Response by the Solicitors Regulation Authority to the Legal Services Regulation Authority invitation for submissions on the education and training arrangements for legal practitioners in the Republic of Ireland

The Solicitors Regulation Authority is the regulator of solicitors and law firms in England and Wales, protecting consumers and supporting the rule of law and the administration of justice. The SRA oversees all education and training requirements necessary to practise as a solicitor, authorising individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

The SRA has been engaged in the process of reforming the education and training of solicitors of England and Wales since 2014. Our experiences might be of interest and potential relevance to the LSRA.

The major pillars of our reforms are:

- a new Competence Statement for Solicitors setting out the activities we expect all the solicitors we admit to be able to do competently
- a new approach to the continuing competence of solicitors, which requires them to reflect on their learning needs and take appropriate steps to ensure they continue to meet the requirements of the Competence Statement
- a new licensing examination for solicitors of England and Wales – the Solicitors Qualifying Examination (SQE). This will be run by a single organisation who we will appoint. They will be independent of training providers and restricted from offering preparatory training for the SQE, to ensure that there is no conflict of interest between training and assessment.

Underpinning all this work have been the principles of better regulation and the regulatory objectives in the Legal Services Act 2007 (which are very similar to those in Ireland of the Legal Services Regulation Act 2015, s.13 (the 2015 Act)).

A single, standardised professional assessment, which we specify for all intending solicitors:

- **targets** regulation on assuring outcomes rather than processes – ie standards of practice rather than routes to admission
- is demonstrably **fairer** and **more consistent** than a distributed assessment model where assessments are provided by a large number of organisations to candidates who they also teach
- is a **proportionate** approach to address the risk of consumer detriment if solicitors are not competent, but which is set at the right standard and focused only on core skills and knowledge
- Enables us to be **transparent** about the effectiveness of the system by publishing performance data on the SQE, including pass rates by training provider. This helps candidates decide where and how to train, incentivises training providers to improve quality and enables employers to recruit from a wider pool of training providers. It also means that we, the assessment organisation we appoint, and SQE training providers can be held **accountable** to candidates, consumers of legal services and the profession.

Section 34(3)(c) of the 2015 act sets out a number of issues about which it asks for recommendations from the LSRA.

A summary of our views on these questions is as follows:

- The focus of the regulator's attention should be on assuring that those they admit as solicitors are competent.
- Therefore the regulator needs to identify the competences needed for safe practice and satisfy itself that those it admits can demonstrate those competences.
- It needs to be able to do so on an accurate, consistent, fair, transparent and cost-effective basis.
- It does not need to specify how candidates acquire these competences, or how they should be taught. Its focus should be on assessing the outcomes of education and training, not specifying inputs.
- The professional assessment it requires for admission to the profession needs to be the minimum amount of assessment needed to ensure candidates are safe to practise. It should cover core competences only and be set at the minimum standard. Of course, a minimum standard is not necessarily a low standard. However, otherwise it creates unjustifiable barriers to admission as a solicitor and restricts consumers' access to legal services.
- This leads to the conclusions that
    - The regulator's focus must be on assessment, not training.
    - A single, national, end-point professional assessment is the best way to demonstrate fairness and consistency, rather than a distributed assessment model in which it is difficult to ensure consistent standards.
    - The assessment should be run by the regulator, not the professional body. Only the regulator can ensure that the assessment is set at the right level to ensure that it is a proportionate requirement which protects consumers by ensuring competence but does not impose a higher standard or wider requirements which limit access to justice.
    - The assessment should be an end-point assessment. Barriers along the way, such as assessments permitting entry to a qualification pathway, at best duplicate the end-point assessment, and so add cost and duplication without additional reassurance, and at worst restrict access by preventing admission on the basis of criteria other than ability to demonstrate fitness to practise.

We address the questions raised by the 2015 Act in more detail below:

1. **Appropriate standards of education and training for legal professional qualifications; and arrangements necessary to monitor adherence with the appropriate standards.**

Standards of education and training are not an end in themselves for a regulator of legal services. Rather, education is a regulatory tool which enables us to deliver the regulatory objectives, particularly those of protecting consumers of legal services and encouraging an effective legal profession.

Our focus must therefore be on assuring that the candidates we admit as solicitors have the minimum competence to practise safely, not on regulating the training they receive to get there. Universities and other training providers are the expert teachers, and it is for them to use their professional expertise to decide how best to teach their students.

In England and Wales, we will monitor the outcome of SQE preparatory teaching by collecting and publishing pass rates by provider. This will provide transparency and will help students make decisions about where to train.

2. The scope and content of the curriculum forming part of courses of legal professional education and training, including the teaching methodology of the following: legal education, legal ethics, negotiation, alternative dispute resolution and advocacy

For the reasons set out above, we do not think that it is part of our role to regulate teaching methodology. Nor do we claim any particular expertise in relation to legal education.

It is our role to set the competences needed for legal practice, and check that candidates for admission can demonstrate them. It is critical that a test of professional competence tests the right things, in the right way and to the right standard.

The first stage of our review of legal education and training was therefore to develop a Statement of Solicitor Competence, with an associated Statement of Legal Knowledge. These captured the core skills and knowledge we require of all solicitors. We also developed a Threshold Standard, which articulated the standard to which these skills and knowledge had to be demonstrated at point of admission.

These documents were developed through a focus group and a separate Delphi group of practitioners and academics. They were then tested through an opinion survey of consumers of legal services, solicitors, trainee solicitors and academics. Finally we conducted a formal consultation. Altogether we obtained views of about 2,000 stakeholders.

The Competence Statement we developed is generic. It applies to all solicitors, regardless of their area of practice or their seniority. It captures what we require intending solicitors to demonstrate at point of admission as well as the activities we expect all practising solicitors to be able to do competently.

The core skills and knowledge we identified are centred around the reserved activities which solicitors are permitted to undertake. To this we have added commercial law, because it is such a large area of practice for the profession. We have resisted calls to expand the knowledge to be assessed into specialist areas[1] and for the competences to be extended to cover legal tech, business skills and a wider range of emotional competences[2].

We would counsel strongly against a professional assessment which goes beyond the core of what is required for practice. An admission assessment must test fundamental legal knowledge and skills. Through it, a candidate must demonstrate they have the skill to acquire new areas of legal knowledge and the framework to understand and use this knowledge.

The role of the professional assessment is to assess the distinctive competences required for practice as a solicitor and to check that candidates are safe to carry out the reserved activities statute permits them to do. It is not to check wider competences which apply equally to many professions.

Regulation can never keep pace with the environment in which legal services are provided. To regulate business skills, or technology skills risks the dead hand of regulation preventing innovation. Too wide an assessment stifles creativity in the legal curriculum, increases the cost of training and assessment and risks creating unjustifiable barriers to access.

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[1] The most common calls are for the SQE to be extended into: employment law, family law, finance law, social welfare law.

[2] The Competence Statement already includes a number of competences which could be characterised as emotional competences, including communication skills, self-reflection and working with other people.

Because we are assessing strictly against the criteria of the competences required for safe legal practice, we do not consider it appropriate to control entry to training pathways through an entry-point assessment into legal training, as opposed to an end-point assessment for admission. To do so would mean that candidates were being assessed by criteria which were different to the competences for legal practice, creating an additional barrier and potentially excluding individuals who could ultimately be able to demonstrate fitness to practise.

3. **Arrangements that would facilitate the minimisation of duplication and consequent expense incurred in the taking of examinations in legal subjects on the part of a person who: i. wishes to undertake a course of legal professional training and who has obtained a third level law degree that includes one or more of the subjects that form part of that course; ii who wishes to transfer between the professions, ie a solicitor who wishes to become a barrister or a barrister who wishes to be admitted as a solicitor**

We have taken the view that whilst minimising duplication and expense is clearly desirable, it does not follow that candidates with law degrees should be exempt from professional assessment, or in our case from the SQE. There are two reasons for this:

(a) Law degrees teach subjects which we will assess through the SQE (contract, tort, equity and trusts, public and constitutional law, property law, criminal law, EU law) but through a variety of lenses: socio-legal, jurisprudential, historical etc. We are interested in assessing candidates' ability to take their legal knowledge and use it in a professional context. We are assessing the skills of application, problem solving and decision making. Academic degrees are not necessarily assessing these competences.
(b) Law degrees are offered in England and Wales by over 100 different universities. We have no mechanism to check whether they are assessing students to the same standard, or to the right standard required for professional practice. We take the view that consumer protection and confidence in the profession require a centralised assessment. We conducted an opinion survey among consumers of legal services. 76% of the people we spoke to said they would have more confidence in solicitors if they knew they had taken the same professional assessment.[3]

So far as qualified lawyers are concerned, we propose a different view. We will be recognising the professional qualifications of other lawyers, both domestically and internationally, and where they can demonstrate that their qualifications are equivalent in content and standard to the SQE, or particular parts of it, we will exempt them from the relevant examinations.

We think this distinction between qualified lawyers and people who have done a degree is justifiable in terms of consumer protection. It is right to recognise that a qualified lawyer has already been assessed as competent by another regulator, and that they already have developed lawyerly skills.

4. **Standards required for the award of legal professional qualifications pursuant to courses of legal professional education and training**

[3] http://www.comresglobal.com/polls/solicitors-regulation-authority-solicitors-education-research/

Setting the standard for admission is critical to consumer protection. Where admission is based on passing a professional assessment, the standard of the assessment must be the minimum to assure competence. If the standard is set too low, it will not protect consumers from incompetent solicitors. But if the standard is set higher than is needed for competence, it will restrict numbers qualifying as solicitors and limit consumers' access to justice.

In addition, the standard must remain consistent over time, between candidates and between successive sittings. Modern standard setting processes can be used with large cohorts to provide a high degree of confidence in consistency. These include both statistical analysis and professional judgement. Professional judgements should be based on the views of a panel of assessors, not a single judgement.

While the regulator must be ultimately responsible for setting the standard required for admission, it is important to involve the profession in this process, both because they are subject matter experts and also to give them confidence in the qualification.

For example, for the legal knowledge assessments on the SQE, we will use an "Angoff panel" of practitioners who will decide on a question by question basis whether a newly qualified solicitor should reasonably be expected to know the answer. Averaging their scores is one measure which enables the pass mark to be established[4]. All SQE assessors must be qualified solicitors.

Naturally we will also involve assessment and standard setting experts in the process.

5. **The need for, and, if such a need is identified, the manner and requirements relating to the accreditation of bodies or institutions to: i. provide or procure the provision of courses of legal professional education and training, ii. hold or procure the holding of examinations, and iii. award or procure the awarding of diplomas, certificates or other awards of merit.**

For the reasons set out above, we do not think it is necessary or desirable to accredit training providers. Nor do we think it necessary to specify the making of an award.

Accreditations are difficult and expensive to monitor. If they are not properly monitored, they give false confidence to purchasers of training services about the quality of what they are buying. If there is a centralised assessment, which is independent of the training offered, the proper measure of the quality of the training is the pass rates of the candidates prepared by the training provider. That is why we propose publishing data on SQE performance by training provider.

As an additional protection, we have trademarked "SQE" and will license its use by training providers. We will withdraw our license if a training provider acts unethically, for example by claiming to be connected with the assessment provider, or by inflating their pass rates.

The assessment itself needs to be offered by a single assessment provider, independently of any associated training. We are procuring an assessment provider and will regulate our relationship with them through contractual arrangements. These need to cover controls over the candidate fees, over the quality of the assessments and the efficiency of the assessment processes.

[4] See p. 97 of the Draft Assessment Specification, June 2017.