SOLE PRACTITIONERS GROUP RESPONSE TO SRA CONSULTATION DOCUMENT "ASSESSING COMPETENCE"

The response of the Group in broad terms is that unless there is a fundamental problem for which a solution needs to be found, rather than a need to find a problem for the sake of correcting it, then the way forward is not to radically change the current system of the assessment of competence, but to improve on the current model.

Several members of the Executive of the Sole Practitioners Group and no doubt many sole practitioners themselves, benefited from the non-graduate entry qualification followed by Part One and Part Two. It required five years practical training.

Since the change to a requirement for a graduate entry qualification, further education has changed dramatically from a small minority of students going to university to a situation where nearly 50% of students take a degree. Accordingly a degree is clearly a prerequisite of entering any profession which purports to provide a high standard of service to the public. That is not to say that if, as has happened throughout the recent period, an entrant to the profession has worked in the law for a significant period of time and then transfers to training to be a solicitor, that that cannot continue to be a perfectly acceptable entry route.

However the view of the Sole Practitioners Group is that the overall high entry standards should not be reduced below degree level. It is appreciated that there is a suggestion that such qualifications vary but that is a situation that happens across all degree qualifications and there must be controls to ensure the degrees are of sufficient academic standard. If they are not, the SRA could presumably exclude any substandard degree as being of insufficient entry qualification.

The important factor is to continue to reassure the profession and the public that the qualification of "solicitor" carries a gold standard of academic qualification and professional competence. The academic qualification is to ensure that the knowledge of a solicitor covers, at least on entry, all aspects of law to be able to assess the requirements of the client and address them even though the solicitor may not be the right person to deal in detail with that particular requirement. The practical prequalification period is vital to enable a solicitor to train within the working environment to be able to follow the practice of others. This applies to any profession such as the medical profession and indeed to many trades.

If the proposal in this assessment consultation is that a prospective solicitor takes a unified basic common professional assessment without a pre-entry period of training, then that would be resisted by the Sole Practitioners Group on the following basis.

Firstly that the common professional assessment is not a concept which would sit easily with the public or employers, as opposed to the involvement of an entry degree qualification.

Secondly that it would be wrong for solicitors to commence their professional relationship with the public without having had a significant and realistic period of working training.

The dangers of a common professional assessment are that there will be political pressure on such an assessment to be reduced to a level which can be achieved by all aspiring entrants to the profession. In fact it will make the regulatory body much more susceptible to pressure from central government to reduce the professional requirements, with a view to reducing the value of the brand name of "solicitor". This would be in line with the objective of

successive governments to reduce the quality of legal services in order to reduce the costs of those services.

If the entry qualification of degree standard continues to the outside the control of the SRA, with the exception of the SRA being able to exclude substandard degree qualifications, then it will not be possible to for there to be political influence on standards such as a common professional assessment. That is not to say that the Sole Practitioners Group are against any improvements to professional standards or against any changes which permit as wide a group of entrants as possible from coming into the profession.

Having set out the Sole Practitioners Group approach to the consultation, the Group are wary of answering "multiple-choice questions" which, by being answered, give an implied acceptance of the premise upon which those questions are asked.

At the end of the consultation in one of the appendixes is a table of the challenges by third parties in the pre-consultation period with the SRA's response. The Group's response which is as above, can be amplified by commenting on the numerous challenges which have been raised during the testing phase and which the consultation paper seems to have assumed have been responded to in the "Response" column. The challenges and the consultations response are in italics and the Group's response to both are in bold.

Question/challenge	**Response**
Case for change not made out: what is the problem we want to fix?	*We have refined our rationale to make clear we have concerns both with the risk of inconsistent standards within HE and that we cannot measure consistency of standards across the range of pathways to qualification we currently specify.*

The answer to this is to ensure that the standards are as consistent as possible and it cannot be impossible for the SRA to monitor the standards of degrees rather than changing the whole system to one which is untried

Our proposal will be expensive.	*We have modelled range of possible pathways to qualification under the new approach. All are cheaper than current model, except continuing with traditional route and introducing a common professional assessment on top*

The Group are not qualified to get into the question of expense but whichever route is taken is going to have a significant expense so that people need to have made an effort to be a solicitor

Our proposal will damage the solicitor brand because the common professional assessment has no credibility.	*The credibility of the assessment is critical. Consumers don't know and don't care how the solicitor title is acquired and so the title "trumps" how it was acquired, including issues around consistency of current pathways. As regulator, the SRA must make sure that*

the reality behind the title is sound. Our proposals are designed to ensure that.

This question is entirely valid. The phrase: "consumers don't know and don't care how the solicitors title is acquired" is not an accurate representation. At the moment consumers would believe that it will be based on a degree and training, but if they come to know that is based on a common professional assessment, which could at any stage be said to be subject to external influence or interference then the title of "solicitor" will diminish.

The proposed common professional assessment has no credibility because anyone can take it.

Setting eligibility requirements and introducing a common professional assessment are two separate considerations. We are exploring options around entry requirements for the assessment and expect to consult on a formal proposal in summer 2016.

This is a valid question and it has not been answered in the response

Our proposal has no credibility because it does not require intending solicitors to have a degree.

The solicitors' profession has never been an entirely graduate profession and there are many examples of solicitors without degrees operating at the highest levels. There is no empirical evidence that a degree is required.

The degree has been the basis of the professional qualification for many years. The five-year men, of which the writer is one, came from a time when the degree was not the standard tertiary professional qualification. Other existing non degree routes need to show an equivalent standard of training

The proposed common professional assessment has no credibility because It is not set at degree or equivalent level.

We know we will need to provide guidance about the level of difficulty of the assessment. This will make it clear that it is intended to replicate the level of difficulty of the current system.

The difficulty here is that the SRA is intending to provide guidance as to the difficulty of the assessment. As stated above the SRA is a quasi independent body but potentially not immune from political influence at any point in its existence which could reflect on the standard. The point of degrees is that they come from a multitude of sources which have the motive to increase the quality of their degrees in order to attract students

The proposed common professional assessment has no credibility because it includes MCTs.	*There is a large body of research (and evidence of use of objective testing, including MCQs, in other high stakes professional assessments) which shows MCTs can be used to test higher level cognitive skills. MCTs would not be the only assessment tool.*

MCTs – "Multiple-choice questions" – for those of us who did not take degrees. Whilst appropriate for a driving test, the Group find it hard to understand what place multiple-choice questions have in the provision of legal advice. Presumably if the correct answer is not included in the multiple-choice then the client does not get the correct advice.

Stakeholders are fearful that we may cease to continue to specify a period of recognised training (PRT), which they value and which they think contributes to solicitors' international standing.	*We have rightly needed to make sure that requiring a period of recognised training can be justified, given that it constitutes a significant restriction and barrier to access in the current system. The independent expert advice shows that workplace assessment of some of the competences is needed and that some form of workplace experience is needed to give the assessment credibility. We will explore regulatory options in the December consultation and consult on a proposal in mid-2016.*

Question asked but not answered because it appears that it is being deferred to December 2016 to a further consultation. This is most unsatisfactory because a period of recognised training (PRT) is absolutely vital in our view as regards the training of a solicitor and this issue is integral to the proposals being put in this consultation. Therefore it is necessary that concrete proposals for PRT be put now and not deferred to December 2016. The PRT aspect of qualification of a solicitor is as important as the academic qualification aspect. They are the two sides of the same coin must be considered together, and to the extent of their not being considered together the proposals in this consultation are fundamentally defective because they are not complete.

Pre-qualification training experience is used by firms to train their trainees in the jobs the firms want them to do, which vary from sector to sector. So a standardised professional assessment at point of qualification will be misaligned with experience during the training contract.	*This is a challenge for us because, unlike medical education for example, specialisation begins before qualification with the choice of training provider. At same time, entry confers entitlement to practise all reserved activities. Only a minority of trainee solicitors will gain pre-qualification experience across all the reserved activities. This creates a tension which is hard to resolve.* *We will explore a range of options in the December consultation.*

Question asked but answer deferred

The questions from universities are technical and not answered in detail in this response but the fact of the questions raises the concerns of the group

In reply to the actual questions in so far as these are answered by the above the Group's responses are as follows

Q1) Do you agree that the introduction of the SQE, a common professional assessment for all intending solicitors, best meets the objectives set out in paragraph 10?

No

Part 1. Dislike idea of computer-based objective testing but like modular assessments.

Part 2. No such thing as a 'standardised client.'

Q2) Do you agree that the proposed model assessment for the SQE described in paragraphs 38 to 45 and in Annex 5 will provide an effective test of the competences needed to be a solicitor?

The answer is no when compared with the existing degree and practice-based assessment, subject to it being harmonised so far as possible. On the basis of what has been said above this cannot be answered in the affirmative. If there is to be a common professional assessment then it should not be based on computer-based assessments.

Q3) Do you agree that all intending solicitors, including solicitor apprentices and lawyers qualified in another jurisdiction, should be required to pass the SQE to qualify and that there should be no exemptions beyond those required by EU legislation, or as part of transitional arrangements?

Yes.

Q4) With which of the stated options do you agree and why:

- **offering a choice of 5 assessment contexts in Part 2, those aligned to the reserved activities, with the addition of the law of organisations?**
- **offering a broader number of contexts for the Part 2 assessment for candidates to choose from?**
- **focusing the Part 2 assessment on the reserved activities but recognising the different legal areas in which these apply?**

Agree with 4(a).

Q5) Do you agree that the standard for qualification as a solicitor, which will be assessed through the SQE, should be set at least at graduate level or equivalent?

Yes, the standard for qualification as a solicitor should be set at least at graduate level or equivalent.

Q6) Do you agree that we should continue to require some form of pre-qualification workplace experience?

Yes a form of pre-qualification workplace experience should continue to be required.

Q7) Do you consider it necessary for the SRA to specify a minimum time period of pre-qualification workplace experience for candidates?

Yes, a minimum time period should be specified and it should not be a token or short period

Q8) Should the SRA specify the competences to be met during pre-qualification workplace experience instead of specifying a minimum time period?

No, the SRA should not specify the competences to be met during pre-qualification workplace experience instead of specifying a minimum time period. A minimum standards of competences should be achieved at one time and not each competence achieved over a successive period of time.

Q9) Do you agree that we should recognise a wider range of pre-qualification work experience, including experience obtained during a degree programme, or with a range of employers?

Do not agree that the SRA should continue to recognise a wider range of pre-qualification workplace experience.

Q10) Do you consider that including an element of workplace assessment will enhance the quality of the qualification process and that this justifies the additional cost and regulatory burden?

An element of workplace assessment will enhance the quality of the qualification process.

Q11) If you are an employer, do you feel you would have the expertise to enable you to assess trainee solicitors' competences, not capable of assessment in Part 1 and Part 2, to a specified performance standard?

Yes, sole practitioners would have the expertise to assess a trainee solicitors' competences.

Q12) If we were to introduce workplace assessment, would a toolkit of guidance and resources be sufficient to support you to assess to the required standard? What other support might be required?

A toolkit of guidance and resources would be particularly helpful to sole practitioners, who do not have the support of partners, to assess the required standard, although sole practitioners would have considerable experience of managing businesses because of their particular status.

Q13) Do you consider that the prescription or regulation of training pathways, or the specification of entry requirements for the SQE, are needed in order to:

- **support the credibility of the assessment?,**
- **and/or protect consumers of legal services and students at least for a transitional period?**

We do not agree with SQE proposal and therefore this question is not appropriate

Q14) Do you agree that not all solicitors should be required to hold a degree?

Agreed, in a case of entrants who have had lengthy previous experience of legal practice in other legal disciplines but not for those without that experience.

Q15) Do you agree that we should provide candidates with information about their individual and comparative performance on the SQE?

Yes, to the extent that they pass, gain merit or distinction.

Q16) What information do you think it would it be helpful for us to publish about:

- **overall candidate performance on the SQE?**
- **training provider performance?**

(a) see above.

(b) number of candidates who passed.

Q17) Do you foresee any additional EDI impacts, whether positive or negative, from our proposal to introduce the SQE?

No.

Q18) Do you have any comments on these transitional arrangements?

No.

Q19) What challenges do you foresee in having a cut-off date of 2025/26?

No comment.