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CLSA response to consultation

'A New Route to Qualification: The Solicitors Qualifying Examination'

The Criminal Law Solicitors' Association is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales and membership of the Association is open to any solicitor - prosecution or defence - and to legal advisers, qualified or trainee - involved with, or interested in, the practice of criminal law. The CLSA is responding to the consultation on behalf of its members.

1. We intend to respond from a mainly criminal law firm perspective not least because a broader response has already been submitted by the Law Society and we support and endorse most of the Society's comments.

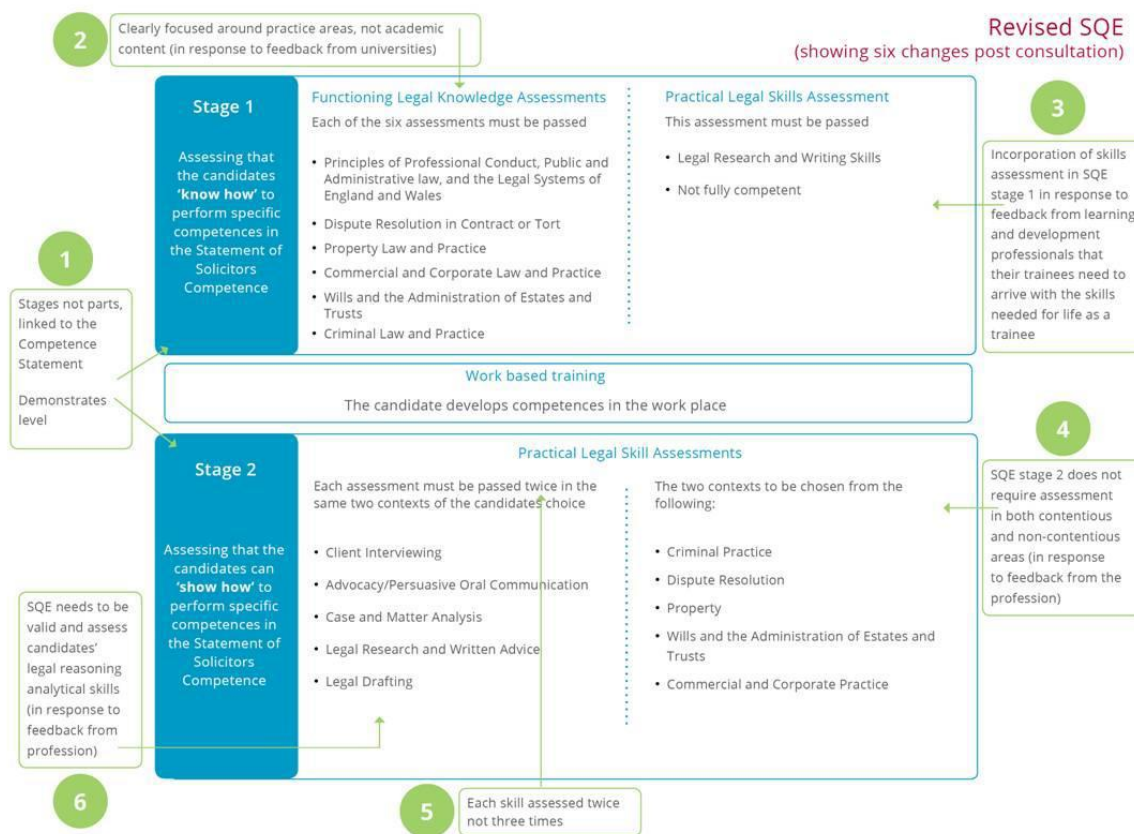
2. We wish immediately to highlight the main problems faced by criminal firms that do need addressing in these proposals to make them work for the majority of these mainly legal aid funded firms. Specifically in relation to the training proposals set out for SQE stage.

3. We admit that we do not have formal collated statistics for this but our common experience is that many criminal legal aid practices no longer offer training places to any large extent. There are a number of existential reasons for this:

- 1) The funding crisis in legal aid resulting in firms no longer being able to offer training places due to critical financial pressures due to cuts and a downturn in legal aid work.
- 2) Related to 1) above, in many areas of the UK the further pressure upon reputable firms to survive who might otherwise be willing to assist with a long term training legacy caused by twin pressures of ghost duty solicitors and touting.
- 3) The substantial number of criminal legal aid firms who offer only one discipline or area of work.

4. The SRA has no or little influence over 1), some influence over 2) but it is 3) that we wish to address in some detail because the SRA could change the landscape for firms and student substantially if it had the will to do so, albeit in cooperation with other agencies and organisations.

5. In paragraph 71. The issue is illustrated in the diagrams below taken from the consultation:



The simple reality is that many if not most Criminal legal aid firms are highly specialist and simply do not offer training in the work place of any of the subjects suggested to be the practical legal skill assessment contexts. They will offer 'criminal practice' but rarely other areas such as Wills, dispute resolution, property, trusts and Estates or commercial and corporate practice etc.

6. This main problem is set out in Paragraph 107. Although the proposal would no longer specify that work experience should include experience of at least three areas of practice, including contentious and non-contentious there remains the requirement to demonstrate skills in two different practice contexts in SQE stage 2. This is not possible for most legal aid firms in house especially from the areas of work specified. There is no family law, immigration or benefit law for example.

7. Many firms and trainees have found it very hard to find short term placements in other disciplines. Sometimes they find themselves having to pay towards another firm's salary bill whilst the trainee worked away there simply out of desperation. Often the trainee will drift away to that other firm with the link weakened. In addition the very narrow context to be chosen from will be with firms with whom the criminal legal aid practice will have few or little contact to arrange such a placement.

8. The consultation says 'Any work-based experience' that allowed a candidate to develop the competences in the Statement of Solicitor Competence could count. Periods of experience acquired under a formal training contract or through working in a student law clinic, as an apprentice or a paralegal, or through a placement as part of a sandwich degree could all contribute to this requirement. But we ask how many of these organisations offering e.g. property, Wills or

commercial law are likely to be interested in taking trainees from criminal practices for 3 months or more. In our experience very few would. There is no incentive for them and no quid pro quo that can be offered by way of reciprocation.

9. It is odd to proffer criminal law and practice on PQE courses without enabling or signposting the practical means to facilitate training placements when the two context experience requires is nearly impossible to secure. We would be interested to learn how many legal aid practices now offer training places. We doubt these proposal will make a lot of positive difference.

10. We appreciate that this may be difficult and optimistic but as this is a consultation so we hope anything can be contemplated but we would urge particular consideration be given to the following:

- I. Given the importance of the criminal law that the SRA consider making representations to the Government and perhaps magic circle commercial firms to set up financial assistance to help defray the cost of the employment of trainees otherwise the supply of criminal solicitors may either 'dry up' or be restricted to a better off economic section of the population able to subsist on low salaries.
- II. Engaging with the Law Society etc and setting up a structure involving firms who might offer legal aid firms direct support by taking and paying the salaries of trainees during a 3 month placement for their trainees so they can gain experience in areas such as Wills, dispute resolution, property, trusts and Estates or commercial and corporate practice.
- III. Contemplate what a missed opportunity this is to make a contribution to society by having such narrow areas for training. Why not family law, Housing law, benefit law, debt counselling and immigration? If the SQE taught these subjects in phase one they could be applied in CAB's, Law centres, advice centres etc. There might be a role for local law Societies to provide a supervision structure and back up. This could be a tremendous boost for the voluntary sector. Trainees with knowledge of the law and gaining experience in areas of law perhaps more relevant to criminal cases and clients than trust and commercial law etc.

To be brutal having tested membership opinion there are no or hardly any trainees going to be taken on by Criminal law practices. Many used to but cannot afford to do so now and if they did no longer have other placements for this type of 'context 'work. If you wish to see the comments we will ask their permission to pass these on.

The path ways will only work for the top end (financially) of the profession not therefore most criminal legal aid firms.

Other issues.

Para 26. We agree it is vital we have a qualification that justifies the high reputation of solicitors of England and Wales around the world.

Para 27. We support a one stop consistent examination at the point of qualification for solicitors.

SQE stages 1 and 2. We support the new course structures subject to our criticism that they ignore subjects like family law, Housing law, benefit law, debt counselling and immigration. The emphasis neglects these vital subjects in terms of work training.

Para 59. Rather than actors why not involve real local lawyers in role playing?

Para 67 stage two. Is there not scope for some specialist option as well? So a candidate could at least have part of the marks allocated to their chosen specialisation if they wish to?

Criminal Law is a much specialised skill requiring particular adversarial skills not necessarily used in other areas. Not suggesting excluding others and support broadness of approach but It would help on job market and most advocacy is done by solicitors.

We have no issues as to the design or methods of assessment.

Questions

We do not wish to add to the answers given by the Law Society on behalf of the profession and support and endorse those responses. We have dealt with issues not picked up by the Society which are specific to our members.

Final Comment.

If the SRA wish to do more than pay lip service to the aim to include Criminal legal Aid firms in the provision of training contracts (and Law students will have to study criminal law as part of SQE) then further steps will have to be taken to support those firms and their potential trainees otherwise the concept and actuality of training contracts will remain theoretical. This means newly qualified solicitors will be unleashed upon the public without specialist training. Broad applicability of skills from other areas will, with great respect be of limited value when being humiliated in court or a police station due to lack of practical training. It will not seem theoretical but very real to the firm and the individual concerned.

The SRA with the Government and the Law Society have an opportunity to breathe new life into the training legacy of the profession related to criminal law and practice. Unless these issues raised above are addressed the essential availability of practical training now barely on life support will die altogether with the public being collateral damage.