



## **YOUNG LEGAL AID LAWYERS**

### **Response to the Solicitors Regulation Authority Consultation on Training for Tomorrow: assessing competence**

**4 March 2016**

#### **About Young Legal Aid Lawyers**

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 2,000 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 Training for Tomorrow: assessing competence. This consultation concerns the introduction of a common professional assessment for intending solicitors: the Solicitors Qualifying Examination (SQE).

#### **Introduction**

3. The consultation poses a number of questions. We have responded to these below.
4. However, 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. The stated purpose of the SRA's introduction of a standardised assessment at the point of qualification is in order to "ensure consistent high standards of entry into the profession, providing confidence for the public and employers". While we note that the SRA has stated that it wants "to ensure that the most talented people from any

background can become solicitors”<sup>1</sup>, YLAL has concerns about the potential effect the proposed changes will have on the accessibility of the profession. To date, the SRA has failed to provide any clear information about how much it expects the SQE to cost. It remains unclear what the effect of the introduction of the SQE will be on the status of undergraduate law degrees and the Legal Practice Course (LPC). It also remains unclear whether prospective solicitors will be required to obtain practical work experience through a training contract equivalent in the future. In our view, it is therefore very difficult to provide an informed response to this survey as it is entirely unclear what effect the introduction of the SQE will have on the cost of qualifying as a solicitor.

6. YLAL notes the SRA’s view that the introduction of the SQE would “level the playing field between different routes to qualification”<sup>2</sup>. However, the view expressed by the SRA that the SQE “could help address the problem” of the lack of social mobility in the legal profession appears – on the information provided by the SRA – to be purely speculative. YLAL considers it vital that the SRA properly and fully considers the impact of any reforms on social mobility and the accessibility of the legal profession.
7. This is particularly important in light of the recent and concerning statistics regarding the lack of diversity within the profession and the prohibitive costs of entering the profession. In February, the Sutton Trust, an institution established in 1997 with the aim of improving social mobility through education, published the results of a survey into the educational backgrounds of “the UK professional elite”, including the judiciary<sup>3</sup>. The survey found that the proportion of senior judges who went to fee-paying schools has barely fallen in the last 25 years: in 1989, some 76% attended private schools, in 2004 this figure was 75% and in 2015 it was 74%. Moreover, the research found that in 2015, 71% of the top 100 ranked QCs and 32% of partner-level solicitors attended independent schools, compared to the 7% of people from the general population who attend such schools.
8. These statistics mirror the findings of YLAL in our October 2013 report on social mobility and diversity in the legal aid sector, *One Step Forward, Two Steps Back*<sup>4</sup>, launched by Baroness Hale of Richmond. Our report found that, unsurprisingly, high levels of debt combined with low salaries make legal aid work unsustainable for many from a lower socio-economic background. In 2013, before the impact of vastly increased student fees could be measured, 65% of respondents to our social mobility survey had debts in excess of £15,000, while a similar proportion of respondents in employment – 67% – were earning £25,000 or less. This combination of high levels of debt and low salaries represents the stark financial reality of life as a young legal aid lawyer, and means it is very difficult for many people to pursue a career in this area.

---

<sup>1</sup> SRA blog, 16 February 2016: <http://www.sra.org.uk/sra/policy/training-for-tomorrow/T4T-Blog/Can-the-Solicitors-Qualifying-Examination-help-social-mobility-.page>

<sup>2</sup> Ibid

<sup>3</sup> [http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People\\_Feb16.pdf](http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People_Feb16.pdf)

<sup>4</sup>

<http://www.younglegalaidlawyers.org/sites/default/files/One%20step%20forward%20two%20steps%20back.pdf>

## **RESPONSES TO THE CONSULTATION QUESTIONNAIRE**

**Q1: Do you agree that the introduction of the SQE, a common professional assessment for all intending solicitors, best meets the objectives set out in paragraph 10?**

1. No, because:
  - a. It creates another layer of bureaucracy and will put those who are not able to prepare specifically for the assessment, but otherwise have the skills of a solicitor in their given practice area, at a disadvantage.
  - b. Although it may be a way of ensuring the quality of solicitors on entry to the profession it would in no way address the issue of ensuring the ongoing quality of legal practitioners.
  - c. Other than removing the need for LPC/PSC the SQE is unlikely to remove barriers to social mobility within the profession. The SRA would need to ensure that employers and candidates are clear that the LPC would no longer be necessary, and should not be used to give applicants a competitive edge.
  - d. Although it may cut costs for students it would inevitably transfer costs and training needs onto firms. YLAL considers that it will be particularly difficult for niche and/or legal aid firms to meet these added costs, due to the already tight cost margins that firms are operating under. The limited ability or inability of legal aid / niche firms to pay for and facilitate training would put aspiring legal aid lawyers at a distinct disadvantage compared to their corporate peers.
  - e. Without a clear idea of what the route(s) to qualification as a solicitor will look like following the introduction of the SQE, we feel it is very difficult to comment on whether such a common professional assessment would ensure that the most talented candidates can qualify as a solicitor.

**Q2: Do you agree that the proposed model assessment for the SQE described in paragraphs 38 to 45 and in Annex 5 will provide an effective test of the competences needed to be a solicitor?**

2. We do not agree that the proposed model would provide an effective test of the competences needed to be a solicitor. The competences and the assessment in this form are too broad. The proposed model would also shift the burden of supervision and training onto the employer. YLAL is concerned that many legal aid / niche firms will not be equipped to provide training in the required areas.
3. YLAL considers that it would be more effective to focus training on specific practice areas. Client skills and legal knowledge vary greatly across the sector meaning that most generalised skills are not helpful and would not ensure quality.
4. It is also illogical to compare the proposed model with assessments used in other professions as described in paragraph 40, such as accountancy and pharmacy. The comparators put forward are clearly more mathematical or scientific in nature

compared with the practical application of the law. Whilst the proposed assessment methods may work in other industries, computer based testing would appear, on the face of it, to be inappropriate for lawyers.

**Q3: Do you agree that all intending solicitors, including apprentices and lawyers qualified in another jurisdiction, should be required to pass the SQE to qualify and that there should be no exemptions beyond those required by EU legislation, or as part of transitional arrangements?**

5. No, because:

- a. YLAL considers that it is difficult to know the full impact the SQE could have on lawyers from other jurisdictions, but would be concerned to ensure that standardised testing will not deter talent from outside the UK.
- b. The test is not qualitative, it is simply a re-fashioning of existing assessments, and does not ensure that the required standard of quality is met.

**Q4: With which of the stated options do you agree and why:**

- a. offering a choice of 5 assessment contexts in Part 2, those aligned to the reserved activities, with the addition of the law of organisations?
  - b. offering a broader number of contexts for the Part 2 assessment for candidates to choose from?
  - c. focussing the Part 2 assessment of the reserved activities but recognising the different legal areas in which these apply?
6. We agree with option B, because many of the reserved areas will not be directly or broadly applicable for legal aid / niche firms. It is important to offer a wide range of assessments that candidates can use for their training and future practice. However, this should be done without burdening future solicitors with study and assessment preparation in areas of law for which their firm cannot offer training.

**Q5: Do you agree that the standard for qualification as a solicitor, which will be assessed through the SQE, should be set at least at graduate level or equivalent?**

7. YLAL considers it unnecessary to establish equivalency with traditional qualifications. If the SQE has been created to enable solicitors to qualify for practice and if it tests the skills and competences required for work in the law, then that should be sufficient for it to stand alone as a standardised assessment.

**Q6: Do you agree that we should continue to require some form of pre-qualification workplace experience?**

8. Yes, practical experience is vital, particularly when dealing with vulnerable clients. However, there needs to be regulation to ensure that there is equality of access to work place learning.

**Q7: Do you consider it necessary for the SRA to specify a minimum time period of pre-qualification workplace experience for candidates?**

9. No. Employers view the current set time period is arbitrary and 'lazy regulation'. The period should be as long as is necessary to gain all the relevant skills to be a competent solicitor, which will take longer for some than others. However, it is important that there are adequate safeguards to prevent employers taking advantage of cheap labour and retaining people in the training phase longer than required. Without such steps YLAL considers that the current problem of 'paralegalisation' of the profession will become entrenched.

**Q8: Should the SRA specify the competences to be met during pre-qualification workplace experience instead of specifying a minimum time period?**

10. Yes, there should be some specifications that employers should be expected to ensure their trainees meet, rather than a time frame. However, it is also necessary to regulate the employer not just the trainee, to ensure quality of training. The competences should not be too broad, and should be targeted for different legal sectors.

**Q9: Do you agree that we should recognise a wider range of pre-qualification workplace experience, including experience obtained during a degree programme, or with a range of employers?**

11. Yes, this will prevent the problem of paralegalisation and may help to even out the oversupply of law graduates in relation to the number of available training contracts. It would allow for candidates to have independence from their employers, ensuring that they are not restricted to paralegal or administrative jobs, where they have already gained the requisite skills to qualify. Importantly this would remove barriers to social mobility by providing the flexibility to enable candidates from non-traditional routes to qualify as solicitors.

**Q10: Do you consider that including an element of workplace assessment will enhance the quality of the qualification process and that this justifies the additional cost and regulatory burden?**

12. Maybe:
- a. YLAL considers that workplace assessment is the optimum environment for ensuring future solicitors develop the necessary client care skills;
  - b. There should not be assessment for assessment's sake;
  - c. The SRA must ensure that firms with a track record of offering training contracts are not deterred from taking on trainees because of the proposed added training costs. YLAL considers it imperative that the SRA gives full consideration to the provision of financial support to such firms during the crossover period;
  - d. YLAL questions the reasoning behind the costing of the introduction of the new assessment: why does it have to cost a lot? And what do the components of the assessment involve?

**Q11: If you are an employer, do you feel you have the expertise to enable you to assess trainee solicitors' competences, not capable of assessment in Part 1 and Part 2, to a specified performance standard?**

13. In responding to this consultation, YLAL represents the interests of its members only. However, YLAL wishes to make the following comments in response to Q11 of the consultation questionnaire.
14. YLAL anticipates that it will be difficult for smaller firms to accommodate an assessment at a specified performance standard, as there may be a limited number of people at supervisor level. Firms practising solely in legal aid tend to have fewer resources than their corporate counterparts, and are unable to devote the same people power to supervision. YLAL considers that it will also be difficult for small and niche legal aid practices to absorb the cost of the new assessment. This is likely to have the effect of firms reducing the number of training contracts available, and consequently introducing fewer lawyers into this much needed part of the legal sector.
15. If firms are to provide training and assessment in specified competences, there must be a method of ensuring that this is standardised across the industry and that trainees are given adequate support and supervision. Without this standardisation solicitors will qualify after a period of "on the job" assessment which will vary widely in its efficacy and usefulness for their future careers.

**Q12: If you were to introduce workplace assessments, would a toolkit of guidance and resources be sufficient to support you to assess to the required standard? What other support might be required?**

16. As above, YLAL is unable to answer any question from the view point of an employer, but as an organisation we would wish to make the following observations:
  - a. We would suggest that, during the transition phase, training would be necessary for employers who will act as assessors, and for any new providers. This could include training on the competences they would be required to assess and the methods of assessment that could be used. It could also give training on the soft skills required to assist candidates through the SQE and towards qualification, such as offering support, performance reviews, constructive criticism and supervision to trainees.
  - b. Use of a toolkit alongside training would help to provide consistent supervision for students as well as a consistent standard of training.
  - c. Possibility of a helpline/email/forum where providers could go with questions that arose during implementation.
  - d. However, this would again create an additional administrative burden for employers, and may be problematic for small firms looking to divert resources towards training and supervision.

**Q13: Do you consider that the prescription or regulation of training pathways, or the specification of entry requirements for the SQE, are needed in order to:**

**a. support the credibility of the assessment?**

17. No, because:

- a. We do not consider that the prescription or regulation of training pathways is necessary to support the credibility of the assessment.
- b. Any attempt to regulate the training pathways is likely to limit individuals' options/choices with regards to their route to qualification.
- c. University fees are now at an all-time high. The GDL and LPC are also extremely expensive, especially for the high number of students who are independently funding these routes. The diversification of routes into the profession has allowed people to choose pathways which best suit their learning style, monetary capabilities and lifestyles (for instance parents, carers, those working full-time to fund education etc). To remove options such as CILEx, equivalent means or apprenticeships and to replace them with a prescriptive and strictly regulated training route would inevitably lead to even greater barriers for social mobility within the profession. The assessment should not require additional pathways to enhance its credibility. If the assessment is properly constructed, fairly balanced and will ensure that all solicitors are qualifying and will remain at a good standard, then this will be sufficient.

**b. and/or protect consumers of legal services and students at least for a transitional period?**

- a. YLAL considers it would be useful and reasonable to have measures in place during a stipulated trial period that will ensure that the SQE is monitored for quality and reliability. The results of the exam can be considered and the newly qualified solicitors given adequate supervision to allow for any problems with the exam and any failings that may have to be identified and rectified. This should be sufficient to reassure both consumers and students that once fully implemented the SQE will be above the requisite standard. These would not need to be training pathways as such, but more procedural safeguards that ensure the assessment system is functional and fulfils its' objectives.
- b. YLAL considers that if measures need to be put in place on a permanent basis to protect consumers and students when the SQE assessment is fully in practice, this, in itself, may undermine the assessment.

**Q14: Do you agree that not all solicitors should be required to hold a degree?**

18. Yes, because:

- a. Many members of the profession have qualified through CILEx and in the future will qualify through legal apprenticeships.

- b. A degree is useful for students in that it allows them to gain a broad range of knowledge of areas they may never practice in. It also allows students to consider moral issues and issues of jurisprudence which do not come into the more practical courses such as the LPC. We recognise that undertaking a degree in law shows commitment to the subject. However, we do not believe that it should be seen as being a prerequisite for qualifying as a solicitor.
- c. A law degree is very broad, and not necessarily reflective of practice.
- d. Should the profession be limited to those who have a traditional degree or GDL this will limit social mobility as, particularly now with increased fees and removal of maintenance grants, many people with limited means or caring responsibilities (for instance) have been deterred from undertaking a degree.
- e. If the SQE and practical assessments are regulated and standardised then the quality of solicitors on admission should be assured without a university qualification as a prerequisite.
- f. There will, of course, still be requirements set by the training providers during the recruitment process for trainee solicitors/SQE candidate; this is likely to be the point at which the importance or otherwise of holding a degree or LPC will be most noticeable.

**Q15: Do you agree that we should provide candidates with information about their individual and comparative performance on the SQE?**

19. Yes, because:

- a. Feedback will enable candidates who have not passed the SQE to review areas of weakness, and will inform their decision-making about whether or not to re-take the assessment.
- b. Feedback will help to identify strengths, and focus future practice areas.
- c. Where prospective lawyers have been disadvantaged in terms of their access to education, impacting on their results, providing candidates with information about their individual and comparative performance on the SQE will highlight practical abilities that future employers can have regard to rather than relying on academic ability alone.
- d. It would allow candidates who had been unable to take part in courses such as the LLB, GDL or LPC for reasons such as lack of financial backing, illness or disability or family and caring commitments to demonstrate that they fulfilled the required competencies and had reached the same standard within the SQE as others who had followed a more traditional route.
- e. A single centralised assessment would allow the SRA and other bodies to better understand how performance in assessments varies by ethnicity, gender and other protected characteristics. This would help the SRA and other bodies to take action to remedy inequalities. YLAL considers it an imperative part of the SRA's function that full and fair equality and diversity statistics are gathered in order to assist and inform the regulatory objectives of the SRA.



**Q16: What information do you think it would be helpful for us to publish about:**

**a. overall candidate performance on the SQE?**

20. YLAL considers it would be helpful for the SRA to publish the following information on overall candidate performance on the SQE:

- a. Range of marks and number of candidates performing at each level. This would show whether the exam was producing overly low marks in certain areas. The SRA would then be able to assess whether the problem lay with the assessment or the training. It would also highlight any patterns in which law firms in some sectors were unable to meet the training needs of the assessment, and whether candidates with protected characteristics under the Equality Act 2010 or from socially disadvantaged backgrounds were performing to a lower standard.
- b. It could be used to determine whether there is a difference in educational routes, i.e. whether those who have studied the LLB or GDL perform better than those without the degree background. If there is no difference, it will encourage people to enter the profession without the degree, thereby removing current barriers to the industry.

**b. training provider performance?**

21. YLAL considers it would be helpful for candidates if the SRA published the following information on training provider performance:

- a. The cost of training should be transparent and services and materials included in the cost.
- b. Anonymised results of students should also be made available.
- c. Whether or not the provider has any additional services (e.g. crèche facilities, excellent disability link workers, excellent student welfare support, good/cheap transport links, good mentoring schemes with local firms, scholarships and bursaries and any other services that can assist in making the training accessible to all prospective candidates).
- d. Where and when the examination(s) will take place. Exam dates should be announced ahead of time and venues should be spread across the country, with options for assessments to be taken remotely where possible.

**Q17: Do you foresee any additional EDI impacts, whether positive or negative, from our proposal to introduce the SQE?**

22. There is a risk of a two-tier system developing if the LPC and the PSC are not completely scrapped. There will be candidates who are in a position to fund the LPC and PSC, which is likely to put them at a competitive advantage to those who can't fund these courses, both in the training phase and after early qualification. This will create additional hurdles for already disadvantaged

candidates (i.e. BAME candidates, and candidates with family responsibilities) to enter the profession, impacting on diversity within the sector who can relate to associated client groups.

**Q18: Do you have any comments on those transitional arrangements?**

23. Transitional arrangements will of course be necessary so that candidates who are caught in the change-over do not lose the value of their existing qualifications, nor are they put in a position that will lead to further expense.
24. Many of YLAL's members will be seeking employment in small legal aid firms. For small (legal aid or otherwise) practices, they will therefore need to be operating dual systems of qualification during the transitional period. Small firms should be given adequate support and financial concession to ensure that they are in a position to do this, and will not have to turn away candidates seeking to qualify under either scheme because of the administrative burden or additional expense.

**Q19: What challenges do you foresee in having a cut-off date of 2025/26?**

25. In our report "One Step Forward, Two Steps Back", evidence from YLAL members demonstrates that work experience is a pre requisite to finding a job in the legal aid sector (pg 22; para 59).<sup>5</sup> Many are undertaking lengthy unpaid work experience, or working as paralegals for many years before they are able to secure a training contract. Those from BAME and financially disadvantaged backgrounds are disproportionately affected. Although the 2025/26 cut off is a significant time period in which to end the old system of qualifying, due to the length of time it can take to secure training contracts there is a risk that there will still be large numbers of people who have recently completed the LPC and have not been able to qualify under the old system in time.
26. It will therefore be essential that, if the new regulations are brought into force by 2018, as much as possible is done to ensure that students and aspiring solicitors are made completely aware, through secondary schools and sixth form colleges, university careers centres, training providers and employers (particularly where offering work experience), that the new regulations are coming into force, and to fully understand the requirements of any new training system.

**Q20: Do you consider that this development timetable is feasible?**

27. In light of the views of the stakeholders (universities), which demonstrate that it can take time to develop new courses, the current timetable seems unrealistic. YLAL considers that the current timetable is likely to risk candidates not receiving the right training through their education, thereby undermining their ability to undertake the later assessment.

---

5

<http://www.younglegalaidlawyers.org/sites/default/files/One%20step%20forward%20two%20steps%20back.pdf>

28. As we have made clear throughout our response to this consultation, YLAL considers that although an overhaul to the current system is needed, the current proposals do not get to the heart of removing barriers to social mobility in the profession. There is insufficient evidence to demonstrate how a common assessment at entry point to the profession ensures ongoing quality throughout the lifespan of a solicitor's career. Furthermore, there is insufficient evidence to demonstrate that any such common assessment would offer onward protection to consumers. Should the SRA properly consider the responses to the consultation and seek to address these live concerns to their proposal, then this current timetable will be unworkable.

## **CONCLUSION**

29. In conclusion, 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, niche and legal aid firms to offer and more difficult for graduates to find. Students often find themselves academically qualified but practically ill-prepared for training.

30. Social mobility within the profession has improved very little in recent decades (as demonstrated in the introduction to our consultation response). For these reasons YLAL welcomes the SRA's willingness to consider a new route which, if implemented and regulated efficiently and fairly, could assist with social mobility within the sector and begin to help solve the problem of the loss of expertise in publicly funded or traditionally publicly funded areas of law.

31. However, YLAL believes that this will only be possible if costs are kept down, both for students paying for the exam independently, and for the firms who may be sponsoring their employees and offering training and supervision as part of the SQE. We also believe that it is extremely important to ensure that assessment and preparation are relevant, useful and effective. Employers, assessors and, most importantly for YLAL, students, must feel that the time and money they have invested has been worthwhile and that they enter the profession fully prepared.

32. YLAL considers that this consultation is a useful first step, but that it does not contain enough detail regarding costs, regulation or implementation. The SRA must consider whether the cost and time required from firms in the implementation and facilitation of this new route to qualification will be proportionate. Should firms find the costs of this route prohibitive it is likely to be most problematic for the small, high street and legal aid firms to continue to offer training contracts or to become SQE assessors. A lack of trainee level positions in these categories of firms would most affect those tied to their local areas for reasons of finances, family commitments or disability and as a result would be likely to have a negative effect on social mobility within the profession.

33. The SRA must make clear how the LPC, GDL and LLB will fit in with the future as part of the route to qualification. Should sitting these exams still be allowed to give prospective solicitors an advantage over those who have not sat them then the effect that the SQE can have on social mobility within the profession will be minimal.
34. For the reasons outlined within this conclusion and in the answers to the questionnaire, YLAL cannot support the SRA's proposal at this stage. However, we await further details from the SRA and hope for answers to the questions that we have posed in this response before giving our final analysis.

**Young Legal Aid Lawyers**

March 2016

[www.younglegalaidlawyers.org](http://www.younglegalaidlawyers.org)  
[ylalinfo@gmail.com](mailto:ylalinfo@gmail.com)  
@YLALawyers