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By e-mail only: consultation@sra.org.uk

Dear Mr Pearce

CLLS TRAINING COMMITTEE RESPONSE TO THE SRA CONSULTATION: A NEW ROUTE TO QUALIFICATION: NEW REGULATIONS

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.

Consultation question 1

Do you agree that these regulations implement the agreed policy framework for the SQE?

As we understand it the agreed policy framework is that the SQE is a centralised and standardised independent assessment with four criteria for eligibility for admission, which are:

1. Passing the SQE;
2. Holding a degree or equivalent qualifications or experience;
3. Completing qualifying experience; and
4. Character and suitability requirements.

The aim of these requirements is to assure the profession, employers and the users of legal services that all qualifying solicitors, regardless of the pathway or background will have met consistent, high standards.

The regulations, a draft of which is set out in the consultation, need to be drafted in a way that ensures that the framework is implemented to reflect the aims of the framework. In some respects, we think that the draft regulations introduce so much flexibility that they will fail to deliver the consistency and certainty that the policy framework has set out to achieve and in other ways, the high standards that they set out to achieve.

It might be argued that the considerable amount of latitude built into the draft regulations risks undermining the requirements themselves.

Our comments on the draft regulations will illustrate this.

Draft SRA Authorisation of Individuals Regulations 2017

Eligibility for admission

1.1(a):

1. What does "satisfactorily" passed add to "passed"? The word "satisfactorily" should be deleted since it appears to suggest that there is an additional subjective element to passing the SQE.
2. Is it still a requirement that SQE1 must be passed in one sitting? There is no reference in the draft regulations to this requirement. On the contrary, we see that in relation to the recognition of qualified lawyers, the notion of components now feature in the recognition of their qualifications. This requirement should be added.

1.1(b):

1. The requirement to have a degree can be satisfied by equivalent qualification or experience. We have emphasised in the past the importance of degree courses for the analytical and problem solving skills that they teach since they are essential skills for solicitors. We have also seen that the SRA has acknowledged this and has recently introduced the requirement. We can see that other qualifications could be treated as equivalent to a degree. However, it is hard to see how equivalent experience can be found to be equivalent to a degree and especially without having another qualification to demonstrate it. We see this option as resulting in inconsistency in the standard setting for those holding a degree and those deemed to be equivalent by reference to experience. We suggest that this option is deleted.

2. The basis on which qualifications will be treated as degree equivalent should be clear and explicitly stated.

Qualifying work experience

2.1(b):

It would appear from the draft regulations that qualifying work experience (QWE) can start and finish at any time before seeking admission. This means that it can accrue any time before SQE1 is taken and be completed any time after SQE2 is taken and passed, in other words without reference to the SQE at all. We question the quality of any work experience before any law studies or training has been undertaken.

The QWE is one of the four criteria for admission and therefore to meet the consistent high standards which is the objective of the policy framework (and applicable to the QWE), there should be more focus on the intrinsic quality of the QWE. This includes the stipulation to undertake QWE once some law has been learned and in a legal environment (see further under 2.1(c) below).

So as to ensure that the QWE is of itself good quality, no more than six months QWE should count towards the two years before SQE1 has been taken/passed.

2.1(c):

1. We remain unconvinced that QWE gained in a number of different organisations will result in the same quality of workplace experience for the reasons given in our response to the previous consultation. These were that the quality of work experience will be better where it is gained consistently and progressively in one organisation without the disruption resulting from starting again at another organisation. We said that short periods of experience are likely to result in a poorer quality of learning by virtue of their disjointed nature.

   Therefore, since it is proposed that QWE can be gained in up to four different organisations, we think the regulations should state a minimum duration with each organisation. We suggest that paragraph 2.1 (c) is amended to read: "be carried out under an arrangement or employment with no more than four qualifying organisations and with a minimum duration of six months in each qualifying organisation." A "qualifying organisation" would be defined as an organisation regulated by the SRA or any other organisation which employs a solicitor under whose supervision the person undertakes qualifying work experience.

2.2:

1. Paragraph 2.2 requires the opportunity to develop some or all of the competences. An *opportunity* to develop competences is not the same thing as developing some or all of the competences because having an opportunity to do something is not the same thing as doing it. It is not therefore, by definition, gaining experience.

   It is also not satisfactory to have the opportunity to develop "some or all" of the competences. An aspiring solicitor might only develop a limited subset of the competences on that definition. It might be argued that the person would then fail SQE2. But that is a dangerous assumption and will only be capable of proof long after SQE2 has been up and running.

   Paragraph 2.2 should refer to …"given you the experience to develop the prescribed competences…."

2. The requirement for giving the confirmation under paragraph 2.2 is an onerous one and the consequences of and possible sanctions in connection with giving it should be clear.

2.2(b):

1. The word "organisation" is not defined so whilst the reference to the organisation's COLP must mean an entity regulated by the SRA, that is not necessarily the case in paragraph 2.2(b). If the organisation in question is not SRA regulated then confirmation from a solicitor working within the organisation is quite different from the requirement that the QWE is undertaken under the supervision of a solicitor. To ensure quality QWE, aspiring solicitors should work under the supervision of a solicitor if the organisation is not SRA regulated. It is inadequate simply for there to be a solicitor in the organisation but who has no day to day responsibility for the experience that is being gained and the supervision of the work being undertaken.

2.2(c):

1. Paragraph 2.2 (c) should be deleted altogether. The SRA has previously stated that the QWE should be undertaken either in an organisation regulated by the SRA or under the supervision of a solicitor (see e.g. para.106 of the second consultation). The invaluable experience of QWE seems now to be universally recognised as a way of aspiring solicitors assimilating learning from their peers.

   It is hard to envisage how QWE can take place in an organisation where there are no solicitors. In that situation, it is difficult to see how they could be doing solicitors' work and therefore gaining relevant experience. It is surely a bizarre notion that experience of solicitors' work can be gained without learning it from those who are qualified to practise it. Undertaking QWE anywhere and simply being signed off by a solicitor who has not supervised the person concerned nor has the reassurance that the experience was gained in an organisation which understands the codes and ethics of conduct that are required in an organisation regulated by the SRA, falls well short of what the QWE requirements should be.

Additionally, it would appear that the requirement for a Training Principal will be abolished. Under paragraph 2.2(c) it is replaced by the requirement for a confirmation by any individual solicitor. This puts a great deal of additional responsibility (and arguably unfair responsibility) on every solicitor who might be asked to give the confirmation.

Furthermore, the confirmation comes at the end of the QWE which gives no opportunity to put right any shortcomings or omissions from the QWE under paragraph 2.2(c) by contrast to the situation where a solicitor has also been the supervisor throughout or the individual has worked in an organisation regulated by the SRA.

In summary, the draft regulations frame QWE in terms that allow QWE in a form far removed from its essential elements, which are a two year fixed period of quality legal experience in a law firm or other similar legal environment where the experience can properly be learnt from practising solicitors.

We believe that the SRA in its efforts to widen access has gone too far in watering down qualifying work experience.

Consultation question 2

Do you have any comments on the proposals for recognition of the knowledge and competencies of qualified lawyers?

Generally

Annex 2 is not referred to in the draft regulations and so how will the principles set out in Annex 2 apply to the recognition of the knowledge and competences of qualified lawyers? Annex 2 does not seem to have any standing.

The rules for qualified lawyers are markedly different to the rules for the domestic route through the SQE. This will lead to inconsistencies in the qualifications and experience of the domestic route and those of the qualified lawyers' route, which is something the SQE policy framework sets out to eliminate. There are no exemptions for UK law degrees for any part of the SQE, yet there are exemptions for overseas qualifications. It appears possible to determine no "substantive difference" for overseas qualifications but not for components of UK law degrees. Professional experience is capable of satisfying the SQE for qualified lawyers but not for domestic candidates. Domestic candidates will need to undertake two years' QWE, qualified lawyers will not.

We believe that the SRA should look again at the requirements for qualified lawyers.

These observations are also picked up in our comments on the specific provisions below:

3.1(b):

There appears to be no requirement for a qualified lawyer to have completed any period of QWE. We had thought that the SRA intended to require two years' work experience. We see no reason for not making it a requirement in the same terms as the domestic requirement. Not to do so, is further evidence of inconsistency in standards which the SQE standards set out to eliminate.

Paragraph 5 of Annex 2 suggests that qualified lawyers will typically have a minimum of two years' professional experience. But this is not a fixed stipulation and is not a separate requirement but instead a means of gaining exemptions from the SQE. The reference to two years becomes meaningless if expressed as a "typical" requirement and can be less if the candidate can demonstrate to the SRA that he or she has developed the competences in less time.

3.2:

Paragraph 3.2 refers to the SRA being satisfied but no criteria are specified. The consequence is that the requirement is entirely subjective and therefore candidates have no basis on which to determine in advance what criteria will be satisfactory and what the standards are they need to meet. The criteria on which this is based should therefore be specified. The consultation refers to principles in annex 2 but as already noted, there is no cross-reference to the principles in the draft regulations and in any event the principles do not refer to any criteria.

Annex 2:

Paragraph 3:

1. It is not clear what constitutes "an individual component" when referring to the SQE1 or SQE2. This should be defined.

2. It is not clear how the professional qualification must cover content which is not "substantially different". To take property law or contract law as examples, does it mean that the law itself must not be substantially different from the equivalent English and Welsh property or contract law? If so, this means presumably that it will be difficult to satisfy as home qualification law content will need to be virtually the same as English and Welsh equivalent law. This needs further clarification.

Paragraph 4:

Again the expression not "substantially different" is used with reference to acquired professional experience without setting out the criteria on which this will be based. Again, the criteria on which this is based should be specified.

Paragraph 6:

Paragraph 6 provides that where necessary, there will be an English language test requirement imposed for qualified lawyers whose professional qualification(s) or professional experience we have recognised as equivalent to all of SQE 2. This will take place post-admission, at the point applicants apply for a first practising certificate.

There is no information provided on the level of English required, which is unsatisfactory. It is also too late to have a test post-admission. It should be done as part of the requirement to qualify.

Remarks on the consultation paper itself

The consultation paper contains some important issues but it does not have any standing by reference to the draft regulations. We therefore ask how the SRA intends to embed them into the framework: for example, in relation to the "support package" to include case studies and guidance.

Furthermore, it is said that the case studies and guidance will relate to QWE and the SRA policy on recognising qualified lawyers but it should also identify the criteria for determining how the SRA will be satisfied on degree equivalence. These are all equally important.

Finally, we are inclined to think that it would be fair to charge an administrative fee to qualified lawyers applying for admission.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY TRAINING COMMITTEE

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