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Dear Daisy

CLLS submission to the Legal Services Board on the SRA's application for the approval of amendments to its regulatory arrangements in respect of the introduction of the Solicitors Qualifying Examination

The City of London Law Society 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 and makes submissions on issues of importance to its members through its 19 specialist committees. This submission has been prepared by the CLLS Training Committee. The members of the committee can be found herewith:-
http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=158&Itemid=469

CLLS Submission

This submission relates to the Solicitors Regulation Authority's (''SRA'') application to the Legal Services Board ("LSB") for the approval of amendments to the SRA's regulatory arrangements in respect of the introduction of the Solicitors Qualifying Examination (''SQE'').

The CLLS Training Committee has expressed serious concerns about the SRA's proposals in relation to the implementation of the SQE throughout the ongoing consultation process. Although the SRA has made some changes to its proposals in response to our concerns, it is broadly continuing to pursue its original strategy.

As a result, we have a number of fundamental objections to the proposals based on the very real and practical business needs and experience of our members, who are responsible for the provision of a substantial proportion of all training contracts for aspiring solicitors.

Our objections are set out in some detail in our responses to the three most recent SRA consultations in relation to the SQE, which are appended to this submission. In addition, we have summarised below our main concerns:

- **The case for change** - We do not believe that the SRA has made its case for proposing such a significant change to the approach to legal education and training in England and Wales. In our view, it has neither demonstrated that the current system is so flawed it needs a complete overhaul nor that the new framework is superior. In particular, the SRA has failed to demonstrate that its proposals will lead to (i) greater flexibility in entering the profession; (ii) cost benefits; and (iii) higher standards in the profession.

  Our view is that there is a case, in principle, for a centralised assessment but one which tests the practical application of law that solicitors need in practice. The SQE, in its proposed form, is intended to test both the application of law and the learning of the law itself. However, for the reasons outlined below, we are not convinced that it will be able to adequately and fully test knowledge of the law. Under the current SRA proposals, knowledge of the law will be tested at SQE stage one only and using a methodology which we think is inappropriate as the main/sole method of testing legal knowledge. We believe that the better approach to reforms, as stated in our response to the second consultation and mentioned below, is the retention of a Qualifying Law Degree ("QLD") or Graduate Diploma in Law ("GDL") (or apprenticeship equivalent) and a centralised assessment testing the practical application of law that solicitors need in practice.

- **International benchmarking** - We were also unconvinced that the international benchmarking exercise which the SRA carried out supports the SQE in its current form. The SRA points out 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 explicit, it seems unlikely that the written assessments in the reviewed jurisdictions are limited, as is proposed in the SQE, to testing skills separately from legal knowledge. It seems to us to be a high-risk strategy, to embark on a qualification framework which has no parallel elsewhere and moves us further away from the requirements seen in other well-respected jurisdictions without demonstrative compensatory benefits.

- **Law degree or equivalent** – We are extremely concerned by the SRA's proposal to abolish the requirement to have a QLD, GDL or equivalent (e.g. a solicitor apprenticeship) to qualify as a solicitor. Our key concerns are twofold:

- Based on the information and assessment specification provided so far, we are very doubtful that the SQE alone, which will be predominantly testing legal knowledge through multiple choice questions, will be able to assess whether candidates have sufficient depth of legal knowledge and an ability to analyse and reach a nuanced understanding of legal issues to practise competently as solicitors; and

- A degree in law is an essential element in every jurisdiction that is a serious competitor to England and Wales. We are concerned that abolishing this requirement, will impact the reputation and pre-eminent standing of the England and Wales legal profession on the global stage and threaten our members' ability to compete successfully. Particularly in the context of our departure from the EU, we would not want to open the door to any suggestion that the solicitor qualification falls short of EU standards.

- **The proposed SQE** – We continue to have concerns about the breadth and focus of the SQE syllabus and the quality of the proposed assessment methodology. As such, whilst having a single assessment may achieve consistency, we doubt its adequacy to test aspiring solicitors' competence to practise within the contemporary legal environment. In particular:

  - By focusing principally on the 'reserved activities', the proposed SQE syllabus leaves out many of the vital topics from the current combined QLD/GLD and LPC syllabus which are relevant to the practice of the majority of solicitors (including those needed by corporate practitioners). The result will be a qualification with a narrower knowledge base which is significantly less relevant for many solicitors qualifying 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. As such the SQE represents a step back and a missed opportunity to future-proof the profession;

  - It is our belief that the SQE would reduce the breadth and depth of knowledge needed even in core areas. For example, Contract law and Tort, the foundation blocks of civil responsibility in England and Wales, are (i) assessed together; and (ii) principally assessed in the context of Dispute Resolution and where the weighting appears to be in favour of process and procedure; and

  - In terms of the overall standard of the SQE, the SRA is offering no objective benchmarking or standard-setting indicators. Therefore, we have only the SRA's assurances that the standards will be high. This is particularly concerning if the requirement for a QLD/GDL (or equivalent) is abolished and the SQE becomes the sole means of testing legal knowledge.

- **Qualifying Work Experience (''QWE'')** – We welcome the fact that the SRA is proposing a minimum period of 24 months for the QWE. However, we believe that there is too much fluidity in the QWE proposals (by that we mean a lack of consistency in what would qualify as QWE), even to the extent that it risks undermining the very essence of QWE. We note that the QWE is one of the four requirements leading to qualification and that means

it must have its own intrinsic value and not merely serve as a potential means of passing SQE2. We have two particular concerns:

- The first is that the experience can be gained at any time (for example, before the aspiring solicitor has even embarked on a law degree or had any legal experience). We do not believe that such experience is equivalent to the experience gained currently during the period of recognised training, following the completion of a QLD/GDL and LPC and under the close supervision of a solicitor. Our response to the consultation on the proposed Regulations outlined our suggestions to introduce some parameters so as to reduce inconsistencies and improve the quality of the QWE; and

- We believe that under the SRA's proposals there is a serious risk that individuals will be able to qualify as solicitors only having had practical experience of a very narrow range of skills and knowledge. The SRA is removing the requirement for aspiring solicitors to have had experience of a variety of areas of law and, under the new approach, those signing off on candidates' QWE will only need to confirm that the candidate has had the opportunity to develop '**some** or all of the prescribed competences for solicitors'.

- **Transition arrangements** – In our response to the SRA's most recent consultation on the transition arrangements for the SQE, we highlighted a number of practical concerns in relation to the proposed timings for the implementation. In our view, based on the SRA's current timeline and the still limited information that is available on the SQE, a launch date of September 2020 does not leave sufficient time for law firms and possibly training providers to prepare and implement the new approach to qualification.

- **Access to the profession** – Whilst our member firms are very supportive of the introduction of initiatives and approaches which will broaden merit-based access to the profession, we are concerned that the SRA's proposal will, indeed, have the opposite impact and create or reinforce a two-track profession. Given the lack of relevance of the SQE syllabus to a modern solicitor's practice, many employers, and City firms among them, will extensively supplement aspiring solicitors' knowledge and experience through additional training. As a result, by qualification there may be a significant difference between the competence levels of solicitors whose employers have invested in them and those who have simply passed the SQE. This will negatively impact the career prospects of the latter group. We have a number of related concerns, which are described in detail in the attached consultation responses.

The SRA application

We have had the opportunity to read the SRA's application and consequently we would like to draw your attention specifically to a couple of matters referred to in the application:

- **Regulatory objectives -** Section D demonstrates how the SRA's changes relate to its Regulatory Objectives. The first of which is Protecting and Promoting the Public Interest. The SRA states that:

‘Legal services are often needed at critical points in a person’s life, when buying a house, getting divorced, when someone has died. Or they may be needed for commercial transactions on which financial interests, employment and economic growth might rest. We need to make sure that all legal services, including those delivered at critical points, are delivered competently. The SQE will provide better assurance of this competence than under the current system. The SQE will assess all intending solicitors on a consistent basis. It will give assurance that all intending solicitors are competent to deliver the legal services that consumers need.’

However, family law, employment law and corporate and business law (except at a very basic level) have been stripped out of the syllabus. We find it hard to see how the SQE, and in particular its much narrowed syllabus, is better at protecting the public interest (both at the consumer level and for businesses) than the present system.

- **Costs -** The SRA is rightly concerned about, and comments upon, the costs of becoming a solicitor. It refers specifically to the cost of the LPC as a reason for abolishing it and rejects the option of modifying the present system. However, we are concerned that the SRA is underestimating the potential costs of qualifying under the SQE. For example, in the application the SRA suggests that many candidates will be able to prepare for SQE2 solely on the strength of their work experience which we believe is unlikely to be the case. Based on our experience, we think that a preparation course will be required. In addition, the SRA appears to consider that competition between training providers will drive down the cost of education and training and that under the new system costs could be lower. We fear that it will also inevitably lead to training providers teaching to the test, particularly we would suggest, because of the fee pressures they will be under (there being no SRA regulation or authorisation of training providers), and because the principal measure of their success will be the ‘league tables’ that the SRA is proposing.

  Whilst we accept that it is not possible for the SRA to predict with any accuracy the likely costs of qualifying under the new system at this stage, we believe that there should be a proper cost analysis carried out before any proposals are approved.

In conclusion, we believe that the SRA’s application is premature and we would urge the Legal Services Board not to approve the SRA’s application in its current form.

Yours sincerely

Hannah Kozlova Lindsay
Chair, Training Committee
The City of London Law Society