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City of London Law Society Training Committee
Response to the SRA's Consultation on A Competence Statement for Solicitors

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multi-national 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 in respect of the SRA's Consultation on A Competence Statement for Solicitors and has been prepared by the CLLS Training Committee.

Introduction

The Consultation is principally about a Competence Statement for Solicitors, but other aspects are covered and assessment options are presented as a reflection of the SRA's current thinking. In this response, we are replying to the specific questions asked and also taking the opportunity to comment more generally. The reason we have been prompted to do so is because the Competence Statement cannot be taken in isolation. Competence is part of an education and training regime which also consists of knowledge and experience.

We start with the conclusion reached in the Legal Education and Training Review of July 2013 (LETR), that the current LSET system provides, for the most part, a good standard of education and training enabling the development of the core knowledge and skills needed for practice across the range of regulated professions. That said, the LETR identified areas for improvement in its recommendations. These included the development of certain skills, the development of a more robust system of learning outcomes and standards and increased standardisation of assessment.

General comments relating to the development of a framework for assessment and review of the process for qualification as a solicitor

We understand that a further consultation will be issued later this year in relation to these areas and therefore that we will have the opportunity to respond to the SRA's detailed proposals in due course. But since some initial views are offered in the Consultation, we would like to make some comments at this stage. In addition, as mentioned above, the Competence Statement cannot be treated in isolation and our comments on it should be viewed in the broader context of the process for qualification as a solicitor.

We have taken initial soundings from our members in relation to the possible alternative approaches which contemplate allowing a more flexible range of pathways to qualification; pathways which would enable individuals to qualify as solicitors with qualifications and practice in the law which could be quite different from the current qualification requirements. We have also done so in relation to the desirability or otherwise of retaining a mandatory fixed period of recognised training. This is because the framework for initial qualification as a solicitor outlined in the Consultation has ramifications in relation to both of these matters.

Whilst initial soundings only, our members' responses nevertheless show a distinctive pattern of thinking and remain broadly consistent with the views expressed by them in the past.

It is generally accepted that standards are high in the profession and one of the central planks is the educational background of practitioners. Graduate level education brings with it an intellectual rigour and discipline which is essential to the practice of law. Law practice is more than having answers based on knowledge acquired. It requires an ability to apply an evolving body of knowledge to different and often new and developing situations, to form judgments and find solutions in circumstances which have not been faced before; to form views on matters where there is no precedent. This has always been the case but in a world of ever greater change and complexity and of uncertain international and domestic conditions, this is even more necessary and acute.

Against that background, members are supportive of widening access to the profession, but on the basis that an intellectual rigour and discipline to entry is maintained. We are supportive of alternative routes which have already opened up, such as legal executives qualifying through CILEx. These both require examination at level 6 (an undergraduate level qualification). Maintaining high standards with a universal benchmark is the best way to achieve this. The LETR itself did not fundamentally challenge the requirement for a graduate level entry qualification, but it did recommend that the quality and diversity effects of such pathways should be monitored. We would expect the SRA to do this.

We will refer on several occasions in our responses to the specific Consultation questions to the need for clarity and consistency in the legal education and training regime. It is vital for good regulation and is in the interests of all – solicitors, aspiring solicitors, education and training providers, clients and the public at large. This leads us to believe that a possible alternative approach which allows any training pathway

to qualification (provided that the candidate can demonstrate compliance with the Competence Statement and the Threshold Standard) is potentially dangerous. When one considers the variable standards already between law degree courses or between the legal practice courses available within a system with prescribed routes to qualification, it is extremely hard to see how opening up the profession to any number of pathways will lead to greater clarity and consistency. . There comes a point when costs, complexity and the confusion generated by multiple pathways will undermine any possible benefits and they are potentially unfair to people seeking to enter the profession who do not have the background or knowledge to make informed choices.

One of the options outlined in the Consultation is a centralised assessment. It has been suggested that a centralised assessment of competence could be modelled on the Qualified Lawyer Transfer Scheme (QLTS). It will surely be costly to operate and therefore a danger that such a system could form a barrier to entry. In addition, there is a risk that if the assessment is grafted on to the main existing route to qualification then it will be very disruptive for prospective solicitors and firms.

The current system with a core academic training and a diverse practical legal training seems to us the best way of embracing diversity. A single centralised assessment would, in our view, surely move the profession in the opposite direction. It is strongly arguable that having milestones in the route to qualification and ongoing practical training is an infinitely more reliable way to judge whether an individual is fit to be a solicitor than a single/one off assessment.

The CLLS has previously characterised the training contract as the "jewel in the crown" of the English solicitor qualification process and this was referred to by the LETR in its report. The views of members expressed to us so far in response to this Consultation indicate that this remains their view. There may well be other methods of practical training which achieve similar goals but such training is essential. As the Consultation does not address this issue, we hope that there will be a proper consultation on any changes.

The SRA has stated that its regulatory purpose is to protect consumers of legal services and to support the operation of the rule of law and the proper administration of justice. It has also stated that its overriding aim is to enhance the quality of legal services through its education and training framework. The cornerstone of the maintaining and raising standards is education and training. The priority is therefore standards in education and training and maintaining the quality of legal services. Whilst there may be other priorities such as promotion of competition, the desire to encourage innovation and widening access to the profession, each of these must be measured against the principal aim of maintaining standards and maintaining (and in fact enhancing) the quality of legal services. It is not appropriate to innovate at the expense of standards, nor lower standards in the interests of opening up access to the profession.

Finally, it may be necessary to consider the impact at the European level and the international reputation of the profession is something which should not be underestimated. The existing combination of an academic qualification coupled with a substantial period of practical experience has contributed significantly in this regard.

Our position may be compromised if other countries see the manner of qualification and the testing of quality as inferior to theirs. It would be all too easy to lose this international reputation and would be far more difficult to retrieve it.

Consultation Q1: Does the competence statement reflect what you would expect a competent solicitor to be able to do?

We generally support the idea of a Competence Statement and we believe that it is a good thing to introduce competencies to settle and assure standards of effective performance which have not in the past been expressly articulated. It chimes with the focus on consistency of performance and with the desire to make it clearer to solicitors what it is they are expected to achieve as solicitors.

General comments:

1. The stated objective of the Competence Statement is to provide a broad definition and consequently, a high level model for the whole profession. Broadly, the Competence Statement should require each solicitor to consider what effective performance looks like within their own practice. In many cases, this should take account of the work undertaken by the department, and firm, in which a solicitor practises. However, if it is intended to be an expression of the skills and behaviours that any individual solicitor should possess (at all stages of a career from newly qualified to senior partner), then we are concerned that it is too generic. Whilst unobjectionable in itself, it may not elicit from a practitioner a consideration of the competencies required to practice effectively within the real world in which that practitioner operates.

   For those solicitors who specialise in the areas of business law which our members firms undertake, the Competence Statement sets out a breadth of expectation without requiring a solicitor to focus on the depth of knowledge and expertise which, in our judgment, that solicitor would need to exhibit to practise effectively and to comply with Principles 4 and 5 of the SRA Principles.

   We do not think that, as drafted, solicitors will be able to use it as a basis for deciding how they apply their skills and how they behave in carrying out the work. This is because it is set at such a high level, that no decisions can be made on the interpretation of the competencies without a very high degree of subjective interpretation. Would a single solicitor be able to turn to the statement and decide that he or she has categorically acted or not acted as required in the competencies and at the level required in the statement? Equally, would a group of solicitors faced with the same issue come to the same view as to whether they meet the competencies at the required level or would they come to different views? It seems highly likely that on many occasions, there would be as many views as there are number of solicitors of whom the question is asked.

   This is potentially dangerous for solicitors, particularly if they then consider what the consequences are of making a judgment that another solicitor or the

SRA would make differently based on an alternative interpretation of the competencies.

What would be beneficial is a full explanatory guide which provides a proper steer from the SRA, as the regulator, on how it interprets the competencies. We would suggest that the SRA provides examples not only of when a competency has been met but also when it considers it would not be met.

2. The description of the skills and behaviours listed under the four headings: professionalism and judgment (A), the practice of law (B), managing a practice (C) and working with other people (D), are not sufficiently geared to a legal practice. In many instances, if one were to take out a reference to "law" or "legal", one would not know that it is a competence statement for solicitors. In many instances it means that the way that a solicitor is expected to practice under the Competence Statement would often be beyond the remit of the solicitor's engagement. Examples of this are also given below. This is less of an issue in relation to the ethics element in (A) as it specifically relates back to the legal and regulatory requirements and the SRA Handbook and Code of Conduct.

   This issue could be addressed by curtailing some of the generalisations by reference to the law or to legal knowledge or practice or to the parameters of the client engagement.

Some of the competencies are more relevant, or only relevant, to solicitors at certain stages of their career. A detailed review of the text with this issue specifically in mind would assist. The Competence Statement seems not to take account of the manner in which a solicitor's practice develops over time. As practitioners progress through their career, it is the depth of knowledge and breadth of experience (rather than knowledge) which distinguishes them from less qualified colleagues who may have a broad basic knowledge of legal issues but little experience in how to apply that knowledge to a case or transaction.

3. Regrettably, aspects of the Competence Statement encroach on the Code of Conduct and other parts of the SRA Handbook. The title to A1, for example, contains a direct cross reference. Acting in accordance with legal and regulatory requirements is already an obligation imposed on all solicitors and is not a standard or level of skill to which solicitors (and those seeking to qualify) must achieve. Care should be taken that matters covered in the Code of Conduct or elsewhere in the SRA Handbook are not also treated as competencies.

4. The Competence Statement should be clearly expressed and free from inconsistencies and vagueness if it is to serve the purpose for which it has been created. It must be capable of objective interpretation by all seeking to use it – the regulator, the profession, students seeking to enter the profession and those tasked with the education and training of aspiring solicitors. Above all, if it is to become the universal standard of competence by which every person seeking to qualify as a solicitor is to be adjudged competent enough to practise

law, it must be susceptible to assessment in its entirety, something to which we will revert later on.

Comments on some of the competencies:

- A. Ethics, professionalism and judgment

    - A1: See our comments at 4 above. Notwithstanding that view, we are uncomfortable with the restrictive rather than permissive nature of A1d and think that it should be re-worked: "Act ethically and encourage other solicitors to do likewise". Additionally on A1e, it is not clear why Principle 9's requirement to, encourage respect for diversity is repeated in the Competence Statement; as a Principle, it is already a fundamental obligation of solicitors. A1e could be redrafted to read "Act fairly and inclusively" thereby enforcing the Principle through a measurable standard of performance.

    - A2d: For clarity, this competency should be expressly qualified by reference to a solicitor's own legal practice.

    - A3a: This competency should have an additional limb added to it namely, "and securing assistance from others, where necessary". Clearly solicitors are under a duty (as expressed in Principle 4) to act in a client's best interests but there is a difference between solicitors adding to their knowledge and experience and consequently their ability to act for clients, by carrying out work which they may not have done before and acting beyond their personal capacity. It is vital that solicitors learn and develop their practice and find better solutions for clients and that innovation and progress is not stifled. If work is beyond someone's personal capacity the requirement to secure assistance from others may be an example of a competence most readily applicable to young or inexperienced solicitors.

    - A4a and b: Only "legal principles"? We think this is quite narrow and should be extended to include, in respect of A4a, the commercial or personal implications for his client; and, in respect of A4b, the scope of a particular engagement.

    - A4b: the reference to "best addresses" is not entirely realistic. Often compromises need to be reached which are not necessarily what the client wants nor which necessarily reflects his commercial or personal circumstances.

    - A4c: the language here is probably one of the competencies which causes us most concern:

      We understand it to mean that solicitors will only need to be able to spot relevant areas, rather than issues, outside their specialism and to refer a client elsewhere where appropriate. However, we still have concerns that the wording could be interpreted as an obligation on solicitors to keep abreast of areas beyond their own specialism, for example, as an obligation

for a City solicitor to keep abreast of *any* issue on which a business or its directors might seek legal advice. That would be unduly onerous and costly. It would also significantly restrict the relevance and usefulness of any CPD activities undertaken to maintain such a competence. In other words, it would seem contrary to the aims of the CPD reforms which we have supported.

We have analysed carefully the wording "an awareness of background legal knowledge" and whilst it is possible to have an awareness of some law without a detailed knowledge or a level of legal knowledge outside an area of practice "in the background", it is not, we think possible, to have an awareness of *background* knowledge of law.

Equally, whilst the Consultation states that a solicitor's legal knowledge is not intended to be active knowledge of all areas, it must be such that a solicitor is able to recognise possible problems outside his or her immediate area of practice. Nevertheless, it will be a highly subjective matter and therefore difficult, to identify what level of awareness is required. For example, what would be expected of the corporate lawyer relating to spotting issues in succession planning on a M&A sale or the relevant issues in related complex tax structures? What if the engagement letter makes it clear the solicitor will not be advising on certain tax matters?

Most strikingly, the examples given of legal knowledge exclude areas such as employment, data protection and competition law which are frequently of concern to individuals and businesses.

- A5: is an example of an issue which we referred to at 2 in our General Comments and that is the lack of specific reference to legal practice. Neither the introductory language nor any of the specific competencies refer to the law or to legal knowledge or practice. This means, for example, that assessing information and identifying key issues and (importantly) risks, is completely open-ended and could apply to anything in connection with the transaction or case and be totally outside the legal engagement or even be (properly) excluded by it (such as, for example, providing tax or accounting advice). Even if A5a-e were curtailed along these lines (which they need to be), they would remain very loosely worded: "recognising gaps", "using multiple sources of information", evaluating the quality and reliability of information". Often this would simply be asking the impossible.

- A5d and e: both should include a reference to taking additional advice from competent third parties, such as counsel, accountants or tax advisers.

- B Technical legal practice

  - B: the heading "Technical" legal practice is perhaps not ideally chosen. There is nothing really technical in this section in the accepted sense of legal knowledge. It is a sub-set of the overall skills which we

would expect a solicitor to exhibit. We would suggest that "Technical" is replaced by "The".

- B1: has some of the problems noted in our comments on A5 in that it is too general and does not distinguish how this might occur in legal practice: obtaining relevant information, analysing and assessing documents, recognising the need for additional information, etc. These should relate back to the law, legal practice and the scope of a solicitor's engagement.

- B4b: we suggest that "all" is deleted. It adds nothing to "relevant" and if it is intended to add something, then it may well, in the circumstances of a matter, be impossible to achieve from a practical point of view.

- B5: should be broadened to cover spoken and written persuasive skill. We also suggest deleting "the" from B5b and "any" from B5f.

- B6: it may not necessarily be in the best interests of a client, or within the scope of a client's instructions, to present options for compromise (B6c), to respond to options (B6d) or to develop compromises (B6e).

- B7c: it is by no means always possible or always desirable in the light of altered circumstances, to bring a matter to a conclusion.

- C Managing themselves and their own work

  - C1: some of the listed competencies are out of the reach of a newly qualified or young solicitor in a large, or complex, practice and so unachievable by such solicitors – an illustration of the problem we referred to at 3 in our General Comments.

  - C3: The comment made at C1 applies equally here. We would suggest that "on" is replaced by "to".

- D Working with people

  - D1a: it may be outside the control of a solicitor whether the communication achieves its intended objective.

  - D1b: the word "appropriately" would be better than "effectively".

  - D1f: there needs to be an element of exercising care in relation to matters which are within the control of solicitors, absolute confidentiality and security may not be within a solicitor's control and the competency should reflect this.

  - D2c-f: are further examples of the problems we referred to at 2 in our General Comments, ie the lack of reference back to the law, legal knowledge or practice, making these competencies too open-ended and capable of falling outside the legal engagement.

- D2g: Whilst new solicitors might see some of the process, it is unlikely they will be in a position of agreeing services and charging with the client, instead it might well be the responsibility of a more senior solicitor.

- D2h: is it right that a solicitor must always, as a matter of course, explain the ethical framework within which he works?

Consultation Q2: Are there any additional competencies which should be included?

We don't have any suggestions on additional competencies for the Competency Statement. There are of course other skills which it is advantageous for solicitors to possess but in our view they are outside the scope of regulation.

Consultation Q3: **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?**

Before dealing with the question, we would make the overarching point that without knowing what the Statement of Legal Knowledge may be used for in the future, it is hard to comment effectively. If, for example, it is to be used as a basis for assessing competence of solicitors, we consider it to be totally inadequate as it gives no indication of the depth of knowledge expected. We expand on this further in question 5.

Whilst the Statement of Legal Knowledge does we think list the majority of the correct topics for qualification purposes, and we identify in response to question 5 some of the gaps and changes we think are required, we do believe that there are two particular problems with the Statement of Legal Knowledge. If it is intended to encompass the practices qualified lawyers may have over time, there are clearly gaps e.g. for competition or employment lawyers. In this regard, we do not understand why the Statement of Legal Knowledge needs to strike a balance at all between consumers' understanding of the title solicitor and what solicitors do. As long as the Statement of Legal Knowledge encompasses what consumers expect, it can go further and encompass what practising lawyers think is required, which will include knowledge of specialist areas of which many consumers will have no awareness. Even allowing for that, we would expect that many corporate consumers of legal services would be surprised at some of the gaps. While we appreciate that the Statement of Legal Knowledge is expressed to be a non-exhaustive list, if a solicitor's area of practice is not listed or is only partially listed then it cannot in any way inform the solicitor nor be a guide to ongoing training and development.

The second problem arises if the Statement of Legal Knowledge is intended to inform practising solicitors generally of the areas of law which the SRA expects them to have as "background legal knowledge". This is because the Statement does not list all areas of practice we consider should be included and overemphasises some which we think are less important. Again, we expand on this in question 5. Importantly in this

regard, the Consultation recognises that the broad knowledge which solicitors have on qualification will inevitably fade where it is not used and that there is no expectation that solicitors will retain active knowledge of all areas nor undertake professional development activities in relation to legal topics which are unlikely ever to have a bearing on their practice area. This obviously has a bearing on the interpretation of the Statement of Legal Knowledge and as such we think it ought to be built into the statement itself. For this and the reason outlined at the beginning of this section, it seems to us that the Statement of Legal Knowledge needs some preamble or general scene setting and remarks such as these could be included.

Consultation Q4: Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

If the Threshold Standard is to be used as an objective standard for assessing competence to qualify, the differences between level 3 (the required standard) and levels 1 and 2 will need to be very clear. We are concerned that the current draft is not clear in this respect. An example given of the intended standard of performance which achieves the required standard relative to Functioning Knowledge is one where a person: "*identifies legal principles relevant to the area of practice, and applies them appropriately and effectively to individual cases"*. But a standard of performance which: "*recognises some of the standard legal issues relevant to the area of practice and begins to see how they apply to a particular case or transaction*" falls below the required threshold standard. In a process designed to provide clarity and consistency, one can foresee challenges with this.

Similarly, there may be problems if one analyses whether level 3 is the correct standard for a newly qualified solicitor. Whilst the area of work is not and cannot be specified for this purpose as it has to take account of highly diverse solicitors' practices, there are immense difficulties is setting a single standard applicable to all qualifying solicitors. If we take some of the highly technical and specialised transactions on which solicitors in City firms advise and on which trainees work, we can readily think of examples where under Functioning Knowledge, it would be quite impossible for someone on the point of qualification to be able to identify "*the"* legal principles relevant to the area of practice and apply them "*appropriately* and *effectively*".

The same could be said for the level 3 standard set for the Standard of Work: "….*complex tasks may lack refinement*". There is an implication that the newly qualified solicitor knows how to do all of the tasks in the practice area but just needs some refinement. This will not be the case. In many practice areas undertaken by City firms, a six month seat will have only scratched the surface of what it takes to be a competent solicitor in a particular practice area.

Furthermore, in some cases, this single standard may penalise the non-specialist. If someone qualifies into a specialised area of work and only focuses on that, it is more likely that he or she can achieve a higher threshold standard than someone qualifying into a broader practice area. Often experience in a broad area of practice is most beneficial to clients but it is less likely that someone can achieve level 3 in those circumstances. A further issue with a single standard is that each element must work

for all practice areas. With this in mind, we suggest that words such as "transactions" in Complexity should be replaced with more generic terms (such as "client matters").

Our view, therefore, is that level 3 does not articulate the correct standard at which we believe a common standard should be set.

We note that aspects of level 3 require the newly qualified solicitor to be able to exercise judgment and make choices: for example, the reference in Complexity to an ability to deal with "*occasional unfamiliar tasks which present a range of problems and choices"* and similarly, under Innovation and Originality: the ability *"using experience,… to form judgments about possible courses of action and ways forward"*. We think that this is absolutely right and believe that it endorses our view that academic background and learning must be coupled with real on-the-job experience before qualification. We welcome this and urge that this is borne in mind when considering opening up the pathways to qualification.

Consultation Q5: Do you think that the Statement of Legal Knowledge reflects in broad term the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

The Statement of Legal Knowledge is said to be deliberately broad and high level and is not designed to be an exhaustive list or to constitute a curriculum. It is in fact no more than a list of topics. More attention appears to have been given to the skills and behaviours required of a solicitor in the Competence Statement, but it is the practice of the *law* which is what solicitors are about**.** It is of concern to us that nowhere will there be a definitive list of the body of legal knowledge which solicitors are required to know in order to enter the profession. This has been (and remains) a problem for lawyers intending to take the QLTS, but the regulatory response was that it was necessary to reach the level of the LPC and so in a roundabout way, there was, after all, a curriculum to follow.

In the past, the SRA has said that the education and training framework must be based on a clear articulation of the standards to be achieved that are robust and consistent. This presumably must also apply to the knowledge that solicitors must possess on qualification. The Consultation itself refers to solicitors having a core of knowledge which all solicitors need to know upon qualification and that knowledge is to be the focus (along with skills) rather than process, but it is hard to square the requirement for a clear articulation of standards with such a rudimentary statement of legal knowledge.

The SRA also stated in its Policy Review of October 2013 that the primary driver for competence is to provide assurance to consumers of legal services in the delivery of quality legal services. Can it be said that the proposals will deliver quality legal services when the proposals are so vague on what law solicitors need to know?

In essence legal education and training must remain fundamentally about legal substance (legal knowledge) and then about testing that knowledge the skills and behaviours needed to apply it. We question whether the SRA's focus on standards and assessment lacks a sufficient of focus on legal knowledge; whether there is a risk that it somehow becomes secondary – with a primary focus on skills and behaviours.

This is in some ways not surprising when the focus in developing the Statement of Legal Knowledge was on consumers' expectations. Ultimately consumers expect their solicitors to know the law (it is a "given") and often only differentiate in the lawyers they choose by reference to their non-legal skills and behaviours. To give too much focus on what consumers say rather than on legal knowledge fundamentals, risks underplaying the need for and giving inadequate attention to the basic building blocks of the solicitors' role: their knowledge of law.

A list of topics gives no sense of the depth of knowledge that is required or the lateral coverage. It will be entirely open to interpretation and will create great uncertainty at all levels. There is a danger that courses will consist of very different content and it will only be at the point of testing or assessment that this will become apparent. With so little to go on, the way is opened up to subjective judgments on what is required and to inconsistency and divergence in the law learnt. This will do nothing for the reputation and credibility of the profession and nor indeed is it fair on legal education and training providers and employers but most of all, on students who will have spent a great deal of time, effort and money to study.

The Consultation also refers to a broad based training and knowledge of the law which distinguishes solicitors from other legal professionals. This broad base of knowledge will only distinguish solicitors if there is a certain depth to that knowledge, otherwise the broad base is worthless. Someone has to decide what that depth of knowledge is (as well as the breadth) in order to test or assess aspiring solicitors to decide whether they are fit to qualify. Someone has to have a curriculum or syllabus in order to set an assessment or examination. If there is a central assessment then that will be the SRA, if not, then it is likely to be the education and training providers. If it is left to external providers, then there will be an even greater variance in the judgments made as to what needs to be studied and in what depth under each of the topics. Surely they will need to benchmark their courses against something in order to gauge what is required in relation to each topic. At some point a curriculum or syllabus becomes inevitable. Yet the Statement of Legal Knowledge makes no attempt to do this.

From this, we consider there are distinct problems with the Statement of Legal Knowledge and that a curriculum or syllabus does need to be spelled out, not least for clarity and consistency.

We, in any event, question whether there is a call for a radical rolling back of what is required to be studied as the legal knowledge requirements. It does not come out of the LETR and in fact the reverse, the LETR states that, for the most part, the current requirements provide a good standard of education and training enabling the development of the core knowledge and skills needed for practice across the range of regulated professions. Instead, LETR recommended grafting on additional legal requirements in ethics and management and other skills.

We think it is a pity that the Statement of Legal Knowledge is not being consulted on independently in order to give it the attention it deserves. Competencies and assessment are capable of applying to any professional, but the law and acquiring legal knowledge is at the heart and soul of being a solicitor. This Consultation does address legal knowledge but asks limited questions. Question 3 asks only about the

balance between the perception of knowledge that solicitors are expected to have and the actual knowledge which comes with specialisation and Question 5 asks whether the Statement of Legal Knowledge reflects in *broad terms* the legal knowledge required at qualification. Determining what legal knowledge is actually needed in practice at qualification is a long way from a statement which reflects what is required in principle (ie in broad terms). The LETR suggested learning outcomes should be prescribed for the knowledge, skills and attributes of a competent solicitor, indicating a more detailed approach.

The SRA has suggested that to prescribe a syllabus or curriculum results in too much attention on process rather than substance. But we believe it is wrong to dismiss the current qualification requirements as mere "procedure" when the bulk of them are in fact about the quality of learning and ones which are endorsed by the LETR as for the most part good.

There is also the view that in the present system, testing underpinning legal knowledge is best done before the period of practical training. Topics which do not form part of an area of practice will fade from that point and not on admission and to expect any re-learning at the point of admission is disruptive and burdensome.

On the topics themselves, some are dealt with in relatively more detail than others. For example, the Code of Conduct has five subsets and Solicitors Accounts has six, which incidentally is more than any other topic. Yet insolvency is dealt with in a single phrase, as are business structures. Paragraph 4 refers to Business Law and Practice (including company and commercial law), but there are no commercial law topics covered. This imbalance of emphasis can only make the task of those seeking to use the Statement of Legal Knowledge more challenging. Does the amount of detail reflect the importance the SRA places on the topic?

On "gaps", we find it very surprising that there is no reference to employment law at all, an area where we would expect the SRA to wish all solicitors to have "background legal knowledge" given the extent it pervades the work of the profession as a whole. In similar vein we are surprised that data protection/privacy law does not feature. This is a rapidly growing area and a subject that needs to be addressed by practitioners across a range of disciplines. It is an area where one would expect solicitors to need to be able to spot issues. Other important topics which we would expect to see in a broad curriculum are intellectual property law and competition law. We would also expect to see reference to environmental law as part of the Property section. Overall, and with due respect to those involved in the drafting, the Statement of Legal Knowledge reads like an early draft of a list of possible topics for legal education which needs more time to be spent on it, refining, updating and expanding on the substance.

Consultation Q6: Do you think that the Competence Statement will be a useful tool to help entities and individual comply with Principle 5 in the Handbook and ensuring their competence?

We do believe that the Competence Statement could be a useful tool but only with the appropriate level of guidance and with examples of how the competence will and will not be demonstrated. In its current form we envisage difficulties with this. If it is hard

to establish a competency threshold at the point of qualification, then it is even harder to do so on an ongoing basis over the lifespan of a solicitor's career. How is the standard to be objectively applied from one year to the next as a solicitor's career progresses? How does the solicitor judge what standard is expected of him at any one time?

Similarly, we would ask how the SRA as the regulator intend to use the Competence Statement and standards for practising solicitors. We are not aware that the SRA has made any statement on this which might provide guidance or direction for individual solicitors to follow.

Some guidance from the SRA on what "robust systems" they envisage firms needing to have in place in order to ensure that their solicitors' annual competence compliance declarations are sufficient, would be welcomed. Will the typical performance review processes suffice? Firms such as our member firms are keen to ensure that they abide by their professional conduct obligations.

It is possibly also worth stating that we anticipate that a number of firms will already have, or will develop, their own competence statements, reflecting the realities of their practices so there is a potential for different competence statements to exist. Some guidance from the SRA on the degree to which firms may and should rely on their own competence statements could be helpful.

Finally, we would be interested to know how the Competence Statement will be applied to individuals whose practice is suspended (for example, those on parental leave), to RELs and RFLs and those practising overseas.

Consultation Q7: Are you aware of any impact, 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?

We do not yet have the full picture. A significant and crucial piece of the jigsaw is how the knowledge and competency will be tested at qualification and without that it is difficult to comment on the impact at this stage.

However, we think that the rudimentary nature of the Statement of Legal Knowledge (for the reasons stated above) is a negative aspect of the proposed reforms as outlined to date and therefore will not serve to assist solicitors as a tool to help comply with Principle 5.

Furthermore, greater clarity in relation to some of the competencies will be necessary. Equally, some of the competencies are not applicable to newly qualified solicitors and equally there are certain competencies which are not appropriate in the long term as a solicitor's practice continues to develop and often becomes more specialised.

It has already been pointed out (at 4 of our response to Q1 above) that there is an undesirable confusion of professional conduct and competencies.

We would also look for further guidance about how the Competence Statement and SRA Handbook will work together, whatever the final documents, they need to be clear, consistent and applicable.

Individuals and firms represented on the Training Committee are as follows:

Caroline Pearce (Cleary Gottlieb Steen & Hamilton LLP) (Chairman)
Rita Dev (Allen & Overy LLP)
Ruth Grant (Hogan Lovells International LLP)
Hannah Kozlova-Lindsay (Slaughter and May)
Patrick McCann (Herbert Smith Freehills LLP)
Catherine Moss (Fasken Martineau LLP)
Allan Murray-Jones (Skadden Arps Slate Meagher & Flom (UK) LLP)
Stephanie Tidball (Macfarlanes LLP)

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