

Mr Bob Neill MP
Chair, Justice Committee
Justice Committee
House of Commons
London
SW1A 0AA

By email: justicecom@parliament.uk

21 June 2019

Dear Mr Neill

Request for evidence session / short inquiry: The Legal Service Board's approval of the Solicitors Regulation Authority's application relating to the introduction of the Solicitors Qualifying Examination

I am writing to you in my capacity as Chair of the Junior Lawyers Division ("JLD") of the Law Society of England and Wales.

On 26 March 2018 the Legal Services Board ("LSB") approved an application from the Solicitors Regulation Authority ("SRA") regarding the introduction of the Solicitors Qualifying Examination ("SQE") (the "Decision").ⁱ The JLD, along with numerous other key stakeholders, whilst in agreement with a standard centralised examination, is greatly concerned that the introduction of the SQE will lead to a lowering of professional standards which will be detrimental to users of legal services and damage the reputation of the profession both domestically and internationally. I am accordingly writing to request that the Justice Committee holds either an evidence session or a short inquiry to review this Decision.

Background

The SRA has been developing the SQE since at least December 2015 and has published a number of consultations with regards to the proposed changes.^{ii iii iv v} The JLD (and other key stakeholders) have expressed concerns in relation to the introduction of SQE in response to those consultations and with the SRA directly.^{vi vii viii ix}

As you are no doubt already aware, various stakeholders had written to the LSB expressing their concerns regarding the introduction of the SQE prior to its final approval.^x In particular, the JLD notes that you wrote to the LSB on 8 March 2018 both citing such concerns and urging a delay in the approval process in order that the proposals receive further scrutiny.^{xi} The LSB's reply (dated 27 March 2018) said that "the rule approval process undertaken by the Legal Services Board (LSB) is not an assessment of whether or not we agree with proposals made by the SRA. It is an analysis of whether the statutory criteria set out in the Legal Services Act 2007 ("the Act") have been met...under the Act, **the LSB may refuse an application only if it is satisfied that one of the refusal criteria has been met**" (our emphasis added).^{xii} The JLD believes that the refusal criteria have been met as set out below.

Concerns about the LSB's approval of the SQE

The LSB's approval of the SRA's application (and subsequent letter to yourself of 27 March 2018) indicates that it was not satisfied that one or more of the refusal criteria had been met. However, the JLD notes that many of the concerns raised about the SQE by various stakeholders (including by the

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JLD itself) indicate that its introduction would (i) be contrary to the public interest, (ii) not be in the interest of consumers and (iii) result in lower professional standards.

As our consultation responses make clear, although the JLD is supportive of a centralised assessment (as the SQE will provide), it has significant concerns about other elements such as the removal of the requirement to study academic law substantively, assessment by method of multiple-choice question (MCQ) examination, training requiring only *'the opportunity'* to develop the necessary competencies and sign-off being possible by a newly qualified solicitor who may not ever have met the trainee.

There is a prima facie risk that these changes will lead to a decrease in the standard of assessment and experience necessary to qualify as a solicitor and ultimately a decline in the service provided to consumers (with a consequent deterioration in the reputation of the profession domestically and internationally). Furthermore, the unresolved question of how much it will cost to qualify (and whether loans will be available) have also raised concerns about a negative social mobility impact.

Contrary to the LSB's determination, these concerns therefore seem to reflect the refusal criteria contemplated in the sections of the Act cited above.

The JLD has reviewed the LSB's letter to you of 27 March 2018 and the Decision Notice^{xiii} that accompanied it. These were presumably intended to assuage the Justice Committee's concerns. However, the JLD suggests that they not only fail to address the Justice Committee's permanent concern (that the removal of academic study will lower the reputation of the legal profession in England and Wales), but also that these documents themselves raise further issues of concern. In particular, the JLD notes that the LSB explicitly avoided the question of whether the SQE assessments would be of sufficient quality (paragraph 25, Decision Notice) and acknowledged that there was a lack of detail about the SQE more broadly (paragraph 32, Decision Notice).

Given the strength, breadth and nature of opposition to the SRA's SQE application, the JLD is concerned to ensure the refusal criteria are considered and applied appropriately.

The refusal criteria

The refusal criteria referred to by the LSB are listed in paragraph 25(3) of Schedule 4 to the Act. For your ease, relevant extracts note that:

The Board may refuse the application only if it is satisfied that—

(a) granting the application would be prejudicial to the **regulatory objectives**, (our emphasis added);

...

(c) granting the application would be contrary to the public interest,

...

The regulatory objectives are listed in Section 1(1) of the Act and include:

(a) protecting and promoting the public interest;

...

(d) protecting and promoting the interests of consumers;

...

(h) promoting and maintaining adherence to the **professional principles** (our emphasis added).

...

The professional principles are listed in Section 3 of the Act and include:

...

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(b) that authorised persons should maintain proper standards of work,

...

The JLD therefore believes that authorised persons, i.e. solicitors, will not be equipped to maintain proper standards of work and will therefore fail to promote and adhere to the professional principles.

Next steps

The JLD is aware that the LSB will have to approve a further application from the SRA before the SQE can be implemented. However, our experience to date has led us to the view that there is a need for an independent body to assess the decision-making processes being undertaken in relation to the SQE. As such, the JLD proposes that the Justice Committee holds either an evidence session or a short inquiry to consider the Decision and to inform any future assessment ahead of the further application to be made by the SRA to the LSB. The JLD would welcome an opportunity to provide evidence to the Justice Committee in either event.

The JLD avers that conducting an independent review of the decision would be acting proactively and in a preventative manner. The SQE is just over two years away, with a plethora of issues still to be resolved and thus having a review now would aid in solving those problems.

I would be grateful for the opportunity to discuss this further with you or the Justice Committee's clerks, as appropriate.

Yours sincerely,



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ⁱ https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_decision_notice.pdf

ⁱⁱ <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page>

ⁱⁱⁱ <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>

^{iv} <https://www.sra.org.uk/sra/consultations/new-regulations.page>

^v <https://www.sra.org.uk/sra/consultations/ltf-phase-two-handbook-reform.page>

^{vi} <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page#download>

^{vii} <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download>

^{viii} <https://www.sra.org.uk/sra/consultations/new-regulations.page#download>

^{ix} <https://www.sra.org.uk/documents/SRA/consultations/ltf-phase-consultation-responses.pdf>

^x https://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm

^{xi}

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/180308_BN_to_Legal_Services_Board_re_SQE.pdf

^{xii}

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/20180327_Letter_to_Bob_Neill_SRA_Decision.pdf

^{xiii}

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/20180327_Letter_to_Bob_Neill_SRA_Decision.pdf

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