Cardiff & District Law Society

Cardiff and District Law Society's response to SRA Consultation: 'A new route to qualification: The Solicitors Qualifying Examination (SQE), October 2016'

04 January 2017

The Incorporated Law Society for Cardiff and District trades under the name Cardiff and District Law Society (CDLS). CDLS is the largest local law society in Wales. It has a membership of over 1,000 people including solicitors, barristers, legal executives and academic lawyers.

CDLS appoints a number of specialist committees, including a Regulatory Issues Sub-committee.

Through these committees CDLS responds to a number of public consultations on matters that affect the professional lives of solicitors in the Cardiff and District area. CDLS welcomes the opportunity to respond to the SRA's Consultation: "A new route to qualification: the Solicitors Qualifying Examination".

Introductory/general comments

Like many organisations that responded to the previous consultation on the SQE in March 2016, we were critical of many aspects of the SRA's proposals. Although we continue to have concerns about certain aspects of the SRA's proposals contained in this current consultation, we are pleased to see that the SRA has listened to the criticism it received, and that some important and sensible changes have been made to the proposals.

We are pleased to see: (1) that the SRA has acknowledged that a period of recognised work training is essential, (2) that the profession should be a predominantly graduate profession (or that if a solicitor does not have a degree they should have something 'equivalent'), (3) that Stage 1 of the SQE (the knowledge tests) are now a much more substantial set of assessments than previously, (4) that the ability for students to 'cherry pick' assessments has been removed by requirements to sit all assessments in a given assessment window, and (5) that unlimited resit opportunities have been removed. Our main concern with the proposals in the previous consultation were that the proposals threatened to dumb down the training process significantly, and thus devalue the qualification of solicitor, both in this country and overseas.

We continue to have some concerns and reservations about the SRA's proposals, but fewer than we had with the previous consultation.

Question 1 – To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

It is fair to say that opinion is divided on whether there is a need for a new centralised assessment.

Many solicitors see no inherent problems of quality of trainee under the current system of LLB (or another degree plus GDL) followed by an LPC. Many think that the SRA's case (that there is a problem of quality of entrants to the profession) is unproven. The current system is based upon the maintenance of a set of minimum standards and is policed by external examiners appointed by degree and GDL/LPC providers, in accordance with established QAA (The Quality Assurance Agency for Higher Education) requirements. There is no evidence that this system is failing in terms of quality or protection for the public. The SRA's reporting of the level of indemnity insurance claims and complaints to the Legal Ombudsman cannot be attributed directly to the current system of training, as many claims and complaints can be attributed to solicitors who qualified under previous training regimes, not dissimilar in many ways to the one the SRA is proposing. We are not persuaded that an SQE will have any beneficial effect on the level of claims or complaints. In fact, if more solicitors qualify as a result of greater freedoms on work training, the number of claims and complaints may well rise.

However, there is also considerable support among other practitioners for a centralised assessment. The argument in favour of a centralised assessment is that every solicitor takes the same test, and thus firms can be assured of consistency (or more consistency than is possible under the current system). One comment was that if the profession was starting from scratch/working with a blank canvas, then it would almost certainly choose a centralised assessment. The main concern of those practitioners who support the introduction of a centralised assessment is that the assessment should be sufficiently rigorous and not be dumbed down.

On this, there continue to be widely held concerns about the nature of the proposed Stage 1 assessments. Practitioners simply do not consider that a series of multiple choice questions, single best answer questions and extended matching questions are an appropriate means of assessing future solicitors. Whilst such forms of question have their place, and have certain advantages, such as providing a variety of methods of assessment, they really need to be part of a suite of question types which include extended written answers (as currently happens on the LPC). The suspicion is that the forms of question suggested by the SRA are suggested for means of convenience, because those forms of question can be more easily administered on computer and in bulk, and marked quickly and automatically by computer. There is a danger that the logistical needs of a centralised computerised assessment are determining the types of question used, rather than choosing the sorts of question that best ensure rigour and best ensure high standards. There is therefore a grave danger that the method of assessing Stage 1 will lead to a dumbing down of the assessment of potential solicitors, particularly compared to the core elements of the LPC, which is the place where most of the SQE Stage 1 proposed content is currently assessed. We are not convinced by

the SRA's arguments on quality and appropriateness of the forms of question being proposed for Stage 1.

Although there is an element of reasoning and writing lengthy answers to some of the Stage 2 assessments, it is notable that candidates will be told what the relevant law is for some of those assessments before producing their work, on the basis that the skill is being assessed, not the candidate's knowledge of the law.

We also do not think that the tri-partite structure of legal education, criticised by the SRA in the consultation paper, will disappear entirely. If Stage 2 of the SQE does not have to be deferred until during or towards the end of the period of work based training, then we can see that the market will push students to taking both Stage 1 and Stage 2 of the SQE before the period of work based training. Employers will want trainees (or employees) to be as well qualified as possible, and as useful as possible, from day 1 of the period of work based training. Firms may therefore require students to complete the SQE before joining, or before entering the office. If this happens, then we will continue to have a tri-partite structure.

Will universities really bring the SQE Stage 1 subjects within the LLB as is hoped by the SRA? It is entirely possible that this will not happen, or only happen in the case of a few universities (probably the new universities, that do not generally draw on the stronger students). Most universities (certainly the more prestigious ones) will continue to want to deliver a liberal law degree, with a wide choice of subjects for its students. The SQE Stage 1 subjects, whilst important from a practical point of view, are quite prosaic, and largely mirror the vocational subjects currently on the LPC, where relatively little academic law is considered. They are not subjects that sit easily within a degree, and the SRA's proposed method of assessment is quite alien to the methods appropriate for deciding whether a student should obtain a 1st, 2.1, 2.2 or 3rd class degree. It is likely that large commercial firms will recruit their students from law (or other) degrees at prestigious universities. How then will students study for the SQE Stage 1? Probably via a postgraduate course. If this is combined with a study in preparation of Stage 2, then you will have postgraduate course not dissimilar to the LPC. That course will cost money. The cost will be not dissimilar to the cost of the LPC. Added to that, students with a non-law degree may be at a disadvantage unless they have some grounding in law, in that firms might not recruit them in such numbers if the only legal education they have had is an SQE preparatory course. There may be a similar course to the GDL, therefore (although perhaps with a different suite of subjects, say including company law). That course will cost money.

On top of those courses, candidates for the SQE Stages 1 and 2 will have to pay hefty examination fees. The SQE itself will not be cheap.

In other words, the tri-partite system may not disappear and the financial cost of qualifying will remain high. All that would be achieved would be replacing distributed assessments with a centralised assessment, but is that worth the considerable upheaval and uncertainty that will be caused by changing the system? As said, many practitioners are not convinced

that there is a problem with standards under the current system, and there are concerns about the centralised assessment in that it could lead to a dumbing down.

Another concern about the SQE and about the SRA's proposals as a whole is that there will be a considerable narrowing of the breadth of knowledge and experience that qualified solicitors may have under the new system.

This will happen as a result of several changes being made by the SRA. Firstly, there is the possibility that universities, or some universities, will bring the preparation for SQE Stage 1 into their LLBs. If that happens, then the scope for covering other legal subjects on the LLB will be reduced, as students will have to take the SQE preparatory modules. Indeed, it is possible that no prior knowledge of the law is required before a student studies for and sits the SQE. Secondly, the 3 elective or optional subjects currently studied by students on the LPC will disappear. There is no equivalent for them under the new system proposed by the SRA. Trainees will thus have a narrower range of knowledge when starting with firms. Thirdly, there will no longer be a requirement for 3 seats in the period of work training. A solicitor could spend all of their period of training undertaking one type of work (perhaps in a commoditised Personal Injury operation). The only check on this is that the SQE Stage 2 assessments have to be in two separate contexts, but the SRA is proposing that the legal content needed for each Stage 2 assessment will be given to the candidates in the assessment itself – in other words, the candidate actually need know very little about the relevant law before sitting the Stage 2 assessment. Lastly, but importantly, there will be no requirement to cover both contentious and non-contentious work in the period of work based training, or even in the Stage 2 contexts: 'Persuasive Oral Communication' can be chosen instead of Advocacy. Collectively, these changes will lead to many qualified solicitors who have a much narrower range of understanding of the law and practice than solicitors do at present. This represents a dumbing down of the qualification of solicitor and is also potentially dangerous to the public.

On the publication of the results of Stage 1 – we do not understand how the results of candidates from different assessment windows can be compared if the pass mark for Stage 1 is variable. The explanation given by the SRA on how the 'raw' mark will be converted to a standardised mark scale is not clear. It would be helpful to have examples to show how this will work. Firms will want information on how well candidates have done on the SQE, so it needs to be clear how this will work, and firms need to have confidence in the process.
Comments on Stage 2 – as said above, we can envisage a situation where firms will be reluctant to take 'trainees' who have not yet passed Stage 2, as they (a) would not wish to engage someone who then subsequently failed Stage 2 and (b) would resent the considerable time out of the office needed both to sit the Stage 2 assessments and to attend preparatory courses for Stage 2. We think it likely that market forces will mean that students will seek to sit Stage 2 before beginning their period of work based training, mirroring the current situation of the LPC preceding the training contract.

We support the SRA view that Stage 2 should be taken in two contexts, of the candidate's choice. We recognise it would be too complex to allow a wider range of contexts, and the provision of some choice for the candidate is welcomed. The Stage 2 contexts also align with a number of the Stage 1 groupings of subjects, which is sensible.

As with Stage 1, firms will want to be assured that there is a consistent means of judging the marks obtained by candidates, so this needs greater explanation so that firms can have confidence in the method.

Question 2a – To what extent do you agree or disagree with our proposals for qualifying legal work experience?

We are pleased that the SRA has recognised that a substantial period of work experience is required.

However, we have concerns about the proposal that the work experience need no longer include three areas of practice, and that it need not contain both contentious and non-contentious work. As noted earlier, when combined with the loss of the current LPC electives and the possible loss of optional content in the LLB, this will narrow the knowledge and understanding of a newly qualified solicitor dangerously. It will be possible to qualify as a solicitor by doing no more than basic paralegal work in one narrow area of practice. This will diminish and devalue the qualification of solicitor, and make solicitors indistinguishable from legal executives.

We are also concerned by the proposed declaration that a supervising solicitor must make in respect of the candidate. The supervising solicitor will be required to declare that a candidate had 'had the opportunity to develop *some or all* of the competences in the Statement of Solicitor Competence'. This is incredibly vague. How many competences constitute 'some'? It is so vague that it becomes almost meaningless, and is not a substitute for assessing whether a candidate has met competences during the work experience – it seems like mere window dressing. (It should be said here that we recognise that it is extremely difficult to assess competences during the period of work based learning and we do not advocate that there should be assessment – we agree with the SRA that this would impose an undue compliance burden on candidates and firms alike.)

Provided it is properly regulated, we agree that qualifying work experience could be obtained outside of a formal training contract. We agree that the person should be regulated by a solicitor, but we have concerns (related to the recent SRA consultation on the Code of Conduct) that this might be supervision by a comparatively junior solicitor operating in an unregulated body.

We agree with the SRA that work placements outside a formal training contract should be of a minimum length to qualify as part of the period of work based training. We think there should be both a minimum length for the work placement to be counted, and there should be a maximum number of work placements that could be counted. It should be possible to

count periods of (say) three months or more, but with (say) a maximum of four placements, so that the average time on a placement would have to be six months.

We agree with the flexibility allowed by the rule that the completion of work-based learning would be required by the point of admission, not as condition of eligibility to sit Stage 2.
We agree with the proposal that candidates should maintain a record of their qualifying legal work experience.

However, a major concern is that relaxing the rules on how and where legal work experience can be gained, will lead to a far greater number of solicitors qualifying. The SRA has rightly noted there is a bottleneck for potential entrants to the profession currently, due to the limited number of training contracts available: there are more students seeking training contracts than there are opportunities. However, changing the rules to include a wider range of work experience will lead to more students qualifying. Will this simply shift the bottleneck to newly qualified posts, in that there will then be an oversupply of newly qualified solicitors, many of whom will not be able to secure employment as an assistant solicitor?

Question 2b – What length of time do you think would be the most appropriate minimum requirement for workplace experience?

We consider that a period of two years' work experience is appropriate, as now. We do not agree that there should be a minimum level of two years - we think the period should be two years.

To specify a minimum that is less than 2 years will mean that the majority of firms will opt for the minimum, so the minimum will become the norm.

Also, to specify a minimum implies that a candidate might need longer. This could lead to abuse by employers, who refuse to sign the declaration that someone has met the competences in order to retain the cheaper labour of a trainee for longer.

Question 3 – To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

We recognise that if the SRA implements the proposed changes it will be very difficult to regulate any preparatory training for the SQE, as the modes and timing of available training courses will vary widely, unless the SRA imposes a model, as is the case with the LPC.

On publication of results, we can see confusion arising between the results of degree provider and the results of a particular SQE preparatory course. Given that no particular course will be required for preparation for the SQE, a multiplicity of courses and pathways will arise. Will it be possible to provide meaningful statistical information about all of these different courses and pathways? In particular, when assessing how well or how badly candidates have done according to the educational provider, will they be judged by the

degree they did, or by which method they used for preparing for the SQE? We suspect the latter, but then if the student did not use the degree as part of the preparation for the SQE, also giving data by degree provider will not be meaningful, and will either be of little help to, or will be misleading for, potential employers.

We suspect that the SRA's hopes, that the new system will be cheaper than the current system, will be largely unfounded. As mentioned in the answer to question 1 above, we think it highly possible that new preparatory courses will arise to prepare candidates for both stages of the SQE. Those courses are unlikely to be cheap. Added to that will be cost of the SQE itself. It is entirely possible that the market will lead to a situation where most students will continue through a tri-partite system. The only significant change will be that the assessment will be centralised.

However, there will be a difference, in that currently the LLB, GDL and LPC is subject to regulatory oversight, by the SRA and due to QAA requirements. This regulatory oversight will be absent if the SRA is content to leave it all to the market, and it is possible that quality will suffer as a result. There will be no mechanism (other than published data on pass rates) to identify poor course provision, and some candidates will enrol on and pay for sub-standard courses, with minimal regulatory protection.

Question 4 – To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

Please see the answers to questions 1-3 above, particularly the answers to question 1 on reservations we have with the proposed SQE.
We are pleased that the SRA considers that candidates must have a degree 'or equivalent'. We agree with this in principle. However, we do have concerns that the issue of equivalence will be properly regulated by the SRA in practice. It must be made clear exactly what is equivalent to a degree. We agree that equivalence should include apprenticeships or prior attainment as, say, a legal executive.

Question 5 – To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

We recognise that it will be very difficult to provide exemptions from the SQE Stage 1 and 2, and to do so would undermine the system proposed by the SRA. We have concerns, though, about the possibility that EU candidates (even post-Brexit) may be granted exemptions from the SQE, when domestic candidates and other international candidates will not be allowed exemptions. We see no reason for preferential treatment of EU candidates in this regard. Will the SRA engage with the UK Government on this issue?

Question 6 – To what extent do you agree or disagree with our proposed transitional arrangements?

We welcome the flexibility for students to complete the process of qualification under the current system if they have already started the process before a certain date. The main concern with the transitional arrangements is that it may be too ambitious of the SRA to introduce the SQE in September 2019. Legal education providers will need a significant lead in time to adapt their LLB and other courses to meet the requirements of Stage 1 (and possibly Stage 2). New or re-designed courses need to go through processes of validation to comply with QAA requirements. All of this has to be done sufficiently far in advance for providers to comply with CMA (Competition and Markets Authority) requirements on advertising and marketing of courses to prospective students, many of whom will be at school and still considering what to study at university and where to study. Until the assessment organisation has been appointed and produced sufficient sample assessment materials it will not be possible to design or re-design courses. In addition, to say that the work involved for the appointed assessment organisation is considerable would be an understatement. For this reason we doubt that the revised timetable proposed by the SRA is realistic.

Question 7 – Do you foresee any positive or negative EDI impacts arising from our proposals?

Yes, although we are pleased that the SRA is not now proposing that candidates can have unlimited attempts at the SQE, or that they can spread their assessments over several assessment periods.

Concern persists that a two tier market will arise, with more privileged students still doing a full 'liberal' law degree, followed by an LPC style course, followed by a two year training contract. Less privileged students may do a degree at a less prestigious university that includes SQE preparatory content, be less prepared for the SQE, may need several resits, and will be undertaking paralegal work limited to one area. Come the point of qualification, there will be a (quite probably accurate) perception of difference between the one qualified solicitor and the other.

We also see negative EDI impacts of publishing candidates' scores by legal education provider, specifically if the data shows where the students studied their law degree. It is more than possible that more privileged students (who come from wealthier, middle or upper class backgrounds, who go to private schools where more individual assistance with exams is provided, who then get better A level results, and thus join more prestigious universities, who have less need to obtain part time work due to family finance, and who obtain jobs where their employers pay for the fees of the SQE and any preparatory course) will obtain better results than less privileged students who do not enjoy any of those advantages. In particular, a student from a more difficult, perhaps ethnic minority, background, may struggle to enter a more prestigious university, but will go to a newer university. That student's marks on the SQE may be adversely affected by a range of factors,

but to link that student's weaker marks with attendance at a particular university, comparing it with a more privileged student at a more prestigious university, may have a negative effect. By reinforcing the perception that certain universities, ones which typically take less advantaged students, are inferior, publication of this data has the potential for harming the employment chances of students who attend those universities. If this is taken into account by employers when making decisions about who to recruit, then the effect on EDI will be negative.

Another concern is that the new system of qualifying may prove more expensive than the current system, when the cost of the SQE itself and SQE preparatory courses are compared with the LPC, and especially when the SQE is compared with what is currently Stage 1 of the LPC (the core subjects). There is no elective content in the SQE (what is now Stage 2 of the LPC). The cost of Stage 1 of the LPC is only a proportion (around 70%) of the current cost of the LPC. If, instead of introducing the SQE, the SRA simply removed the elective content from the LPC, the cost of qualification under the current system would reduce considerably, and would almost certainly be cheaper than the SQE and any attendant preparatory courses. We believe it is a flawed assumption of the SRA that the cost of qualifying would be reduced by taking out the LPC, because we believe that other courses would arise to take its place.

A more specific, but nonetheless important, concern is whether a single assessment provider will be capable of providing a sufficient geographical spread of secure assessment centres to avoid students having to travel long distances for their assessments, and even having to book overnight accommodation to do so, something that would impact adversely on poorer students. The number of candidates for the SQE is likely to greatly exceed the number of candidates for the QLTS. We doubt that one organisation is able to effectively resource this. Also, it is not clear on how long an assessment window will be. Stage 1 of the SQE includes 7 assessments, totalling 19 hours of assessment time. Within what time period will a cycle of assessments be held? Will it be a return to the bad old days of the Law Society Finals with multiple assessments crammed into a very short space of time? Linked to this is a concern about students with disabilities and who require specific provision. If the assessment window is very short, how will arrangements, including extra time and other additional provision, be provided by the single assessment provider, particularly when these special provisions will need to be made available in a sufficiently wide range of assessment centres across England and Wales?

Cardiff & District Law Society Council
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