The SRA's Application to the LSB for approval of the SQE: Submission to the LSB

I wish to make a submission in relation to the SRA's application under Part 3 of schedule 4 to the Legal Services Act 2007 for the approval of:

- regulations 1.1-4.1 of the SRA Authorisation of Individuals Regulations [20XX]
- the SRA Handbook Glossary 2012 (Amendment) Rules [20XX]
- the Solicitors Qualifying Examination (SQE): approach to qualified lawyers seeking admission as a solicitor of England and Wales – the principles.

My reason for wishing to do so is to add to the concerns expressed by the Association of Law Teachers, The Society of Legal Scholars, the Committee of Heads of University Law Schools and the Socio-Legal Studies Association in their submissions, so that the Legal Services Board is aware that concerns with the SQE, which I share, extend beyond those organisations, and are far more extensive than as evidenced in the submission to the Board from the Law Society of England and Wales.

I do not make this submission on behalf of any body but as a neutral and independent observer with extensive experience in legal education and training in the profession, in higher education, and in regulation[1]. I am happy to provide further detailed credentials if desired. I am not a provider of legal education and training, or an employer, and I have no vested interest in the outcome of the application. What I do have, as a member of the solicitors' profession, are deep concerns about:

- the SRA's proposed dismantling of a legal education and training framework, for which it has produced no cogent evidence or justification for doing so;
- the grounds the SRA has given for this proposal
- the way in which the SRA has gone about its purported consultations and the making of its case to the SRA Board for approval of its proposals.

I have no objection to a centralised assessment being introduced at an appropriate point in the legal education and training pathway, provided that the assessment achieves what is not otherwise achieved by the other components of the pathway, and, if the centralised assessment is intended to replace any components of the pathway, a proper cost-benefit analysis is first undertaken and the benefits to be brought by the introduction of the centralised assessment clearly demonstrated. The SRA has not done this for what is being proposed in this particular application.

<u>Concerns about the proposed dismantling of the existing legal education and training framework</u>

Even if one accepts that introducing a centralised assessment is an appropriate intervention to make in the qualification requirements for solicitors, it does not inextricably follow that the whole framework for legal education and training of solicitors in England and Wales should be dismantled. The SRA has produced no cogent evidence of any failing in the different parts of the framework, and has relied purely on supposition.

Dismantling the existing legal education and training framework in England and Wales in the way proposed by the SRA will have a number of detrimental consequences:

- the solicitor qualification in England and Wales will be alone in not requiring substantive academic study of law, and places England and Wales at odds with jurisdictions in which English and Welsh-qualified solicitors practise and are recognised, and to which English and Welsh legal services are exported. This goes to the credibility and quality of the solicitor qualification, and consequently, to the perception of the quality of legal services in England and Wales.

[1] I am the author of "Legal education and training – A practical guide for law firms", Lexis Nexis, 2010; "Legal Training Handbook", Law Society Publishing, 2016; and "Legal Training Toolkit", Law Society Publishing, 2017

This will be exacerbated if qualifying work experience can include work experience which is not equivalent to work experience under a training contract or Period of Recognised Training, the Chartered Legal Executive qualification requirements, or a legal apprenticeship. Passing the SQE will not provide any assurance of actual understanding of the requirements of practice, and will not protect the public.

- a narrowing of access to the profession, and adverse impact on equality and diversity, and on social mobility. Not even to prescribe pathways to qualification, let alone quality assure pathways, means that those who may wish to qualify as a solicitor but who have no connection with or knowledge of the profession or of higher education – those from BAME or non-traditional backgrounds in particular – will be required to navigate completely unchartered territory to achieve their career ambition. The SRA acknowledges that preparatory courses are likely to be necessary but will not prescribe or quality assure those either, or control their cost. Consequently, a student risks having to make investments in time and money, effectively gambling whether or not they have chosen a path which will optimise their chances of success. That cannot be right. Their success in achieving qualification as a solicitor should not depend on luck but on their own ability. The cost of qualifying is also likely to be higher – not lower - because of the lack of any controls.

  Employers are being encouraged to widen the scope of their recruitment, in order to widen access to the profession. There is no question that there are able students from universities which employers may not usually select. However, under the SRA's proposals, with no defined and quality assured pathways, employers will be asked to make impossible comparisons and to choose between non-equivalent or even approximate pathways. Inevitably, employers will restrict their choices to pathways that they know and can rely on in order to recruit. Merely passing the proposed SQE will not solve this problem.

<u>The SRA's grounds for its proposals</u>

The SRA has not been able to adduce any probative evidence that any or all of the Qualifying Law Degree, Graduate Diploma in Law/Common Professional Examination, the Legal Practice Course, the training contract/period of recognised training has or have failed in delivering their educational and training objectives.

Rather, the SRA has given as its reasons for proposing removing the requirement for these courses:

1. inconsistency in quality of law degrees
2. a law degree has never been a requirement for qualification as a solicitor
3. inconsistency in pass rates between providers on the LPC
4. the cost of the LPC
5. inconsistency in, and no objective assessment at the end of, the Period of Recognised Training
6. a bottleneck in LPC graduates obtaining training contracts

1. inconsistency in the quality of law degrees

This is disingenuous on the part of the SRA: it chose to disband the Joint Academic Stage Board, which it ran with the Bar Standards Board, and which ensured that for a law degree to be recognised as a Qualifying Law Degree, it met the requirements – and continued to meet the requirements – of the Joint Statement on the Academic Stage of Training. It is therefore the SRA's own decision not to use the quality assurance mechanisms previously in place to ensure consistency in quality.

2. law degree never a requirement for qualification as a solicitor

This statement is misleading: although a law degree has not been a requirement for qualification as a solicitor, academic study of, and examination in, law has been a requirement, namely, the Graduate Diploma in Law, and the Chartered Legal Executive exams.

The SRA's proposals for the SQE would involve no requirement for academic legal study, and the examination in Part 1 on Legal knowledge would not even be at a level equivalent to any of FHEQ Levels 4, 5 or 6.

3. inconsistency in pass rates between LPC providers

In the same way the SRA has relinquished the quality assurance of QLDs and GDLs, the SRA has disbanded the quality assurance and monitoring scheme for LPCs. If there is any inconsistency in standards now between providers, it is in large part due to the SRA's own actions.

4. Cost of the LPC

The LPC is unlike the law degree or GDL, in that it is predominantly skills-based teaching. For skills to be acquired, the teaching must be in small groups. Thus, the staff/student ratios between law degrees/GDLs and LPCs are entirely different. The learning resource requirements on the LPC, which is a practice-focused course and therefore relies on practitioner texts, are also more expensive. That is why the LPC is more expensive than the law degree. What the SRA has not done at any stage is to carry out a cost-benefit analysis of the LPC – what is the value to students – and their prospective or future employers – of undertaking the LPC? Rather, the SRA has dismissed the LPC purely on the basis that it is an expensive course and there is inconsistency in pass rates. I have been a director of an LPC whose student cohort was predominantly BAME and from non-traditional backgrounds, with no contacts with or experience of practice or the profession. At the start of the course, perhaps unsurprisingly, those students were rarely ready for practice. After the year on the LPC, with the support and guidance that are integral to the teaching on the course, many of those students had turned into fine practitioners who were then able to secure training contracts.

The LPC is in fact admired worldwide as a method of preparing young lawyers for practice (in contrast to US Bar exams, for example).

5. Inconsistency in, and no objective assessment at the end of, the Period of Recognised Training

This again is disingenuous on the SRA's part, since the SRA has itself chosen not to set standards for the signing-off of trainees. I was a Training Principal for many years and requested guidance from the SRA (then the Law Society) for Training Principals both personally and in representative roles for the profession[2] but guidance has never been provided. It seems somewhat unfair then to castigate Training Establishments and Training Principals.

The other claim the SRA makes is that firms sign off trainees who are not competent. I take great exception to this. The SRA's evidence base is the fact that some trainees are not kept on by firms. There are many reasons why a trainee may not be kept on by a firm, ranging from no position in the practice area the trainee wishes to qualify into, to life choices to move elsewhere, and everything in between. After studying for three years on a QLD and being assessed at Levels 4, 5 and 6, or studying for three years on a non-law degree and studying and passing the GDL; a year studying on and passing the LPC, a post-graduate level programme; and spending two years on a training contract with supervision, performance appraisal and training, the likelihood of an individual being actually incompetent at the point of sign-off is extremely unlikely. On the other hand, merely having to sit the SQE without any requirement to have studied law and with any sort of work experience is highly likely to lead to incompetence.

6. Bottleneck to training contracts

[2] Chair of the Legal Education and Training Group (LETG); Chair of the City of London Law Society Training Committee

There is no question that there are more LPC graduates than there are training contracts or positions for the Period of Recognised Training available. However, this is due to employers such as law firms being businesses, and resourcing their businesses to the level that they need. This is not an obstacle to qualification. Holding an entry exam or interview for an English or Welsh solicitor in Gaelic would be an unnecessary (not to mention unfair) obstacle. Business need is not. The reality is that, with increasing use of technology and Artificial Intelligence, the number of solicitors needed for modern day practice is going to decrease in any case. If the SRA is concerned about graduates with disappointed career aspirations - and there is a question as to whether the SRA as a regulator should in fact be involving itself in this - then the SRA should direct its focus on whether law graduates have made an informed decision to study law, and know the limited opportunities for training places available. I have conducted two funded, academic research projects into the career intentions of law degree students[3], and both studies confirmed that students were choosing to enrol on law degrees ill-informed and with little understanding of career prospects. Dismantling the current framework and removing prescription as to how a student gets to the point of qualification will merely move the point of unemployment – from unemployed LPC graduate to unemployed newly qualified solicitor.

This also has nothing to do with access to affordable legal services.

The way in which the SRA has gone about its consultations and has made its case to the SRA Board

Since the Legal Education and Training Review report in 2013, for each consultation the SRA has produced on reforms to legal education and training, it has adopted every proposal, sometimes tweaked but adopted nonetheless. That is not to say responses to consultations has been supportive of each and every proposal – on the contrary. Although the SRA may carry out informal (albeit selective) consultations before publishing the formal consultation document, it does not in fact approach the formal consultations in a manner that permits it to be influenced by the responses it receives. Rather, the formal consultation tends to be a rubber-stamping exercise so that the SRA can say that it has consulted. That is also the case with the consultation responses to the SQE consultations: the SRA has ignored the overwhelming opposition to the proposed dismantling of the existing legal education and training framework, and has tended to dismiss concerns raised by stakeholders on the basis of self-interest – 'they would say that, wouldn't they'.

What is worse than the almost complete disregard the SRA has shown for the expert opinions of the profession and higher education sector is the way the SRA has cherry-picked from the responses to make its case to the SRA Board. I commend the article by Professor Elaine Hall in the Law Teacher[4], which analyses the SRA's interpretation of the consultation responses, and which raises clear questions about the probity of the SRA's interpretation, which falls below the standards under the Legal Services Act 2007, to which the SRA as a regulator should be held.

[3] Career expectations of students on Qualifying Law Degrees in England and Wales – A Legal Education and Training Survey – Project Report – Melissa Hardee, Higher Education Academy, 2012
http://www.heacademy.ac.uk/assets/documents/disciplines/law/Hardee-Report-2012.pdf
The cohort study of the career expectations of students on qualifying law degrees in England and Wales – Melissa Hardee, LERN, 2014/2015
http://ials.sas.ac.uk/sites/default/files/files/About%20us/Leadership%20%26%20Collaboration/LERN/LERN_Hardee.pdf

[4] "Notes on the SRA report of the consultation on the Solicitors Qualifying Exam: "Comment is free, but facts are sacred", Elaine Hall, The Law Teacher, Volume 51, 2017 – Issue 3
http://www.tandfonline.com/doi/full/10.1080/03069400.2017.1335977

Alternative proposal

There is in fact an alternative model which would achieve the benefits of having a centralised assessment without the detrimental consequences which I have outlined above.

It is vital that the solicitors' profession encourages talented individuals from all backgrounds. All should have equal opportunity; all should have a level playing field; and for all, the only test should be one of ability – not inside knowledge or luck. For the protection of the public and the reputation of the profession, holding all entrants to the same standard is unarguable. Using a centralised assessment is one way of achieving these objectives. However, in addition to equality of opportunity, there must also be certainty and transparency, which the current legal education and training framework provides.

An alternative to the SRA's proposals, which would achieve all these objectives while still providing flexibility of pathways and ensuring high standards, would be the following:

- A choice of four prescribed and quality assured pathways to the point of the LPC. These pathways would be:
  - a Qualifying Law Degree
  - a non-law degree plus the Graduate Diploma in Law
  - a Chartered Legal Executive qualification
  - completion of a Solicitor Apprenticeship.
- All pathways would lead on to the Legal Practice Course, which, unlike at present, would be examined by way of a centralised assessment (not dissimilar to what the Bar Standards Board has done for the core subjects on the Bar Practical Training Course).
- A two-year period of qualifying employment (with exemptions for Chartered Legal Executives and Legal Apprentices), which would require supervision by a qualified solicitor, training over the two years, and sign-off dependent on objective criteria being applied to the trainee and their performance over the two-year period.
- A requirement to meet Character and Suitability requirements.

Since the Legal Services Board has reserved its decision on the SRA's application, I would respectfully request consideration of the points raised in my submission. If I can provide any further information, please do not hesitate to contact me.