



## YOUNG LEGAL AID LAWYERS

### Response to the Solicitors Regulation Authority Consultation on A new route to qualification: the Solicitors Qualifying Examination

9 January 2017

#### About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 2,500 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded. YLAL's 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) Consultation on A new route to qualification: The Solicitors Qualifying Examination. This response follows our response to the previous consultation on the introduction of the Solicitors Qualifying Examination in March 2016 (Training for tomorrow: assessing competence).<sup>1</sup>

#### Introduction

3. The consultation poses a number of questions. We have responded to these below. We also refer to our response to the SRA's previous consultation on the introduction of the Solicitors Qualifying Examination (SQE) further below.
4. YLAL welcomes the decision by the SRA to engage in a second consultation exercise on its proposal for the SQE, as well as the provision of further information about the proposal and how the SQE would operate in practice. We believe it is possible for the SQE to provide a robust, effective and consistent measure of competence for solicitors. However, at the outset YLAL would like to raise certain key issues in line with our objectives as an organisation, which are:
  - a. To campaign for a sustainable legal aid system which provides good quality legal help to those who could not otherwise afford to pay for it.
  - b. To increase social mobility and diversity within the legal aid sector.
  - c. To promote the interests of new entrants and junior lawyers and provide a network for likeminded people beginning their careers in the legal aid sector.

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<sup>1</sup> Available on the YLAL website [here](#).

5. We note that the purpose of the SQE is to ensure consumer protection, with four in five adults believing that all solicitors should pass the same final exam. As a group of aspiring and practising lawyers working with some of the most vulnerable people in society, YLAL both understands and welcomes any approach that ensures protection for our client group in the delivery of legal services.
6. We also commend the SRA's recognition that the current cost of qualifying is excessive, and welcome proposals that will reduce this cost and level the playing field amongst people of differing socio-economic backgrounds, as we contend that a diverse profession best reflects the needs of our client base.
7. However, we remain concerned that the new proposals will not address the perception that certain routes to qualification as a solicitor are preferable and will therefore perpetuate a 'tiered' system where those who are able to finance the more traditional routes may be preferred by employers over those who gain their skills primarily through work experience. As the consultation states in its introduction, the SRA is legally responsible for the education and training of prospective solicitors.
8. We note that The Law Society has raised this concern in its response to the consultation, stating that "it is clear that some potential employers will continue to regard candidates who qualify through more traditional routes as preferable to those who take newer, potentially shorter routes." Further, we agree with The Law Society that "it is important that the solicitor profession continues to be accessible to applicants from a diverse range of backgrounds, reflecting the makeup of our society." In our view, it is therefore imperative that the SRA takes steps to address the rising cost of law schools and works with prospective employers and candidates to ensure that all routes to qualification are treated with equal respect.
9. We also share the concern, raised by The Law Society in its response to the consultation, about the availability of funding for the new assessments or any preparatory courses which students may be required to take. The Law Society notes that LPC students can currently apply for graduate loans to cover the cost of their courses, and we agree that it is critical that the SRA ensures that similar loan funding will also be available to cover the cost of both SQE preparation and assessments. YLAL believes it is possible for the introduction of the SQE to increase the accessibility of the profession by reducing the cost of legal education, and it is vital that the SRA uses this opportunity to significantly reduce the financial barriers to qualification as a solicitor.

## **RESPONSES TO THE CONSULTATION QUESTIONNAIRE**

1. **To what extent do you feel that the proposed SQE is a robust and effective measure of competence?**

**Neutral** – further information below.

10. YLAL believes that an overhaul of the current route to qualification is desperately needed. The consultation provides some clarity with respect to how the SQE will operate following the first consultation, however the overall effect on the cost of qualifying as a solicitor remains unclear. We refer to our response to the previous consultation by the SRA on the introduction of the SQE (see footnote 1), and in particular paragraphs 7 and 8, which set out the context of the lack of diversity within the profession and the prohibitive costs of entering the profession.

11. YLAL believes it is possible for the SQE to provide a robust and effective measure of competence. However, we remain concerned that the current proposals for the SQE assessment are similar in nature to the LPC, albeit split between Stage 1 (legal knowledge) and Stage 2 (legal skills), and could therefore result in students having to pay similar course fees as they do at present.
  12. YLAL considers that even under the current proposals there is insufficient guidance in relation to the assessment of skills (Stage 2 of the SQE). While flexibility is always welcomed it remains unclear, for candidates and employers, how skills and competency of candidates will be assessed on completion of their final assessment for SQE and their period of recognised training / qualifying work experience. Guidance is crucial to ensure consistency in standards, and also to prevent further exploitation of prospective lawyers by legal education providers starting to advertise SQE preparation courses with increasingly high fees.
  13. YLAL does not consider that a sufficiently compelling argument for the use of computer based assessments has been made, as we cannot see the relevance of the comparison with the pharmaceutical and medical industries. However, we acknowledge the SRA's statement that computer based assessments provide a less expensive method of testing.
- 2. (a) To what extent do you agree or disagree with our proposals for qualifying legal work experience?**
- Agree** – further information below.
14. YLAL supports the proposals for pre-qualification legal work experience and agrees with the SRA that this is “an essential part of becoming a solicitor”. YLAL believes this to be the best method for students and trainees to engage with areas of law they may like to specialise in and to gain hands-on legal and client care experience.
  15. YLAL has repeatedly raised concerns (see for example our 2013 report into social mobility within the legal aid sector *One Step Forward: Two Steps Back*<sup>2</sup>) regarding the over-use of junior members of staff by law firms trying to adapt to the legal market of today following government cuts to legal aid. More junior employees such as paralegals and caseworkers are increasingly expected to take on responsible fee earning roles with insufficient support or training. Junior employees are often required to work long hours for inadequate remuneration. In many cases, unpaid legal work experience is seen as a prerequisite to gaining a paid position.
  16. In this context, we believe oversight and regulation of how junior employees are treated and trained by law firms is vital. YLAL considers that it is the role of the SRA to take steps to minimise this on-going ‘paralegalisation’ of the legal aid sector, and considers that if firms are given clear guidance on the assessment process for the SQE, this would help to reduce the increasingly unfair structure of the workforce within legal aid firms.
  17. YLAL also considers that the option of a degree combined with a year in industry would assist candidates to enter the workforce without the need for extensive voluntary or unpaid experience, and would ideally lead to faster qualification periods for those currently working in legal aid practices.

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<sup>2</sup> Available on the YLAL website [here](#).

**2. (b) What length of time do you think would be the most appropriate minimum requirement for workplace experience.**

**Flexible, depending on the candidate's readiness** – further information below.

18. While YLAL believes pre-qualification legal work experience is an essential part of becoming a solicitor, we do not wish to specify a particular minimum requirement. As stated in our response to the previous consultation by the SRA, the period should be as long as is necessary to gain all the relevant skills to be a competent solicitor. We note that the SRA currently favours a period of two years and that The Law Society supports retaining a two year period of work-based learning.
19. In light of the growing amount of work experience that candidates in the legal aid sector acquire prior to qualification, YLAL considers that the fairest approach to a period of recognised training is to base this on a qualitative assessment, ideally led by the employer and regulated by the SRA. This would be intended to prevent employers hiring people as paralegals before undertaking the period of recognised training, as often occurs with the current system of training contracts.
20. YLAL recognises that such a qualitative approach has the potential to be unwieldy and to create a burden on employers. To that end YLAL would agree with a recommendation to employers of approximately 18 to 24 months but believes that this should not be absolute, in order to accommodate candidates who can qualify more quickly and that a bar should be set for a maximum period.

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

**Agree** – further information below.

21. YLAL submits that there must be robust measures in place to regulate the cost, method of provision and standard of preparatory training for the SQE. We also recognise that flexibility for providers is useful in providing choice to prospective SQE students.
22. We do, however, submit that market pressures alone are unlikely to be sufficient for monitoring and regulating the provision of SQE training. Where institutes are given freedom to set prices, cost will always be an issue, and where pass rates are not scrutinised by an official regulator, there is the possibility that providers with inadequate pass rates will lower the costs in order to encourage attendance. This may therefore result in a two-tier system of education providing a lower quality of education to those prospective lawyers who are least able to finance the route to qualification. Where standardisation of outcomes and costs are not regulated centrally there is also the possibility of the creation of a postcode lottery where those tied to location by family commitments, financial matters or other issues will be forced to choose substandard SQE courses.
23. There must also be regulation of the location of providers, in that provision should be national and accessible for all. In areas where accreditation is compulsory for practice it is unacceptable that examinations or training can only be accessed in certain parts of the country. The SRA must work to ensure that this does not become the case with the SQE as it has with other qualifications and in certain areas of law. This kind of lack of accessibility can lead to advice deserts and a 'brain drain' to places like London, and therefore consideration should be given to strict monitoring of this issue. On a similar point, providers should not be

allowed to monopolise the market of training provision for the SQE, particularly if regulation is eventually left to the market. Although it is not our preferred option, should market forces be expected to regulate provision, this can only be possible and workable where candidates are offered true choice.

24. YLAL agrees that if flexibility and innovation is to be encouraged there must a clear and transparent way for students and prospective students to learn more about the providers they can access the training from. We support the publication of costs, pass rates and outcomes. We also very much support the idea of transparent and accessible statistics being published regarding outcomes in relation to past performance and experience of SQE candidates alongside eventual outcomes. We believe this will be useful not only for prospective students but also as a measure of the impact SQE is having on social mobility, making it possible to review whether or not the revised route to qualification has helped or hindered social mobility and access to the profession for groups such as those with disabilities, from BME backgrounds and from low income households.
25. Though we agree it is useful for training providers to have the ability to review and monitor their own performance, we continue to believe that a centralised, standardised regulatory body should also play a role in the regulation of the provision of training. There is no suggestion that an OFSTED-like inspectorate is necessary; however, it seems cavalier to roll out an entirely new system with the intention of assisting social mobility and access to the profession whilst keeping consumer confidence at the centre and then leaving it to be controlled and regulated purely by the market. YLAL does not believe this would be sufficient or optimal. A centralised body could, for instance, collate the data gathered from the providers on areas such as outcomes, pass rates, cost and methods of provision and use the results to inform and improve policy and provision nationwide creating a system where all prospective candidates have access to high level training at reasonable prices from providers that are rated equally by employers.
26. We welcome the suggestion of publishing pathways to the profession. We welcome new and innovative ways of training and qualification with the hope that a broader section of society will be motivated and able to qualify as solicitors, eventually ensuring the profession is more representative of society as a whole and is not seen as being the preserve of only certain groups of people. However, limiting the pathways which are publicised is likely to cause confusion for candidates who may be taking a different path. It may also cause employers to look upon certain routes as being more acceptable, traditional or impressive than others which are not specifically set out by the SRA. In this vein we would suggest as comprehensive a list as possible to be created and published, and that this should be regularly updated as different pathways are created or recognised. The possibility of perfectly common and respectable routes to qualification being ignored is made clear through the examples set out on the chart provided on page 25 of the consultation: the chart is limited to three options involving QLDs, one involving an apprenticeship and one involving a non-law degree. There is no mention of CILEx, equivalent means or the GDL amongst other routes. Such an approach may make candidates feel excluded or may appear to create barriers to the profession which do not actually exist.
27. Despite our misgivings regarding the limitations of providing only some of the pathways, YLAL is very supportive of the idea of providing information for candidates regarding routes to qualification. We support the provision of case studies, advice and information and believe it will give prospective candidates the information they require to make informed decisions regarding their future career paths.

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

**Neutral** – further information below.

28. We consider that this question is largely a reiteration of question 1. Solicitors require different skill sets to suit the sector that they are in. We broadly agree that requiring new solicitors to have a degree or equivalent, with qualifying work experience and meeting the character and suitability criteria is a suitable test of the requirements to be a solicitor. Maintaining a similar structure allows candidates to have a full overview of the law, before narrowing their options to the area they are most interested in and best suited to whilst ensuring that they have an adequate grounding in other core legal skills which may also be complementary to their chosen field.
29. In the absence of sample assessments of the proposed SQE exams we are not able to comment fully on whether we think the SQE assessment will be a suitable test of the requirements to become a solicitor.

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

**Agree** – further information below.

30. We agree that some exemptions should be available in appropriate circumstances. The reasoning that exemptions should not be offered for candidates who hold a QLD/GDL on the basis that the SQE is not an academic law degree does not consider the position of candidates who have accumulated substantial legal experience (for example as a paralegal) before embarking on the SQE and can demonstrate the required 'legal knowledge in practical contexts'. This is particularly relevant for the core legal skills examined in Stage 2, which the consultation has identified as the more expensive stage of assessment, such as interviewing clients. We propose that a candidate with demonstrable skills meeting the requirements of an SQE assessment should be able to submit a portfolio of work for consideration in a similar manner to the 'Equivalent Means' route. Without this, aspiring solicitors who have built up extensive experience will face additional bureaucracy and expense with no improvement in accessibility or social mobility.
31. Further, recognising demonstrable work experience as grounds for exemption from the relevant parts of the SQE would reduce the financial burden of SQE training costs for legal aid firms and aspiring legal aid solicitors. Although the consultation states that the SRA does not propose to specify how candidates prepare for the SQE it does suggest that this will be through 'providers', which will clearly incur a cost that will need to be met by either the candidate or their firm. This poses potential problems for smaller legal aid firms with tight profit margins, as has been shown by the lack of funded training routes in legal aid firms under the current training regime.
32. It is unclear how the SQE would integrate with the Legal Apprenticeship scheme and CILEx, but it is important that candidates taking this route to qualification are not required to incur additional expense.

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

**Agree** – further information below

33. We are broadly supportive of the proposed transitional arrangements, subject to the concerns outlined below. We agree with The Law Society, which in its response to this consultation urges the SRA “to take the necessary time to ensure that the SQE assessments are right, reliable and well tested” and, if there is a risk that the timetable proposed by the SRA does not allow sufficient time for this, the timetable should be extended.
34. While transitional arrangements are essential to protect the position of candidates who are caught in the changeover so that they do not lose the value of their existing qualifications or are required to incur further expense, we would like to draw the SRA's attention to the following potential concerns:
- a. If exemptions are not granted, candidates who have completed a QLD/GDL before September 2019 but have been unable to complete the LPC due to financial or other constraints (a common situation in legal aid work) will be at a disadvantage to candidates beginning their route to qualification after September 2019, as they will either have to continue on the current training route and fund the expensive LPC or incur additional expense by funding the full SQE in addition to the fees already paid for their QLD/GDL. This should be addressed by allowing such candidates to pursue the SQE with appropriate exemptions made for their qualifications and experience.
  - b. As there will be a period from September 2019 when both the traditional and SQE routes to qualification are available, small legal aid firms should be supported to meet the additional administrative considerations and expense of facilitating qualification via dual schemes. Failure to do so may lead to candidates seeking to qualify under a particular scheme being unable to do so at such firms, creating inequality.

**7. Do you foresee any positive or negative EDI impacts arising from our proposals?**

35. The cost of the SQE to students once it has been introduced is still unclear, making it impossible to comment on whether the proposed regime will materially improve the training prospects of candidates from lower socio-economic backgrounds or who have family commitments. We note that the SRA expects the preparatory training and cost of the SQE will be less than the current LPC fees. While this is encouraging, it is at present uncertain, and there must be a significant cost difference in order to provide a viable option for candidates receiving low salaries in the legal aid sector. It must also be closely regulated by the SRA in future to avoid the same spiralling costs that have been evident on the GDL and LPC. The assertion that candidates do not need to pay for SQE Stage 2 until after they have secured a period of workplace experience<sup>3</sup> is irrelevant if the cost remains prohibitive: it is often not a lack of experience preventing legal aid candidates from completing the GDL and/or LPC, but the extortionate fees.
36. Further to the above, legal aid firms will need support in meeting the costs of the SQE to avoid further ‘paralegalisation’ of the profession, as outlined in our previous answers.
37. The non-specification of particular SQE preparation courses is positive, in that it will go some way to avoid the current ‘captive market’ and associated extortionate provider costs of the GDL and LPC. However, to promote true social mobility the SQE assessments should not

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<sup>3</sup> A new route to qualification: The Solicitors Qualifying Examination [SQE], October 2016, page 17

require the completion of any preparatory course: the materials required to study the assessment content should be available to purchase at a non-prohibitive cost and candidates who wish to prepare for the SQE through self-study should be permitted to do so. Preparatory courses will undoubtedly be offered by providers, but this should be entirely optional and the completion of such a course should not be a pre-requisite to sitting the assessments.

38. The six year limit between completing Stages 1 and 2 of the SQE should be flexible to accommodate candidates who can demonstrate sufficient legal knowledge and continual professional development within this period to assure the SRA that their legal knowledge is up to date, for example if they have worked within the legal profession for a significant proportion of this time and can provide confirmation of their state of knowledge from their firm. Failure to provide such flexibility risks discriminating against candidates who cannot complete both stages within six years due to family circumstances, health, financial or other considerations.
39. The recognition of a greater range of work experience in place of a traditional training contract is positive and will assist firms who may not be able to meet the requirements for a training programme, as well as supporting candidates who have taken non-traditional routes into law.
40. As stated above (at paragraph 9), it is vital that the SRA ensures that similar graduate or career development loan funding to that which is available for the LPC will also be available to cover the cost of both SQE preparation and assessments. Any preparatory courses for the SQE and the assessments must be priced in a way that represents value for money, and up-front funding in the form of graduate loans must be available to students who do not have access to capital. The SRA must, in our view, ensure that any new courses or assessments meet the criteria for receiving funding through government-backed graduate loans.

## **Conclusion**

41. YLAL believes that the route to qualifying as a solicitor is in desperate need of improvement. The costs of the current legal education system are prohibitive and training contracts are becoming less attractive for small, nice and legal aid firms to offer and more difficult for graduates to obtain.
42. Social mobility within the profession has improved very little in recent decades. YLAL welcomes the SRA's willingness to consider a new route which, if implemented and regulated efficiently, effectively and fairly, could improve the accessibility of the profession and assist with social mobility. However, YLAL believes this will only be possible if the cost of legal education is significantly reduced, both for students paying independently and for the firms who may be sponsoring employees and offering training and supervision.
43. The introduction of the SQE represents an overhaul of legal education and training, and as such provides a unique opportunity to increase the accessibility of the profession by reducing the cost of legal education, which is a significant financial barrier to qualification as a solicitor. We urge the SRA to consider carefully at every stage the impact of its proposals on the accessibility of the profession, particularly to those from disadvantaged backgrounds.

**Young Legal Aid Lawyers**

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