

SRA Consultation

SRA Training for Tomorrow:

A competence statement for solicitors (the 'consultation')

Response by the Junior Lawyers Division of the Law Society of England and Wales

Introduction

The Junior Lawyers Division of the Law Society of England and Wales (the '**JLD**') represents LPC students, paralegals who have completed the LPC, trainee solicitors, and solicitors up to five years qualified. With a membership of approximately 75,000, it is important that we represent our members in all matters likely to affect them either currently and/or in the future.

This proposal will have a significant impact on junior lawyers, yet it is unclear to what extent junior lawyers have been involved in the development process (indeed, neither the JLD or Young Legal Aid Lawyers group were involved). We kindly remind the SRA that trainee solicitors, newly qualified solicitors and other junior solicitors are uniquely placed to identify those areas of practice which they do not feel their education or training has adequately prepared them for, and where the gaps are. We hope that the SRA will better engage with junior lawyers in the development of the Assessment Framework - which in our view should have been released alongside the proposed Competence Statement and Threshold Standards. The Assessment Framework is the document which will give meaning to the generic terms laid out in the documents dealt with in this Consultation.

The JLD would also be interested in reviewing the full equality impact assessment of the Competence Statement with the opportunity to comment as it is difficult to answer on these matters in detail without the full picture being presented.



Summary

Competence statement and Threshold Standard

The JLD has kept up-to-date and involved with the Training for Tomorrow regulatory review since its inception. We therefore understand the background to the consultation, and in particular how the Competence Statement is intended to fit into the regulatory framework both now and in the future. In particular, the JLD is aware of the importance of the Competence Statement for qualifying solicitors, including those wishing to qualify through the 'equivalent means' route the SRA introduced in July 2014. Indeed, the JLD believes that the SRA should have had a Competence Statement in place before introduction of the 'equivalent means' route.

The JLD is highly concerned that the Threshold Standard lacks clarity / is widely open to interpretation. Of course, greater flexibility was a key recommendation that stemmed from the LETR, and the JLD supports flexibility in theory. However, flexibility should never prevail over clarity, and ultimately the quality of training required to qualify as a solicitor. To do so would be detrimental to the protection of consumers, who should have a clear level of expectation when instructing a solicitor.

Statement of Legal Knowledge

The JLD has reviewed the Statement of Legal Knowledge, and it appears to broadly reflect the areas currently taught during either a qualifying law degree ('**QLD**') or the legal practice course ('**LPC**').

The JLD is unclear as to how the Statement of Legal Knowledge will fit into the regulatory framework.

If the SRA intends for the Statement of Legal Knowledge to be a 'continuing obligation' (i.e. an expectation that every solicitor maintains legal knowledge in all areas listed), the JLD considers that such expectations are unrealistic, and risks misrepresenting solicitors to consumers as experts in all areas listed. Indeed, after qualification many solicitors cease to remember areas of law unconnected with their practice. By way of example only, it would be simply incorrect to assume that every solicitor who practices in Corporate Law, for example, maintains knowledge in Wills and Administration of Estates.

Of course, it is also not necessarily the case that specialist lawyers should be maintaining knowledge in *all* areas of practice. The corporate lawyer should be developing their knowledge of Corporate Law and practice, to be a more competent solicitor for their clients. This will obviously include a breadth of practice outside of Corporate Law, but perhaps not as wide as the Statement of Legal Knowledge.



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Whilst we use Corporate Law as an example, this same argument can be made for any specialist lawyer.

There must be greater information on (i) what the Statement of Legal Knowledge is intended to *replace* (if anything); (ii) what *supplements* the Statement of Legal Knowledge (other than the Competence Statement and Threshold Practice); and (iii) how and when, if ever, is a solicitor assessed on it?

The JLD has considered each question asked by the SRA in the Consultation and provides its answer below.

1. Does the competence statement reflect what you would expect a competent solicitor to be able to do?

Yes, the statement broadly reflects the capabilities of a competent solicitor. The Competence Statement is non-area specific, and the JLD assumes that the SRA is not intending to ask newly qualifying solicitors which area(s) of law they will be practising in.

The JLD has greater concerns over (i) the level at which these competencies should be performed (which is largely dictated by a separate document, the Threshold Standard); and (ii) the assessment of these criteria (particularly the assessment at the point of qualification).

The Level at which the Competencies are performed

For the protection of consumers, it should be clear from the Competence Statement **alone** that the level expected of a solicitor is 'high'. The level of quality expected of a solicitor should be enshrined within the Competence Statement rather than an independent document.

We further consider the Threshold Standard elsewhere in this response.

The Assessment of these Criteria

We are concerned that, given the detail provided in the Consultation, the criteria and threshold is subjective. There is no explanation of what is meant by the generic terms in the Competence Statement. This means that it is unlikely, if not impossible, that a consistent standard will be used in assessing whether the criteria has been met by a specific applicant.

This is of particular concern due to the increase in flexible routes to qualification, such as the 'equivalent means' route. The JLD is often asked by its members: 'equivalent to what?' At the moment, the answer to this question is not clear. It is submitted that the proposed Competence Statement and Threshold Standard do not make the answer any clearer.

It is also unclear how qualified solicitors will be assessed on maintaining these criteria, particularly in light of the recent and ongoing CPD reforms.

We are sure that the SRA agrees that protection of the consumer is of paramount importance, and one way to protect consumers is to provide a uniform assessment for entry. The JLD would therefore propose that the SRA seeks to be more prescriptive in providing the assessment criteria.

Specific Points

B7(c): we suggest that 'bringing the transaction or case to a conclusion' should be qualified as follows: 'bringing the transaction or case to **an appropriate** conclusion' (noting that bringing a transaction or case to a conclusion which is not in the best interests of the clients is not an exhibition of competence).

2. Are there any additional competences which should be included?

Continuing obligations

The JLD is concerned that the Competence Statement does not make any mention of the skills that will allow a newly-qualified solicitor to pick up and develop further specialist skills and knowledge in accordance with their career progression.

The JLD is unsure of how such competences would be identified, but this would be important when considering whether the Competency Statement is useful in helping solicitors ensure continuing competence (*see question 6, below*).

Pro Bono and Legal Aid

We note that there is no reference in the Competence Statement to legal aid or pro bono work. We have been referred to a document from Australia, the 'Practical Legal Training Competency Standards for Entry Level Lawyers'. According to the Law Council of Australia's website, the 'Practical Legal Training Competency Standards for Entry Level Lawyers' *'sets out the various Skills, Practice Areas and Values in which a person seeking admission to the legal profession in Australia on the basis of Practical Legal Training undertaken in Australia must have demonstrated understanding and competence, before applying for admission'*, and the current version came into effect on 1 January 2015.

'Being aware of the importance of pro bono contributions' is one element from that document, and the JLD thinks this should be included in section **A** of the SRA's Competence Statement (*'Ethics, Professionalism and Judgement'*).

The JLD would also support the inclusion of a reference to legal aid within the Competence Statement. In the Australian 'Practical Legal Training Competency Standards for Entry Level Lawyers', one way of demonstrating awareness of the importance of pro bono contributions is to identify *'when a client with insufficient resources may be entitled to legal aid, or assistance from professional or community*

organisations'. The JLD thinks this, or a competence similar to this, should also be included in section A of the SRA's Competence Statement.

3. Have we struck the right balance in the Statement of Legal Knowledge between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area?

The Statement of Legal Knowledge covers the reserved activities (considered essential by the JLD as a point of distinction for solicitors) and broadly reflects the legal knowledge requirements of the present system.

It should, however, also include reference to the fact that solicitors may practise in specialist areas not covered by the Statement of Legal Knowledge, so that students and the public are not led to believe that it limits a solicitor's scope of practice.

We assume that the Statement of Legal Knowledge is intended to be a 'check-list', of a sort, for areas of law which individuals must study during their QLD or LPC. It is unclear how and when compliance with this 'check-list' will be assessed.

We do not consider that every qualified lawyer remembers or maintains all the knowledge provided during the QLD and LPC. Indeed, it is unrealistic to assume that every qualified lawyer maintains such a broad legal knowledge, completely unrelated to their practice, post qualification.

If the SRA intends for the Statement of Legal Knowledge to be a 'continuing obligation' (i.e. an expectation that every solicitor maintains legal knowledge in all areas listed), the JLD considers that the SRA has not struck the right balance. It would be simply incorrect to assume that every solicitor who practices in Corporate Law, for example, maintains knowledge in Wills and Administration of Estates (Section 2 of the Statement of Legal Knowledge). Importantly, the SRA risks misrepresenting to consumers that all solicitors do have this broad knowledge.

Of course, it is also not necessarily the case that specialist lawyers should be maintaining knowledge in *all* areas of practice. The corporate lawyer should be developing their knowledge of Corporate Law and practice, to be a more competent solicitor for their clients. This will obviously include a breadth of practice outside of Corporate Law, but perhaps not as wide as the Statement of Legal Knowledge. Whilst we use Corporate Law as an example, this same argument can be made for any specialist lawyer.

We agree that, to a reasonable degree, solicitors should be able to identify issues concerning areas of law outside of their specialist practice area, even if they are

unable to adequately advise on those areas (but can direct the client to someone who can), but this is not stated in Annex C.

There must be greater information on (i) what the Statement of Legal Knowledge is intended to *replace* (if anything); (ii) what *supplements* the Statement of Legal Knowledge (other than the Competence Statement and Threshold Practice); and (iii) how and when, if ever, is a solicitor assessed on it?

4. Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

The JLD understands that the Competence Statement is intended to ensure that each individual who becomes a solicitor is able to perform their roles and tasks required to the expected standard. The JLD supports a Competence Statement with this intention, so long as the 'expected standard' is sufficiently high to maintain quality in the profession, and correspondingly ensure that a consumer is protected.

The Threshold Standard is intended to reflect the level of skill expected at the point of qualification. It does not reflect the very steep learning curve post qualification or the knowledge base from which a solicitor may start if qualifying into a new field.

We understand that level 3 represents the level of competence required upon qualification and that the other levels are included purely for the purpose of context and comparison. The JLD thinks further explanation on the significance of the five levels would give the document greater clarity.

The JLD appreciates that the SRA is trying to move away from prescriptive rules, but thinks consumers would be in danger should the SRA move too far away from prescriptive rules in assessing competencies. The Threshold Standard is widely open to interpretation, and therefore the JLD cannot say with any certainty whether the Threshold Standard articulates the standard at which we would expect a newly qualified solicitor to work.

The real test would be in the implementation. The JLD would urge the SRA to reconsider the flexibility it is affording assessors in the Threshold Standard, and the JLD would be pleased to further consult with the SRA in the development of a more prescriptive framework, which would still afford *some* level of flexibility.



5. Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

The JLD appreciates that the Statement of Legal Knowledge has been drawn up by a series of distinguished academics and practitioners as identified in the Consultation, although some questions should be asked about the SRA's level of engagement with medium and small firms in this process. However, we have identified a few areas which the SRA may consider including in the Statement of Legal Knowledge:

1c: The SRA may consider expanding upon 'duties to others', and specifically call out 'duties to the court'.

1c: The SRA may consider expanding upon 'interacting with the regulator', to include 'interacting with regulators' (i.e. including regulators other than the SRA. Indeed, given the recent 'Consumer Credit Activities' consultation, solicitors may have increased contact with the FCA directly).

1d: The SRA may consider expanding upon 'money laundering', to include 'money laundering and fraud'.

5: The JLD has noted that there is nothing on the process of conveyancing under the 'Property' section.

9: The JLD has noted that there is nothing on the Statute of Limitations under the Contract Law section, which the SRA may consider including as this is an important area of legal knowledge for any contracts lawyer.

9f: The SRA may consider expanding upon 'exemption clauses and unfair terms', and specifically call out 'exemption and limitation clauses and unfair terms'.

11: 'Human Rights' should be removed from brackets. Human Rights is a distinct area of law from European Union law.

11 & 12: Devolution should be covered in these sections.

6. Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the handbook and ensure continuing competence?

The JLD cannot sufficiently answer this question without answers to the following:

(i) what does failure to ensure continuing competence look like (i.e. how does one identify failure to comply)?

(ii) who will be responsible for failure to comply (i.e. the individual or firms?)

(iii) what are the sanctions for failure to comply?

The JLD believes the SRA should provide guidance on the above.

Putting those questions aside, the Competence Statement may be a useful tool as part of a suite of documents, but it should by no means be an exhaustive tool. The Competence Statement is silent on legal knowledge, and a lawyers ability to understand, interpret and apply specific legal principles (other than the generic skills in Section A4, for example). The development of these skills, in an area-specific context, is of key importance for solicitors in continuing competence.

7. Are you aware of any impacts, either positive or negative, which might flow from using the competence statement as a tool to assist entities and individuals with complying with Principle 5 in the handbook and ensuring their continuing competence?

As above in response to question 6, the JLD is concerned that the Competence Statement is not, in itself, a sufficient tool to assist entities and individuals comply with Principle 5 in the handbook and ensure solicitor's continuing competence. The Competence Statement is based on a range of broad and generic skills. Continuing competence must go beyond the application of skills, and must also be focussed on enhancing legal knowledge.

The Junior Lawyers Division

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