

City of London Law Society – Training Committee

Minutes of the CLLS training committee with the SRA and representatives of CLLS member firms on Tuesday 13 October 2015 at Allen & Overy, One Bishops Square, London E1 6AD

CLLS:

Caroline Pearce, Cleary Gottlieb Steen & Hamilton (Chair)
Lindsay Gerrand, DLA Piper
Rita Dev, Allen & Overy
Stephanie Tidball, Macfarlanes
Patrick McCann, Herbert Smith Freehills
Ruth Grant, Hogan Lovells
Hannah Kozlova Lindsay, Slaughter and May
Catherine Moss, Fasken Martineau
Ben Perry, Sullivan & Cromwell

CLLS MEMBER FIRMS:

Allen & Overy
Addleshaw Goddard
City of London Law Society
Clifford Chance
Clyde & Co
CMS Cameron McKenna
DLA Piper
Freshfields
Herbert Smith Freehills
Hogan Lovells
Holman Fenwick Willan
Macfarlanes
Mayer Brown International
Norton Rose
Reed Smith
Simmons & Simmons
Slaughter and May
Stephenson Harwood
Travers Smith
The Law Society

SRA:

Crispin Passmore, Executive Director at the SRA with responsibility for Policy
Julie Brannan, Education and Training Director
Nick Eastwell, an Adviser to the SRA with specific responsibility for City Firms

TRAINING FOR TOMORROW REFORMS – WHAT WILL THEY BRING?

Crispin Passmore gave a presentation on the proposed reforms (slides attached). The SRA had to ask itself some tough questions on the training of lawyers. The SRA's priority is to make sure that all those who qualify are consistently of a high standard. The *Training for Tomorrow* consultation is a response to the challenge. The SRA wants to give training providers the opportunity to innovate rather than the Regulator trying to do this.

In 1993 the system for entering the profession was closely controlled, since then with the introduction of more flexibility in the LPC, the range of providers and the range of different pathways (QLTS/Apprenticeships/Equivalent Means, as well as the LPC route) have made it hard to ensure that everyone is good enough. The one thing which is known is that the SRA has no direct assurance of the consistency and comparability of standards.

The SRA stressed that it is a long way from making decisions and hopes to be in a position to consult before Christmas.

What is the assessment framework that is being proposed?

There are currently three options:

1. That the SRA will continue to specify approved pathways to qualification: if the current system works, why incur the cost of change? Because this does not tackle the issue of consistency.
2. That there be unspecified paths to qualification: this gives providers the opportunity to come to the SRA with whatever pathways they want to develop. However this does not get over the question around consistency or comparability.
3. Some form of centralised assessment: by adopting a Common Professional Assessment (CPA), there will be no need to compare different qualification routes. It will be enough to have passed the CPA. It is like shifting the focus from the number of driving lessons taken to the test itself.

Or all three options could be combined such as a CPA and prescriptive routes. No decision has yet been made. If a CPA is introduced, The SRA assured the meeting it will not reduce standards but could increase them.

What are the benefits of the CPA?

1. It is consistent and fair. There are no first or second class routes to qualifying. This will put pressure on educational establishments because it will be clear if their students are not good enough to pass the CPA.
2. Large city firms could choose to do it in-house and create an in-house training academy routed in their culture. There is an opportunity to have real flexibility at the same time as being rigorous.

The SRA also commented that it was difficult to imagine circumstances where there would not be some sort of training contract if a CPA were introduced.

RESPONSE FROM THE CHAIR

The LETR was the starting point for the reforms and one of its conclusions was that the current standards were for the most part good. That was only two years ago. That review did not challenge the requirement for a degree level of qualification. However, it did support the higher apprenticeship level to level 6/7. Under the proposals currently outlined these two features could cease to be a mandatory requirement. How will the SRA ensure that the quality of legal education is maintained without graduate level entry and a training contract? The training contract system has been the backbone of qualification for as long as any of us can remember. That system has produced a solicitors profession rightly regarded as one of the best in the world and we need to be careful that any system coming in is better than that which is currently there.

The Committee is looking for clear and unambiguous standards that are very visible and an assurance that quality will not be dumbed down. There would need to be an unequivocal enforcement of standards and if not by the SRA then by who?

The SRA endorsed these comments and in respect of the graduate level entry point, commented that currently 40/50% of students go on to achieve this academic level and it would seem unlikely that entrants to the profession would not be within that part of the population. It should be remembered that it is currently possible to qualify as a lawyer without a qualifying law degree (for instance you can qualify within 5 years via the ILEX route). Historically, non-graduates were able to do five years of articles and then qualify. This is not something new and there are many competent lawyers who have come through that system.

Q&A SESSION

Q: Are there any other jurisdictions in the world whose lawyers currently qualify without degrees? How do they fare in a competitive market?

A: There have always been a variety of routes in. The SRA agrees that we need to distinguish between setting a standard at degree level and requiring people to have a degree. It is not opening up a debate about having solicitors at below degree level and noted that course providers will need to convince us that whatever is done will be at that level. Again, the SRA noted that they did not know how they could come up with a system that did not have an element of on the job training.

The SRA added that law is not an entirely graduate profession at the moment and that in a world where university is increasingly more expensive, requiring a degree could become a barrier to social mobility.

It was noted during the discussion that there is no other jurisdiction that does not have a degree requirement for entry. Law is an undergraduate study in the UK and post graduate study elsewhere. The fact that a law degree is not required already makes it difficult to demonstrate the value and quality of an English qualification.

Q: Are we trying to focus on innovation without quality? We had a system that was very high quality and then we became very flexible. Are we providing too much flexibility when the focus should be on quality?

A: Whilst the SRA expressed some sympathy with that argument, it was still necessary to address the issue of social mobility. The SRA's fear is that if it does not respond to calls to address this issue, then a solution will be thrust upon the profession. The SRA states that their first objective is quality. Consumers rely on this and it has the job of making sure that the brand of solicitor means something.

The SRA noted that there are parts of the market that it had no control over. The number of students doing law degrees has doubled since 2000.

There followed a discussion about the fact that the focus should be on quality rather than consistency. The SRA noted that in part it was about language – those qualifying need to be consistently of a high quality. The SRA's concern is that some students are not good enough. Its focus was on consistency of quality. A strong brand needed to be maintained.

Q: What will the CPA look like?

A: The CPA could be a knowledge test incorporated into a law degree or a standalone test. The CPA would be like a driving test and everyone has to pass the test to be allowed to drive. At the moment at least half of all lawyers do law degrees and this is unlikely to change. The SRA thinks it is wrong to be reliant on the brand of the institution itself, it is not a good proxy.

It is too early to be certain about the content of the CPA at this stage. The QLTS is a good model and is similar to that used to assess doctors. There is much work to be done in developing the CPA model

but the QLTS could be followed which means two days of skills assessment with lawyers and actors, in addition to a test of legal knowledge in a practical context.

It was pointed out that the QLTS is designed for lawyers who are already legally qualified with a degree elsewhere.

Q: How is legal knowledge going to be tested?

A: The working model includes a knowledge test and a skills test.

The SRA have commissioned research to show whether this could be delivered and how. The key issues are reliability and validity: reliability in terms of there being consistency between candidates and successive sittings and validity in that the right things are tested. For instance, is it appropriate to get somebody to write an essay about advocacy or should that be tested as part of a skills test?

A supplementary question was raised about the level of knowledge at the point of admission. The response was that competence is tested by reference to the competence statement and knowledge by reference to the legal knowledge statement. The level of that knowledge or competence required at qualification is set out in the threshold standard. The final test would be at the end point and it was unthinkable that the test could be passed without a period of work experience (such as a training contract).

The SRA noted that the title of solicitor at the moment, allows solicitors to practise and to carry out reserved activities but, because so many specialise earlier, many do not get to the required standard in all areas. Firms have the flexibility to train their people in the areas of practice required.

During this discussion the comment was made that much of the work solicitors do is work that they have not done before. Therefore, what firms are looking for from the candidates they recruit, is an intellectual capacity to deal with this as much as what they have actually learned on their degree courses. Having a university degree demonstrates a minimum level of intellectual capacity.

The SRA believes that if they get the CPA right, it will be easier for people to show this. It gives firms the choice to require people to have a first from Oxbridge or to use another route.

The SRA expect that universities will see the change in regime as an opportunity and that they will change their law degrees to cover the knowledge required for the legal knowledge test.

Q: Would the training contract referred to have a mandatory time period?

A: The SRA confirmed that if they retain the training contract then it should have a time limit. There is a possibility that it could be flexible but there will be an expectation that there is a minimum time period.

Members firms commented that if no time period was imposed then the market will be driven down to its lowest common denominator. One of the other values of the current training contract is that it is two uninterrupted years. If as mooted, we are given a system that allows for, say three to six months work experience before each of the exams, the benefit of the experience being uninterrupted is lost. It would be difficult for firms to manage and the trainees would have more limited work experience.

Q: How can you hope to guarantee quality with a 2 day test?

A: The SRA commented that it was not just two days. Candidates will have had six years of training before that and that during the period of a two year training contract, trainees are actually assessed every day.

It was observed that there needs to be input requirements for the legal knowledge. The SRA reiterated that this element of the qualification process has not yet been prescribed and there will be further discussion to come on input. The SRA will consult on the assessment and seek views on other entry requirements before consulting separately on a specific proposal for entry requirements. The CPA is the last bulwark of non-graduates seeking to show that they are at graduate level, therefore it needs to be very thorough. The SRA acknowledged that they are not the right people to run the assessment and has commissioned expert advice on whether its model can produce a valid and reliable assessment.

Q: What do students think? Will there be confusion for students where there is no set framework? Do you have concerns for those who need to know what's coming?

The SRA agreed that social mobility is a challenge but if we work together we can resolve it. You need to let people know what the requirements are to attract people but this model already works for accountants.

Member firms commented on the importance of a clear framework. Students need to be clear on what they have to do to qualify, especially if the SRA is seeking to increase social mobility and not prescribing routes to qualification. There was concern expressed that there was a risk that actually the profession could become less diverse if the ways to qualify were not clear and people did not know how to qualify. There was also a danger of creating a system that was unattractive to the City. The SRA confirmed that the SRA would provide a framework to give people what they need.

The SRA went on to address concerns about the burden of the additional costs associated with the new processes to qualify, by remarking that the SRA have employed an economist to carry out an economic impact assessment. As a postscript to the meeting, the SRA noted that the economist had confirmed that continuing with the current routes with the assessment on top would be more expensive. Other possible routes which the economist had modelled would all be cheaper.

Q: The SRA has said that this is all about setting and enforcing standards but at the same time the SRA is a Regulator and cannot set standards. Who will then set and enforce the necessary standards if there is no objective benchmark to do this against?

A: The SRA replied that its role was about the standard of delivery of services and its competency as that is important for individual consumers. If there is a systemic problem then the Regulator must deal with it.

Q: Is the intention to expand on the threshold standard and the statement of legal knowledge?

A: If the SRA does this, it would have to be an assessment of work document which would be a long document so as to address the breadth of courses. There needs to be a different document to communicate with candidates on what they need to do.

The SRA remarked that it wants to engage with City firms and get their opinions. The whole process will involve consultation, it will not be done behind closed doors.