Solicitors Regulation Authority

Solicitors Qualifying Examination (SQE) Equality, Diversity and Inclusion Risk Assessment

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Introduction

We propose that to be admitted as a solicitor, individuals will need to:

- hold a degree or equivalent qualification or experience
- pass stages 1 and 2 of the SQE
- have undertaken a period of qualifying legal work experience
- meet our character and suitability requirements.

We have explored the potential benefits and risks to equality, diversity and inclusion (EDI) resulting from our proposals through two formal consultations and extensive stakeholder engagement. We have also asked for feedback from assessment organisations and assessment experts.

This document describes the background of each issue and our proposal. In respect of each issue, a table then identifies:

- the potential benefits of our proposals
- the potential risks
- the steps we will take to mitigate those risks and maximise the benefits.

We then set out our conclusions about the balance of potential risks and benefits to EDI.

Issues

Issue 1 – Cost of training and qualification

Background

The structure of legal education (divided into academic, professional and work-based stages), limits the development of innovative and flexible training that is focused on assuring solicitor competence.

The Legal Practice Course (LPC) came into being before fees were introduced for degrees. It now costs £27,000, plus living expenses, to graduate, with tuition fees set to rise. The LPC costs up to £15,000, plus living expenses. Every year, students complete the LPC but are then unable to qualify as a solicitor because they cannot obtain a training contract. Although there are other routes to qualification (for example, the Qualified Lawyers Transfer Scheme, CILEx, equivalent means), the vast majority of new solicitors qualify through the LPC route. Of the 6,452 solicitors who qualified in 2015/16, 5,580 qualified through the LPC route .

The price of the LPC has risen inexorably since it was introduced, and we see no evidence of downward competitive pressures on its cost. In a market where there is little or no independent information about the quality of courses, students see price as a proxy for quality.

Proposal

We will no longer specify the length and type of training needed to qualify as a solicitor. This means that we will no longer specify a requirement to take the LPC or any other named form of preparatory training to qualify as a solicitor. Candidates will instead demonstrate their competence to practise as a solicitor by passing the SQE. They will be able to chose the type of preparatory training for the SQE which best meets their needs and circumstances.

We will use market information and open data to create competitive pressures from candidates and employers/firms for high quality and flexible legal education and training.

Potential benefits of our proposals	Potential risks of our proposals
1. The new approach could lead to greater choice in the type and price of preparatory training available to qualify as a solicitor. 2. Greater choice could lead to greater competition and pressure to provide more flexible and competitively priced preparatory training for the SQE. 3. It could remove the unfairness in the current system where candidates choose and pay for training without access to independent and consistent information about standards of assessment and pass rates. Candidates would be able to make better informed decisions on costs and benefits. 4. The SQE could create a market incentive for universities to teach as much as possible of SQE preparation at undergraduate level. If SQE stage 1 preparation could be undertaken as part of an undergraduate law degree, this would significantly reduce the cost of qualification as a solicitor. The fees charged for undergraduate degrees are capped by the government and candidates would be eligible for student loans. 5. Universities would be free to develop innovative and more vocationally focused degrees. 6. New providers could also enter the legal education and training market. 7. Publishers could also develop self-study materials and text books to support SQE preparation.	1. SQE preparatory training could be still be needed, even after completing a law degree at university. This is because not all universities, particularly those who are not already LPC providers, would wish to incorporate SQE preparation into their law degree. This additional SQE preparatory training may still be expensive for students, and therefore deter some candidates from seeking to qualify as a solicitor. 2. The cost of preparatory training, combined with the cost of the SQE assessment, could be the same as, or more than, the cost of the LPC. 3. SQE preparatory training, which is not included as part of an undergraduate or master's degree, plus the cost of the SQE assessment itself, would not be eligible for government-backed student loans. 4. A two-tier system could emerge whereby institutions with higher pass rates charge more for their courses, meaning students with less financial support may opt for providers where the teaching quality is poorer and they have less chance of passing. 5. If not all universities embed SQE preparation into their law degrees, particularly Russell Group universities, this could discourage students from poorer socio-economic backgrounds from aspiring to attend more prestigious universities, limiting their employment prospects as a result.

8. The introduction of the SQE would remove the "LPC gamble". Candidates would not need to decide whether they should take a course such as the LPC without securing a training contract, as they would only attempt to pass SQE stage 2 once they had gained enough qualifying work experience. 9. More flexibility means that students could continue to study through university routes which qualify for loan funding if they wish, but would also have more opportunity to fund the SQE through earning and learning. 10. There could be savings in the overall cost of qualification. The SQE is narrower than the LPC as it does not cover the LPC electives. Some candidates may not need to take an additional training course to sit SQE stage 2 as they would have developed the necessary skills through their qualifying work experience. 11. Firms and candidates who come through the solicitor apprenticeship route (either from a school leaver or graduate point of entry) will qualify for apprenticeship funding. 12. At system level, there would be economies of scale through the provision of a national examination, instead of 26 different providers each writing their own assessments.	6. No longer specifying the length of SQE preparatory training could advantage those most able to afford the highest quality training in the shortest time – which will come at a greater cost, disadvantaging less affluent students. 7. Firms and employers could be sceptical about the quality of alternative/new training providers and courses until there is sufficient data to show positive outcomes, and so would be most likely to stay with tried and trusted routes and providers. This might limit the development of a more competitive training market and may be detrimental to the progression of students from less affluent backgrounds who may choose newer and cheaper training providers 8. Some firms and employers, particularly City firms, could continue to require an LPC-type route to qualification, even if it was no longer specified by us. Some firms may even continue to require an LPC-type course before allowing candidates to start a period of qualifying work experience. 9. SQE stage 2 could increase the cost, administrative and training burdens on smaller firms who already have limited resources. 10. Employers and firms might only recruit "safe" trainees whom they were confident would pass SQE stage 2, especially if we published data on SQE candidate performance. 11. Regulating training through the publication of data on candidate performance might not provide sufficient protection for candidates, particularly in early years of the reforms. 12. The single assessment supplier, appointed to deliver the SQE assessment, could exploit their monopoly position to charge inflated candidate fees.

Mitigations we will put in place to minimise risks and maximise benefits

1. We will make sure that universities, other providers of SQE preparatory training and publishers have access to timely information about the SQE to allow them to design appropriate courses and materials.
2. We will provide easily accessible, independent and authoritative data on candidate performance on the SQE by provider to inform the purchasing decisions of candidates and employers.
3. We will provide a comprehensive toolkit of resources, tailored to the needs of different stakeholder groups, explaining the new routes to qualification. It will describe the different types of SQE preparatory training available and set out the information candidates and employers could use to inform their choice of university or other training provider.
4. We will make sure that the assessment supplier has a transparent funding model for the delivery of the SQE assessments and all candidate fees will be agreed with us in advance.
5. We have modelled the likely cost of delivering the SQE assessments and the level of the candidate fee will be driven by candidate numbers. Based on our modelling, we estimate that the cost of the SQE is likely to be comparable to other, equivalent professional qualifications.
6. We will continue to engage with the government to explore whether other career and professional development loans can be used for SQE preparatory training and assessment.

Conclusions

We believe that the mitigations we will put in place will make sure the SQE is fairly priced and will support the development of a competitive and flexible training market, which will keep the cost of qualification down.

We recognise that our ability to influence the way the legal education and training market responds to our proposals is limited unless we specify courses and/or authorise providers. For example, one way in which we could exercise more control over the way universities might respond would be to redesign our requirements for the Qualifying Law Degree (QLD), so that it covered the Statement of Solicitor Competence. But we do not believe that this is consistent with our regulatory focus on outcomes and standards, and it would continue to constrain the development of a competitive legal education and training market.

We also know from our engagement with universities and training providers that they are already looking to develop new courses and materials to prepare candidates for the SQE. Universities have also told us that, if the SQE was introduced, most universities would look to adapt their courses to include SQE preparation to remain competitive. Government reforms in higher education, such as the Teaching and Excellence Framework (TEF) and the employability agenda, are consistent with our approach. The TEF will incentivise excellent teaching and provide better information for students to support them in making informed choices about their degree and university.

If SQE stage 1 preparation was undertaken as part of an undergraduate law degree, this would significantly reduce the cost of qualification as a solicitor for many candidates. University fees are capped by the government, which discourages other training providers from charging higher fees. And, we expect that some training providers would charge significantly less than universities because of their delivery model.

We recognise that, initially, some employers may be cautious about making changes to the way they recruit and train their staff, but that is not a reason for asking all employers in a diverse legal sector to train their staff in the same way.

We believe that, over time, our reforms will help to drive a more competitive and flexible legal and education market, although we recognise that, particularly for the transitional period, we have a key role play in providing independent and authoritative information about SQE preparatory training.

Issue 2 - Fairness of the SQE assessment

Background

There are about 110 universities involved in assessing students through QLDs, Exempting Law Degrees, the Graduate Diploma in Law (GDL) and the LPC. These universities both teach and assess their students through examinations the universities set, mark and moderate. With this number of providers, we cannot be sure that all new solicitors are meeting, on a consistent basis, the levels of knowledge and skills that consumers expect of the profession.

Proposal

We will introduce the SQE, a centralised assessment made up of two stages, which anyone wishing to qualify as a solicitor would have to pass.

We sought expert opinion on whether the design of the SQE might discriminate against particular groups of candidates. Experts at the Bridge Group confirmed to us that there is no evidence that the assessment methods we propose to use are any more likely than any other assessment method to discriminate against any particular groups of candidates.

We also know there are some specific advantages associated with computer-based testing. For example, the second most common reasonable adjustment is for a candidate to take their examination using a computer. Using computer-based testing, therefore, levels the playing field. Computer-based testing also enables any questions that inadvertently discriminate to be identified and removed from the assessment.

Potential benefits of our proposals	Potential risks of our proposals
1. The SQE would provide a level playing field for all candidates, assessing all candidates to the same standard regardless of their training or prior achievement. 2. Candidates who attended less prestigious universities, or who had chosen new routes to qualification, could demonstrate to employers that they had reached the same standard as candidates who attended those universities.	1. A poorly designed summative assessment could be susceptible to coaching, which would favour candidates with access to good quality and potentially expensive training. 2. A poorly designed summative assessment could be susceptible to coaching, which would favour candidates with access to good quality and potentially expensive training.

3. The data generated from a large scale, standardised test would provide more detail on the performance of different groups of candidates than is possible in the current system. 4. There would be a consistent approach to "reasonable adjustments" for disabled candidates.	3. A poorly designed summative assessment could be susceptible to coaching, which would favour candidates with access to good quality and potentially expensive training. 4. There is a perception that assessment methods proposed for the SQE, in particular the use of MCQs and computer-based testing, could disadvantage particular groups of candidates, especially those with protected characteristics. 5. Candidate performance on the SQE could be influenced by the candidate's prior educational experience, therefore re-enforcing prior social and economic disadvantage. 6. The single assessment supplier, delivering the SQE on our behalf, might not make the necessary reasonable adjustments for candidates, particularly in view of the large volume of candidates likely to sit the SQE. 7. The requirement to sit the SQE in a single, and potentially lengthy, assessment session could discriminate against candidates with particular disabilities/conditions, or for those with family or other caring commitments. This would be exacerbated if there were only a limited number of assessment centres which were not widely available throughout England and Wales. 8. Allowing three attempts to pass each SQE assessment could negatively affect socially disadvantaged candidates, who may not be able to afford to retake SQE assessments.

Mitigations we will put in place to minimise risks and maximise benefits

1. Before implementation, we will test the SQE design and assessment methods to make sure they are fair and reliable. We will test whether the proposed assessment methods discriminate unfairly, and if so we will adjust them.
2. Both during testing and once implemented, we will report on the performance of SQE candidates by protected characteristic and socio-economic background to monitor the impact of SQE design and assessment methods.
3. The appointed assessment supplier must comply with the duty under the Equality Act 2010 to make "reasonable adjustments" for disabled candidates.
4. We will require the assessment supplier to operate a clear and transparent process to allow candidates to request reasonable adjustments for SQE stages 1 and 2.
5. We will also operate a "fit to sit" policy, whereby in attending an assessment, a candidate certifies himself or herself as being fit to sit it.
6. We will require the assessment supplier to have rigorous quality assurance procedures to develop and pre-test questions before they are used with live candidates.
7. We will also require the supplier to carry out statistical analysis of candidate performance on every question in every assessment so that any unintended bias in questions can be addressed before results are awarded, for example differential item functioning analysis.
8. We will require the assessment supplier to recruit a diverse examiner team to minimise the risk of unconscious bias in question design and marking.
9. Centralised assessment centres will be distributed widely across the country and internationally, so they will be accessible to candidates.
10. We will have independent scrutiny of the SQE assessment and standard-setting process so we can demonstrate the fairness, reliability and validity of the assessments.

Conclusions

We are confident that the SQE will be a fair, robust and rigorous assessment that will allow all candidates to show that they have met the same high standards, regardless of their training route or prior educational achievement. We are proposing the use of a range of assessment methods across the SQE – MCQs, written tasks, and role plays. These are valid and reliable assessment methods which are widely used in other high stakes assessments.

We accept that badly designed assessments have the potential to discriminate against particular groups of candidates, but we believe we can make sure that the SQE is fair, reliable and a valid assessment by asking the assessment supplier to:

- test the SQE design before implementation
- comply with rigorous quality assurance procedures thereafter.

But, we recognise that to realise some of the potential benefits, we must convince all stakeholders, particularly employers, that they can trust the SQE. This is not easily done without sight of the assessments. Therefore, we will involve stakeholders in a period of pre-implementation testing to build their confidence in the SQE design and the assessment methods, including the use of MCQs.

We will demonstrate the fairness and robustness of the SQE through both public reporting of candidate results and by allowing independent scrutiny of the SQE assessment.

We have carefully considered the issue of allowing candidates three attempts in total to pass the SQE assessments (a first attempt and then two further attempts if they fail the assessment). We believe that not allowing any opportunities to retake an assessment would be unfair to candidates, especially those with family or employment commitments who may face competing demands on their time. We think that only allowing candidates to resit if they have failed the SQE assessment, and not just to improve their score, is fair. It will mean that candidates cannot resit the SQE just because they have the financial means to do so.

Issue 3 - Widening access to qualification by introducing greater flexibility in qualifying work experience

Background

One of the major barriers to qualification is the ability to secure a training contract. Many firms and employers, in particular City firms, recruit their trainees from a narrow range of elite universities, mostly from the Russell Group. People from disadvantaged backgrounds are under-represented in this group.

Proposal

We will recognise any work-based experience that allows a candidate to develop the competences in the Statement of Solicitor Competence. The legal experience must be at least two years in length and must be signed off by the firm's compliance officer for legal practice (COLP). Or, if the employer does not have a COLP, a solicitor nominated for this purpose by the entity can sign off the training. Or, if neither are available, a solicitor. Periods of experience acquired under a formal training contract, or through working in a student law clinic, as an apprentice or a paralegal, or through a placement as part of a sandwich degree could all contribute to this requirement.

Firms and employers will not be making any judgments about whether a candidate is competent to be a solicitor. Instead, we will test their competence via the SQE stage 2 assessments.

Potential benefits of our proposals	Potential risks of our proposals
1. Recognising a wider range of work experience and moving away from the traditional training contract model could create a wider range of accessible and flexible short-term jobs, which could enable a wider range of candidates to access the necessary experience to qualify as a solicitor. 2. Firms and employers may be more willing to recruit trainees as they no longer have to commit to a full two-year training programme. 3. This flexibility, together with the removal of the LPC and greater choice in SQE preparatory training, could widen access to the profession, including to older candidates and those already qualified in another profession.	1. Candidates qualifying through non-traditional training or qualifying work experience routes could face difficulties in finding employment as a solicitor, which would adversely affect the diversity of the profession. The current "bottle-neck" at the end of the LPC stage could simply be transferred to the point of qualification. 2. Employers and firms could regard candidates who had gained their qualifying work experience as a paralegal or working in a legal advice clinic as not having reached the same standard of competence as those who had followed a more traditional training contract route. 3. The widening of the scope of qualifying work experience could encourage less responsible employers to take on candidates without providing appropriate training. These candidates are most likely to be from non-professional backgrounds. 4. Some firms and employers could refuse to sign off qualifying work experience because they do not want their paralegal staff to qualify as a solicitor.

	5. If unpaid experience (such as unpaid internships at law firms) is allowed to count towards qualifying work experience, this could advantage candidates who can afford to work without a salary. 6. Candidates, particularly those from lower socio-economic groups and non-professional backgrounds, could be deterred from entering the profession because of the uncertainty about the best route to qualification, particularly during the inevitable period of transition while the new regulations were introduced. The introduction of a toolkit of information might not be sufficient to reassure and inform these candidates. 7. The SQE stage 2 practice contexts may exclude legal aid firms that carry out social welfare law and family law. This may lead to reduced opportunities for qualification, and is likely to disproportionately impact those aspiring solicitors who are already under-represented.
Mitigations we will put in place to minimise risks and maximise benefits	
1. We will report on the profile of SQE candidates and newly qualified solicitors by protected characteristic and socio-economic background to monitor the impact of the SQE on the profile of the profession. 2. We will provide a comprehensive toolkit of resources, tailored to the needs of different stakeholder groups, explaining the new routes to qualification. 3. Through the toolkit, we will explain how performance in SQE 2 will provide objective evidence of the competence of a candidate, and therefore help candidates to market themselves, even if they have followed a less traditional route to qualification.	

Conclusions

We know that the under-representation of candidates from disadvantaged, socio-economic backgrounds and some ethnic groups in the legal and other professions is a complex and longstanding problem with no easy solutions.

There is already a two-tier qualification system for solicitors, largely based on choice of university. Many students at 18 will not realise the impact of their choice of university on their ability to secure a training contract, nor appreciate that achieving a high grade on the LPC will not necessarily compensate for a degree achieved at a non-Russell group university.

However, the existing narrow recruitment practices of some firms and employers are not compelling reasons to retain the traditional two-year period of recognised training.

We are confident that the SQE will be a robust assessment of competence and that allowing greater flexibility in qualifying work experience will not dilute standards but promote a wider range of talented candidates to qualify as a solicitor.

As explained above, we do recognise that employer trust in the SQE is key to realising the benefits arising from more flexibility in training and in qualifying work experience, but we believe that the steps we have described earlier will develop that confidence in the new approach to qualification.

Overall conclusion

Having carefully considered the potential benefits and risks, we have concluded that the potential benefits to EDI outweigh the risks arising from the introduction of the SQE and the new approach to qualification.

Through ongoing and transparent evaluation, we will check whether the potential benefits we have identified are being realised and whether the mitigations we have put in place have minimised the risks.

We will do this through the collection, analysis and reporting of data on candidate performance on the SQE at each assessment session and through the regular collection and analysis of data on the profile of the profession. In doing this, we will build on the work currently undertaken to develop our EDI toolkit.

Our findings and conclusions will be published and, as far as we are able to while complying with data protection legislation, we will make our data available to stakeholders and other researchers to interrogate. We will also revise and develop our mitigations in light of any identified issues through the ongoing evaluation.

Our approach to evaluation and monitoring will be informed by the work we commissioned from The Bridge Group, a charitable policy association researching and promoting socio-economic diversity and equality in the UK. We asked them to provide advice on how we

could use data collation and analysis to monitor the impact of the SQE on candidates with protected characteristics and those from lower socio-economic groups. They also provided reflections and recommendations about practicable actions that we can take to maximise the positive impact of the SQE in relation to diversity.

Its report, *Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity*, recognises that there is no silver bullet to address diversity in the legal profession, but that the greater transparency afforded by a standardised examination can help the sector to have an improved understanding of the causes of, and potential solutions to, a lack of diversity. It argues strongly that data from the SQE would allow us to monitor far more closely candidate performance on the SQE and the subsequent career progression of particular groups. It also recognises the role for employers to take advantage of the better information provided through the SQE and the new freedoms to promote greater diversity in recruitment. The advice they have provided on the collection of data to monitor the impact of our reforms on socio-economic diversity draws on best practice in other sectors.

Finally, we believe that the reforms we are proposing are consistent with our regulatory objectives and the better regulation principles:

- They have the potential to encourage the development of an independent, strong, diverse and effective legal profession.
- The introduction of standardised assessment of solicitor competence through the SQE will protect and promote the interests of consumers.
- Ensuring competence to practise on a consistent basis through the SQE will establish transparent standards for the solicitors' profession.
- The proposals are targeted directly to ensuring the competence of new solicitors. They are, therefore, a more proportionate and accountable approach than the current pathway-based regulation of solicitor qualification.