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CLLS Training Committee

Response on behalf of the CLLS to the SRA's Consultation Paper on "Training for Tomorrow: Regulation Review"

Introduction

The City of London Law Society (the "CLLS") represents approximately 15,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This Response to the consultation of the Solicitors Regulation Authority ("SRA") on proposals to review unnecessary regulatory burdens and improve processes (the "Consultation Paper") has been prepared by the CLLS Training Committee. The membership of the Committee is set out below.

We welcome the opportunity to comment on the proposals with which we are broadly in agreement albeit with certain caveats.

That said, we feel there needs to be clarity on the SRA's objectives for these changes. Some of them indicate an intention to place obligations on training providers, law firms and so on rather than the SRA itself directly regulating "quality". This carries with it the possibility of uncertainty and even adverse consequences for quality. Is this in line with the SRA's remit as a risk-based regulator?

As a further introductory remark, whilst this Consultation Paper is described as one intended to remove layers of regulation and as part of your Red Tape Initiative, we have noted, particularly in the drafting of the new Regulations, that there are, potentially, some more far reaching consequences. These consequences should be the subject of further consultation and as illustrations of this, we have made a reference to some of them in our response to the Proposals.

Our comments on the seven proposals which make up this consultation are set out below.

Responses to the Proposals in the Consultation Paper

Proposal 1 – Remove complex and inflexible exemption arrangements

To introduce the concept of "equivalent means", creating greater flexibility within the current routes to qualification by enabling us to recognise equivalent education and training

1. Do you agree with the proposal?

We note that the SRA is not specifically consulting on this proposal (as it does not affect policy in any way) but instead is asking for respondents to indicate whether they agree with this change.

We are not clear why an issue on which the SRA is not specifically consulting is included in this Consultation Paper but nevertheless, in principle, we do agree with this proposal as we support the concept of greater flexibility in routes to qualification in the interests of equality, diversity and social mobility. However, not at the expense of standards.

The difficulties will be around determining what is or is not "equivalent means". We note that the SRA states that there will be explicit criteria. However, we are not clear what those will be and the SRA has not yet specified what the explicit criteria will be or when they will be developed. The content of the explicit criteria will be crucial to the success of this change and so should be put out to consultation in due course.

We are also unclear whether individual applicants will be the right persons to provide "appropriate evidence" about the "equivalent means". If someone comes up with an "equivalent scheme" and asks the SRA to vet it, what will the SRA expect from applicants who complete that scheme? Will there be opportunities for case-by-case reviews?

Looking at the specific wording in the new Regulations designed to bring this change into effect, we are concerned by the wording of new Regulation 4. That Regulation makes it plain it will be possible to complete the period of "recognised training" by "equivalent means". This would seem to open the door to would-be solicitors being able to qualify without completing a training contract in its current form. While this may be a logical outcome from the Legal Education & Training Review, we would not have expected this to be addressed via this Consultation Paper. Instead, the profession should be consulted properly on such a fundamental change and so we do not agree with this particular aspect of the proposed change.

As a result, we would want the "equivalent means" flowing from this Consultation to be limited to the formal education stages in the training continuum – the Qualifying Law Degree or Graduate Diploma in Law and the Legal Practice Course.

Furthermore, the reference to a would-be solicitor having completed the vocational stage "satisfactorily" has been deleted in the new Regulations (see Regulation 4). What is the thinking behind this? Could any adverse or unintended consequences flow from this? We do, of course, acknowledge that "complete the LPC" implies having passed it and an authorised education provider should ensure proper standards are maintained. However, does the deletion of "satisfactorily" open the way to disputes over what "complete" may mean?

Could it be argued that completing the LPC becomes merely a "time served" requirement? The same concerns could apply to the period of recognised training.

Applicants who embark on one career and then find that a change of career direction leads them to want to requalify as a solicitor could reasonably be expected to accept the criteria imposed by the SRA. However, given the focus on transferability and mobility in the SRA's response to the Legal Education & Training Review, it is to be anticipated that some future applicants may embark on one career path with an eye to becoming a solicitor (such as, say, an individual who begins his or her legal career as a licensed conveyancer). Such a person may well want certainty before committing to an "equivalent" course.

Given the last point, is the SRA planning to open a dialogue with other relevant regulators to agree complementary provisions and guidance for individuals transferring between qualifications?

2. Are there any consequences, risks and/or benefits that have not been outlined?

As we have indicated, the SRA should put in place consistent measures and policies so as to ensure current standards are maintained.

3. Are there any costs that have not been anticipated?

We are not aware of any.

Proposal 2 - Remove the requirement for a certificate of completion of the academic stage to be issued by the SRA

To remove the necessity for students to apply to us for a certificate to confirm that they have completed the academic stage of training.

1. Do you agree with the proposal?

Again, we agree in principle though any such change needs to ensure fairness for all the affected parties – the students and the providers.

We are aware that the certificate serves little purpose in the overwhelming number of cases. However, we understand problems can arise in a small number of instances where the student has followed some unusual path to his or her degree.

In those cases, if the SRA is intending to delegate the decision on whether the student has completed the Academic Stage to the relevant LPC provider, the institution's decision should be binding for the benefit of all parties. However, there does need to be some form of appeal process put in place.

Insofar as this change overlaps with that covered by Proposal 1, we hope that there will be a mechanism in place to allow such applicants to know that the SRA accepts those means before proceeding to the expense of commencement of the Vocational Stage.

Therefore, in any event, we would want to see the SRA provide guidance (or, better still, binding rules) which will ensure providers are clear on the requirements to be satisfied before the student proceeds to the LPC.

2. Are there any consequences, risks and/or benefits that have not been outlined?

The key is for the SRA to provide clear advice and support to LPC providers who are dealing with the small minority of students whose circumstances give rise to problems.

This will avoid the risk of students being deterred from applying to sit the LPC and of LPC providers being deterred from admitting them.

3. Are there any costs that have not been anticipated?

We are not aware of any.

Proposal 3 – Remove duplicated arrangements for the CPE and LPC

To remove requirements which duplicate the regulatory requirements placed on higher education institutions (HEIs) by the Quality Assurance Agency (QAA)

1. Do you agree with the proposal?

The key issue is that the institutions providing the CPE and LPC must deliver those courses to the requisite standards. Therefore, we support this change provided the combination of the SRA's authorisation and validation processes with the work and requirements of the QAA will ensure maintenance of those standards.

However, while we do not claim to be experts on the work of the QAA, we query whether the QAA can be an adequate substitute body.

The QAA will look at general academic standards (as is only right) and we would assume any QAA inspection team would include legal academics. Nevertheless, for courses of such importance to the future "health" of the profession, we would have thought a body such as the SRA is a more appropriate oversight entity (albeit perhaps working in conjunction with the QAA). Its representatives with their specialist knowledge of the requirement of the courses and the needs of the profession should be better judges of the quality of the detailed legal content of these courses than the QAA's representatives can be.

We are aware of the resource constraints which the SRA faces but reassurance on this "inspection quality" issue is needed.

2. Are there any consequences, risks and/or benefits that have not been outlined?

As we have said, we see a risk to quality assurance if the SRA’s role is removed. Can the QAA supply inspectors with the expertise to judge these courses effectively?

We see it as the role of the SRA to ensure a standard of excellence at all levels, including at the Academic and Vocational Stages. If this change undermines that objective, we question its worth.

3. Are there any costs that have not been anticipated?

We are not aware of any.

Proposal 4 – Clarify the regulatory requirements for training (1)

To remove the requirement for training to take place under the terms of a contract specified by us.

1. Do you agree with the proposal?

We agree in principle with the removal of the specified SRA contract requirement provided the current protections, remedies and rights available to trainees under their "contracts of apprenticeship" are not adversely affected.

We can see that exploitative employers might take advantage of the changes, including the fact that from the detail of the SRA paper it is clear that SRA consent will no longer be needed to terminate a Training Contract early. In the absence of any information about how the SRA uses its current powers to give or withhold consent to terminate contracts, it is difficult to comment in detail.

However, we feel that withdrawing from this area is consistent with modern regulatory practice.

While you have not specifically sought comments on this, we have noted that most of the requirements surrounding the Training Contract have been removed from the draft Regulations and replaced with a very simple Regulation relating to a period of "recognised training". A particular point is that new Regulation 5.2 refers to the recognised training as "***normally*** [being] not less than two years if undertaken full time or pro rata if part time". (We have added the emphasis.) This wording could be read as indicating that a Training Contract could be either longer or shorter than two years. If there are any circumstances when the period of recognised training could be less than two years, the Training Regulations should be explicit.

We note that the comment relating to this new provision in the Table of Destinations states "Length of training period retained" and goes on explicitly only to refer to the possibility of *extending* the period if the SRA finds that there has been inadequate training. Therefore, our interpretation of the new provision may not be in line with what was intended. However, in that case the new Regulation should be clear on this point.

2. Do you agree that we should not specify any of the terms of the training contract? Or are there particular arguments which would justify the regulator requiring employers to incorporate regulations 11 and 12 into all training contracts?

We think it is desirable to keep these Regulations so as to retain the current level of protection trainees enjoy and to ensure a breadth of training.

3. Are there any consequences, risks and/or benefits that have not been outlined?

The incorporation of Regulations 11 and 12 in all Training Contracts should avoid any adverse consequences arising from this change.

4. Are there any costs that have not been anticipated?

We are not aware of any.

Proposal 5 – Clarify the regulatory requirements of training (2)

To remove the restrictions on the number of trainees a firm may train, and how many practising certificates a training principal must have in order to hold that role.

1. Do you agree with the proposal?

We agree on the basis that a properly run law firm will recruit only the number of trainees the business can support. For some firms this may be few, for others it may be many. Clearly, there may be a risk of abuse but this should be minimised, if not avoided altogether, through the process of authorising training establishments under Part 4 of the new Regulations.

Our view is that a fairly substantial period of practical experience is needed if the Training Principal is to ensure the trainees get adequate training. Therefore, our view is that the holder of this role needs to have held at least five consecutive practising certificates.

We query whether the position of "training principal" is not itself a throwback to an earlier age. The draft regulations refer in Regulation 13 (1) (b) to a training principal being "competent to meet the requirements of these regulations". As the requirements for a training principal are not spelt out, could there not be some statement of what they are?

2. Are there any consequences, risks and/or benefits that have not been outlined?

We do not anticipate any adverse consequences on the assumption that no sensible employer would take on more trainees than the employer's business could support.

3. Are there any costs that have not been anticipated?

We are not aware of any.

Proposal 6 – Rephrase the requirement for trainees to experience a breadth of legal practice

To remove the requirement for development of skills in "contentious" and "non-contentious work", and amend the wording of the three areas of law requirement to "at least three distinct areas of English law and practice".

1. Do you agree with the proposal?

This is perhaps the most potentially problematic proposal in the Consultation Paper.

The Consultation Paper makes it plain that the SRA does not see this change as affecting the need for trainees to gain contentious as well as non-contentious experience (as a result of the interaction between the Training Regulations and the Practice Skills Standards).

If that is right, this proposed change does not give us the opportunity to air the view held at least in some quarters that the contentious experience requirement imposes burdens on the ability of some training establishments to meet the requirement.

If a more fundamental change is not in the offing (so we accept the current position), we query whether it is right not to set this requirement out in the Training Regulations. That would give clarity and certainty. Some knowledge of contentious work informs many areas of non-contentious practice as well as underpinning rights of audience. Therefore, we would favour retaining a reference to it in the Training Regulations for the avoidance of doubt, if nothing else.

Furthermore, we are unclear on how and when the Practice Skills Standards are reviewed. If the obligation to comply with such an important requirement is to be embedded in those Standards, any change to them must to subject to consultation with the profession.

Picking up the point at the end of the section on this proposal about this change "alleviating confusion", obviously we do not know the full range of queries the SRA gets on the status of particular periods of experience or pieces of work. However, we are not clear why this change should have this beneficial effect for the SRA. That said, we assume the current flexibility the SRA allows as regards satisfying this requirement will continue.

2. Are there any consequences, risks and/or benefits that have not been outlined?

None that we have not covered in the previous paragraph.

3. Are there any costs that have not been anticipated?

We are not aware of any.

Proposal 7 – Remove the requirement for student enrolment

To remove the requirement in part 3 of the Qualification Regulations to have student enrolment in place before commencing a Legal Practice Course and serving under a training contract.

1. Do you agree with the proposal?

We have concerns with this change.

We would like to see more detail about the proposal that individuals may seek approval before commencement of the vocational training and how this will be documented.

There is a practical problem here. The majority of applicants are likely to be young and not yet imbued with a lawyer's understanding of what might be material to a "fit and proper" test. There is then a real potential for applicants to incur the costs of academic legal study and vocational training before discovering that some blemish in their past prevents them from proceeding. (In passing, anecdotal evidence suggests that the SRA is now more realistic about what would cause some to fail such a test than the authorities were in previous years, which we welcome.)

We are aware that the SRA website has guidance on "suitability" but is it clear enough? How will the SRA ensure that that information is publicised in ways which, as far as possible, guarantee that the overwhelming majority of applicants (if reaching all of them is impractical) are aware of the potential problems they could face given their particular circumstances?

We would ask the SRA to propose a practical approach for doing this before this rule change takes effect. We would welcome being consulted on this.

2. Are there any consequences, risks and/or benefits that have not been outlined?

The publicity point we have made in the previous paragraph must be addressed if adverse consequences are to be avoided. The change carries with it the risk that students may embark on an expensive course of study which they later discover they cannot use to help them gain the qualification.

It is true that the students ought to take responsibility for their own futures. Furthermore, it might be justifiable to question the suitability of a student to become a solicitor if he or she does not recognise a dishonest act as likely to have consequences. However, detailed guidance is necessary.

3. Are there any costs that have not been anticipated?

We are not aware of any.

25 February 2014

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