A Competence Statement for Solicitors

Consultation questionnaire form

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Question 1

Does the competence statement reflect what you would expect a competent solicitor to be able to do?

Before addressing the specific questions we wish to make certain preliminary observations.

The Association of Law Teachers (ALT) is one of four representative Associations concerned with higher education in law in England. While this is an individual response of the ALT, given the imperative that the four Associations attach to this matter we have met on several occasions to discuss the proposals and are continuing to meet. You will see that the views of all the Associations are closely aligned.

The ALT comprises teachers of law in both higher and further education. The majority of the membership is UK based, but we also have a significant international membership. The ALT is responsible for the Law Teacher, an international journal of legal education. The specific focus of the ALT is the pedagogy of legal education, and we are therefore particularly concerned with the educational aspects of the statement of competences, in particular the educational processes by which some or all of the competences are developed, and the educational levels which the competences represent.

Solicitors have hitherto been acknowledged as full members of the international community of legal professions. While there is no international definition of the educational process for members of the legal profession, the International Bar Association clearly envisages a high level of education, expertise and ethical awareness: General Principles for the Legal Profession (2006) [http://www.int-bar.org/images/downloads/Executive%20office/Principles%20Legal%20Profession%20A3%20-%20Jan%2008.pdf (Accessed 6.1.15)].

In virtually every major jurisdiction there is a formal regulatory requirement that membership of the legal profession requires a relevant law degree, in some cases at postgraduate level, and very often associated with further accredited professional study. This is the case, for example, in New York State (selected as representative of the USA) where the basic requirement is a J.D., and alternatives all involve formal postgraduate legal education. It is also the case in New South Wales (selected as

representative of Australia) where the requirement is an LLB degree together with a professional diploma. The situation is similar in New Zealand. In Germany the educational requirement for a Rechtsanwalt is essentially the same as for a judicial career, involving a law degree, a second state examination and a period of work-based learning. In France a law degree and higher level professional diploma are required. Exceptionally in the People's Republic of China the formal requirement is simply passing a national judicial examination, but in practice the vast majority of applicants have an undergraduate or postgraduate legal education. Similar provisions to those in France and Germany apply in most European states, and EU provisions for mutual recognition of professional qualifications are based on Directive 89/48/EEC "for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration" as applied to the legal profession by Directive 98/5/EC.

It can therefore be stated with some confidence that the international consensus is that admission to the legal profession requires formal legal education at least to LLB level, and usually requires significantly more, in terms of postgraduate study and/or study for recognised professional qualifications.

While legal practice is extremely diverse, a significant proportion of solicitors are currently engaged in international/transnational practice. The English legal system, and English law have a very significant place in international commercial and legal affairs, in relation particularly to dispute resolution, insurance, shipping and trade, and partly for this reason many of the largest international legal service providers are, or have their roots in, English solicitors' firms. However, the reality of such international practice is that these providers can source their lawyers globally, and also have to convince clients and other stakeholders that their lawyers are of international calibre. Solicitors therefore are in competition with lawyers from all other major international jurisdictions. The nature and perceived standard of their qualification is one element in this competitive environment. It is therefore surprising that the SRA appears not to value and adopt the international consensus as to the educational underpinning of legal qualification, in the sense that it has not yet indicated what level the framework will be set at. The SRA still has the opportunity to take this point under consideration which we strongly urge them to do

It must of course be borne in mind that the solicitors' profession historically was based on an apprenticeship model, with training essentially in the form of work-based learning. However, from a relatively early period this was supplemented by formal examinations, and by the 1960s a law degree was recognised as the equivalent to the first stage of these examinations, and had become statistically the normal route of entry to the profession.

We understand that one concern of the SRA is that the existing process of qualification which overwhelmingly depends on a Qualifying Law Degree, or a non-law degree followed by the GDL, in turn followed by the LPC and a period of traineeship or work-based learning is not delivering a legal profession which is fully representative in terms of diversity. We do question whether there is any adequate evidence that moving away from the internationally recognised approach based on formal degree level qualifications will actually address this issue, since it is clear that barriers to entry to the legal profession of non-traditional applicants exist at many stages. Indeed the student population of most UK law schools is considerably more

diverse than the population as a whole, although clearly skewed in favour of those with higher intellectual attainments.

Furthermore, there is now a formal Framework for Higher Education Qualifications produced by the Quality Assurance Agency in 2008 [http://www.qaa.ac.uk/en/Publications/ Documents/Framework-Higher-Education-Qualifications-08.pdf (accessed 6.1.15)]. This is part of a wider initiative to ensure compatibility of qualification levels and therefore educational attainment at European level within the Bologna Process [http://www.ehea.info/ article-details.aspx?ArticleId=69 (accessed 6.1.15)]. It is noteworthy that the General Medical Council has integrated the educational, professional and ethical aspects of the requirements for medical practitioners – see Good Medical Practice [http://www.gmc-uk.org/guidance/good_medical_practice.asp (accessed 7.1.15)], Training Tomorrows Doctors [http://www.gmc-uk.org/education/undergraduate/tomorrows_doctors_2009.asp (accessed 7.1.15)] and Undergraduate Medical Education [http://www.gmc-uk.org/ education/undergraduate.asp (accessed 7.1.15)]. Other professional frameworks, such as the UK Professional Standards Framework of the Higher Education Academy [https://www.heacademy.ac.uk/sites/default/files/downloads/UKPSF_2011_English.pdf (accessed 7.1.15)] also seek to tie professional standards and ethics more closely to levels of attainment. While it may be true that some of the competences relate to behaviours and attitudes, rather than levels of educational attainment, many of them clearly are the outcome of either formal or work-based learning educational experiences, and therefore clearly suitable to be specified in terms of Framework levels..

The Framework provides generic descriptors of educational attainment for Bachelor with Honours (Level 6) and Masters (Level 7). These would provide an excellent starting point for a definition of the level at which the SRA competences which have this educational component are to be displayed, although they would of course require contextualising to law. Much could also be learned from the level of integration achieved by the iterative approach of the GMC. The QAA is also responsible for producing subject benchmarks for the various disciplines, and it is a matter of regret that the SRA has chosen to engage to only a limited extent with the implications of the current respecification of the QAA benchmark for law. This is of course focussed on the law degree as an academic qualification, but it seeks to engage with current understanding of the essentials of legal study. The Statement of Underpinning Knowledge, by contrast, appears to be rooted in the old Joint Statement of the Foundations of Legal Knowledge together with LPC cores (and indeed options) without reflecting the nature of legal study/legal practice in the 21st century

We do acknowledge that it is entirely possible for a particular individual to demonstrate achievement of the requirements, whether expressed as competences, or in terms of the QAA Framework, by a variety of means. Specifically, CILEX has offered a route to qualification through professional examinations and work-based learning. These examinations are however firmly rooted in the Framework with an initial qualification at Level 3 (equivalent to ‘A’ Level) and a final qualification at Level 6. The recent development of higher apprenticeships and their application in legal practice is also formally linked to the Framework, which gives them a transparent and understandable currency across the sector and the world. It should be recalled that

the Framework has an academic and a vocational component, with NVQ qualifications available at the same level as their academic equivalents, including at the lower levels within the remit of Ofqual. It is particularly important to ensure the level of study of those on these non-traditional pathways, as they lack the inherent assurances of level which academic degrees have.

To summarise our position, it is that we find it highly surprising that the SRA appears thus far to be prepared to depart so far from the consensus of the international legal profession, and also from the consensus of professional bodies in different disciplines in England by divorcing its competences completely from the QAA Framework and also by ignoring the reality that a recognised higher education qualification in law is the international yardstick for recognition as a full legal professional. This carries with it a clear risk that the solicitor qualification will cease to be regarded in the context of the provision of legal services internationally as a 'full' legal professional qualification.

Turning to the specific subject matter of Question 1:

Yes. Indeed the competence C2 appears to go beyond this, touching on areas which are more properly the responsibility of the entity in which the solicitor works. We consider the competences as such to be appropriate and fit for purpose.

Question 2

Are there any additional competences which should be included?

No

Question 3

Have we struck the right balance in the Statement of Legal Knowledge between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area?

There is a very significant issue here. The nature of legal practice is now so diverse that there is virtually no specific knowledge base required for all solicitors except in terms of fundamental principle. For example, a solicitor dealing with regulatory issues in a commercial context, and a solicitor dealing with criminal litigation, will each need to have a grasp of the principles of regulation, including the criminal justice process, however the detailed legal rules which each will be required to utilise will be very substantially different.

The "broad qualification" referred to is, we would submit, essentially the same as the concept of a fully educated professional functioning at a professional standard which is reflected by the QAA Framework at Level 6 and 7, and by the international consensus that a lawyer has an academic education to degree or postgraduate level in law as well as relevant formal professional qualifications. It thus relates to the perception of the solicitor as an educated professional, with well-developed intellectual, critical and ethical faculties; what is often summarised as 'graduateness'. It is not the same thing as expecting each solicitor to know 'everything about everything', even in relation to reserved practice areas.

There is no doubt that each solicitor at the point of admission must be competent in relation to the legal knowledge relevant to the particular field of practice in which s/he is engaged. It is however neither necessary nor appropriate to have that same level of knowledge in relation to all possible fields of practice. The LETR intentionally did not address the issue of whether there should be qualification and certification based on practice areas, but in reality a combination of the obligation on the individual solicitor to practise within their competence (Competence A3), the hiring policy of the employing entity which will ensure that the skill set of the solicitor is matched to the job description and person specification and the requirements of PI insurance are likely to lead to the development of specific formal or informal qualifications in particular practice areas.

We therefore consider that the proposed Statement of Legal Knowledge fails to strike the right balance, erring on the side of specifying details of a number of areas of practice which individual solicitors would only be expected to acquire after qualification and/or adoption of a specific practice area. Even in its own terms, it is incomplete: there is no reference to Family Law, Intellectual Property, Employment, Banking and Insurance Law, to mention only five significant practice areas..

An example of a suitable model, integrating skills with substance and focussing on legal principles, can be found in Huxley-Binns, R, What is the 'Q' for?(2011) The Law Teacher 45 (3) p 294. The article envisages a range of detailed approaches or exemplars, expressed in the form of (qualifying) law degrees, of which the following is typical. The approach envisages eight 'skills': 1. Cases, 2. Legislation, 3. Legal

theory, 4. Critical legal reasoning, 5. Ethics, 6. Legal writing, 7. Legal commerciality and 8. Dispute resolution and litigation. However, others such as advocacy and negotiation can be readily accommodated. These are then mapped to coverage of legal principles and topics:

QLD Year	Skill linked to knowledge	Skill achieved
Year 1	Legal writing (drafting) and cases with Contract law	1 and 6
	Dispute resolution and litigation (interviewing) with Commercial law	8
	Critical legal reasoning with Information Technology law	4
	Dispute resolution and litigation (negotiation) with Competition law	8
Year 2	Legislation with Insolvency law	2
	Legal Theory with Public International law	3
	Ethics with Trusts	5
	Commerciality with Business law	7
Year 3	Research project	-
	Cases and legislation with Banking law	1 and 2
	Legal theory with Space law	3
	Dispute resolution and litigation (mooting) with European law	8

Question 4

Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

We do not disagree with the level at which this is pitched, but we question the need for a separate statement, when there are existing frameworks which could be adopted and which have national and international recognition and acceptance. At the very least, there should be an express cross-referencing and benchmarking of the SRA threshold standard to an appropriate QAA Framework level.

Question 5

Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

It is very difficult to address this question without any clear understanding of the level at which the various elements are pitched, and the depth and intensity of study of each which is expected.
We certainly accept that the subject matter comprised within paragraphs 1, 11,12 and, at least in outline, 4 and 13 of the Statement does represent essential knowledge for any professional lawyer. Indeed to a significant extent, elements within this are understated. These include the broader ethical context, as opposed to the specifics of professional regulation, understanding of the rule of law and the importance of the lawyer in relation to it, principles of regulation and governance and the relationship between the state and other public authorities and the client, all of which could be further emphasised as part of the essential core.
We note that legal research is included as a competence (B2), but is not included in the statement and the same applies to other skills such as advocacy, negotiation and drafting. In reality these skills are best learned in the context of the development of the ability to organise and manipulate legal concepts. We therefore suggest that the Statement address both skills and knowledge/principles, in the manner suggested in our answer to Question 3.
We consider that an understanding of fundamental legal concepts such as property, real, personal and intellectual, obligations, human rights, and crime is essential, but this needs to be at the level of fundamental principles and their application in the appropriate social, economic and commercial contexts.
There is a danger in over specifying the actual knowledge required, both in the sense that because legal practice is now so specialised most solicitors will in practice be using a very limited set of legal principles and rules, and because the actual content of the law is constantly changing as a result of legislative and judicial developments. An understanding of fundamental principles coupled with an ability to research, and an ability to deploy law constructively and proactively in the interests of the client are far more important than a checklist of specific subject matter
For example, in paragraphs 7 and 8 a very comprehensive statement as to the knowledge base required for a criminal practitioner is given. Since the majority of solicitors are not criminal practitioners, there is no obvious reason why they should be required to demonstrate that they are educated to practitioner standard in this area. It is important that they have an understanding of the nature of criminal liability, and this area can, for instance, be used to develop advocacy and interviewing skills. The essential awareness of principle can be provided using a much more limited range of substantive offences. Similar observations apply to paragraphs 2 and 3. Those who practise in the relevant areas of succession and probate and taxation will require this level and depth of knowledge and understanding, but other practitioners merely require an understanding at the level of principle and/or outline.
We appreciate that the Statement differs from the current approach where the content and outcomes of the academic and vocational stages are separately articulated and specified. This does inevitably lead to some paragraphs covering different aspects of a particular topic which have historically been dealt with at different stages.

It is our view that the Statement should focus on those matters which are of core significance for all solicitors. For this reason, we consider that the present version of the Statement does contain significant elements which are unnecessary, and if it remains in its present form intending solicitors will require to be over-educated in relation to a substantial number of areas. This has implications in terms of suggested need for further diversity in the profession, the nature of the qualification process, the attractiveness of the profession to entrants, and whether legal service providers will regard this level of qualification as being necessary or desirable to carry out the functions of which they require legal professionals. There is a danger that the solicitor's qualification will be seen as overly restrictive, resulting in providers opting to deploy individuals qualified in different ways, but perfectly competent to handle the practice area in question. Since potential entrants will need to prepare themselves in some way to demonstrate that they satisfy these requirements, this will increase the cost and effort required, which may in itself act as a disincentive, particularly to non-traditional entrants and thus actually militate against diversity. It could also be seen as over-regulation and therefore anti-competitive.

Significant further consideration needs to be given to the extent to which there should be supplementary statements in relation to specific practice areas, possibly linked to a form of specific accreditation in relation to such practice areas.

Question 6

Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the Handbook and ensure their continuing competence?

In principle yes, but this is not our primary area of expertise.

Question 7

Are you aware of any impacts, either positive or negative, which might flow from using the competence statement as a tool to assist entities and individuals with complying with Principle 5 in the Handbook and ensuring their continuing competence?

Our concerns in this respect have more to do with the impact of the current version of the Statement of Legal Knowledge. For the reasons set out in our answer to Question 5, the level of over-specification in the proposed version is likely to be counter-productive.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to trainingconsultations@sra.org.uk, by **12 January 2015**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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