully and we would question how the SRA feels it has been able to do so. The following, therefore, represents the Law Society's views based on the information available and the specific proposals put forward under of option 3, as the preferred option.

<u>Minimum Common Standard</u>

It seems entirely reasonable to set a minimum common standard for entry to the profession and the Law Society supports the SRA's intention to do so. However, without mapping this common standard against the current standards of legal knowledge (Level 6/ degree level), it is impossible to be assured that the new standard will not represent a lowering of standards. It has been suggested by the SRA that this process will not be possible, although conversely this is what we are

told the SRA will do for those who find themselves part-way through a current course when the new arrangements come in. If it is possible to do this for interim arrangements, it should also be possible to do so in order to assure stakeholders that the new standards meet that necessary for a level 6 qualification, such as the current QLD.

Negatives of the Current System

It seems likely that many of the negatives of the current system which have been identified in the engagement document would be exacerbated under the stated preferred option 3. It is especially unlikely that the current perception of some routes as being 'second best' will be altered by these proposed changes as the SRA have suggested. Indeed, most recent comments from the SRA on this topic, made at their recent engagement event, asked whether there was actually a problem with a two-tier profession given the different types of work that solicitors undertake. The Law Society would most strongly oppose this idea that potential solicitors should be treated differently up to point of qualification, which would then determine their career prospects.

Authorisation of Providers

Any course which prepares students for a required assessment should be approved and overseen, even if this is just an authorisation process which ensures the course is adequate to carry out what it advertises to do and so offer protections for students. Where providers are not regulated by outside authorities, such as the QAA or Ofsted, the SRA should ensure they are regulated by someone, or else offer reassurances themselves. This duty is set out in the LSB's guidance on regulatory arrangements for education and training, issued 4 March 2014. Outcome 2e states that, "regulators complement rather than duplicate existing quality assurance processes".

A lack of a system of authorisation of providers of undergraduate and postgraduate legal education and training providers, for the purposes of routes to qualification, has the potential to severely affect the quality of legal education and training in the marketplace. It could enable institutions of a lower standard to come into the market - through the whole route, including training contract providers. Students who have spent time and money on inferior providers will be at a disadvantage in the proposed two-stage assessment process and there will be no recourse for them should they find that they have received inadequate education and training. Less well informed and advised, or international, students would be particularly at risk of being taken advantage of. A lack of specified routes will also leave potential entrants to the profession without a clear pathway to follow at all.

Training requirements

The Law Society recognises the problems created by the sharp decline in available training contracts in the recent economic downturn, and the still reduced number of providers. However, the current two year, supervised, training contract (Period of Recognised Training) is an essential part of the legal education and training that a potential solicitor receives and a substantial and supervised period of work in a legal environment, akin to the two year training contract, must form part of any new regime. The work-based learning pilots conducted as part of the input into the Legal Education and Training Review showed a number of ways in which flexibility could be achieved within the current requirements, or with minor alterations. Portfolios for

training contracts (PRTs), accompanied by a thorough appraisal process followed by employers, could aid employers and the SRA in managing standards and could be a better way of assessing the outcomes of this stage of legal education and training than the role play examinations suggested.

Contentious and non-contentious requirements

The proposed assessments must be taken in both contentious and non-contentious areas, which was something that was removed when the current Periods of Recognised Training replaced the outgoing training contract. Returning to this requirement causes potential issues for firms, who may struggle to provide adequate breadth of practice for their 'trainees'. This is an arguably retrograde step that will most likely see a return to 'crammer' courses to meet the necessary requirements where actual practice cannot provide. This kind of 'tick box' behaviour is unhelpful and inefficient, but will almost certainly return as a practical means to an ends.

There is also a danger that firms may decide that the implications of the proposed assessments, coupled with the lack of prescription in the proposed arrangements, makes having trainees too much of an issue for them to continue to provide training. Certainly, some in-house members have reported that they have concerns about their ability to continue to offer training, a significant concern when in-house accounts for around a quarter of training opportunities.

International reputational impact

Internationally, the training contract is well respected and provides legitimacy to a route to qualification which is seen as being academically light in comparison with others, for example the New York Bar where law is a postgraduate course lasting three years. To remove the requirement for a substantial period of work-based learning would damage the reputation of the profession internationally, which could have serious knock on effects for England & Wales as a jurisdiction of choice. The Law Society's report on Global Competitiveness, which deals with these considerations, is at Annex B.

Centralised assessment

The Society supports a properly thought out and appropriately scoped centralised assessment, which would be of benefit in ensuring that a common minimum standards for entry is assured – which at present it is accepted it is not. Some form of centralised assessment should be incorporated into the current system but assessment alone seems insufficient to ensure the quality of the legal education and training completed and the experience undertaken by those who seek to enter the solicitor's profession. A centralised assessment process that seeks to cover every aspect of the competence statement is unrealistically ambitious and objectively unnecessary. The two stages of centralised assessment bring forth different concerns are so are dealt with separately here.

Assessment of legal knowledge

The first of the two centralised assessments seems likely to focus undergraduate law courses (and the equivalent of the GDL), as has been suggested in meetings by the SRA, more narrowly on the requirements set through the Competence Statement,

than the current freedom and breadth of study. This would degrade choice, quality and innovation in university teaching of law. It also seems logical that any such centralised assessment will be on the minimum standard, which, again, will not encourage innovative or excellent teaching.

To offer no exemption from the assessments for those who have completed law degrees or postgraduate diplomas in law would reinforce this effect, as well as being costly and inefficient. It means that, at least in the short term, students will be forced into multiple assessments, those from their university and those from the SRA. The SRA's suggestion that universities will fall into line with the SRA's assessments underestimates the conservative nature of academia and ignores entirely that undergraduate law degrees offer more than the first step on the rung to becoming a solicitor, albeit that this is a key consideration for many students.

It also raises the question of what will happen to those students who are unsure whether they wish to follow a legal career, or those who wish to become barristers. The BSB has indicated in their recently released consultation, on the Future of Training for the Bar, that they will keep the undergraduate law degree as part of their route to entry. It sends mixed messages about the relative values of these two professions for one to be a graduate profession and the other not at all, and will likely cause students to rethink their options if a law degree offers exemptions for one and not the other. This option put forward by the SRA would force students to make decisions about their eventual career path at an earlier stage.

Assessment of practical legal skills

Whilst a centralised examination of legal knowledge and the 'hard edge' skills typically assessed by the LPC can be envisaged as satisfactorily allowing students to evidence their learning, the 'soft skills', currently assessed in the training contract, do not lend themselves so readily to a centralised assessment. This is due, not least, to the diversity of practice environments in which trainees work. How would a scenario such as that suggested be able to reflect the differing experiences of City and in-house or small firm?

Some form of practical assessment, on client interviewing skills, for instance, may be applicable. However, it is the view of the Law Society that many of the skills demonstrated throughout the training stage can be best assessed through ongoing observation, perhaps backed up with portfolio evidence or in-work assessments by training supervisors. This is especially the case where being able to demonstrate skills coherently and consistently is concerned.

The potential expense of the part two assessment, alongside queries as to whether this is the best way of assessing these skills, is a concern which needs to be addressed. The Qualified Lawyers Transfer Scheme (QLTS) utilises practical examinations along similar lines as those suggested for use here, at a cost of £3,510 for two examinations. The SRA has not said precisely how many examinations will be required for stage two of the proposed assessments but has identified a need for 12 distinct assessments (covering each of six areas in two different contexts), so it seems sensible to assume that there will be more than two examinations. The impact of crammer courses, which will almost certainly become the norm, if not actually necessary in order to pass these assessments, must also be taken into account. It seems unfeasible that these assessments could be taken and passed without some form of additional training. If that expense were to fall on students, it

would create a further barrier to entry, and were it to fall on firms, it seems likely that some would cease to provide training opportunities, or reduce numbers, further exacerbating the lack of training available to those seeking to become solicitors.

To appoint one institution to provide all of the assessment pieces, as Kaplans currently does for the QLTS, would be to ignore issues of differing suitability at each stage. Instead, it might be more appropriate to appoint the best provider for each stage, with retendering required at suitable intervals.

Assessment arrangements

The Law Society has concerns regarding the arrangements for the assessments as set out in the engagement document. The lack of restrictions on the number of times an assessment can be retaken, alongside the lack of time restrictions on the completion of all elements, does not seem to be a robust approach. It could lead to a situation where students can effectively 'bank' elements indefinitely, which they may have no familiarity with by the time they finally manage to qualify. It also means that familiarity with the assessment, question types or scenarios could enable students to gain higher marks than may have been the case on their abilities alone.

It will be interesting to see the outcomes of the research commissioned by the SRA into whether this model represents a valid and reliable form of assessment. The Law Society does not believe that it can be the case that unlimited retakes, without time constraints for the completion of all elements, can be considered a robust form of assessment of those competent to practise. Such a system also discriminates unduly in favour of those candidates who can fund repeated re-takes. Any assessment methodology must be consistent with equality and diversity objectives to encourage a diverse profession.

Preferred Approach

The Law Society's preferred approach would be to build on current assessment procedures, whilst having regard to the content of the Competence Statement and new routes into the profession. New assessment processes should be introduced only where necessary, to ensure that the skills and knowledge required by the Competence Statement are covered to a consistent standard for all new entrants.

There is a role for centralised assessment for appropriate elements, such as legal knowledge and the hard edge skills currently assessed during the LPC, in assuring standards. The second set of assessments should complement work-based assessments which could be quality assured by the SRA through the monitoring of portfolios and employer appraisals and a requirement to train training principals in the appropriate application of the competences for this purpose.

For the purposes of work-based learning, the Law Society believes there should be a specified minimum time required, that this experience/ training must take place within a legal work place and under the supervision of a solicitor, subject to any current exceptions to this requirement. The time required should be substantial; indeed many firms have reported that the current two years training is 'about right' and this should be taken into consideration.

Transitional Arrangements

The SRA has outlined in their most recent engagement document the principles on which they will base their transitional arrangements. Of particular concern is the principle that when the new arrangements are implemented, those who find themselves part way through a pathway under the current training requirements will receive credit for the parts they have completed and be moved across to the new system.

The sheer number of courses, options and pathways that different students may be taking suggests that this may be a burdensome task for the SRA to complete. The Law Society accepts that it is practical for students to passport onto the appropriate stage of the new system, but the queries around the role of undergraduate and vocational training and where these sit in the new assessment regime make this process particularly unclear. The SRA has a duty to those students who will be affected by changes it implements and clarity on this issue is essential as it may affect the choices students make when choosing which courses to undertake in the lead up to the changes.

Equality Impact Assessment

The SRA has stated that it is a public authority for the purposes of the Equality Act 2010 and is bound by the public sector equality duty which requires it, in the exercise of its public functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between people who share a protected characteristic and those who do not, and
- foster good relations between people who share a protected characteristic and those who do not.

It is unacceptable that an equality impact assessment has not been completed on the options put forward for discussion in the engagement document and that this is seen as being secondary to research which the SRA has commissioned into the economic impact of the changes. The economic impact of any proposed changes will most likely have direct consequences for those seeking to enter the profession and these should be considered at the initial stages, where they can be fully debated by all.

The SRA's preferred option, 3, will discriminate against many students whose education and training up to the point of entry at university is deficient in both the educational skills and life experiences required to compete in a graduate market. The current specific undergraduate education mitigates these factors and allows these students to exit university on a more equal footing to their peers. There is a risk, should option 3 be introduced, that universities will feel that they need to redefine the learning outcomes for students to prepare them for the centralised assessments. This would preclude time for much needed focus on broader employability and learning skills and reduce the number of options students are able to take. The knock-on effect of this would be to disadvantage those students in the future when they compete for available training opportunities.

Also of concern is the likely financial impact of these changes which would disproportionately affect poorer students. Both stages of proposed centralised

examinations will almost certainly operate within a free market environment of intensive preparatory courses. These courses will not be covered by Student Finance England or Wales and will need to be self funded, or funded via commercial loans. Poorer students already struggle to meet the costs of post-graduate education, both tuition and maintenance, and this would be and this would be an additional barrier.

The counter argument put forward by the SRA, that students have financial choice as they are not required to undertake university or post-graduate education at all, ignores the fact that many poorer students benefit immensely from university education, as is referenced in earlier paragraphs. The opportunities for improvement in written, verbal, team-working and other valuable skills would not be available to them otherwise, nor would the valuable contacts they will need for gaining work experience or training opportunities. Whilst there are currently other routes into the profession, these are still seen as secondary to the graduate route and the SRA's proposals run the risk of exacerbating this situation and creating an even greater diversity problem than currently exists.

Without details regarding the form the centralised assessments for knowledge may take it is difficult judge. However, the most likely forms of assessment suggested by the SRA, multiple choice or short 'thumbnail' questions can be a barrier to students with specific learning differences such as dyslexia. The British Dyslexia Association has consistently advised against reliance on these types of questions as they do not allow these students to demonstrate their true ability and would therefore impact on their equality of opportunity.

The stated aim of this proposed revision to assessment is as part of the widening participation approach to legal qualification. This aim is laudable and right. However, option 3 does not correlate with a widening of opportunity for many students. The specific and narrow exam skills inherent to such a regime; the costs implications for students; the downward effect on universities' teaching programmes; and the implications for students with specific learning differences negate any perceived benefit. If implemented, this proposal will further contribute to the regression in social mobility within the profession recently reported by the Commission on Social Mobility and Child Poverty Commission chaired by Alan Milburn.

Conclusion

In conclusion the Law Society would like to reiterate its support for a clear standard of entry to the profession, as set out in the Competence Statement for solicitors, and a degree of centralised assessment to support this. However, we have significant concerns regarding the way in which the SRA proposes to assess the Competence Statement, particularly with their intention to step away from authorising, quality assuring or otherwise specifying pathways to entry.

It is not sufficient for the SRA to state that they do not consider it to be their role as regulator to manage these aspects any longer. The SRA is responsible for those entering the profession, in ensuring not just the mark they can achieve in a series of examinations, but also the quality of the legal education and training they have undertaken.

Our preferred option would be to look at ways in which the current system could be improved in order to provide the reassurances the SRA have identified as seeking through their proposed changes.

The Law Society would like to see the SRA fully address the concerns raised in this paper and to produce evidence to support their proposals, as well as for the assessment made of the current system as being unfit for purpose, a conclusion the Society would vigorously oppose. An equality impact assessment, to fully assess the impacts of these proposed changes is also essential.