

Response to Solicitors Regulation Authority (SRA) Survey on Assessing Skills under Solicitors Qualifying Exam

About us

1. Young Legal Aid Lawyers (YLAL) is a group of lawyers who are committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded. YLAL members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.
2. This is our response to the Solicitors Regulation Authority (SRA) Survey on Assessing Skills under the Solicitors Qualifying Exam ('SQE'). This consultation concerns a number of issues, including the removal of Legal Aid subjects, training, social mobility and accessibility.

1. Would you want a written skills assessment as part of SQE1? *This question is required.

- **Yes X**
- **No**

Please tell us why

3. YLAL believes that it is important for skills to be assessed at an early stage in the process of qualification as a solicitor. Removal of the skills test is contrary to one of the stated aims for the SQE i.e. to enable candidates to take SQE1 without having to commit to the full financial burden of SQE2; the recommendation that it be removed completely from the SQE1 is therefore concerning.
4. The skills test will most likely be the first time that candidates will have been expected to undertake tasks which mirror those undertaken by solicitors in practice. The learning on the LLB and the focus of the Multiple Choice Questions ('MCQs') in SQE1 focus heavily on legal knowledge, understanding and theory; without a focus on the practical use of this knowledge. YLAL believes that it is important to give candidates an opportunity to use some of the essential skills a solicitor requires in order to begin to understand the role of a solicitor; and also that the individual candidate's suitability for the role be assessed. The SQE exams and preparation courses are likely to be expensive, and the two years' Qualifying Work Experience ('QWE') is a big commitment. It is important therefore that candidates feel they have at least some level of certainty that the profession is suitable for them and is suited to their skillset.
5. A number of City firms have stated that they will not take on candidates until they have completed both parts of the SQE. From discussions with Legal Aid providers and High Street firms we believe that removal of the skills test at SQE1 will make it more likely that they will also proceed this way. We believe testing skills at an early stage provides a level of reassurance to employers as well as candidates that future solicitors' skills go beyond completing the MCQ exam (which we have already highlighted on numerous occasions we do not think is fit for purpose). We are also concerned that the removal of Skills at SQE1 may lead to candidates feeling pressured into taking further preparatory courses before SQE2, therefore leading to higher costs and greater difficulties surrounding entrance to the profession.

6. Furthermore YLAL is concerned about the burden of a failure to prepare candidates and to test skills is likely to put upon the employers. YLAL's concerns relate particularly to those employing its members (e.g. Legal Aid providers, Law Centres, High Street practices) who have few resources for training provision and are keen to employ candidates who have demonstrated aptitude in at least some of the skills required for the role. The skills necessary to practice as a solicitor should be included within the curriculum and assessed by the regulator. If firms with inadequate resources, guidance or support are expected to provide bespoke skills training, whilst at the same time being told they are not expected to sign off on the competence of those undertaking QWE at their organisations, YLAL is concerned that this will in turn lead to even fewer opportunities to qualify as a solicitor being made available by such organisations.
7. YLAL is extremely concerned about the issues which have been picked up in the pilot examination regarding the potential discrimination against Black And Minority Ethnic ('BAME') candidates, particularly in the skills section. No explanation has been provided for this disparity. The SRA has indicated that they do not expect that the skills tests in SQE2 will encounter the same issues. It is not understood why or on what basis this assumption is made. It is inappropriate to simply scrap the skills test at SQE1 because, in the pilots, BAME candidates performed worse. Research must be undertaken to understand why and thereafter addressed. We are concerned that not undertaking a full investigation and seeking to address the potential discrimination in reference to the findings would be tantamount to the SRA failing BAME and non-BAME potential solicitors, all of whom require aptitude in the legal skills.
8. Additionally, if it is accepted that work experience in a relevant legal environment will assist candidates in preparing for and passing the Skills assessment, all those who have chosen to work in the areas of law not being examined by the SQE (Social Welfare, Family, Employment, Personal Injury, Clinical Negligence, Immigration/Asylum, Community Care, and Inquests, among others) will be at an immediate disadvantage when sitting this part of the exam.

2. If we included skills within SQE1, it would count for 10% of the total mark. Would this change your answer to Question 1? *This question is required.

- Yes
- No X

Please tell us why

9. This would not change our answer however YLAL is concerned about suggestions that the inclusion of additional skills testing in order to ensure greater accuracy and reliability of results for this section will increase exam fees further. Given that one of YLAL's major priorities is improving social mobility and access to the profession, and one of the main purported aims of SQE is to provide a lower-cost route to training, we believe that Government funding for SQE must be urgently addressed there must be greater clarity on the issue of costing in relation to both SQE1 and 2.
10. The SQE must be fit for purpose, and assessing written and research skills is integral, even if this accounts for just 10% of the overall mark, as it is a skill that is required on a daily basis and will enable both the candidate and the prospective employer to begin to assess whether a career as a solicitor is within their capabilities.

3. If we included skills within SQE1, there would be one pass/fail covering both the knowledge and the skills element of the assessment. If it was available, would you find a breakdown of the Functioning Legal Knowledge and skills marks helpful? *This question is required.

- Yes
- No

Please tell us why

11. One of the stated aims of SQE was to ensure that solicitors across England and Wales were qualified to a comparable standard. A breakdown of how things are marked is always useful, especially when different sections are weighted. It is important for all of the reasons detailed in Q.1 that the candidate and the prospective employer can see the result for the Skills section. Without transparency and a breakdown of the marks for the Skills section, this form of the SQE1 would be little more helpful to candidates and employers than an SQE1 based upon MCQs only. If it is agreed that it is important for all parties that skills are tested at the beginning of a candidate's journey to qualification as a solicitor then YLAL believes it should follow that marks are provided for both sections separately.

12. We reiterate our concerns relating to the discrimination of BAME candidates in this exam and again call for greater investigation of this issue in order to try to address the imbalance; rather than removing skills testing completely in an attempt to ignore the issue. If these matters have not been addressed we would be concerned that releasing a breakdown of marks for the two sections could lead to further discrimination against BAME candidates if their lower marks on the skills section were then being highlighted to prospective employers.

4. If this breakdown was not available, would this change your answer to Question 1 (whether to include a written skills assessment as part of SQE1)? *This question is required.

- Yes
- No

Please tell us why

13. We believe that a written skills assessment should be included in the SQE1 and we believe that to make most use of the exam for candidates and employers, a breakdown must be made available.

SQE2 - uniform exam or specialist options

5. Should all candidates take the same exam for SQE2 or one focusing on specialisms?

Same exam for all

Exam focusing on specialisms from their work experience or career aspirations.

(undecided)

Please tell us why:

14. YLAL is very concerned about this issue. We were aware that in the early stages of the development of the SQE the SRA explained that the SQE2 would be drafted in such a way that there would be no benefit for those who practised in the area of law in which the Skills were being examined. In discussing our concerns the SRA emphasised that a drafting exam based on Property Law would be merely considering the skill of drafting and not the legal knowledge required for that area of law. YLAL is not yet convinced that this could or would be the case and it seems that more recently the SRA have

accepted that those sitting Skills exams in areas they have never practised in will be at a disadvantage as compared to those who have had real work experience in the area of law.

15.If the SRA does not intend to revisit the contexts in which SQE2 will be examined, then YLAL believes this choice is, for the majority of our members, almost irrelevant. No area of law being covered by the SQE2 is an area covered by Civil Legal Aid, Social Welfare Law or an area that was traditionally legally aided (e.g. Employment or Personal Injury). In these circumstances there is no area of specialism available for those candidates gaining QWE in any of the YLAL areas of law to choose which would reflect their practical experience or career aspirations.

16.The current position seems to suggest that our members will have the option to either work in the area they are passionate about and have aptitude for: in Legal Aid, Social Welfare law etc, and be at a disadvantage when sitting SQE2; or move away from their area of interest and find experience in the areas being tested (Property Law, Company Law, Criminal, Wills etc). YLAL is extremely concerned about the impact this new route to qualification will have upon the future of Legal Aid / Social Welfare work and the recruitment and retention of lawyers into our sector of the profession, if the SQE as currently proposed remains the structure to be implemented. We are concerned that the lack of relevant areas of law being included in this SQE which has been designed to secure the future of the profession shows a lack of respect for and interest in our sector, and of our clients,even from our own regulator. This is extremely concerning.

6. The specialisms would cover these five areas:

Civil Litigation

Company/Commercial

Criminal Litigation

Property Law and Practice

Wills and Probate

If this is the case, would this change your answer to the previous question?

17.As detailed above YLAL's view is that the decision not include any civil legal aid or traditionally legally aided areas of law in the SQE2 is likely to harm recruitment and retention in the sector

18.YLAL understands that this reform of the route to qualification is being made, in part, to ensure high quality of provision and trust in the sector for our clients and future clients. However there are many legal skills that lawyers would be required to develop which are specific to our sector and that are not inherently required within the five contexts, including so called "soft skills" that are required for working with vulnerable, traumatised and sometimes chaotic clients. Therefore YLAL strongly believes that the range of specialisms should reflect the legal need in our country more closely and the selection of specialisms available should be diversified to reflect all areas of practice. Candidates from a legal aid background will be deprived of the opportunity to utilise their work-based experience within the context of the exam and also skills required for these areas will not have been developed or tested as part of the SQE. It is difficult to see how the SQE can guarantee a uniform standard of provision in the excluded areas of law for clients under either iterations of the proposed system.

19.YLAL is concerned that an SQE2 exam based on specialisms is likely to place candidates working in legal aid at a disadvantage when compared to their non-legal aid counterparts. If candidates are being tested in practice areas of which they have no experience, there is an increased chance that they will feel obliged to seek additional preparatory courses for which they will have to pay extra. This is concerning given that one of the main stated aims of the SQE was that it would drastically reduce the cost of qualification. This also represents an additional barrier to prospective solicitors entering the

profession. There are already significant financial barriers facing prospective legal aid solicitors when compared with lawyers working in more lucrative fields. YLAL is concerned that this will be exacerbated should prospective legal aid solicitors be required to fund additional courses, which is likely to deter lawyers from working in these fields in the future.

20. Based on the information currently available, YLAL supports the introduction of a single SQE2 exam to be sat by all candidates rather than an SQE2 based on specialisms. Whilst the addition of further specialisms could go some way to alleviating YLALs concerns, YLAL are of the view that this is unlikely to adequately address the issues outlined above due to the niche nature of much legal aid law. The addition of family law as a specialism, for example, would do little to assist a prospective solicitor working in welfare benefits or inquests law. We are also concerned that increasing the number of areas of law available on the exam would inevitably increase the cost of sitting the exam which would place even greater barriers in the way of those struggling to qualify and do nothing to alleviate the financial difficulties faced by those pursuing qualification under the current system.

21. YLAL suggests that the SRA must either (1) extend the areas of law to make available those important areas covered by our sector or (2) ensure that the exams are drafted and marked in such a way that there can be no advantage available to those already practising in the area of law being examined. As previously asserted in relation to the SQE1 YLAL calls for greater clarity on the cost of qualification under the SQE and the potential cost impact these various options would be likely to have.

22. YLAL's previous responses to SQE consultations can be found at www.younglegalaidlawyers.org/SQE

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ARE
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JUSTICE**