



YOUNG LEGAL AID LAWYERS

Response to the Solicitors Regulation Authority Consultation on A new route to qualification: New Regulations

26 July 2017

About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has almost 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 A new route to qualification: New regulations. This consultation concerns the regulation of the Solicitors Qualifying Examination (SQE) and the recognition of qualified lawyers under the SQE scheme.

Introduction

3. The consultation poses two questions. We have responded to these below.
4. At the outset YLAL would like to raise a few 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.
5. 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 economic 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.

6. YLAL has also previously voiced concerns relating to the effect the proposed changes to the route to qualification will have on accessibility of the profession. To date, the SRA has failed to provide any clear information about how much it expects the SQE to cost. This continues to be the case. 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, the lack of transparency regarding possible related costs and a lack of information regarding possible funding options. As previously YLAL requests that the SRA provides clear information about the expected costs of the SQE as soon as possible.
7. YLAL notes the SRA's view that the new rules relating to recognition of qualified lawyers are intended to ensure that they are "consistent in their approach to recognizing the knowledge, skills and competences that qualified lawyers have gained through professional qualifications and professional experience". We further note that the SRA suggests that they will "require all qualified lawyers to take the SQE" unless they are able to show their experience or qualifications are equivalent to the SQE. Though this proposal appears to cover all categories of entrants, YLAL wishes to draw attention again to the lack of clarity and detail within the proposal which prevents us from providing fully informed views and responses to the consultation as it stands. Below we have provided our views based on the information we have available at this present time.
8. YLAL is particularly concerned with ensuring that any proposed changes to the system of qualification do not work in a way which will discourage or deter those who have qualified in different jurisdictions from applying to practise in the UK or those working in the legal sector who are not (or not yet) qualified as solicitors. We continue to support accessibility to work in the legal sector for all those with the requisite skills and knowledge. We do not support any additional costs being introduced for these categories, which are likely to discourage or deter some of those keen to practise in the UK but unable to afford an extra financial burden. 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.
9. Finally, YLAL is also keen to stress that Brexit is an issue which we would expect the SRA to deal with fully and transparently throughout the development of the SQE. Though we welcome the fact that the SRA assure us that they have considered the repercussions of Brexit for lawyers from within the EU and appreciate the reassurance that whilst the UK remains a member of the EU the current situation will continue, we do not consider that enough information has been provided regarding the situation following the UK's withdrawal from the EU. YLAL encourages the SRA to provide clear guidance regarding its suggestion for how lawyers from outside the UK will qualify to practise in the UK both during any transitional arrangements and when the UK is no longer a member of the EU.

RESPONSES TO THE CONSULTATION QUESTIONNAIRE

Question 1: Do you agree that these regulations implement the agreed policy framework for the SQE?

10. In relation to 1.1 (a), YLAL does not believe there has yet been satisfactory information provided relating to the content of the examination and the nature of the assessment itself. We have raised concerns in our previous responses. We continue to be concerned that the way in which competences will finally be assessed through the SQE remains unclear. We also continue to have concerns relating to the use of computer based assessments. Neither of these concerns have been addressed by the SRA.
11. In relation to 1.1 (b), YLAL is concerned that there is no clear indicator of what experience the SRA will be willing to treat as being equivalent to a degree. We find this point to be extremely important for many of our members who have many years of legal experience but are not qualified solicitors. We ask for clarity on this issue, which is extremely important in any drive for social mobility within the legal sector, along with recognition of the complex and important work undertaken by often low paid paralegals and case workers for instance.
12. There are a number of issues YLAL would like to raise relating to 1.1 (c) and 2.1. YLAL has previously expressed concern regarding the proposal that there would be a minimum requirement for legal experience. Though we have previously agreed that an upper limit should be introduced we continue to be concerned that not all aspiring solicitors will need to complete the full two years to meet the requirement. We continue to believe that it would be more appropriate to allow each applicant's legal experience to be assessed on its own merits allowing those who have gained the requisite level of experience in less than two years to qualify at this point. Again, YLAL requests further detail on this issue which is particularly vague in relation to what kind of work will be considered to have allowed the aspiring solicitor to develop the required competences.
13. In relation to 1.1 (d), YLAL agrees that solicitors should continue to be required to meet character and suitability requirements. We request that such matters be dealt with at an early stage in order to avoid those who will be deemed unsuitable working with clients in a legal environment prior to the requirements having been assessed. We also consider it would be unfair to allow those who would be unable to pass the requirements to start down a path which they will be unable to complete following such an assessment being made.
14. YLAL disagrees with the SRA's suggestion in 2.2 that the burden of confirming the period of qualified work experience should lie with the applicant. We believe that this burden should lie with the relevant organisation or alternatively, depending on the circumstances, the training provider. We consider placing the burden on the applicant will likely create further issues with bureaucracy and may lead to delays in such confirmation being provided to the SRA and as a result lead to unfair and unavoidable delays in qualification for the applicant.
15. In relation to the regulations relating to eligibility for admission of qualified lawyers, YLAL has a number of comments to make. YLAL refers you to paragraphs 10-13 of

our response above, the same concerns are raised here in relation to qualified lawyers. In relation to 3.2, YLAL requests that further clarity is provided. There must be more guidance provided on what the SRA will deem to be sufficient qualifications or experience to satisfy this requirement in order to allow qualified lawyers to make an informed decision as to whether they will be able to meet the requirements to have the SQE waived or whether they will in fact have to pay for the assessment in order to cross-qualify. YLAL finds the current formulation to be vague and lacking in detail.

Question 2: Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

16. YLAL understands the need for a consistent approach to be taken when recognising the knowledge, skills and competences of qualified lawyers. However, it is difficult to assess the impact that the SQE will have on qualified lawyers from other jurisdictions until full details of how the knowledge, skills and competences will be assessed are published by the SRA. We consider that an emphasis should be placed on ensuring that the SQE does not deter talent from outside of the UK, particularly where any deterrent would have an adverse effect on social mobility across the legal sector.
17. In relation to 1 a), b) and d), YLAL broadly agrees with the SRA that legal qualifications, suitability requirements and compliance with the Statement of Solicitor Competence and Statement of Legal Knowledge provide the basis of a competent solicitor.
18. In relation to 1 c), YLAL agrees that solicitors should not be required to hold a degree. Many of our members and other junior lawyers have qualified through CILEx and in the future will qualify through legal apprenticeships, and we believe this helps to promote social mobility within the sector. YLAL does not however believe that it is absolutely necessary to establish equivalency with traditional qualifications as is suggested by the SRA. Further, we accept that previous legal qualifications may lead to exemption from part or all of the SQE. We do not however believe that qualifications equivalent to a degree should be a prerequisite where the applicant will be expected to complete the SQE as, if the SQE is intended to test the skills and competences required for work in the law, then this should be sufficient for it to stand alone as a single standardised assessment.
19. The SRA's consultation document states: "qualified lawyers who are seeking admission will have to contact us and demonstrate how their professional qualification or experience is equivalent to the SQE, or part of it". YLAL understands that "professional qualification" refers to the qualifications of those from other jurisdictions however it is less clear what "equivalent experience" refers to. The SRA does not give any examples of what they believe may be equivalent experience. YLAL would encourage the SRA to issue clear guidance on this matter which would give clarity for all qualified in other jurisdictions and professions.
20. YLAL supports the SRA's decision to continue to recognise jurisdictions and professions which have already been recognised under the previous Qualified Lawyers Transfer Scheme. We would appreciate clarity from the SRA regarding which other professional qualifications and jurisdictions they intend to recognise in order to allow lawyers qualified in other professions and jurisdictions to plan ahead.

21. The SRA suggest that:

“qualified lawyers will typically have a minimum of two years' professional experience in order to demonstrate to us that they have satisfactorily developed to an equivalent standard the competences assessed by the part(s) of the SQE for which they are seeking recognition. However, some candidates may be able to demonstrate to our satisfaction that they have developed the respective competences to an equivalent standard within a shorter period of professional experience or through lifelong learning”.

YLAL certainly welcomes this recognition of shorter periods of work experience and commitment to life-long learning but would encourage the SRA to apply this principle to both qualified lawyers from other jurisdictions and prospective lawyers studying and working in England and Wales. As we suggest above recognition of periods of less than two years may be appropriate. We also suggest that recognition of lifelong learning may assist with encouraging a wider range of people to enter the profession and assist with encouraging social mobility.

22. YLAL supports the SRA's decision to apply a qualitative assessment when considering whether a candidate's knowledge, skills and competences meet the prescribed content and standard requirements. YLAL agrees that pre-qualification legal work experience is essential; YLAL also strongly believes that there should be no absolute minimum length of time specified for this by the SRA. We recognise that there are benefits to outlining a minimum starting point of two years' professional experience but submit that it should not be necessary for all candidates to have undertaken this arbitrary period of experience. As we stated in our previous response to the SRA consultation, the period of experience should be as long as is necessary to gain the relevant skills required to be a competent solicitor. Therefore, we support the proposal to consider evidence from candidates who can demonstrate that they have developed the relevant competences in a shorter timeframe or through life-long learning. We consider that the latter in particular will increase social mobility among candidates who have not qualified into the profession through the traditional route. We believe it should be implemented without a required minimum for all qualified lawyers and all aspiring solicitors within the English and Welsh system.

23. YLAL agrees with the SRA's proposal that an English language test should be a requirement. We do however question the decision for it to take place post-admission at the point of application for the first practicing certificate. YLAL suggests it may be a fairer approach if the language test was to take place pre-admission, at the point applicants are asking for previous qualifications and experience to be recognised.

24. Under the current scheme in place for lawyers qualified within the European Union, the qualifications of EU lawyers will be sufficient for recognition purposes unless the SRA can establish that there are significant differences. The SRA confirms this position will continue as long as England and Wales remain in the EU. YLAL agrees with this approach, but we are concerned to see the burden shifting. At present the burden lies with the SRA to prove that qualifications or experience are significantly different from those which would be gained under the English and Welsh Systems. Under the new rules the burden seems to lie with the applicant to prove their experience and skills are not significantly different. We find this to be a heavy burden for the applicant to carry and one which will be difficult to discharge without detailed and clear instructions as to how the knowledge, skills and competences will be assessed and how they may be met through means other than sitting the SQE.

25. The SRA is considering charging an administrative fee to qualified lawyers who apply for admission as a solicitor on the basis of recognition. YLAL is concerned that this additional expense may hinder access to the profession as it is not clear how much the administrative fee, SQE fees or other related costs will be. We would ask that before imposing such a fee the SRA seriously consider the effect it is likely to have on social mobility. We consider that any fee could have an adverse effect on social mobility and deter talented qualified lawyers from applying to practise in England and Wales. This would have a particular impact on candidates who wish to work in the legal aid sector where salaries tend to fall below the average salary to be expected in the legal sector.

CONCLUSION

26. In conclusion, YLAL continues to have some concerns regarding the introduction, implementation and regulation of the SQE. Though some of our previously raised concerns have been addressed by the SRA, we believe a number remain unresolved. As stated previously, YLAL considers that there continues to be a lack of transparency on a number of relevant issues (referred to above). YLAL considers that it is very difficult to provide firm and final views on a matter which will so seriously affect such a large proportion of our members and future members without detail, transparency and clarity being provided on a number of salient points mentioned in our response above.

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