



LawWorks Briefing: A new route to qualification for solicitors - Solicitors Qualifying Exam (SQE)

Introduction

The Solicitors Qualifying Exam (SQE), which the Solicitors Regulation Authority (SRA) intends to introduce from 2020, follows on from the Legal Education and Training Review (LETR). It will replace the current system of qualification. This briefing explains the proposals, identifies key issues, and provides LawWorks' perspective on the challenges facing legal education and training, and the potential impact of the SQE.

LawWorks supports what the LETR was aiming to achieve, however as an organisation that has 20 years of experience of promoting and facilitating pro bono in Law Schools and advice clinics we do have some concerns about the impact of the SQE on social welfare law practice.

Background

In 2011 the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (ILEX) established a joint review of the legal services education and training (LSET) required of individuals entering into the profession. The UK Centre for Legal Education (UKCLE) Research Consortium conducted the research stage of the Review and the LETR published its report in June 2013 (LETR Report). A process of consultation has followed through which the SRA has developed its proposals for a system of centralised assessment."

... growing student numbers, the escalating costs of qualification and difficulties in finding employment after qualification [which] have also resulted in calls for reform of the current system of legal education and training, [and] cuts in the availability of legal aid advice and representation for individuals in the vast majority of civil and family disputes..."ⁱⁱ Legal Education and Training Review Report, 2013

As well as the backdrop of increasing barriers to public access to social welfare legal services, other factors in the LETR Report include promoting greater diversity and social mobility in the legal professions. LETR also identified a number of shortcomings in the current system of the two-stage academic (or apprentice) and practical legal course requirements, including:

- *"insufficient assurance of a consistent quality ... where education and training is delivered by a range of semi-autonomous providers";*
- *"limits on the acceptable forms of professional training ... which may unnecessarily impact the utility of training, inhibit innovation, or restrict competition";*
- *"the impact of increasing cost barriers".*

The LETR Report did not recommend a common examination; rather it recommended that *"different approaches must have at least equivalent effect"* to reflect an *"underlying standard"*. However, in response to the LETR Report in 2015 the SRA published the first of three consultations on the qualification of solicitors, proposing a new "common exam" for all intending solicitors: the Solicitors Qualifying Examination (SQE). The SRA intends the new SQE to assess entrants to the profession in a consistent, transparent and affordable way,



mirroring the LETR Report in terms of policy objectives.ⁱⁱ In April 2017, the SRA Board approved the introduction the SQE, with September 2020 target date for full implementation. Under the new SQE those entering the profession must:

1. have a degree or equivalent qualification or experience;
2. have passed the SQE;
3. have completed qualifying legal work experience, for at least two years (or part time equivalent), and which can be certified by either a solicitor or a compliance officer for legal practice.
4. be of satisfactory character and suitability, to be assessed at the point of admission.

Overview of the current qualification system	
Stage 1: Academic Stage	Stage 2: Vocational Stage
<p>Qualifying Law Degree (QLD) or Graduate Diploma in Law (GLD) covering foundation subjects of legal knowledge: Constitutional & Administrative Law, Criminal Law, Contract, Tort, Land Law and Trusts</p> <p>Or</p> <p>exempting law degrees (ELDs), which combine the academic stage of education and training with the LPC</p> <p>Or</p> <p>Apprentice route -</p>	<p>Legal Practice Course (LPC)</p> <ul style="list-style-type: none"> • Compulsory modules - generally Criminal Litigation, Business Law and Practice, Property Law and Practice, and Civil litigation. • Skills - Writing and Drafting, Interviewing and advising • Elective/vocational modules – a potentially wide choice of commercial, equity and property law subjects, personal injury/negligence and some criminal, family social and public law subjects.
Stage 3	The training contract; usually a two-year period spent working at a law firm - SRA no longer stipulates content.

Overview of the SQE	
Stage 1	Stage 2
<p>6x Functioning Legal Knowledge Assessments:</p> <ul style="list-style-type: none"> • Principles of Professional Conduct, Public and Administrative law, and the Legal Systems of England and Wales • Dispute Resolution in Contract or Tort • Property Law and Practice • Commercial and Corporate Law and Practice • Wills and the Administration of Estates and Trusts • Criminal Law and Practice. <p>1 x Practical Legal Skills Assessment:</p> <ul style="list-style-type: none"> • Legal Research and Writing. 	<p>2 x 5 Practical Legal Skills Assessments:</p> <ul style="list-style-type: none"> • Client Interviewing • Advocacy/Persuasive Oral Communication • Case and Matter Analysis • Legal Research and Written Advice • Legal Drafting. <p>Practice contexts</p> <p>All five assessments must be taken and passed in the same two practice contexts of the candidate's choice, making a total of ten assessments. The practice contexts are:</p> <ul style="list-style-type: none"> • Criminal Practice; • Dispute Resolution; • Property; Wills and the Administration of Estates and Trusts; • Commercial and Corporate Practice
Qualifying work experience of two years	

The new framework aims to satisfy the SRA's "Statement of Solicitor Competence".ⁱⁱⁱ The SRA expects a significant number of candidates to take SQE stage 1 *before* their work-based experience, and SQE stage 2 at the end of that work-based experience. The six functioning knowledge assessments in the SQE stage 1 will be assessed by computer-based, objective testing, using the following question formats: single best answer questions, extended matching questions, and multiple choice questions. Each assessment will include ethical questions.

The SRA's plans to reform the current system of qualification and replace it with the SQE were formally submitted to the Legal Services Board (LSB) in January 2018 and in response the LSB requested extended time to allow it to respond given that the proposed changes are controversial. Indeed, throughout the consultation process, the proposals have generated significant controversy amongst stakeholders. In a letter to the LSB, Bob Neill MP, chair of the Justice Select Committee, stated that there were "fears that the SQE framework in its current form would lead to England and Wales becoming the only jurisdiction that does not require substantive academic study of law as a precursor to qualifying as a lawyer", noting that without "sufficient safeguards", it "may risk damaging the reputation of our legal profession and, ultimately, of the UK as a legal jurisdiction of choice".^{iv}

A committee of the City London Law Society (CLLS) launched a scathing critique of the SQE, stating that the SRA had "neither demonstrated that the current system is so flawed it needs a complete overhaul nor that the new framework is superior".^v Given that there is still much detail to come, for many stakeholders though the jury is still out, for example the Law Society of England and Wales say, "We believe that the equality and diversity effects of the SQE cannot be predicted until there is more certainty over the cost, content, format of the exams, the administrative arrangements for them (including adjustments to be made for candidates with disabilities), and clarity over whether candidates from disadvantaged backgrounds will be able to access funding for courses to prepare for these exams."^{vi}

On consideration of the SRA's formal application, the LSB initially postponed its decision by issuing two extension notices (up to the maximum of 90 days) and despite a plea from the justice committee to postpone its decision for another 6 months, on 26 March 2018 the LSB approved the SRA's application but in outline only. The LSB's decision notice states:

"The LSB has taken into account the fact that further regulatory arrangements will need to be approved by the LSB to give effect to the changes to the regulatory arrangements that are the subject of this application and therefore to implement the SRA's new admission requirements. The precise timetable for such an application from the SRA is not yet known, although the SRA anticipates that it will be made in 2019. Approval of the regulations that are the subject of this application is not sufficient on its own to allow the Solicitors Qualifying Examination to come into force"^{vii}

As a consequence it appears as though, failing some unforeseen policy shift, the SQE is a reality and we can expect it to be implemented by September 2020.

The remainder of this briefing discusses the issues and challenges that the SQE raises, with reference to its intended outcomes and the potential impact on pro bono, social mobility and professional culture and standards, and the sustainability of social welfare law practice.

LawWorks and legal education and training

LawWorks (the operating name of the Solicitors Pro Bono Group) has a significant interest in the legal education and training system. We promote and facilitate pro bono through a range of programmes and through supporting a growing network of over 230 independent clinics across England and Wales, over 40% of which are based with Law Schools. We provide legal training for member firms, students, trainees and volunteer lawyers (including paralegals and advice workers) on key social welfare law topics. Typically we run between 40 and 50 training sessions annually, and deliver social welfare law training to MPs and their caseworkers as part of a wider programme of legal education projects. We also run the annual Student Pro Bono awards supported by the Attorney General.

Our principle concern is around the impact of the SQE on the profession's ability to respond to the social welfare law needs of society, particularly in the context of the cuts to legal aid budget and entitlement following the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

The SQE and Access to Justice

There is a significant body of research which highlights the prevalence of legal problems in society and, consequently, the public's legal advice needs, as well as the experience of dealing with those legal problems. Much of the research – including research from the Ministry of Justice – points to a high prevalence of legal problems in society, with one such piece of research concluding that, "around a third of the population experience legal problems, with certain groups more likely to experience problems than others, particularly those vulnerable to social exclusion."^{viii} Consumer law problems, money/debt issues, neighbour disputes, employment, housing and family breakdown problems have tended to rank the highest in measures of legal problem incidence. The data shows that around 10 per cent of people 'lump it' and take no action at all; and around 46 per cent handle such problems alone without accessing any formal or informal support or legal help. In other words there is a significant unmet need for legal advice, which suggests a significant disparity between the demand and supply sides of the legal services system.

That system of legal education and training should not ignore these disparities or the social context of law, in which case the LETR's conclusions are welcome in this respect.

Legal education and training (LSET) provision as approved by accredited regulators should be capable of making a contribution to the regulatory objectives set down in the Legal Services Act 2007 (LSA) – the principal statutory basis for the regulation of legal services. These objectives include

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers of legal services;
- Promoting competition in the provision of legal services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties;
- Promoting and maintaining adherence to the professional principles.

Whilst there is no specific regulatory objective concerning pro bono it is clearly relevant to “public interest” and “access to justice”, as well as other key regulatory objectives. In this respect, it is encouraging that clinical legal education initiatives (e.g. student participation in pro bono clinics) have become increasingly integrated into mainstream LSET provision.

LawWorks is concerned to see that any LSET system instils public service values and strong ethics among those entering into the profession, alongside a relevant and adaptable skills-set. This skills-set will need to be capable of taking advantage of the opportunities created by technology in the delivery of legal services, as well as adapting to online courts, which along with artificial intelligence and open sourced legal software have the potential to significantly change the legal services landscape. Students and aspiring lawyers will need to develop different skills in this changing environment.

Finally, given the ratio of qualified law graduates to available entry level roles in legal practice, the legal training framework should be sufficiently flexible so as to develop transferable skills to enable alternative career pathways, so that there might be other ways that those qualified can contribute to access to justice

Key issues and discussion

In this section we analyse the key arguments and issues around the SQE in its proposed form, the overall approach pursued by the SRA, the potential impact on diversity and social mobility, and, finally, the social context of legal practice and impact on pro bono.

Consistency

The LETR cited a lack of “consistency” in outcome as a significant deficiency of the current LPC, and *The current system of LSET does not consistently ensure that desired levels of competence are reliably and demonstrably achieved... There is ... reliance on relatively shallow, vague or narrow conceptions of competence*^{ix} The SRA in its proposed reforms cannot be said to have failed to take up this message, placing “consistency” at the very centre of the SQE; some have argued to a fault. Whilst improving “consistency” (in respect of quality and the SQE “competences”) is straightforward enough as a policy goal, it is necessary to drill into some of the detail of the reforms in order to fully appreciate what the SRA means by this.

Looking at the data, the SRA found: *“Some Legal Practice Course (LPC) providers have success rates in excess of 90%, while others are below 50%. Some undergraduate law schools require A and A* A-level grades from entrants, others admit students with B, C and D grades. The Higher Education Funding Council for England said this year, ‘the current quality assessment system does not provide direct assurance about the standard of awards made to students, or their broad comparability.’”^x*

The LETR Report’s recommendations 1 and 5 referred to “prescribed” and “common” learning outcomes as the remedy to the problem of inconsistent standards.

Given dissatisfaction with the current model’s level of inconsistent outcomes, the SRA was faced with a choice between either a single mandated examination (such as the SQE) or permitting the providers market to respond to a new prescribed set of standards (within a varying degree of restrictions). The latter option would have entailed considerable ongoing SRA resources for authorisation, monitoring and evaluation. In this context it is unsurprising

that the SRA opted for the former approach. In any event, ensuring consistency across the whole sector appeared to be an almost impossible task in the absence of a centralised system of assessment.

The SRA has stressed that the SQE represents a *minimum set of standards*, beyond which, in theory, there is nothing preventing a market place of post graduate LSET providers producing a wide range of courses, including courses very similar to the current LPC: “City firms will likely require additional training equivalent to the LPC electives with the strong likelihood that overall cost will equal or exceed existing costs.”^{xi} Consequently, the outcome of the SQE may well be marked by a plurality of courses which are consistent only to the extent that they prepare candidates for the SQE (courses which did not adequately prepare students for the SQE, presumably, would not survive). This outcome would be consistent with the SRA’s policy of opening up pathways to qualification and could stimulate competition.

Whilst there may be some disruptive potential for so-called “high-end” post-graduate course providers, specifically with issues surrounding the content of the SQE and the reaction of law firms that could see some training taken in-house, the SQE’s real disruptive potential is likely to be amongst some of the less well known post-graduate courses and providers. This seems to be the real target of the reforms, i.e. candidates who entered onto undergraduate law courses with “*B, C and D grades*” and who have subsequently undertaken post-graduate LSET courses. If the underlying assumptions regarding the flaws in the current model are correct, some students who qualify under the current model might be unable or deterred from attempting to qualify under the new SQE model.

Standards and assessment

The LETR Report concluded that: “*The key weaknesses in the [current] system are: its reliance on relatively shallow, vague or narrow conceptions of competence.*” The LETR Report then went on to recommend: “*.that, to assure an appropriate underlying standard, the threshold for authorisation should be at not less than level 6.*”^{xii}

Whether the SQE brings about satisfactory minimum standards which are “consistent” will depend, in large part, on the assessments themselves; in particular, at what level the SQE is set against the commonly understood national educational benchmarks. For the reforms to be successful, employers as well as members of the public must have confidence in the SQE as a benchmark of excellence. In that regard, the SQE needs to be capable of assessing all of the skills required of a solicitor, including the ability to produce nuanced advice in circumstances where there are gaps in the available information and/or the law. Failure to persuade key stakeholders of the value of the SQE could lead to even greater inconsistency and a lack of comparability of outcomes, with - at one extreme - the SQE becoming no more than a hoop to go through for some providers and firms which set their own tests, such as comparable with some LPC courses currently on offer.

We share the concerns of some respondents to the SRA’s consultations about the SQE assessment process, namely around an over-reliance upon multiple-choice or other computer-based testing. We urge the SRA to work with its chosen out-sourced developers to deliver a programme of assessments that not only has the support of stakeholders, including the educational providers that will deliver the new examination, but is also *perceived* to be a benchmark of excellence by members of the public and consumers.

Undergraduate pathways to qualification

The drivers for change at the undergraduate law degree stage are, broadly, consistency of outcome and cost, with the SRA citing the greater reliability of *post-graduate* stages as indicators of ability and standards: “It is noteworthy that fewer than 1% of full time students on the Graduate Diploma in Law (GDL) fail and only 2% of those with training contracts are not admitted”^{xiii} As regards cost, the LETR makes a strong link between the cost of qualification and diversity and social mobility.

The potential for the SQE to disrupt at the undergraduate law school level is considerable, as some respondents to the SRA’s consultations about the SQE have argued.

“The proposed SQE is a challenge for law schools but also brings new opportunities. We are embracing the change by reviewing our curriculum and programmes to explore whether and how to align them with the new qualification proposals. We know we have an obligation to think about future careers of our students. So we are asking what are the skills, qualities and experiences that graduates need to succeed in the legal sector and other professions”^{xiv}

“We expect that the great majority of universities will be compelled to adapt their law curriculum to incorporate some or all of the SQE1 preparation. A small number of elite institutions may well be able to ignore the changes. But for other research intensive universities, like us, who do not currently offer vocational teaching, the SQE could dramatically affect everything we do – which could also mean radically changing our staff base. Only about 50 percent of our students go on to qualify as lawyers; we would still need to make provision for both groups. We are unconvinced that reducing the time spent on education and training (as a three-year degree including SQE preparation would do) will improve standards in the legal profession. We are concerned about negative impacts upon widening participation, given that less-privileged students benefit from additional attention and experience, to help equalise the playing field. The SRA should be far more up-front about such likely impacts on universities of the SQE proposals.”^{xv}

One area where the SQE is set to make a radical change is to Qualifying Law Degrees. Despite strong opposition from some stakeholders, the SRA decided not to grant exemptions to stage 1 of the SQE for holders of Qualifying Law Degrees. On balance, LawWorks accepts the SRA’s position. Had the SRA maintained the current system of qualifying law degree as part of the SQE, in promoting “consistency” it may have been forced to review and/or withdraw the award of qualifying status for some law courses, namely those courses accepting lower A Level entrance grades. LawWorks would not favour such an outcome as A Level results may be, at least for some students, a poor indicator of success in terms of ability to pass the SQE, especially for students from less privileged backgrounds. For these students, A Level results may be no more than a snap-shot of ability at a still relatively early stage in their development, and which do not necessarily reflect a whole range of challenges overcome, nor future potential. Such students might be assumed to be disproportionately represented on the very courses about which the SRA has expressed its concerns. Secondly, refining the system of exemptions (as opposed to scrapping them altogether) looked impracticable from an organisational viewpoint.

Information barriers, jobs data and social mobility

Both the LETR and the SRA identify significant information barriers at the very point at which entrants to the profession decide upon which pathway to qualification to take. By way of example, there is limited information available to students regarding the number of places on post-graduate professional training courses and the number of training contracts on offer, such as might better inform some students about prospects of success at the point at which they decide whether to commit themselves. Information barriers are likely to have a disproportionate effect on candidates from minority or lower socio-economic groups.

This impacts at recruitment level, and as Oxford University observe: “At present many law firms, particularly larger law firms, recruit prior to degree completion...”^{xvi} This recruitment approach looks conservative, in that it ignores candidates from less traditional routes to qualification. For candidates it means that failure to accurately predict the most fruitful *route* to qualification can also lead to wasted expense and disappointment. In this regard the LETR states, “There is concern, and sometimes anger, among those who have invested much time and money in the initial stages of education and then been unable to find qualifying employment within the regulated sector. Respondents mentioned a lack of initial information about risks and career options; the potential for unfair treatment in recruitment; being left in a paralegal limbo; potential for exploitation, and a lack of recognition of prior experience.”

Post-graduate: the cost of qualifying, diversity and social mobility

The impact of the new SQE on diversity and social mobility is impossible to know, not least because there is a paucity of evidence in respect of the impact on diversity of the current qualification system. Indeed, the LETR states, “The limited availability of diversity data at present makes it difficult to generalise about trends across the sector... The steps taken by the LSB to obtain diversity data from the regulated professions are welcomed, but this also needs to be matched by a better range and quality of data on participation in LSET”.

Lowering the cost of qualification under the new SQE and opening up new pathways to qualification might be assumed to increase both student numbers as well as diversity at least, in respect of some pathways to qualification. However, the picture is potentially complicated in respect of what are currently Qualifying Law Degrees (“QLD”). Under the SQE, QLDs will lose their passported status for qualification purposes. Consequently, it is likely that there could be some unnecessary repetition of course content and, therefore, duplication of costs for some students on graduate or post graduate law degree pathways, especially for those students taking courses which do not alter their content to directly prepare them for the SQE; but which under the current regime enjoy passporting rights.

The LETR identified cost as a major barrier to diversity and social mobility: “The impact of such a waste of human and economic resources, and the barriers to development of a diverse and socially representative profession is a growing concern... The high cost of professional training in some parts of the sector, notably for solicitors ..., are said to be justified by the need to deliver high quality training, often with relatively low staff-student ratios, and significant investment in teaching resources. LETR research data highlight considerable dissatisfaction with cost and the way in which the system thereby limits access to the profession.”^{xvii}

The LETR's analysis and recommendations are a mix of market-based and non-market based measures (such as financial assistance). The LETR states, "The lack of variety in models of vocational training for solicitors ... restricts development of a more competitive market in vocational training. The development of more flexible approaches to training would potentially play an important role in ameliorating the cost." The LETR suggested the following measures:

- "the further development of apprenticeships to the level 7 qualification for intending solicitors;"
- "development of new forms of training which integrate more of the vocational stage of training with workplace learning;"
- "alternative work-based learning pathways through the training contract ..., particularly in the employed sector;"
- "assessment of the viability of a three-year exempting degree model ... which could substantially reduce the cost of qualification;"
- "whether regulators should, on equality and diversity grounds, take price, scholarships and financial assistance into account in future tendering or validation cycles."

In connection with the LETR's recommendations, we particularly welcome the SRA's decision to continue to permit apprenticeships as a route to qualification, as well as its decision to liberalise the market for qualifying work experience (QWE), both measures which have the potential to have a positive impact on both social mobility and diversity.

The impact of the SQE on apprenticeships will largely depend on the content and standards set by the new exam, as well as the information available to students at the point at which decisions are made about which route to qualification to take. In this regard, we urge the SRA to gather better data in respect of apprenticeships, especially in relation to diversity and social mobility, so as better inform the design of the new system of qualification. This is supported by the LETR which states, "Diversity and social mobility data on apprenticeships should be obtained and monitored."^{xviii} Better data would also help firms with recruitment decisions; as Oxford University's response to the SRA says: "At present many law firms, particularly larger law firms, recruit prior to degree completion - they therefore have little data on which to make recruitment decisions. As a result many focus on Oxbridge for their pool of potential applicants - thereby perpetuating the inequalities within the system. Those who go wider and include a few Russell Group universities in their recruitment pool equally do little to challenge these inequalities"^{xix}

Additionally, the SRA might consider scholarships and financial assistance in connection with apprenticeships as, in our view, market-based measures alone cannot make all the difference: the solicitors' profession is still a relatively elite profession. At a time when many City firms employ diversity officers and firms' have long understood the business case for a diverse workforce, the profession itself might reasonably be expected to make some collective contribution towards the costs of increasing diversity.

As a consequence of the above, we are urging the SRA to consult widely, including with firms, universities and non-traditional pathway providers, in order to ensure that improvements in diversity and social mobility are felt throughout the profession as a result of the SQE. We have also commented elsewhere in this paper in connection with the SRA's

decision not to exempt undergraduate law degrees from elements of the SQE, and whilst we understand the SRA's reasoning this issue may need to be kept under review.

Qualifying work experience

We strongly support the principle of allowing a diverse range of pre-qualification work experience (PQWE) to count towards becoming a solicitor. However there is a risk that PQWE, in replacing the current training contract system, could potentially give rise to new barriers to entrants to the profession in requiring aspiring lawyers to have held a job (ie more than a 'trainee') in the legal marketplace before fully completing the qualification process and being able to practice (given that the SRA expects most candidates to be completing SQE Stage 2 at the end of their work experience). Allowing pro bono work to count towards PQWE, which the SRA specifically discussed in the consultation process, could in theory mitigate this risk; however we have serious concerns about the ability of the new system of PQWE to accommodate the majority of pro bono volunteering undertaken in practice

The SRA has recently confirmed that under these qualification reforms the total number of placements that could be counted towards PQWE would be capped at 4. It has also confirmed that calculating the amount of time spent volunteering, say at a university led pro bono advice clinic, would be a simple mathematical exercise. This means that for a student who spent a few hours per week as part of or alongside her undergraduate degree course it would take approximately 70 weeks or approximately two academic years to attain about one month's PQWE. In the circumstances, it seems unlikely that many students would wish to count the time spent volunteering towards their PQWE, using up one of four placements for this purpose.

We would like to see a training system emerge from the SQE reforms which both permits and encourages students volunteering in clinics across the country, as a meaningful way to gain qualifying work experience. This would also be consistent with the SRA's settled policy goal of increasing diversity, reducing cost and opening up pathways to qualification. Whilst the SRA in its consultation expressly envisaged that law clinics could provide the right sort of environment for students to gain qualifying work experience, as mentioned above we are concerned that this will not happen. To achieve the SRA's stated aim, more work is needed on this issue.

Social welfare law

There are some concerns about the lack of mandatory social welfare law subject based modules in the SQE structure. "Social welfare" law includes, among other areas, housing, immigration, employment, family, debt, mental health, community care and childcare law. Some stakeholders have expressed concern about the potential impact of the SQE on the number of entrants to the profession taking up social welfare law jobs. This is a particular concern in the context of the decline and restrictions in the provision of legal aid and publicly funded contracts in this essential but under-resourced area of legal practice.^{xx}

There is no requirement, or option, within the SQE itself to study employment, human rights, immigration, housing, family or welfare benefits. Stage 1 of the SQE includes a public and administrative law foundational knowledge component, but not other aspects of social welfare law such as housing or community care. There are some options and expectations under the current LPC structure in respect of family and civil law. However from a simple

online search of some LSET providers currently offering LPC programmes, it is not clear that there are many, if any, providers which are currently offering a full or even a broad suite of social welfare law modules, with some offering two or three social welfare electives only.

The key challenge is that smaller firms, and similarly non-profit agencies, who are unable to pay for LPC and who recruit from a pool of those who have self-funded the LPC, may rely heavily on the skills developed during the LPC through electives like family law and immigration law as a baseline of practice knowledge. It cannot be assumed that they would be prepared to take on the additional cost of providing that training in-house, or that students could fund additional training themselves.

Whilst a link between social welfare law subjects being mandated in the qualifying assessment and the number of social welfare lawyers in practice may appear self-evident, we accept that the evidence on this is not clear cut. It is just as important to note that the current LSET (law degree/diploma and LPC based) model is very expensive, including those post-graduate courses which offer social welfare elements. As the LETR states, "Cost was perceived as a barrier to taking on trainees in sole or small practices in particular [i.e. social welfare firms and departments], and in respect of publicly-funded services for solicitors."^{xxi} Given the salary levels of social welfare lawyers in practice and the limited availability and level of legal aid in many cases, the cost of qualification can itself be a significant barrier to social welfare lawyers entering into the profession. As the SQE aims to bring about substantially reduced qualification costs, and in theory there is nothing preventing both undergraduate and post graduate LSET course providers including social welfare components as part of their offer, it may be premature to judge the impact on the number and mix of students who may become social welfare lawyers.

We do, however, share the concerns of other organisations which work to promote access to justice that the lack of reference to social welfare law within the SQE sends a message that these topics should not be priority concerns in the evolution of legal practice and training. Yet these areas of law are "the laws of everyday life." We also have concerns over how the SRA envisages that law firms and NGOs might develop and fund a new training regime in these areas of law, given both the market restraints and the paucity of public funding in family and social welfare law. The Legal Education Foundation's Justice First Fellowships which effectively funds a new type training contracts for Law Centres, Citizens Advice offices and legal aid practices is a good model,^{xxii} but even this excellent scheme is limited.

As specialist fields of legal advice and practice work, family and social welfare law do require both knowledge-based learning as well as appropriate qualifying work experience, and we have concerns about whether the proposed SQE framework will be able to accommodate the appropriate balance.

Pro bono and the rule of law

We welcome the LETR's recommendation that there should be a greater emphasis on ethics, values and standards in any new assessment. We have been urging the SRA to ensure that the SQE affords the opportunity to develop a rounded appreciation of the vocation of lawyer, including the commitment to the rule of law, access to justice, and consequently, towards supporting or undertaking pro bono work. The interdependency the rule of law and access to justice was well articulated by the Supreme Court's that "*The constitutional right of access to the courts is inherent in the rule of law*".^{xxiii} Whilst we do not

consider that pro bono can or should replace publicly funded provision, it nevertheless makes an important contribution to access to justice, especially for the most vulnerable and those least able to afford to pay or access services.

Whilst pro bono cannot fully compensate for or take the place of a properly funded system of legal aid, it does support access to justice for many individuals who would otherwise not have had access to any legal advice. As such, pro bono activity significantly increases access to justice which in turn promotes the rule of law. Consequently, we have argued in our policy work that there needs to be consistency and clarity among regulators about how to facilitate pro bono among qualified legal practitioners and to ensure that regulation does not place unnecessary bureaucratic hurdles in the way of this; whilst at the same time to protecting clients against poor advice. It is too early to predict the potential impact of the SQE on pro bono (especially alongside other changes such as the introduction of the new SRA Handbook and proposed flexible models of practice), but we hope to be able to work with the SRA to ensure that the new training regime encourages students and trainees to engage in pro bono work.

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- i <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>
- ii <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page>
- iii <https://www.sra.org.uk/solicitors/competence-statement.page>
- iv <https://www.parliament.uk/documents/commons-committees/Justice/correspondence/Legal-Services-Board-SQE.pdf>
- v <http://www.citysolicitors.org.uk/attachments/article/104/CLLS%20Submission%20to%20the%20LSB%20-%20SQE%20-%2028%202%2018.pdf>
- vi http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/SRA_SQE_Regulations_-_TLS_letter.pdf
- vii http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_decision_notice.pdf
- viii <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page>
- ix <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>
- x <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page>
- xi Hogan Lovells International LLP; response to the SRA's second consultation at p216)
- xii LETR Report xii; "Academic, technical and professional qualifications within the national qualification framework for England and Wales are ascribed a level/levels which indicate the range, depth and complexity of learning that must be achieved to obtain that qualification. Levels run from Level 0 to 9. As an indication of equivalence, GCSE = level 2; A level/Welsh Baccalaureate Advanced level = level 3; levels 4-6 = first degree; level 7 = Masters or higher professional qualifications; 8 = doctorate or equivalent (see LETR).
- xiii SRA's introduction to its 2015 consultation
- xiv Toby Seddon, Professor of Criminology and Head of the School of Law, University of Manchester
- xv A Russell Group Universities response
- xvi Oxford University; p406, responses to the SRA's 2nd consultation).
- xvii <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>
- xviii <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>
- xix *Oxford University; p406, responses to the SRA's 2nd consultation.*
- xx see, for example, The Bach Commission: http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf).
- xxi <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>
- xxii <https://jff.thelegaleducationfoundation.org/>
- xxiii *R (Unison) v Lord Chancellor* [2017] EWCA Civ 935 ("the Unison case").