



YOUNG LEGAL AID LAWYERS

Response to the Solicitors Regulation Authority Consultation on Looking to the future: Phase two of our Handbook reforms

20 December 2017

About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 3,000 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 *Looking to the future: phase two of our Handbook reforms*. This consultation concerns a number of issues, including the introduction of a common professional assessment for intending solicitors: the Solicitors Qualifying Examination (SQE), and the streamlining of the SRA's current character and suitability requirements for solicitors. We have therefore chosen to respond only to the questions which are most relevant to our membership.

Introduction

3. Within this document you will find our response to Questions 6 and 7 of the consultation which relate to reform of the character and suitability requirements for new entrants to the profession and the transitional arrangements for the roll out of the SQE.
4. YLAL continues to have concerns regarding the cost of the SQE to aspiring solicitors and other essential elements of qualifying for practise as a solicitor. In relation to this consultation we ask for clarity on the cost of the character and suitability assessment as well as clarification as to who will bear these costs.
5. At the outset YLAL would like to raise a few key issues in line with our objectives as an organisation, which are: (1) 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;

(2) to increase social mobility and diversity within the legal aid sector; and (3) to promote the interests of new entrants and junior lawyers; to provide a network for like-minded people beginning their careers in the legal aid sector.

6. YLAL has previously stated that we are in theory supportive of a standardised assessment which will ensure high quality provision of legal services to consumers and also provide potential lawyers with a predictable route into qualifying as a solicitor. We have also stated that we support any change to the current scheme which lowers the financial burden currently on those studying the traditional route of Qualifying Law Degree (QLD) or Graduate Diploma in Law (GDL) and then the Legal Practice Course (LPC). However, we remain to be convinced that the SQE is the best way of addressing these issues.
7. YLAL has also previously voiced concerns about the effect the proposed changes to the route to qualification will have on access to the profession. To date, the SRA has failed to provide any clear information about how much it expects the SQE to cost. We reiterate our concerns regarding this lack of information and again call on the SRA to clearly outline the expected cost of the SQE and all other required tests prior to entry onto the roll of solicitors, as well as to make clear on whom the burden of these costs will fall.
8. YLAL also continues to have concerns about the possible effect of the introduction of the SQE on social mobility and diversity, particularly within the legal aid sector.
9. YLAL wishes to make clear our concerns regarding the removal of all civil legal aid subjects from the syllabus for both SQE parts 1 and 2, and particularly the SRA's decision not to include any of these areas within the contexts in65 which SQE 2 will be tested. We are concerned about this matter for a number of reasons: the failure include civil areas of law traditionally funded by legal aid tends to show a lack of respect for or interest in these areas of law, and we fear this will encourage students to move away from these areas and will therefore increase the problem of recruitment and retention in the legal aid sector. We also fear that a decision not to give any attention to these areas may provide encouragement to the government to cut legal aid provision further.
10. We also believe that social welfare law, family and all other civil legal aid areas require their own specific expertise, and we do not believe that the skills learned through practice of commercial areas are necessarily properly transferable to our often vulnerable and complex clients. We feel a failure to cover these areas in the SQE will leave new entrants wholly unprepared for a career in legal aid. We also feel that the skills gained through work experience in the sector will not be properly rewarded and recognised within the SQE in its current suggested form.
11. YLAL notes the SRA's view that the new rules relating to character and suitability requirements will allow for greater flexibility and will in turn encourage social mobility and diversity in the profession. We welcome and support the SRA's recognition of the importance of protection of the public and the public interest. Below we have provided our response to the consultation based on the information provided thus far;

however, we believe that further information is required in a number of areas before a properly informed opinion can be given.

12. YLAL is concerned with ensuring that the new system does not impose any additional financial burden onto our members as they work to qualify. We are also concerned to ensure that any reforms will make the profession more, not less, accessible. We continue to support accessibility to work in the legal sector for all those with the requisite skills and knowledge, and we welcome any reforms which increase accessibility. We continue to encourage the SRA to ensure that its policy and framework for this new system of qualification helps to improve, rather than hinder, social mobility, particularly within the legal aid sector.
13. Finally, YLAL recognises that the transitional arrangements are extremely important to employers, training providers, current students and potential aspiring solicitors alike, and we therefore encourage the SRA to provide as much detail and clarity on this area as possible at the earliest opportunity in order to allow the various interested parties above to properly plan and prepare for the changes.
14. YLAL welcomes the detailed and continuing engagement with the profession during the development of the new system for qualification; however, we ask that the SRA works towards providing more transparency in all areas of the SQE and greater detail within the proposals in order to enable respondents to properly and fully respond to all consultations on this important issue.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

15. YLAL agrees that the current suitability test for new entrants to the profession is very prescriptive. We welcome the SRA's decision to introduce an element of flexibility and to judge each application "on a case by case basis".
16. YLAL welcomes the suggestion that mitigating and aggravating factors will be taken into account when assessing applications for the Suitability Test. We further welcome any increase in transparency, fairness and proportionality within the system, which we believe will benefit applicants, including many of our members.
17. YLAL also welcomes the SRA's approach to these reforms in that they have investigated equivalent assessments applied in similar professions, and we welcome their conclusion that the current system is too rigid.
18. YLAL agrees that greater flexibility may well encourage new applicants, who may previously have been prevented or discouraged from considering a career in law, to pursue a career in the legal profession. We believe that the decision maker's ability to take mitigating factors into account and also employ the consideration of the

application of conditions onto practising certificates in order to manage potential regulatory risks will allow for greater diversity in the profession. We hope that eventually this will promote social mobility within the legal profession and encourage new practitioners into the legal aid sector.

19. YLAL welcomes the decision to restate the overriding principles of protection of the public and of the public interest and agree these are principles which run through all that we do as lawyers.
20. We agree with the decision to introduce a clear list of indicative events as well as to consider personal circumstances and the nature of the applicant's proposed role. We however feel unable to properly provide a response on this issue without a detailed list of the factors which will be taken into account. We further ask for clarification as to whether the list will be entirely prescriptive or whether additional factors can be taken into account at the decision maker's discretion.
21. Though we agree with the decision to create fewer hurdles for new entrants to the profession, as well as the alignment of rules for apprentices and those taking the SQE route to qualification, we do fear that a decision not to allow applicants to take the Suitability Test until they have completed their education and training means that some students may invest a great deal of time and money into training for their profession, only to find at the point of qualification that they are ineligible to practice under the character and suitability requirements.
22. As stated above, we are concerned that people will not be able to properly rely on the individual advice given at an early stage. The SRA accepts that this system will not "provide the same level of reassurance as regulatory decision". The SRA states that this method would be preferable to an early negative decision, and we accept the problems caused by these negative decisions and also recognise the fact that rehabilitation cannot be demonstrated in this situation. We further recognise the reassurance provided by the SRA that states that guidance will be given to applicants on how they may be able to show rehabilitation and gain a positive result in the Suitability Test at point of entry to the profession.
23. We ask that the SRA go further, and we would recommend that individual advice is given, in writing and that the advice be binding, e.g. should the applicant meet all of the requirements laid out within the advice, they will be deemed rehabilitated and they will receive a positive decision. We also ask that if the SRA do not believe an applicant will successfully pass the Suitability Test at any stage due to the severity of their circumstances, then this must be made clear to applicants so they do not make financial and time investments which will never result in entry to the legal profession.
24. These issues also raise concerns regarding the application of a decision maker's discretion. Discretion can help or hinder in equal measure. We feel that it is risky for students and applicants to invest in the process of qualification without any way of knowing for certain the outcome of their application. We look forward to full and detailed guidelines on the factors which will be considered and the way in which the system will be implemented. We do not feel that a potential applicant should have to

rely on an “indication” when investing large amounts of time and money, and we would encourage the SRA to strengthen this part of their proposal in favour of the student applicant.

25. YLAL welcomes the rules being made available to law schools and employers. We acknowledge it will also be made available to members of the public on the website but suggest that all colleges providing Law at A Level or other secondary education levels are made aware of this guidance, as we believe that it is very important that young people understand the affect their behaviour may have have on future chances of employment at an early stage.
26. YLAL seeks more assurance in the form of clearer documents and details of how the SRA will provide an advice service for potential applicants before committing money, time and effort. Furthermore, we are concerned that the proposal does not account for disabled applicants, especially those with long-term health conditions impacting on their behaviour. We would like the SRA to provide these assurances and provide suitable guidance on this.
27. We welcome the suggestion that the process will be simplified and streamlined by removing duplication of requirements for those already regulated by the SRA or other approved regulators. We look forward to further detail on this matter.
28. YLAL also calls for clarification as to whether there will be an appeal or reconsideration process available, and if so how this will be applied and administered. We would encourage the SRA to consider the addition of such a process.

Question 7

Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing rules when the SQE comes into force?

29. YLAL welcomes the SRA's introduction of transitional arrangements for the introduction of the SQE. Many of our members will be affected by the changes to the routes to qualification and we welcome the provision of further information regarding the way in which the crossover from one system to another will work in practice.
30. YLAL welcomes the SRA's decision to adapt the transitional arrangements as the SQE has developed and consultation responses have been received. YLAL is broadly supportive of the proposals in respect of transitional arrangements, but is concerned that the arrangements continue to present a potential for unfairness for candidates who commence their training before the introduction of the SQE, but are unable to complete it within the 'normal' timescale. We are also concerned about the SRA's acceptance that they will not be reintroducing a minimum salary or including national minimum wage requirements within the regulations for employers and training providers.

31. YLAL supports the decision to allow candidates who complete their studies during the transitional period to gain full exemption from qualification through SQE.
32. YLAL welcomes the SRA's decision to widen the group of candidates eligible to choose to qualify under either the old system or the SQE to include those who will have embarked on or invested in their academic stage training at the time that the SQE is introduced. To do so recognises the reality that many prospective QLD students, particularly those from non-traditional backgrounds, may not be aware of the impending implementation of the SQE and may therefore commence or commit to a QLD course on the reasonable assumption that it will lead to qualification as a solicitor via the old route.
33. YLAL accepts that it is appropriate to treat apprentices as ineligible for SQE exemption, given that qualification via the apprenticeship route has always been envisaged as dependant on successful completion of the SQE.
34. YLAL notes the SRA's general position against permitting candidates to 'mix and match' between old and new qualification routes, i.e. to permit partial exemption from the SQE in recognition of pre-existing qualifications, on the basis that to do so would pose a risk to the integrity of the SQE. YLAL notes the reasons offered by the SRA by way of justification for this position, but remains concerned that it creates a potential disadvantage for those who have, at the time of the introduction of the SQE, completed a GDL/CPE but have been unable to complete the LPC. As we have pointed out previously, such individuals would face a choice between undertaking the expensive LPC, or undertaking the SQE without any credit for their existing qualifications.
35. As YLAL has made clear previously, we are concerned that the continued availability of the LPC following the introduction of the SQE may create a two-tier system with candidates and employers seeing those who have obtained an LPC as having a competitive edge over those who have completed SQE. We feel that should the LPC remain available, there will be continued pressure on aspiring solicitors to undertake the prohibitively expensive LPC or risk being less likely to secure future employment. Assuming that such a hypothetical candidate elected to undertake the SQE, to deny them any recognition for their previous qualifications in respect of the SQE in such circumstances would mean their being required to invest further time in securing qualification.
36. We also note that there may be similar problems with the QLD remaining available. As has been made clear by potential employers and training providers, those with a QLD are likely to be preferred over those without. It is possible that instead of saving law students money, the introduction of the SQE will simply add another cost and stage of qualification to the process. If so, this would be detrimental to social mobility, diversity and access to the profession, and would be a significant concern for YLAL.
37. YLAL supports the decision to extend the cut-off date for transitional arrangements from five years to 11 years.

38. We accept the SRA's declaration that learning from a QLD and other qualifications can be applied when preparing for the SQE, even if a candidate falls outside of the 11 year cut-off. We also accept that the period has been based on the length of time it would take for somebody to qualify if studying in the current system on a part time basis. We are however concerned that the decision may discriminate against many groups, particularly those who have had to take time out due to illness or disability, and also parents and carers.
39. YLAL welcomes the decision to continue to allow qualification via equivalent means. We do however call for much greater transparency on the equivalent means scheme: how it will be applied, criteria which must be met, and how it will be assessed. We also call for the SRA to publish clear guidance as to how that mechanism will operate to alleviate any potential unfairness, so that candidates can be clear as to their prospects of qualification.
40. We are disappointed by the SRA's decision not to include the requirement for training providers to pay the national minimum wage (NMW) to all staff in the updated regulations for training providers. We understand that the SRA wishes to allow providers to apply exemptions to NMW laws to apprentices where possible. We are concerned this will lead to training providers and employers preferring the apprenticeship route over others. We are concerned that instead of promoting social mobility and diversity in the profession this may discourage it. We are also disappointed to see this statement, which seems to us to suggest that the SRA does not intend to take any further steps to re-introduce a minimum salary for trainee solicitors. As will be shown by our updated social mobility report (to be published in early 2018), low pay is major concern for trainees and paralegals in the legal aid sector, and is contributing to problems of recruitment and retention, and lack of social mobility.

Conclusion

41. The fact that the cost of the SQE remains unclear following several consultations is still a significant cause for concern for YLAL, in particular given that it cannot be said with any certainty that aspiring solicitors will be able to pursue qualification at a lower cost than under the current route to qualification.
42. YLAL welcomes any reforms which will encourage greater social mobility and diversity in the profession, and which will broaden access to the profession for those from under-represented or disadvantaged groups.
43. YLAL welcomes the changes to the Suitability Test, which include greater flexibility and the recognition that people are capable of being rehabilitated. We ask the SRA to consider providing further detail of the requirements and mitigating and aggravating factors.
44. We encourage the SRA to consider an appeal or reconsideration process for the Suitability Test.

45. YLAL notes the SRA's commitment, in its September 2017 Impact Assessment, to provide support in the form of case studies and guidance to employers and candidates. YLAL is concerned to ensure that the SRA considers whether such support will be sufficient to overcome the administrative burdens that will be imposed during the transition period.
46. YLAL is disheartened to see the SRA's decision not to impose additional security for trainees and apprentices including the establishment of the mandatory national minimum wage for training providers or a minimum salary for trainee solicitors. We believe this may discourage aspiring solicitors from entering the profession, particularly in the underfunded and financially strained legal aid sector. This in turn will worsen social mobility within the profession, rather than improve it as the SRA has stated it intends to do.
47. As ever, YLAL supports any moves towards greater diversity in the profession, and greater protection, clarity, and transparency for aspiring and junior lawyers. However, we continue to have concerns about the transition, implementation, administration and application of the SQE.

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