The SRA's Application to the LSB for approval of the SQE: Submission to the LSB by the Four Law Subject Associations

You will have available to you the detailed responses from each individual association to the SRA's Consultations on the proposed SQE. This joint response distils the essence of our views and focuses on the issues (a) that we believe are most critical; and (b) where we jointly have most experience. It develops a paper that we previously submitted to the SRA Board. We focus on the proposal for SQE1 as a replacement for the QLD or CPE/GDL (recognising that SQE1, if implemented, would also cover areas of knowledge currently covered in the LPC). The major problems with SQE1 are these:

1. Unprecedented, unproven and without justification

SQE1 is sometimes described as similar to the New York Bar exam, QLTS, 'European' systems or UK medical education. In fact all of these four approaches have more in common with the current system than with the SRA proposal. All require UG and PG education in the relevant subject (albeit usually in a broader context and/or with other subjects), followed by (or integrated with) vocational education, the total lasting at least 5 years (excepting the current system to the extent that the UG+Vocational stage can be completed in 4 years). The SRA proposal would enable students to take SQE1 after just a 3-year UG programme that could include no legal study, although we recognise that many would take longer than this and the majority would have law degrees. In no other legal system that we know of is it possible for legal understanding, knowledge and skills to be tested solely by a set of centralised – and largely multiple choice – examinations prior to practice, even the limited practice that is implicit in a training contract. In particular, where MCQ etc. *are* used, there is also a more 'traditional' course of study preceding this element, with a broad range of assessments.

Doing something unprecedented is not necessarily wrong. However, it is first important to recognise that this is what is proposed, and to consider why no other jurisdictions, and no other UK professions of which we are aware, have adopted the proposed approach. Second, since there is no working model on which to base the proposed system, it is incumbent on the SRA to justify its proposals, and deal with the objections to it, more fully than is done in its application.

2. Limiting not widening access

We fully support proposals that widen access. But this proposal is likely to have the reverse effect. Most solicitors' firms, particularly the largest, which do the most complex work, will continue to seek students who have achieved excellent grades in high quality programmes with substantial intellectual content. They know that students who have had this opportunity, and who have had their transferable intellectual skills sharpened by that kind of education, make the best lawyers. They choose relatively few students who take vocationally-oriented law degree programmes. Most students of substantial and moderate means who seek a legal career are therefore likely to continue to attend high-ranking universities if they can, and not to rely primarily on 'cram' courses that would produce SQE1-ready students. Many will, as now, take non-Law degree programmes and then take a conversion course. But a one-year

conversion course will not produce SQE1-ready students, so these students will need to take a 'cram' course as well, or take a 1.5/2-year conversion course that provides an intellectual education as well as training for SQE. Thus students who can afford to will, in the main, follow routes that large firms offering high salaries prefer. Students of modest means, predominantly from low and marginal socio-economic groups, and disproportionately from BAME communities, are likely to take vocationally-oriented law degree programmes producing SQE1-ready students who will not be sought after by most law firms (this point is reinforced in 4 (a) below). Although this is unfortunate in many way, it is also understandable, since firms will continue to seek students with a sound intellectual education as well as vocational knowledge and skills.

3. Increased cost

Widening access requires cost reduction. The SRA proposal incorporates an intrinsic cost-escalation for all students who already have a QLD/CPE. Under the present system, LPC students are required to have a QLD/CPE, so they have knowledge and understanding of 'core' subjects and a high level of legal skills; these are therefore not directly tested again. The SRA proposal neither requires nor recognises the QLD/CPE, and so core knowledge, understanding and skills will all be tested in SQE1. For most students this will be an unnecessary duplication, and the costs will have to be borne somewhere. What is more the SQE1 proposal inevitably involves an increase in the cost of assessment, the scale of which is not yet known. We would argue that shifting costs from learning to assessment in this way is irrational even if short, cheap courses might be provided to prepare for the SQE1.

4. Quality

There are three major quality issues:

a) Depth: SQE1 will test a very wide range of knowledge in a limited number of assessments. Depth cannot therefore be required to the extent normal in the QLD/CPE, especially as most assessments will be multiple-choice. Again there is no valid medical analogy as medical multiple choice assessments are only one element of medical assessment, not the main gateway. Similarly, the QLTS candidate will have already been rigorously educated and assessed in another system. The lack of depth required by SQE1 will not matter for students with high grade degrees. But it will matter in relation to other students. The problem of access in para.2 above will therefore be exacerbated as firms come to realise this.

b) *Reliability v Validity:* The SRA claims that there is a degree of unreliability in relation to standards and knowledge coverage when (as now) universities design and mark their own programmes. However consultation documents have consistently failed to provide robust evidence to support this suggestion and in some instances have misrepresented evidence that is cited. SQE1 would seek to solve this alleged problem by taking the form of centralised assessments, which are mainly multiple-choice. But the supposed problem of reliability would be replaced by that of validity. We doubt that such assessments would be a valid assessment of the knowledge, understanding and skills that intending lawyers need. Preparation for them would, for many students (where financial resources permit), be by

'crammers'. So students without a high quality degree education would lack the underlying depth of understanding that all graduates with good grades possess.

c) Constructive alignment: It is well-established that learning is profoundly influenced by the approaches students know are to be taken to their assessment. Multiple-choice assessments (even the relatively sophisticated ones proposed by the SRA) encourage shallow learning which is unlikely to be retained unless it is regularly put into practice. Accepting this leads to the choice of crammer courses and the abandonment of deeper learning. A more varied diet of assessments is capable of assessing students' understanding of, insight into and ability to apply the law and in this way, constructively aligned with a good undergraduate education in law, prepares students for practice in the way required by employers and by the users of legal services.

5. Absence of risk assessment

Risk assessments are part of standard planning practice. If there has been a risk assessment of SQE1 we would like to scrutinise it. We believe that this is an exceptionally high risk proposal. We have identified above the risks that:

- It will cost most intending lawyers more than now.
- It will reduce access, since it will cost more than now to secure the kind of education that most firms will continue to prefer.
- It will reduce access and increase costs because most firms will (understandably) not regard SQE1 as an adequate assessment of the knowledge, understanding and skills that intending lawyers need, so they will largely still seek candidates with a traditional university education.
- In order to contain costs SQE1 will be likely to be narrow in depth; or, in an attempt to increase its sophistication, its cost will rise yet further.
- Introducing a system on the huge scale necessary with few, if any, working models elsewhere has high potential to fail.
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6. The absence of a requirement for a Law Degree or Graduate Diploma in Law (or the equivalent)

A fundamental flaw in the current proposal is that it means that there will be no regulatory requirement for a qualified lawyer to have studied Law at degree level, and have obtained either a law degree (QLD) or a conversion course qualification (CPE/GDL).This contrasts with the position in virtually every country in the world. It also differs from the approach proposed to be taken by the Bar Standards Board in relation to qualification as a barrister. While the SRA application correctly indicates[1] that the BSB[2] proposes to end its regulatory oversight of QLDs, it fails to point out that BSB goes on[3] to say that it will only recognise a

[1] Eg para 242 .

[2] *Consultation on Future Bar Training: Shaping the education and training requirements for prospective barristers* (October 2017) para 36.

[3] Ibid.

law degree that complies with the QAA Benchmark Statement for Law.[4] SQE1 does not so comply. (This does not mean that attainment of the standard of a law degree cannot be evidenced through other appropriately designed routes, such as an apprenticeship route. But those routes in practice have been and are highly likely to continue to be followed by a very small proportion of the total numbers seeking qualification as a solicitor.)

It is our view that it is wholly implausible that SQE1 as proposed can provide anything like the same level of assurance of the knowledge of the foundation subjects and analytical legal skills as the assessment of these matters in Law degrees and graduate diplomas provided by HEIs. HEIs are subject to regulation, including the requirement of compliance with the UK Quality Code for Higher Education.[5] This includes requirements concerning proper standards in assessment and that HEIs demonstrate that they have taken into account the QAA Law Subject Benchmark. No HEI would dream of using MCQs (or variants thereof) as constituting such a high proportion of the assessment of the foundation subjects. While they are good at testing knowledge of clear law, they are clearly inferior to the other methods of assessment used by HEIs when it comes to dealing with the many areas where the law is unclear. Law degrees and graduate diplomas also require students to engage with the different ways in which law is to be evaluated. MCQs do not. For example, when assessing the ability to advise competently in relation to dispute resolution or the documentation for a range of transactions, the issues required do not break down into the small, separate issues which can be readily assessed by computer assisted assessment (even allowing for the fact that this can be wider than the traditional MCQ). The old Law Society Final and the current LPC both incorporated a significant amount of assessment through analysis of documents and some drafting or explanation of the drafting process. This is present in the proposed SQE1 only to a very limited extent.

7. Prematurity

In any event, it is also our view that the evidence available to date on content of the proposed SQE1 is insufficient to enable it to be concluded safely that it will provide the necessary level of assurance on these matters. This will only emerge once draft assessments have been produced. As matters stand at present, three possible models that might emerge are these. Under Model 1, assessment of the foundation subjects will form a relatively small part of SQE1, the main focus being on the practical knowledge, including knowledge of procedure, currently found in the professional (LPC) subjects. Model 1 provides nowhere near the same level of assurance as a QLD/GDL as regards the foundation subjects, for the reasons given above (cf also para 4a above). Under Model 2, SQE1 will require candidates sitting it to have memorised in detail all the foundation subjects and all the professional knowledge required, a much larger amount of information than in Model 1. Model 2 introduces unnecessary duplication and probably requires candidates to carry too much information in their heads at one time to be workable. Model 3 would require the same amount of knowledge as Model 1, but evenly split between the foundation and professional subjects. This would dilute the amount of professional knowledge required of candidates by comparison with the LPC, which is hardly conducive to the improvement in assurance as to professional standards

[4] http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf

[5] See http://www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code

claimed to be in the proposal. Which of these Models is nearest to the truth will only emerge when draft assessments are published. We suggest that it is premature for SRA to be seeking approval for regulation change now, when such a key element of the proposal is so uncertain.

Conclusion

To design a whole new system to deal with the supposed unreliability of degree standards, creating the other more serious problems that we have identified, would be a mistake. But we acknowledge that some changes can be justified. The appropriate way forward (as has often been suggested to SRA) would see (1) the retention of an academic stage (Law degree or CPE/GDL, covering the foundation subjects) (or the equivalent) coupled with (2) a centralised assessment of the professional knowledge and skills required (an appropriately focussed SQE1, similar to Model 1 above and SQE2). The centralised assessment would provide sufficient assurance of standards at the point of qualification. It would be much easier to see that changes of this kind would be proportionate to such problems as are to be solved. We suggest that the application should not be approved in its current form. However, much of the work undertaken to date by SRA will remain relevant to a redesign of the proposal along the lines we suggest.

Association of Law Teachers (ALT)
Committee of Heads of University Law Schools (CHULS)
Society of Legal Scholars (SLS)
Socio-Legal Studies Association (SLSA)

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