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Dear Sir/Madam

City of London Law Society Training Committee Response to the SRA's Consultation: A new route to qualification: the Solicitors Qualifying Examination

The City of London Law Society ("CLLS") represents approximately 17,000 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 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 has been prepared by the CLLS Training Committee.

General Remarks

We recognise that in its second Consultation, the SRA has gone further in providing detail on the outline proposals contained in its first Consultation which now provides a clearer picture of the proposed new requirements for qualifying as a solicitor. We also acknowledge that two crucial features of the current system are likely to be retained. These are the possession of a degree or degree equivalent (or a level 6 or 7 apprenticeship) as an entry requirement and a period of qualifying workplace experience of a fixed term (although there are shortcomings as we see it, in the workplace experience in its proposed form).

However, despite the SRA's own acknowledgement that much of the large response to its first Consultation was negative, it is still broadly pursuing the same strategy and the same proposals. This is disappointing. In our response to the first Consultation, we said that we were unable to support the SRA's proposals because of some very fundamental objections. We invited the SRA to consider making changes to the existing framework that would instead build upon and improve the current system. We still consider it ought to be possible to achieve the SRA's goal of consistency in standards through having a central assessment whilst retaining the valued features of the existing qualification requirements.

Our analysis of the proposals follows a consultation and feedback with member firms. It has led us to the conclusion that the proposals might achieve the objective of consistency in standards but they fail to demonstrate high standards of learning or to deliver a modern and relevant syllabus of study which provides newly qualified solicitors with a knowledge base and the skills to be effective in providing a broad range of advice in the most appropriate areas of practice.

On the first issue of high standards of learning, we note that the standards of the assessments are not addressed at all in the second Consultation. We are told that the standards in the SQE will be high and the testing rigorous but there is no independent or objective benchmarking. There are no model assessments and there are no standard setting indicators. Furthermore, we are sceptical about the intended standard setting for SQE2 in the light of the SRA's suggestion that it would be possible to pass these assessments without any qualifying workplace experience in the relevant area of law.

Closely linked with standard setting is the chosen methodology for SQE1. We have already expressed reservations about multiple choice testing and yet it is retained as the sole method of testing legal knowledge. We set out our arguments why we disagree with this approach in our response to Questions 1 and 4.

The second issue is a modern and relevant syllabus studied in appropriate breadth and depth for a professional qualification. The proposed syllabus for SQE1 leaves out many of the vital topics of the current combined Qualifying Law Degree/GDL and LPC syllabuses and particularly those which corporate practitioners need, including (but not exclusively) those who are City bound. Equally importantly, the depth of knowledge required in other core areas of legal knowledge is reduced. CLLS member firms are very aware of the importance of this and much attention, time and resources is dedicated to this aspect of managing their businesses. They are not alone in this and it is perplexing that the SRA does not appear to have dealt with this point at all.

In summary, there is insufficient evidence that the proposals are better in terms of quality assurance or that the proposed syllabus is better than the current one. In fact it is clear that

the result will be a qualification with a narrower knowledge base which is significantly less relevant for many solicitors qualifying today or in the future. We know of no other regulator in the UK or elsewhere reducing the practical relevance of the training and education which it is assessing as part of a proposed qualification.

Turning to other aspects of the proposals, we are pleased to see that the SRA agrees that it is vital we have a qualification that justifies the high reputation of solicitors of England and Wales around the world. Where we disagree is that we do not see how the Consultation demonstrates that the proposals help maintain and improve the international standing of solicitors of England and Wales through "introducing a consistent, high standard at a time of change". Consistency yes, through having a central assessment, but high standard, no - not demonstrated, nor indeed in providing better coverage of the areas of legal knowledge which are relevant for lawyers qualifying in the modern world.

To compete successfully on the modern stage and maintain our global pre-eminence as a legal profession, it is surely folly to be going backwards in what solicitors are expected to know on qualification. In the light of our impending departure from the EU when we will experience direct European competition, our international competitiveness has, if anything, become even more of an imperative. We do not want to open a door to any EU suggestion that we fail to meet an equivalence standard, nor do we want to open ourselves to the longstanding US criticism that the solicitors' qualification is "law-lite" by comparison with the JD degree in the US.

We are unconvinced that the international benchmarking exercise which the SRA has carried out supports the proposals in their present form. The SRA says that the majority of the reviewed jurisdictions set a central assessment but of those less than one quarter use multiple choice testing and almost all include written examinations. Whilst not stated, it seems unlikely that the written assessments in the reviewed jurisdictions are limited to skills testing as opposed to legal knowledge testing, as is proposed for SQE1. We therefore continue to look for the education and training of solicitors to remain internationally competitive.

One further aspect which is of overriding concern to us is the nature of the qualifying legal work experience. We welcome the SRA's firmer attitude to the fixed term aspect of the work experience but there are many aspects of the workplace experience which provide such a high degree of flexibility and optionality, that in our view, it will begin to undermine its value and will almost certainly undermine its fixed term nature. We elaborate further on this view in our answers to Questions 2a and 2b.

It is our view that the SRA's pursuit of achieving its twin goals of absolute consistency in the assessments and a methodology of examination at stage 1 of the SQE at the lowest cost possible, has meant that the SRA has closed its mind to many of the other considerations.

The SQE remains at the heart and soul of the proposals but we do not agree that its introduction in its current form will achieve what it sets out to do. However, the concept of a central assessment could be embraced as part of the existing framework. To do that, we propose the following as a basic framework, whilst recognising that there are other issues which will, of course, need to be addressed:

1) The requirement of a law degree or GDL (or apprenticeship equivalent) which recognises the importance of a deep understanding of the law and legal analytical skills to develop an

ability to apply legal principles in practice. The SQE on its own is inadequate for non-law graduates.

2) A central assessment which then tests the practical application of law that is required by solicitors in practice.
3) Optional legal topics in SQE1 of the central assessment alongside core mandatory topics for the syllabus to be modern and relevant. If MCQ is part of SQE1 and it is a reliable and valid method of testing, then consistency in standards where there are optional subjects, as well as mandatory ones, should not be an issue. SQE1 should also include written examinations covering research, analytical, problem-solving and writing abilities.
4) Optional topics in SQE1 and SQE2 taken after 18 to 21 months of the workplace experience, although the timing will only be feasible if changes are made to SQE2. At present, it seems that the numbers taking SQE2 in each year and the number of assessments in "viva" format might well make SQE2 unworkable at least in a cost effective way.
5) Workplace experience of, preferably, 24 months with placements of a minimum period of four months but six months if the workplace experience is with more than one organisation and a maximum in all circumstances of three organisations.

And two final general remarks: first, we do not think the transition arrangements are workable in practice (see our comments in Question 6). Second, we remain unconvinced that these proposals will be better for breaking down social and diversity barriers which the SRA has always maintained is an intended goal. As indicated in our response to Question 7, we fear that the reverse might well be the case in the likely result of an entrenched two-track qualification: those whose study is based on meeting the SRA's minimum competence requirements and those who qualify into firms who provide enhanced training and study, such as City firms.

If the SRA is looking to achieve a level playing field, then there will need to be a broad consensus on the reforms. If not, then many, including City firms, will not rely on the regulatory standards set and will set their own requirements and the level playing field with enlarged access for all, will not be achieved.

Question 1

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

Strongly Disagree

We feel that the revised SQE proposals do not provide a sufficient test of competence. Without centralised standards for the delivery of preparatory training for the SQE (see response to Question 3), the provision of such training, being market-driven and demand-led will inevitably narrow in focus to reflect the fact many prospective solicitors will choose to pay as little as possible to achieve a pass result. Indeed that will become a selling point of courses stripped to the bare minimum to enable a decent attempt at the SQE and over time professional training will simply become limited to what is needed to pass the SQE. This may even become the case to some extent in law degrees, to the extent that the traditional subjects in law degrees are pared down to make room for the SQE-compliant elements. We feel that consumers will be put at risk and that the profession's reputation and capability will suffer irreparable damage both domestically and internationally.

1) The MCQ in SQE1

Multiple choice style testing of legal knowledge in SQE1 will necessarily need to focus on areas where the law is relatively clear, since a firm, single sentence answer will be required. The proposal that the papers will typically comprise 120 questions to be completed in 180 minutes reinforces this impression. We do not consider that this can be an effective or sufficient measure of competence. Lawyers need to be able to do more than identify or worse, guess a correct answer swiftly. They need to have the analytical skills developed in a legal context to develop a sustained, persuasive argument from first principles and then to test and challenge their own approach by considering case law and legislation. This will give them the skills to deal with multi-faceted problems or problems where the law is unclear. MCQ is therefore not appropriate as the sole legal knowledge testing technique.

We understand that the SQE model is closely based on the current QLTS, which is designed for candidates who have experience of practice in another jurisdiction (and who mostly have a law degree as well), where a significant amount of analytical legal writing, cognitive skills of analysis, problem-solving and critical judgment and evaluation would have been required and assessed. We do not see how prospective solicitors, particularly non-law graduates, who have been only trained for the SQE will have developed the necessary skills to provide this level of legal analysis competently. We fear that the quality of legal education will be severely compromised by this approach and thus lead directly to a poorer standard of advice to clients.

We have no objection in principle to multiple choice tests and are, of course, aware that they are currently used as a small part of the assessment process on the GDL and as part of the testing in a few overseas jurisdictions. However, we do have an objection to legal knowledge being solely, or even principally, tested in this way. We return to this point in our response to Question 4.

2) SQE1 and SQE2 skills

We are pleased that the SRA recognised the need to include some element of skills testing in SQE1 following the first consultation but what is proposed is not sufficient. In the SRA's own words the testing of research and writing in SQE1 is of "basic" skills only. It is insufficient preparation for the workplace. The test duration (together with the nature and number of tasks that candidates are required to complete) suggests that candidates will not be expected to deal with complex areas of analysis (where the law is difficult, unclear or evolving). We feel this will be a thin way of testing the ability to apply analytical writing skills to legal knowledge in a factual context. This is the fundamental skill of a solicitor and requires rigorous testing.

While the SQE2 will test writing and research skills at a higher level than SQE1, it will not focus on the detailed analysis and application of legal knowledge. It will be task based and the number and nature of the tasks in the allotted time again indicate that these assessments will not test the level of analytical writing needed for practice. The test will focus on writing for clients, which whilst an important skill will not offer an opportunity for a rigorous test of legal analytical writing that only writing to the "other side" can showcase. The suggestion is that a trainee would not need to have worked in the area of law being tested (e.g. Criminal Practice) in order to pass the assessments because they are only testing basic skills. This merely confirms and compounds our view that the SQE2 assessments will not fill the gap in

SQE1. Further, if SQE2 is to be tested towards the end of the period of workplace training only, trainees will be expected to start their workplace experience without having to demonstrate any substantive analytical legal writing skills. We do not believe it is realistic to expect firms to take on such untried, and literally untested, candidates without being assured of such basic skills.

To be meaningful, SQE2 needs to test skills in a more sophisticated way, in a broader range of contexts and follow a mandatory period of workplace experience.

3) Legal knowledge assessment

We are aware that universities and law schools will be better equipped to respond to the SQE1 legal knowledge syllabus which is set out in the draft assessment, but nonetheless we would like to add a few observations of our own.

We think that there is a disproportionate weighting of some of the topics in the draft assessment, whilst others are too lightly covered: for example, Contract and Tort are combined with Dispute Resolution in one of six assessments. Within this assessment, the description of the test on dispute resolution in contract or tort is weighted heavily in favour of the process and procedure of dispute resolution and reduces the importance of both contract and tort to an unacceptable level. This is further demonstrated in the weightings where they are given a relatively low status and are incorporated into the 30% weighting which comprises an analysis of the "merits of a claim or defence, using key principles of contract and tort", whilst the remainder covers the process and procedures for dispute resolution. Although there is some contract law in the Commercial and Corporate Law and Practice assessment, the weightings appear to refer to the core principles of contract law only in a very limited way and in only one of the eight sections: "Evaluate a client's extant and prospective rights, duties and responsibilities … as a party to common commercial transactions."

Furthermore, the breadth of these topics appears to be reduced. We note that, in the list of core principles of Tort that need to be examined, there is no specific mention of defamation or trespass to the person torts, professional and clinical negligence or employers' primary liability and occupiers' liability.

To us, this is a clear indication that these topics have been relegated and the knowledge to be acquired diminished. Contract and Tort underpins most of the work of solicitors in our law firms (as must also be the case with many other practitioners) and any SQE should reflect that reality. If it does not, it will be a false measure of competence.

As a further example, the first assessment covers Principles of Professional Conduct, Public and Administrative Law and the Legal Systems of England and Wales which seems to be unrealistically wide and has the result of devaluing their individual importance. The assessment is heavily weighted towards Professional Conduct, which is worth 45% of the marks whilst Constitutional law only carries 15%. This currently features heavily in a standard law degree meaning that those coming directly to the SQE without a law degree or GDL may be at a disadvantage.

The topics within the LPC electives are largely absent, including those needed by City practitioners.

We believe that the SRA should consult further on SQE1, particularly with practising solicitors and academic institutions.

4) Practical Issues

Aside from the content of SQE2 and the standard at which it will be set, we are concerned that from the vantage point of practices, preparation for and sitting SQE2 will detract significantly from the benefit of the training seat in which SQE2 is taken as trainees will understandably wish to focus on passing SQE2. Client and overseas secondments during the fourth seat, as offered by many City-based firms now and which are directly relevant to the levels of competence which we require from our solicitors on qualification, may also prove to be impossible.

Although the SQE2 assessments may be split across two sittings, with each covering a single context, this would necessitate attending training twice (in order to prepare for the five skills in each context) and would still cause the same disruption to practice. Moreover it will place pressure on the employer to use the trainees on tasks which will maximise their chances of passing the SQE2, a case of "employing to the test".

Parallels have been drawn between the SQE2 and the accountancy training model. However, the ability of law firms to accommodate day-release or other absences for training is not comparable. Audit work is more predictable in both timing and duration and trainee resource and the skills required are readily transferable from one client matter to another. In contrast, legal work cannot be predicted months or years in advance and needs continuity of staffing, because it requires detailed knowledge of a client and matter, built up over time.

We therefore consider that for trainees to take time out of the workplace training to prepare for and sit SQE2 (as currently formulated) risks reducing the overall competence of newly qualified solicitors in our member firms compared with their predecessors qualifying under the current regime.

The inadequacies of SQE are already apparent from the conversations our member firms are having with GDL and LPC providers. There is real concern that a "teach to the test" course for SQE1 will provide insufficient training for non-law graduates and firms will expect non-law graduate trainees to have undertaken a GDL-type course, as well as an SQE1 preparation course prior to taking SQE1.

Many firms are already considering also requiring trainees to undertake a course equivalent to the current LPC electives prior to joining so that they will have the skills and readiness for work of current trainees. This is clear evidence of the perceived low standard of competence needed to pass SQE1: candidates who pass SQE1 will not be "reasonably prepared for their legal services workplace experience", the stated intention behind SQE1. The quality and rigour of the SQE2 assessments are impossible to gauge at present. Our member firms continue to feel that SQE2, at the time it is proposed to be taken, will add nothing to the competence of their trainees on qualification and will be an unnecessary diversion from ongoing development and training for qualification during their workplace experience.

Question 2a

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

Strongly disagree

There is a real danger that the different types of qualifying legal work experience could create a two-track system with the formal training contract being perceived as superior and having higher quality controls than that gained in a student law clinic, as a paralegal, within a work placement or even as an apprentice in some circumstances. This is likely to have a chilling effect on future lateral hires.

Whilst recognising that the difficulty of obtaining a training contract is a barrier to becoming a solicitor, an unintended consequence of a more liberal approach to workplace learning is that it may move the difficulty, for those outside any formal training contract framework, to obtaining a newly qualified position following qualification.

City firms are likely to adopt additional requirements to those required by the SRA in order to meet their business needs, so they may choose, among other things, to require their trainees to undertake both contentious and non-contentious work and have experience of three distinct areas of law, along with additional commercial and business training which are over and above the SRA minimum requirements.

As to the timing of the workplace experience, we remain to be convinced that pre-SQE1 workplace experience should count, or count to the same extent as post-SQE1 workplace experience, because of the likely quality of that work experience. We believe that further thought should be given to how much should be permitted and in what circumstances.

In principle, we agree that the bulk of the work experience should be completed before sitting SQE2. This is consistent with the SRA's proposition that workplace experience should be needed to pass SQE2. On that basis we have considered the case for specifying that 18 months or perhaps 21 months of workplace experience should be undertaken before the test, but we have concluded that the practical difficulties surrounding the taking of SQE2 preclude this. These include the fact that there are only to be two SQE2 sittings per year and the time it is likely to take for large numbers of candidates to take all of the SQE2 assessments, for them to be marked and the results published. This would need to be accomplished before the end of the workplace experience.

At the other extreme, if all that is required is for the workplace experience to be undertaken before admission rather than as a condition of eligibility, then there is scope for the SQE2 to be undertaken with little or no workplace experience. If, over time, this should begin to happen, the very concept of the workplace experience risks being undermined - not necessarily because of its intrinsic value but because SQE2 is not rigorous enough. The SRA should be looking to enhance the intrinsic value of the workplace experience and this will only be truly tested if SQE2 is rigorous. The description of workplace experience as one of "developing some of the competencies" in itself is not enough.

Overall, we think that there should be fewer variables and options surrounding the workplace experience so that there are clearer parameters relating to what is required and the circumstances in which the experience can count as qualifying experience. This would reduce the risk of a hierarchy of qualifying workplace experience from developing.

We also think that a less ambiguous approach to what constitutes workplace experience would benefit the profession and prospective solicitors, and consequently the consumer, in particular so that the effectiveness of this approach can be measured in the future and be capable of meaningful improvement in quality, if necessary.

Question 2b

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

Two years

The majority of member firms prefer 24 months and so far as we are aware, none would be happy with less than 18 months as a minimum requirement for workplace experience, in order to give enough depth and breadth of experience in different practice areas and allow trainees to experience both transactional and advisory work, as well as contentious work, where applicable. There is little doubt that, over an extended period of workplace experience, the effectiveness of trainees increases significantly as they grow into the context of their work, learn a specialism and understand the socialisation aspects of the workplace, all within the relatively safe environment of being trainees.

Allowing more flexibility through reducing the minimum period of time in each work placement has a certain superficial attraction, but we are not yet convinced that this reduced minimum combined with the opportunity to move from one organisation to another will result in the same quality of workplace experience as that received by a trainee who works consistently and progressively in the same organisation. Experience tells us that it takes trainees at least a couple of months in each seat to find their feet and the possibility that they could not only move away from that seat but also to a completely different organisation after three months and for that period to count towards properly developing the requisite competencies gives us cause for concern. We think that placements should be a minimum of four months but six months if with more than one organisation and a maximum in all circumstances of three organisations.

Put another way, short periods of experience are likely to result in a poorer quality of learning by virtue of their disjointed nature. It will be more difficult for employers to make the commitment and invest the time in the trainees who are not with them for long. Therefore, in reality, to maintain the expected standard of workplace experience, firms are likely choose to introduce more robust selection methods when recruiting at trainee and NQ levels. The proposed flexibility over workplace experience could put some trainees at a disadvantage during the qualification process if they have completed training in more than one firm or other organisation.

We agree that workplace experience should be expressed as a period in terms of a number of days to account for flexibility to allow for annual leave and other types of statutory leave. However, we do not think that part-time work place experience will provide the quality of work experience required and it should not be permitted.

In any event, we would expect guidelines to address the concern that shorter and piecemeal workplace experience could produce solicitors who are neither socialised to an office environment, nor capable of working effectively within teams or as advisers to their clients at the level and standard expected.

Question 3

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

Neutral

We would prefer to see this regulated by the SRA. Experience tells us that otherwise we will see a flight to the bottom. On the other hand, regulation of the paths to qualification seems to us to be incompatible with the principle of the SQE. Therefore we agree with the SRA that the paths do not require regulation. Provided the SQE is sufficiently robust (although we do not think it currently is), it will represent the standard which must be achieved and the route which a candidate takes should be at their (or their firm's) discretion.

Careful signposting will be necessary to make sure that the paths are clearly laid out and are transparent so that candidates understand what each path offers as well as what they cost and how long they take.

City firms are likely to specify the path (and probably the provider and course) that their candidates follow. Many will also pay for additional training to supplement the minimum coverage of the SQE compare to the current requirements and because of the MCQ approach to the testing of legal knowledge. This will represent an additional cost for firms, some of whom might think twice about taking on as many trainees, but we see it as being a necessary one to ensure a higher standard of legal education than is required by the SQE. This might be capable of being absorbed into our member firms' business models, but does seem very likely to add to the risk of the development of a two-track profession.

We are concerned that less well-informed candidates may be driven (by cost or a lack of good information) to pay for training courses that will subsequently close off avenues of employment, even if it does enable them to pass the SQE. Simply publishing pass rates will not tell a candidate anything about the standard achieved by other candidates who have taken the same path. Have they all simply scraped by? What proportion excelled? How many have secured jobs as solicitors at the end of the process and in what areas of law?

Question 4

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

Strongly Disagree

We disagree that the proposed model is a suitable test of the requirements to become a solicitor.

We welcome the requirement for a period of qualifying legal work experience and have outlined our specific thoughts on this elsewhere in our response.

We are also supportive of the requirement of a suitability test pre-admission.

We have already dealt in detail with the content of the SQE and whether it is a robust and effective measure of competence. In response to this question, we have confined our remarks to some general points on whether, as an integral part of the proposals, the SQE is a suitable

test of the requirements to become a solicitor. We give these views on its suitability based on the detail on SQE content that we currently have, which is far from comprehensive.

We reply in relation to the SQE under three main headings:

1) What the SQE is testing

The removal of the requirement of the QLD and GDL as well as the LPC places a great deal of strain on the SQE as the only examination of the solicitors' qualification. The degree requirement (or its alternatives) is only an entry qualification and the proposal that there are no exemptions for an award of a law degree reinforces this.

Since many of the elements of the current examinations are missing from the legal knowledge testing in SQE1, as we have described above, this will inevitably result in new solicitors qualifying with a narrower range of knowledge, and therefore competence, than is currently typically the case. This in turn may well diminish their suitability to succeed as a solicitor. If new solicitors have not been tested in the missing areas of law, and are not educated in relation to them, they cannot be said to be meeting the current needs and requirements of many mainstream solicitors. It therefore seems difficult to argue that SQE1 constitutes a suitable test. We have seen some draft replies from academic institutions in relation to the missing aspects and would urge the SRA to reflect on these.

We anticipate that SQE-teaching universities will need to reduce the content of the courses they currently teach in order to accommodate new SQE-compliant elements. It is likely that certain aspects such as family and social justice law will fall out of typical law degree courses – this is not to the benefit of the profession or society as a whole. We also anticipate that the depth to which universities will teach their courses will reduce as they seek to provide SQE-compliant courses. This is not a positive development.

We are aware of the concerns about today's cost of qualifying as a solicitor and the desire to bring in a new route to qualifying in the most cost effective way possible, but equally we are also conscious of the imperative of maintaining standards and the need to protect consumers of legal services and to protect the profession's standing within our shores and internationally. Consequently, it is our view that the QLD, or the GDL as the alternative for non-law graduates, should remain and be a requirement for entry onto the SQE. This would address many of the profession's concerns about the assessment methodology chosen for SQE1 and ensure that candidates have sufficient depth of legal knowledge to practise safely. Additionally, the need for re-testing for those with a traditional law degree (assuming exemptions are not permitted), could be significantly reduced. This is an aspect which the SRA proposals fail to provide an answer.

SQE1 would then be the common assessment of the application of legal knowledge and would still meet the SRA's concerns about consistency of standards. By retaining the QLD/GDL (or apprenticeship) we think there would be less damage to the credibility of the English qualification and to the international reputation of English law.

We note that a degree in law is required in the majority of overseas jurisdictions. Although the New York Bar examination includes a significant proportion of multiple choice testing, candidates are also required to have a degree in law.

Of equal concern is the removal of the elective elements of the LPC which at present allows prospective solicitors to study subjects more relevant to their intended areas of practice, and also allows their employers, such as our law firms, to tailor courses and competence assessments to the needs of their practices, and their clients. This is a hallmark of the quality of our solicitors and law firms and it is a retrograde step to remove it. The SRA should reconsider its view on this.

Overall, we do not think that topics covered in the SQE accurately reflect the reality of the requirements of solicitors in practice. We also think that the removal of the requirements, or ability, of candidates to evidence their knowledge and skills in areas of law in which they are planning to practice is a backward step. We therefore do not understand how this approach can constitute a suitable test.

2) Whether what is being tested is being properly tested

We have mentioned our concern that legal knowledge is only to be tested on a MCQ basis. We have made the point that SQE1 needs to test legal analytical skills and the ability to present logical and persuasive arguments in the context of the legal knowledge being displayed. Therefore there should, in our view, be at least 50% of the testing suite dedicated to research, analytical, problem-solving and writing abilities – such as essay questions. The New York Bar exam is an appropriate benchmark for City-based practitioners.

The impression is given that the SRA has proposed the SQE1 with a view as to its convenience of delivery rather than whether this is a suitable test for the requirements to be a solicitor. We should not be proceeding on the basis of what is easy to deliver (computer-based MCQs) rather than what will test someone's actual ability to perform.

SQE 2 test does not appear to test legal knowledge beyond SQE1 level, with candidates being shown a set of facts and underlying law before an assessment. We are also not persuaded by the proposal to test in two areas that are unlikely to reflect the areas in which our lawyers tend to work. We would want to see a wider range of practice area contexts from which candidates can choose, in order to allow our lawyers to be tested on areas of law they had actually experienced. We have been worried by comments from SRA representatives that the trainees at our firms would in practice be able to undertake only a weekend preparatory course to pass SQE2. This does not indicate that a robust test, sufficient to show suitability to be a solicitor, will be in operation, particularly in the absence of a set of LPC-like examinations.

3) Whether the proposal can work in practice

The SRA appears to be relying on universities falling into line by teaching SQE1 content on their law courses. We do not anticipate this being immediately successful. Conversations we and others have been having with academic institutions, means that we expect many universities, including those with the highest academic reputations, to decline to teach SQE elements. Those who do choose to teach SQE elements will require their faculty to have practitioner-level experience in order to teach for example, LPC-equivalent elements of the course, so a change in faculty would likely be required. We envisage significant challenges here. Academic institutions, for example, the law schools many of our firms use, offering SQE1 preparatory courses would also need to change their teaching approach to become MCQ-appropriate. Again, we envisage significant practical challenges here. We are unclear

who the faculty members will be who can teach across elements currently contained in the QLD, LPC and PSC to an MCQ-testing approach.

We are unsettled by the possibility that institutions might "race to the bottom", teaching courses where students will pass the SQE but will not in fact gain the deep academic experience they typically currently receive which better equips them to perform the role of a solicitor in practice. We cannot emphasise enough that life as a solicitor rarely presents binary-answer opportunities, the life of a solicitor is much more nuanced, complex and delicate than that – something that cannot be adequately furnished by an institution teaching primarily to MCQ-passing standard. Those whose only legal education is on an SQE-compliant course will be severely disadvantaged compared to those who undertake longer law courses.

We anticipate that the offering of SQE2 on only two occasions a year will not work in practice. The candidate, actor, assessor and logistical staff numbers will simply be too great for this to be delivered. More sittings each year will be required.

We envisage taking our trainees out of the office for several weeks to prepare them for SQE2, and to make them available to sit SQE2, particularly given the very limited legal contexts that the assessments allow. We anticipate that this will mean taking them off client and time-intensive work for several weeks and months before and after this "out of office" time. This will be challenging for our firms operating within the business models we have (and no doubt for all others continuing to offer workplace experience equivalent to the training contract). Equally, removing trainees from the practice during their workplace experience will be detrimental to their learning experience and ultimately on their readiness for practice on qualification, which in turn is less likely to equip them to succeed as working solicitors. We envisage trainee seats that correspond with SQE2-tested legal areas becoming more popular, again affecting trainees' ability to develop experience in areas in which they might ultimately practice – trainees will be tempted to take up seats that help them pass the test rather than ones which give them the experience to succeed in working life.

Question 5

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

Neutral

On one basis, if the SQE model is implemented as currently proposed by the SRA, then we could support a system of exemptions for those who have completed a QLD, GDL or relevant law degree from another jurisdiction. We believe that these would most appropriately apply to SQE1. In our view a failure to do so risks:

1) Putting an additional and unnecessary time and cost burden on aspiring solicitors (which also has negative implications for increasing access to the profession); and
2) Making the QLD less attractive as a route to qualification for aspiring solicitors.

On the other hand, we struggle to see how a system of exemptions might work. For example, candidates will, no doubt, study contract and tort as part of the QLD or GDL but not "Dispute Resolution in Contract or Tort" and so an assessment by assessment exemption is unlikely to

work and a full exemption for SQE1 for those who have done a QLD or GDL would not be appropriate as they will not have covered the LPC elements of SQE1.

If the SRA accepts that, as proposed elsewhere in this response, the entry requirements to the profession should include the completion of the QLD, GDL or an apprenticeship and, therefore, the focus of the SQE becomes the ability to apply the legal knowledge gained during the completion of a degree or apprenticeship, then we do not think that a system of exemptions is needed.

Question 6

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

Strongly Disagree

As indicated in our response to the first Consultation, we believe that a number of aspects of the transitional arrangements are potentially detrimental to individuals and firms and require further refinement.

Our main concern stems from the fact that our member firms currently recruit trainees, in the main, two to three years before the start of their training contracts (currently a "period of recognised training" or "PRT"). As a result, they will, between now and the autumn of 2017, be recruiting trainees to start in the autumn of 2019 and spring of 2020. There will be two further rounds of trainee recruitment, in addition to the current round, before the SQE is introduced: the first in 2017/2018 for trainees to start in the autumn of 2020 and spring of 2021 and the second in 2018/9 for trainees to start in the autumn of 2021 and spring of 2022.

Accordingly, irrespective of when the SQE is introduced, there would at that time be several thousand individuals who had previously accepted offers under the existing qualification framework.

While, under the proposed transitional arrangements, the option of continuing under the existing qualification framework is given to all those who have started a QLD, CPE, LPC or PRT before September 2019, we continue to believe that this option needs to be further extended to all those individuals who have, at the time of the introduction of the SQE, accepted an offer of a PRT under the existing framework.

The reason for this is that otherwise there will be a category of new entrants who will be treated differently from their contemporaries, and required to take the SQE at a time when others are not required to do so. The category is made up of those who are studying for a non-law degree and who graduate in 2019 or later. Any person falling into this category would, under the proposed transitional arrangements, be required to take the SQE – because they had not started a QLD, CPE, LPC or PRT experience before September 2019.

This has a significant practical impact on our firms because it means that their trainee intakes from the autumn of 2021 onwards (and potentially earlier depending on how SQE1 is implemented) will include both those who are required to take the SQE as well as those who can continue to qualify under the existing framework.

We do not believe it will be practical for our firms to follow both the existing regime and the SQE in parallel for trainees joining in the same intake – either from an internal management or a business perspective – as this places a significant additional burden on them in addition

to those already arising from the implementation of the SQE. So while the Consultation refers to candidates having the ability to choose which route to follow, firms will not in practice be able to offer their trainees that choice, and will instead specify that all their trainees joining in a particular intake must either take the SQE or follow the existing route.

On this basis, we think that the effect of the proposed transitional arrangements is that any firm taking non-law graduates as trainees will, by default, be required to adopt the SQE for any trainee who joins from the autumn of 2021 onwards, if not before then. This is not a "market-led approach to implementation" as described in the Consultation and rather than "allowing the education and training market time to adapt to the new landscape", it is forcing firms to make a decision either (a) to adopt the SQE for all their trainees earlier than would otherwise be required, or (b) not to take non-law graduates as trainees until such time as the SQE becomes compulsory for all new entrants.

Our proposed approach of allowing anyone who had accepted an offer of a PRT before the introduction of the SQE to continue to be allowed to qualify under the existing framework mitigates these concerns.

In particular, it would allow firms to continue to undertake trainee recruitment activities (and candidates to participate in the trainee recruitment process) between now and 2019 against a background of regulatory stability. We reiterate the comments made in our response to the first Consultation that it is appropriate that any individual who accepts an offer of a PRT before the introduction of the SQE should know that, if they accept the offer, they will be able to qualify under the existing framework. Similarly, we do not think it is appropriate for firms to be in a position where they are required to make offers to trainees to qualify under the SQE before the SQE has actually come into effect.

Our proposed approach would also give firms at least one additional year (until 2022) to plan for the introduction of the SQE, which we believe is necessary.

There will be some individuals who are adversely affected by the proposed cut-off date of 2024 for qualification under the existing regime. For example, any individual who started a three-year QLD in 2018 would be unable to undertake any further study, or take time off before the start of his or her PRT, without passing the cut-off date for qualification under the existing regime. We think that a one year extension to the cut-off date to 2025 would be appropriate to allow for this.

Question 7

Do you foresee any positive or negative EDI impacts arising from our proposals

Yes

We are concerned that the SRA has not undertaken a piece of research on the impact of the proposed SQE regime before consulting with the profession. We note that a final Equality Impact Assessment is to be published, taking into account comments from the Consultation, when the SRA responds. We consider the timing of this is unfortunate and, ultimately, undermining of the validity of the SRA's consultation, as we see little in the current proposals which will actively assist in ensuring fairer and wider access to the profession.

1) Creation, and reinforcement, of a two-track profession

SQE1 proposes a return to an examination which is premised on the need to cover areas of law which comprise, principally, the "reserved activities" set out in section 12 of the Legal Services Act 2007 to the exclusion of other areas of law which are more relevant to a significant percentage, if not the majority, of solicitors in England and Wales. Consequently, many students may question its relevance to them and this, in itself, will create a barrier to entry to the profession. We have similar concerns as employers. Many of us have been surprised to discover that the combined effect of SQE1 and SQE2 will be that our trainee solicitors will have a less broad theoretical and practical education to meet the needs of clients than those who qualified under Law Society Finals over 20 years ago.

Contrary to the SRA's assertion, member firms do not believe that passing SQE1 means trainees will be workplace ready/competent as new trainees. They will not be adequately prepared for the role. We consider this to be a self-defeating move as any lack of faith in the robustness of the SQE1 to test actual knowledge will simply lead to quality assurance moving further along the professional pathway, potentially making firms more risk-averse when it comes to candidate selection. Simply passing the SQE1 will be seen as no assurance of quality and could make firms inherently reluctant to risk recruiting less conventionally educated candidates.

As explained elsewhere in our response, our firms will be forced to adapt and extend their training of those who have undertaken the SQE1 and SQE2 both to ensure that they pass each exam as efficiently as possible but, more importantly, to ensure that they will be ready to undertake the role of trainee solicitor within an international, commercial context where the UK is still perceived to be among the leading jurisdictions.

Other firms practising within other contexts will be forced to do likewise in order to maintain the standards of competence required by the SRA and to meet the expectations of their clients.

Consequently, we fear that, by the time trainees reach qualification, their career paths will be already set, ultimately reinforcing a two-track profession where those who have passed the basic needs of SQE1 and SQE2 and whose employers are less invested in their trainees, will not have been educated, and trained, to the same demanding level as others. This does not sit well with the SRA's need to protect consumer interests and the general public interest and ensure diversity within the profession.

2) Disabilities

We understand that there are concerns about candidates with learning disabilities being able to cope with a significant number of MCQs in a short period of time and, with an examination which is overwhelming focused on using this method of assessment in a very short space of time, some candidates may be disadvantaged.

3) Costs of preparation for each exam

We note that the SRA feels that the introduction of SQE1 and SQE2 will lead to universities offering a combined degree which would enable the cost of completing academic and practical training to be more manageable. If, as we have discovered from our discussions with various universities, many do not propose to integrate SQE1 into their degrees and "teach to the test", students will be faced with the costs of undertaking a crammer course to be able to sit the SQE1 in the period between undertaking their degree finals and potentially starting work as trainee solicitors. This will have a cost burden but also the effect of

rendering them incapable of earning money between university and the start of the training contract. For those from less advantaged backgrounds, this may prove to be a material disincentive from undertaking a law degree which might stretch them academically but be less relevant to their future professional needs, to the detriment, ultimately of their future careers and the profession as a whole.

For those who are unable to secure a training contract where the costs of SQE2 are met by their employer, the costs of preparation for that exam, together with the costs of doing the exam itself, will add further burdens and, we believe, a further disincentive against joining the profession. Again, we fear that this will ultimately reduce diversity across the profession.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY TRAINING COMMITTEE

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TRAINING COMMITTEE

Individuals and firms represented on this Committee are as follows:

Caroline Pearce (Cleary Gottlieb Steen & Hamilton LLP) (Chair)
Rita Dev (Allen & Overy LLP)
Lindsay Gerrand (DLA Piper LLP)
Ruth Grant (Hogan Lovells International LLP)
Caroline Janes (Herbert Smith Freehills LLP
Hannah Kozlova-Lindsay (Berwin Leighton Paisner)
Greg Lascelles (Covington & Burlington LLP)
Patrick McCann (Herbert Smith Freehills LLP)
Frances Moore (Slaughter and May)
Catherine Moss (Winckworth Sherwood LLP)
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