The Socio-Legal Studies Association (SLSA) welcomes the opportunity to respond to the SRA’s second consultation on its proposals to introduce an SQE in place of the current arrangements for qualification as a solicitor. The SLSA is an association of largely UK-based academics concerned to advance teaching, research and the dissemination of knowledge in the field of socio-legal studies. As such, our interests and expertise encompass the nature of legal education, processes of legal professional formation and acculturation, and the role of lawyers in society. From this perspective, we have several concerns about the SRA’s proposals. In particular we do not consider that the proposals will meet the SRA’s objectives of consistency, quality and increasing access to the solicitors’ profession.

In relation to consistency, we believe the assertions in the consultation paper concerning lack of consistency in the current system are substantially misleading. The provision of academic law degrees is not the free-for-all it is represented to be on p.9. The QAA through its benchmark statements, as well as external examining systems, ensure that standards are met and upheld. There is no evidence to suggest that standards vary to an unacceptable level across the academic degrees. Indeed, the Legal Education and Training Review concluded that the academic stage was broadly satisfactory. For the vocational stage varying pass rates do not necessarily constitute evidence of varying standards. They may be the result of a range of factors and firm conclusions cannot be drawn without detailed research. Consistency of standards at the workplace training stage is currently unregulated and we agree that there is an argument for something along the lines of proposed SQE Stage 2. But even if it is accepted that the SQE as a whole would provide a greater guarantee of consistency, we have grave concerns that consistency is being elevated *at the expense of* quality and equity.

In relation to quality, the proposal is that the current QLD or degree plus GDL, together with the LPC, be replaced with any degree, together with SQE Stage 1. We cannot see how it can possibly be maintained that someone who has no legal education (other than a cramming course for SQE Stage 1) would have the same breadth and depth of knowledge, and have been as rigorously assessed on their ability to analyse legal problems and apply legal knowledge in a nuanced and contextualised way, as someone who has a Law degree or GDL. In other words, the proposals are likely to have a seriously detrimental impact on the depth of understanding of would-be solicitors in relation to law in general, and in particular in relation to fundamental legal values, jurisprudential knowledge and understanding of the ‘law in context’. This risks damaging the reputation of the English and Welsh solicitors’ profession as a whole.

Other systems with common examinations – for example the USA and Germany – have prior law degree requirements. Indeed, in the USA applicants must have undertaken both a generalist undergraduate degree *and* a postgraduate degree in law. Neither are US Bar exams and the German 1st State Examination assessed entirely by means of MCQs. In disciplines that use MCQs, aspiring doctors and pharmacists must have medical or pharmacy degrees. Moreover, law differs from these other disciplines in being a discursive subject involving processes of classification, interpretation and judgement, including the giving of advice and making arguments in situations where the law is unclear. These tasks are inherently difficult to assess by means of MCQs, and no examples are provided to suggest this can be done satisfactorily.

In addition, there is no evidence that the current level of consumer complaints is related to inadequacies in the system of legal education and training. It appears that the majority of complaints in fact relate to lack of effective and timely communication or dishonesty, and the numbers given in the consultation paper are of complaints brought rather than complaints substantiated after investigation. The consultation paper refers only to the area of Immigration as an area where practitioners were found to lack legal knowledge, but since the SQE is not intended to cover this area, this issue would not be addressed. Neither is evidence provided to suggest that in jurisdictions with access tests, the number of complaints is significantly lower or consumer satisfaction is significantly higher. In any event, it is difficult to see the logic of the proposition that removing the requirement for specialist education would be likely to reduce complaints. Indeed there would seem to be quite substantial risks for consumers in the proposals. Assuming that some practitioners will continue to obtain law degrees, one risk is for the emergence of a two-tier profession, in which elite, highly qualified solicitors serve corporate and wealthy clients, while poorer clients are only able to afford the services of minimally SQE-qualified solicitors.

As well as inequity for consumers, the proposals are likely to produce inequities for aspiring entrants to the solicitors’ profession. First, while students will no longer need to meet the cost of the LPC, this will be replaced by the cost of the SQE and of the cramming course that will almost inevitably be required in order successfully to pass the SQE. It is not at all clear that this will result in an overall reduction of costs for students. Secondly, the varying pathways to qualification as a solicitor will not be of equal value. A non-law degree plus SQE, or even an intensively SQE-focused law degree, is unlikely to increase access to the profession for non-traditional applicants, since firms are unlikely to want to take on employees who are less well educated when they are competing with applicants with academic law degrees. To the extent that those taking the new pathways are attractive to employers, it will be because they offer the possibility of cheaper labour. The creation of a de facto two-tier structure as envisaged above is likely to operate to the disadvantage of less well-off and non-traditional entrants who do not possess the resources and/or the social and cultural capital to position themselves at the elite end of the profession.

In light of these concerns, our answers to the specific questions posed in the consultation are as follows:

1. To what extent do you agree or disagree that the proposed SQE is a robust and effective measure of competence?

We strong disagree (5). There is no convincing evidence presented that suggests that SQE Stage 1 will robustly or effectively test the range of knowledge or the types of competence needed for a practising solicitor, such as the ability to analyse situations, to evaluate evidence and make judgements.

2a. To what extent do you agree or disagree with our proposals for qualifying legal work experience?

2b. What length of time do you think would be the most appropriate minimum requirement for workplace experience?

We have no comment on this aspect of the proposals.

3. To what extent do you agree or disagree with our proposals for the regulation of preparatory training for the SQE?

We disagree with this proposal as part of our general disagreement with the proposed model for qualification as a solicitor.

4. To what extent do you agree or disagree that our proposed model is a suitable test of the requirements needed to become a solicitor?

We strongly disagree (5). For reasons of both quality and equity, we suggest that all the pathways to qualification should require possession of a QLD or GDL or equivalent (e.g. via the apprenticeship route, or transfer of an overseas qualification). We further suggest that centralised testing should be limited to the SQE Stage 2, but that this stage should be expanded to include practice contexts such as Family Law, Employment Law, Immigration Law and Welfare Law.

5. To what extent do you agree or disagree that we should offer any exemptions from the SQE stage 1 or 2?

If a QLD or GDL or equivalent continues to be optional, we believe that graduates with such qualifications should be exempt from SQE Stage 1. This would encourage greater educational quality while also promoting equity by sparing law graduates the additional expense of SQE Stage 1.

6. To what extent do you agree or disagree with our proposed transitional arrangements?

In our view, if the proposals go ahead, there will be a need for considerable testing, piloting and validating of the SQE prior to its full-scale introduction, as well as clear information and advice being given to prospective entrants – especially law students – at the point of commencing university study. September 2019 would appear to be too early on both of these counts. Our preferred model would involve simpler changes and correspondingly less lead time.

7. Do you foresee any positive or negative EDI impacts arising from our proposals?

As explained above, we foresee mainly negative EDI impacts arising from the proposals – certainly outweighing any potential positive impacts.

Professor Rosemary Hunter FAcSS

Chair

On behalf of the Executive Committee of the SLSA

9 January 2017