Response of Young Legal Aid Lawyers to
SRA Consultation: “Training for Tomorrow – A Competence Statement for Solicitors”

About us

Young Legal Aid Lawyers (YLAL) was formed in 2005 and has almost 2000 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, that 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.

General comments

Before providing our responses to the Solicitors Regulation Authority (SRA) consultation, Training for Tomorrow – A Competence Statement for Solicitors (“the Consultation”), we wish to make some general comments about the consultation procedure and background to the proposed changes.

We are disappointed that there has not been more involvement of junior lawyers in the consultation process. Neither YLAL nor the Junior Lawyers Division (JLD) of the Law Society were involved in the development of the proposed Competence Statement, Threshold Standard or Statement of Legal Knowledge. The SRA appears to consistently engage at a high level with education and training providers and large corporate firms but has limited real engagement with the junior end of the profession or legal aid practitioners. We believe that it is important for the SRA to engage with junior legal aid lawyers since it is our members who will feel the major impact of the new regime as they are the future of the profession and the ones who will go through the first phase of these standards as they pursue their education and training.

We are concerned at the piecemeal approach to change adopted by the SRA. We understand that “equivalent means” was introduced as a “holding position” while longer-term proposals are consulted on,¹ however we agree with the JLD’s concerns about how the competence statement has been developed separately to the introduction of the “equivalent means” route. An assessment framework has not been developed alongside these proposals and will only be consulted on in autumn 2015, yet the SRA intends the Competence Statement to come into force from spring 2015 before the assessment framework has even been put out for consultation. As the research team of

¹ http://www.lawgazette.co.uk/law/legal-training-making-the-grade/5044905.fullarticle
the Legal Education and Training Review (LETTR) noted, assessment is at the heart of legal services education and training and assessment judgments provide the primary means of ensuring competence to progress to the next stage of training, or achievement of the standard expected of a newly qualified lawyer. \(^2\) It is difficult for us to provide meaningful comment on the proposed Competence Statement without knowing how its broad brush statements will be assessed in practice. This is important when there is a great onus on applicants to ensure their training meets the required standard.

We would endorse the JLD’s concerns that the Threshold Standard lacks clarity and is wide open to interpretation. This is unhelpful for junior lawyers and for the expectations of consumers.

We also support the JLD’s concerns about the lack of clarity over the place of the Statement of Legal Knowledge in the regulatory framework and whether it is intended to represent a continuing obligation for solicitors.

As junior lawyers our main concerns are:

- The lack of clarity for new entrants to the profession or those considering law as a career. Had we been involved earlier we would have urged the SRA to consider a more joined-up approach incorporating development of assessment criteria before implementing any new competence scheme.

- The lack of attention given to concerns previously raised by junior legal aid lawyers about how core areas of substantive legal knowledge do not fit within their work in practice.

Below are YLAL’s responses to the Consultation questions.

**Question 1: Does the competence statement reflect what you would expect a competent solicitor to be able to do?**

**Question 2: Are there any additional competences which should be included?**

The Competence Statement does cover key areas that would be expected of a solicitor. However, we are not able to adequately answer this question in the absence of an assessment framework or more detail that lays out what is expected under each heading. By way of comparison, Australia has developed new Practical Legal Training Competency Standards for Entry-level lawyers, which came into effect on 1 January 2015\(^1\). These have a far greater level of detail under performance criteria which helps make sense of the competencies. We would encourage the SRA to provide more detail in relation to the Training for Tomorrow proposals as the authorities in Australia have done.

**Legal aid**

There is no reference in the competence statement to an understanding of legal aid. In a climate where legal aid is still available but the public do not always realise this, and there has been a very low take up under the legal aid “exceptional funding scheme” that was conceived as a safety net for practice areas where legal aid has been cut, we feel it is incumbent on all practitioners to be aware of their duty to refer clients for public funding when they cannot afford paid services. This fits

\(^{2}\) The final report of the Legal Education and Training Review independent research team, ‘Setting standards: The future of legal services education and training regulation in England and Wales’, June 2013, paras 4.122 and 4.145

\(^{1}\) Law Admissions Consultative Committee, ‘Practical Legal Training, Competency Standards for Entry-Level Lawyers’, commencement date 1 January 2015
with the regulatory objectives set out in the Legal Services Act 2007 which include a need to improve access to justice.

Social responsibility is also one of the attributes identified by the LETR research team as part of their table of professional competencies in legal services.4

Further, under the heading of “Ethics and Professional Responsibility” in Australia’s competency standards, the performance criteria for “Being aware of the importance of pro bono contributions” include “identified when a client with insufficient resources may be entitled to legal aid, or assistance from professional or community organisations.” In our view England and Wales should adopt a similar approach to reinforce duties to advise clients about legal aid for all practitioners.

Social and commercial awareness

The LETR’s research team highlighted consumer data showing that respect for, and empathy with, clients are areas where there are still significant gaps between expectation and reality.6 At present the “respect for clients” aspect of the competence statement uses fairly general wording like:

“A1e. Respecting diversity and acting fairly and inclusively..

..D2. Establish and maintain effective and professional relations with clients, including:

a. Treating clients with courtesy and respect
b. Providing information in a way that clients can understand, taking into account their personal circumstances and any particular vulnerability
c. Understanding and responding effectively to clients’ particular needs, objectives, priorities and constraints
d. Identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances” [our emphasis]

We agree with the sentiment but would like to see a specific recognition in the competence statement of what might constitute a “vulnerable” person to encourage greater awareness of particular characteristics that, in our experience, can prevent or severely hinder certain individuals accessing justice. To illustrate the importance of a more specific approach, we refer to the finding of a recent report that over 1 million young people are left alone to deal with complex rights related problems each year, and part of the problem can be a reluctance to approach and stay engaged with adult oriented services. Young people surveyed said, “[a]ll lawyers who ever come into contact with young people should be trained in how to talk and listen to us.”7

We acknowledge that the competence statement says the following:

“D1. Communicate clearly and effectively, orally and in writing, including:

a. Ensuring that communication achieves its intended objective

4 The final report of the Legal Education and Training Review independent research team, ‘Setting standards: The future of legal services education and training regulation in England and Wales’, June 2013, Table 4.3, p.140
5 Law Admissions Consultative Committee, ‘Practical Legal Training, Competency Standards for Entry-Level Lawyers’, commencement date 1 January 2015, p.16
6 The final report of the Legal Education and Training Review independent research team, ‘Setting standards: The future of legal services education and training regulation in England and Wales’, June 2013, para 4.83
b. Responding to and addressing individual characteristics effectively and sensitively

c. Using the most appropriate method and style of communication for the situation and the recipient(s)

d. Using clear, succinct and accurate language avoiding unnecessary technical terms

However, in our view this should go further, recognising that generalised statements such as the above do not always translate to a real understanding of how to deal with the needs of certain groups. We think the competence statement should specify a need to demonstrate understanding of the service needs of the elderly, young people, people with mental illnesses, and the impact of cultural differences.

**Supervision**

This consultation must be read alongside the results of the SRA’s regulation review and the aim of the SRA within Training for Tomorrow “to remove unnecessary regulatory burdens and improve processes”\(^5\). In this new “light touch” regulatory environment, we are concerned by how standards and quality will be upheld to ensure that junior lawyers are adequately supported. The regulation review led to a decision to remove the restrictions on the number of trainees a firm may train, and how many practising certificates a training principal must have in order to hold that role. We expressed concern in response to the corresponding consultation, based on comments from members as shown in our LETR response about inadequate support and supervision for junior lawyers, exacerbated by the impact of legal aid cuts.\(^6\)

We understand that the Competence Statement is intended to apply to all solicitors. It lists under competence D3: “Establish and maintain effective and professional relations with other people” and under this it should include “b. Delegating tasks when appropriate to do so, c. Supervising the work of others effectively”. However we think this should go further. As the ‘Training Regulations 2014 - Qualification and Provider Regulations’ have been implemented as proposed by the SRA, we suggest a further safeguard for junior lawyers in the Competence Statement by including a commitment to the standards required of supervisors and the responsibilities on them and by which they can be monitored.

The Australian competence standards document places some direct responsibility on a supervisor requiring a certain level of experience of them, which arguably raises the bar for all supervisors, rather than just leaving the matter to be a concern for the training principal or provider as in England and Wales. Further there is a built-in requirement to have concern for a trainee’s wellbeing:

**4.6 Resilience and well-being**

*All PLT providers and SWT providers should:*

(a) make applicants aware of the importance of personal resilience in dealing with the demands of legal practice;

(b) provide applicants with appropriate access to resources that will help them develop such resilience;

(c) provide applicants with information about how and where to seek help in identifying mental health difficulties and in dealing with their effects;

(d) make applicants aware of the benefits of developing and maintaining personal well-being in their professional and personal lives; and

---

\(^5\) SRA, *Training for Tomorrow: Regulation review*, 25 April 2014

(e) provide applicants with information about how and where to find resources to help them develop and maintain such well-being.”

We would propose this is introduced in similar terms into the SRA’s Competence Statement to give junior lawyers a further safeguard when they are under supervision.

**Question 3: Have we struck the right balance in the Statement of Legal Knowledge between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area?**

We repeat our earlier made concern about the Statement of Legal Knowledge becoming a continuing obligation for all solicitors to maintain legal knowledge in the areas listed and the potential for misrepresentation to consumers that solicitors are experts in all areas listed. It is hard to answer questions about the Statement of Legal Knowledge without knowing how and when a solicitor will be assessed on it. The SRA may therefore wish to consider postponing implementation of the Competence Statement and associated documents until it has produced an assessment framework and consulted on of all its plans together.

If the Statement of Legal Knowledge is intended to have an impact on professional courses such as the Graduate Diploma in Law (GDL) and Legal Practice Course (LPC) then we would highlight how little has changed in the academic model put forward by the SRA in comparison to what already exists for those undertaking the Qualifying Law Degree and LPC. Our members have raised concerns about how current arrangements were not fully adequate to equip them for legal aid practice. In response to a survey we conducted in 2012, members said:

> “Respondents’ views about the courses were mixed, with the vast majority (82% for the LPC and 80% for the BPTC) of respondents indicating that course content was “sometimes relevant and sometimes not”.

**Relevance of LPC / BPTC content to later work:**

The relevance of the content of the LPC to later work as a trainee or solicitor in legal aid work was a greater concern than for the BPTC. Respondents indicated that many of the compulsory modules are irrelevant to publicly-funded work and that elective modules were much more useful. This issue was linked to a concern that legal aid was undervalued, with some legal aid related areas not even being offered as options. However, there was recognition by many that the very basic elements of the compulsory modules were useful to practice…

..LPC students indicated that they felt unprepared for being a solicitor at the end of their course, largely due to a lack of being taught practical skills and the practicalities of what a trainee actually does.

...Learning on the job (LPC):

*This was a strong theme. A significant number of respondents suggested that they learnt much more by doing real work than on the LPC, and many linked this to the suggestion of some kind of work-based learning as a useful and viable alternative.*

---

10 Law Admissions Consultative Committee, *Practical Legal Training, Competency Standards for Entry-Level Lawyers*, commencement date 1 January 2015, p.5
The disconnect between legal education and legal aid work was one reason that respondents preferred work based learning as a way into practice, for example stating:

“LPC content e.g. business law does not reflect what is practised in legal aid work – electives were more useful”. 12

By way of comparison, the Australian competency standards are less generalist, for example, not requiring knowledge about wills, as follows:

“3.1 Required Competencies

(a) Every applicant is required to satisfy the Admitting Authority that the applicant has achieved the prescribed competence in the Skills, Compulsory and Optional Practice Areas and Values set out in item 5 and summarised as follows:

Skills

Lawyer’s Skills
Problem Solving
Work Management and Business Skills Trust and Office Accounting

Compulsory Practice Areas

Civil Litigation Practice
Commercial and Corporate Practice
Property Law Practice

Optional Practice Areas

Subject to paragraph (b), any two of:
Administrative Law Practice
Banking and Finance
Criminal Law Practice
Consumer Law Practice
Employment and Industrial Relations Practice Family Law Practice
Planning and Environmental Law Practice Wills and Estate Practice.

Values

Ethics and Professional Responsibility

(b) Paragraph (a) applies to every applicant who has undertaken PLT in Australia, whether by completing a PLT [Practical Legal Training] course, undertaking SWT [supervised workplace training which includes articles of clerkship], or any combination thereof approved by the relevant Admitting Authority.” 13 [emphasis in original]

In Australia a decision has been taken that entry level lawyers should not be compelled to have a knowledge of more than three core areas, and should be able to choose two specialisms. This is arguably a way to address the tensions between breadth and depth in legal education and training.

12 Ibid, p.10
13 Law Admissions Consultative Committee, ‘Practical Legal Training, Competency Standards for Entry-Level Lawyers’, commencement date 1 January 2015, p.3
With substantial legal aid cuts lawyers already in practice may now have to diversify into other areas from those which have suffered cuts and the government may continue to make cuts that affect future legal aid lawyers. We also recognise the importance for some level of breadth and also the need to allow those on a training route flexibility to change course according to their interests or circumstances. However, the Statement of Knowledge as currently drafted seems too close to the existing model of core knowledge areas, and we do not feel it is in step with the needs of practitioners doing a large amount of social welfare, family and criminal law. For example, there is a whole section for tax concerns yet areas that are all very important to legal aid lawyers such as public and administrative law, discrimination, the Human Rights Act and European law are all under one heading of “Constitutional law and EU law”. There should be greater emphasis for these areas in the Statement.

The SRA may also want to include a list of options for knowledge of substantive law areas in line with the priorities for consumers of services that were traditionally legally aided. In a survey conducted for Legal Action Group in 2012, when the public was asked which three areas of law the government should prioritise for legal aid funding, the top choices were child protection, housing and employment law, with 69%, 63% and 59% of respondents selecting these respectively.14 We would note that Canada’s “entry to practice” competency profile lists a requirement for knowledge of family law in addition to other core areas and administrative law is listed separately.15

**Question 4: Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?**

This question is difficult to answer in the absence of the assessment framework. There is a repeated use of undefined generic terminology without an indication as to how this will be assessed such as ‘acceptable standard’. There is no reference to the measurement of key areas that are within the competence standard such as working with other people ie through team work.

**Question 5: Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?**

No.

We refer to our comments in relation to question 3.

**Question 6: Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the Handbook and ensure their continuing competence?**

**Question 7: Are you aware of any impacts, either positive or negative, which might flow from using the competence statement as a tool to assist entities and individuals with complying with Principle 5 in the Handbook and ensuring their continuing competence?**

We understand Principle 5 to state:

“5: Application of the SRA Principles outside practice

5.1

---

15 Federation of Law Societies of Canada, ‘National Entry to Practice Competency Profile for Lawyers and Quebec Notaries’, September 2012, p.1
In relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 1, 2 and 6 apply to you if you are a solicitor, REL or RFL."

We are not clear whether this is what the consultation is referring to.

It is also hard to answer this question in the absence of the assessment framework which will surely be necessary to determine whether continuing competence can be met or not.

Young Legal Aid Lawyers
January 2015