

**Meeting:** Legal Services Board

**Date:** 20 October 2020

**Item:** Paper (20) 47

**Title:** SQE application

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**Status:** Official

### **Introduction:**

1. This paper sets out our assessment of the Solicitors Regulation Authority's ("SRA") application for approval of the proposed Solicitors Qualifying Examination ("SQE") regulatory arrangements, under Part 3 of Schedule 4 to the Legal Services Act 2007 ("the Act").

### **Recommendation(s)**

2. The Board is invited to:
  - **Consider** the application and our assessment of it
  - **Note** our recommendation that the application should be granted (approved) in full
  - **Make a decision** to:
    - approve the application (with clear expectations set for the SRA in terms of the implementation risk they will need to manage), or
    - refuse the application, or
    - issue a warning notice for the application.
  - **Agree** to delegate sign off for the decision notice, or warning notice, to the Chief Executive.

### **Timing**

3. The SQE application was received on 31 July 2020. The LSB has issued an extension notice which extends the initial decision period to 28 October 2020.

### **Background**

4. The SRA is proposing to introduce a new framework for admission as a solicitor in England and Wales. An essential component of this framework is a new centralised assessment, the SQE, which the SRA intends to introduce in September 2021. The LSB approved an initial application on the proposed framework in March 2018. The alterations to regulatory arrangements that the LSB is being asked to approve in this application concern the structure, content

and form of the SQE assessment methodology and appeals process, as well as some minor amendments to regulatory arrangements previously approved in March 2018.

### *LSB statutory guidance on education and training*

5. Board members are reminded that the LSB has issued statutory guidance on Education and Training in 2014<sup>1</sup>. In 2017/18, we reviewed this guidance and concluded that it remained relevant. The guidance sets out five objectives that we seek for Education and Training, which are set out at Annex A.
6. Regulators must have regard to this guidance when reforming their education and training arrangements. The SRA's application does make reference to this guidance.

### *SQE Part 1 application*

7. The LSB approved an initial application from the SRA on the SQE in March 2018<sup>2</sup>. That decision approved *"the framework that will allow for further development and potentially implementation of the SQE"*. The decision notice went on to note (para 15):

*"in making its decision, the LSB has also taken into account the fact that further regulatory arrangements will need to be approved by the LSB to give effect to regulation 1.1(a) and therefore to implement the SRA's new admission requirements."*

8. The decision notice also set out the substantive issues that it was not possible to assess at that stage but that the LSB envisaged the SRA would be in a position to address fully in the second application, that would be necessary to give effect to and implement the new framework.
9. The SRA sought this initial approval in order to give confidence to potential assessment providers about the direction of travel, as it intended to tender for a provider to help to develop and pilot the proposed SQE assessments. The successful assessment provider was expected to invest significant funds in the development of the SQE, leading up to the SRA's second application.
10. The issues identified in the March 2018 decision notice were referred to in a letter from the Board to the SRA in November 2019, which highlighted a non-exhaustive list of key issues that we expected to be fully addressed in the next SQE application, including:
  - 1) Quality of assessment
  - 2) Qualifying Work Experience (QWE) – meeting quality expectations
  - 3) Professionalism and ethics

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<sup>1</sup>

[http://www.legalservicesboard.org.uk/news\\_publications/LSB\\_news/PDF/2014/20140304\\_LSB\\_Issues\\_Statutory\\_Guidance\\_On\\_Legal\\_Education\\_And\\_Training.pdf](http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2014/20140304_LSB_Issues_Statutory_Guidance_On_Legal_Education_And_Training.pdf)

<sup>2</sup> [https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/2018/FINAL\\_decision\\_notice.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_decision_notice.pdf)

- 4) Cost
- 5) Equality impact
- 6) Provision of assessment in Welsh
- 7) Plans for evaluation of impact

### *Stakeholder engagement*

11. Since the SRA made its proposals to reform qualification requirements for solicitors known in 2014/15, many stakeholders have expressed their views. While some have welcomed the move to a centralised assessment under the new framework, many individuals, academics and bodies representing the legal profession have expressed concerns about aspects of the SQE to the SRA, LSB and in open letters.
12. Given the level of concern expressed, the LSB has encouraged the SRA to improve its engagement with stakeholders in developing its further SQE requirements. As part of this, in May 2020 we facilitated a roundtable discussion organised and attended by the SRA and representatives from the Law Society, the Junior Lawyers Division and the Justice Select Committee. The issues raised at this roundtable and in the follow up correspondence have been factored into our assessment.

### *Board consideration*

13. The Board has a standing delegation to the Chief Executive in relation to the approval of changes to regulatory arrangements. Because of the significance of this decision, and on a proposal from the Chief Executive (who is also a Board member), it will be made by the full Board<sup>3</sup>.
14. The Board also agreed, by correspondence, that four Board members should comprise a working group to test the analysis and assumptions made by the Executive in assessing the application and forming its recommendation to the Board.

### *Board decision*

15. The LSB has extended the initial decision period of 28 days for this application to the maximum 90 days under Part 3 of Schedule 4 to the Act. This expires on 28 October 2020. By this date, the LSB must decide whether to:
  - Approve the application in full
  - Refuse the application in full
  - Issue a warning notice for the entire application – this would provide the LSB with an additional 12 months to assess the application, including providing for advice to be sought from relevant stakeholders
  - Approve the application in part and refuse the remainder of the application
  - Approve the application in part and issue a warning notice for the remaining parts.

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<sup>3</sup> The last time that the Board made a decision directly was in November 2018, when it approved the SRA's Looking to the Future application.

16. The LSB may refuse an application in whole or in part only if it is satisfied that one or more of the conditions (“refusal criteria”) set out in paragraph 25(3) of Schedule 4 to the Act, are met. From our assessment of this application, we are of the view that two conditions are potentially engaged, as follows (emphasis added):

*25(3) The Board may refuse the application **only if it is satisfied that** —  
(a) granting the application would be prejudicial to the regulatory objectives,  
(c) granting the application would be contrary to the public interest,*

17. We consider that the other conditions for refusal under paragraph 25(3) to Schedule 4 are less likely to be relevant given the nature of the alterations of regulatory arrangements proposed in this SRA application.
18. In exercising its discretion to approve or refuse an application to alter regulatory arrangements, the Board may need to consider and balance its merits and positive impacts, against detriments and adverse impacts.

### **The SRA application**

19. The SQE application and supporting information can be found on our website at the following link: <https://www.legalservicesboard.org.uk/our-work/statutory-decision-making/alterations-to-regulatory-arrangements/closed-applications-2>.

### *The new framework*

20. The SRA is proposing a completely new framework for admission as a solicitor. Under the new framework, to be eligible for admission as a solicitor, candidates would need to:
- hold a degree, or equivalent qualifications or experience. The current requirement to complete a Qualifying Law Degree (QLD) or Graduate Diploma in Law (GDL) and then the Legal Practice Course (LPC) would cease, removing the mandatory requirement for academic study of law. The regulatory arrangements concerning this aspect of the framework were approved by the LSB in its March 2018 decision on the SQE.
  - pass a two-part centralised assessment: SQE1 (two exams of multiple-choice questions assessing Functioning Legal Knowledge (“FLK”) covering different subject areas) and SQE2 (a series of exams assessing legal skills). Candidates must pass SQE 1 to progress onto SQE2. The current application contains regulatory arrangements that relate to SQE1 and SQE2.
  - complete a minimum of two years Qualifying Work Experience (“QWE”). This could be completed with up to four different legal employers and before completing SQE2. The current requirement to complete a registered training contract after the LPC would cease. The regulatory arrangements concerning this aspect of the framework were approved by the LSB in its March 2018 decision.
  - meet the SRA’s character and suitability requirements. The regulatory arrangements concerning this aspect of the framework were approved by the LSB in its March 2018 decision.

- if seeking recognition of qualified lawyer professional qualifications and experience, comply with the Solicitors Qualifying Examination (SQE): approach to qualified lawyers seeking admission as a solicitor of England and Wales – the principles (“the Principles for Qualified Lawyers”). This proposal was approved by the LSB in its March 2018 decision but approval for minor amendments to the Principles for Qualified Lawyers is sought in the current application.

### *Specific regulatory arrangements*

21. Given that the LSB has already approved the overall framework in March 2018, this application seeks approval for specific regulatory arrangements - the *SRA SQE Assessment Regulations*. Those Regulations give effect to rule 1.1(a) of the *SRA Authorisation of Individuals Regulations*, one of four primary criteria that candidates must satisfy for admission.
22. Rule 1.1(a) requires candidates to successfully and satisfactorily pass a competency assessment conducted by an organisation appointed by the SRA for this purpose. The SRA appointed Kaplan as the assessment organisation in 2018, following the LSB’s decision in March 2018. Following development and piloting of assessments by Kaplan, the SRA has developed the SQE Assessment Regulations. These regulations provide information about the content of the SQE, including specifying the high level form and required order of the assessments. They also cover issues such as resits, exemptions, appeals and reasonable adjustments.
23. The application also seeks approval of minor amendments to the *Principles for Qualified Lawyers*. These principles set out the SRA’s approach to qualified lawyers seeking admission as a solicitor. The changes would:
  - Remove the requirement for qualified lawyers seeking an exemption from the SQE to be from a jurisdiction the SRA’s recognises, focussing instead on the qualification and experience
  - Make clear that qualified lawyers can demonstrate the language requirement in either English or Welsh
  - Extend the language requirement to qualified lawyers who are exempt from parts of SQE2 where the SRA has serious and concrete doubts about their language knowledge
  - Remove the word “test” from the language requirement section to recognise greater flexibility in how candidates can demonstrate their language knowledge.
24. Consistent with the March 2018 decision notice, the LSB’s intention (made clear in the published “SQE next steps” board paper of October 2019) has been that we would assess the second SQE application as the “switching on” provisions for the new framework. Accordingly, in assessing this application we have considered the new framework overall, including those issues that were identified in the March 2018 decision notice as requiring further information and analysis.

## LSB assessment

### *Factoring in stakeholder views*

25. When assessing applications, we always take account of and consider the views expressed by stakeholders through the regulatory body's development and consultation on proposals. The SRA's application explains in detail the issues raised by stakeholders and its response to these (see paragraphs 296 to 451 of its application).
26. Since the SRA submitted its application to the LSB, we have received or been copied into further correspondence from individuals and stakeholders in relation to the SRA's proposals. These stakeholders include, among others, the Junior Lawyers Division, The Law Society, the Legal Services Consumer Panel ("LSCP") and a joint letter from five law subject associations<sup>4</sup>, whose members are law academics from most UK law schools.
27. The procedure and process for approval of alterations to regulatory arrangements under Part 3 of Schedule 4 to the Act does not require that the LSB publicly consult on applications it receives. However, it has been our practice to take account of views communicated to us in in correspondence when considering applications made under Part 3 of Schedule 4. In particular, we review all relevant correspondence for issues that might be relevant to our assessment and seek to identify new issues, or new evidence in relation to existing issues. We publish the correspondence we receive on our website alongside the application. This established practice is what we have followed in relation to this SQE application.
28. We are grateful to stakeholders for the time that they have taken to share their views on the SQE. In our assessment we have sought to cover all of the issues raised by stakeholders.

### *Approach to assessment*

29. Our approach to assessment takes the SRA's two primary objectives for the SQE as a starting point.
30. The SRA's two primary objectives for the new framework are:
  - (i) Greater assurance of consistent, high standards at the point of entry ("Standards")
  - (ii) New diverse pathways to qualification...that promote a diverse profession by removing artificial and unjustifiable barriers ("EDI")
31. If the SRA's objectives are achieved, we consider that the SQE should have a positive impact on the regulatory objectives. Where there are potential adverse impacts, our assessment considers whether they are so significant as to outweigh the positive impacts of the objectives being met (and by extension, whether it is in the public interest to proceed).

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<sup>4</sup> The Association of Critical Legal Scholars, the Association of Law Teachers, the Committee of Heads of University Law Schools, the Society of Legal Scholars and the Socio-Legal Studies Association.

32. Within each objective we have assessed whether issues identified in our assessment of the application, including consideration of issues raised by stakeholders, might undermine or adversely impact on achievement of the SQE objectives, to the extent that approval of the application would be prejudicial to the regulatory objectives and/or be contrary to the public interest.

*Assessment process*

33. We conducted a detailed analysis of all the information available to us to identify a wide range of issues for consideration. All those issues are captured in two comprehensive assessment tables, covering Standards and EDI respectively.
34. These assessment tables have been made available for Board members' consideration. They cover the key issues raised by the LSB in November 2019 as follows:

<b>Standards</b>	<b>EDI</b>
Quality concerns	Overall diversity impacts
Professionalism and ethics	QWE
QWE	Provision in Welsh
Piloting	Cost
Monitoring and evaluation	Piloting
COVID and other miscellaneous issues raised	Monitoring and evaluation
	Other issues raised

35. From the list of issues in the assessment table, we sent four sets of questions to the SRA and assessed its response against the issue in the assessment table. Where the material from the SRA provided us with satisfactory assurance addressing the identified concern, the relevant issue was closed. Through this process, closely overseen by the Senior Leadership Team ('SLT'), we have been able to narrow the focus of the analysis to a small number of priority issues.

*Board SQE working group*

36. There were four Board members assigned to the SQE working group. Board members were invited to:
- Note and consider our approach to the assessment of the application, and challenge the analysis and assumptions made.
  - Consider and comment on our provisional assessment of the key issues which potentially engage the refusal criteria (set out in a paper).
  - Raise any other issues and areas of concern.
37. The working group broadly agreed with the Executive's provisional assessment of the key issues and their consideration and input informed further questions to the SRA.

## Issues for Board consideration

38. We reached a consensus with the working group that from the wider list of issues assessed through this application, there were seven that had the potential to engage the refusal criteria.
39. Of the seven issues, there were five that were considered as potentially engaging the refusal criteria. These were:
- (i) **QWE and professionalism & ethics** – concerns about the clarity of the SRA's quality expectations, including in relation to professionalism and ethics, and the risk of those undertaking QWE being exploited.
  - (ii) **Training provider risks** – concerns about how candidates will navigate the new training market in the early years before data is available. Also, concerns about the potential for providers to fail part way through delivery of a training programme and how this might impact on students.
  - (iii) **Costs/affordability** – establishing whether the new framework will in fact provide the opportunity for cheaper and/or more affordable routes to admission, taking account of fees and the availability of loans and funding.
  - (iv) **Differential performance** – concerns around the differential performance of candidates by ethnicity in the SQE pilots and the case for further piloting to better understand and address this.
  - (v) **Provision in Welsh** – the need to establish the reasons for, and implications of, assessment in Welsh being phased in over a four year period.
40. We have since received additional information and assurance from the SRA on these five issues. On the basis of this additional information, the Executive has concluded that none of these issues satisfy any of the refusal criteria.
41. The Board is invited to review Annex B, which explains these five issues in full, including articulating the concern, the SRA's response and our assessment. It is on the basis of the points set out in Annex B, along with our assessment on the wider issues as set out in the assessment tables, that our recommendation has been based. The reason for our recommendation is also summarised below.

## Recommendation

42. Overall, our assessment is that if the benefits associated with the changes are realised, the SRA's proposals should have a positive impact on the regulatory objectives. Further, there is no reason to conclude from the material available to us that those benefits should not be realised, if the SRA proceeds according to its stated intentions and commitments.
43. We recognise that the twin objectives around standards and EDI have the real potential to deliver significant benefits to the following regulatory objectives:

- (a) protecting and promoting the public interest;
  - (d) protecting and promoting the interests of consumers;
  - (f) encouraging an independent, strong, **diverse** and effective legal profession;
44. With such a significant change, there are risks attached and our assessment has focused on establishing whether any of these risks remain unmitigated to an extent to which it might outweigh the potential benefits and satisfy the refusal criteria, and in particular be prejudicial to the regulatory objectives and/or be contrary to the public interest. As set out in our assessment tables and in Annex B, we do not believe that threshold is met.
45. In reaching our conclusion on each issue, we have taken into account the assurances and commitments provided by the SRA. These include commitments to monitoring, evaluation and research, as well as specific mitigations designed to prevent risks from materialising in the first place. The SRA has also committed to keep its position on each issue under consideration and to respond to the evidence if it identifies concerns.
46. We have identified one risk where the SRA's mitigation could be enhanced. This is in relation to training provider risks and specifically concerns about the viability of training providers and the potential for a provider to fail part way through delivery of a training programme. This will be a new market, and provider failure must be considered a possibility, for example on grounds of inadequate capability or financial viability. The SRA has outlined plans for monitoring the situation in practice and responding to issues that arise. We propose that in addition to this, we set clear expectations for the SRA to undertake further work, in advance of implementation, to establish the viability of introducing additional safeguards to protect students (such as student protection plans or market exit strategies). For the avoidance of doubt, however, while we expect the SRA to take this issue seriously, we do not consider it to be sufficient to engage the refusal criteria on the overall proposals.
47. If the Board agrees to approve the application in full, our decision notice would need to record the SRA's key commitments and our expectations of it and emphasise the importance of it following through on all of these. We would hold the SRA to account for this through our regulatory performance framework.

### **Next steps**

48. If the Board's decision is to approve (or refuse) the application, it will need to be notified to the SRA in a decision notice. It is proposed that the Board agrees to delegate sign off for this decision notice to the Chief Executive.
49. The decision will be formally made when this decision notice is sent to the SRA and once notified, the decision will be published on our website.
50. If the Board's decision is to issue a warning notice, notification and publication will follow the same process as for a decision notice.
51. We will prepare a communications plan to accompany publication.

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	This application comes with a high inherent risk of legal challenge, whatever decision is made. A decision to approve the application is open to challenge from those who oppose the proposals. Equally, the SRA has invested heavily in this project of reform and it is foreseeable that it would seek to challenge a decision to refuse the application, as with the assessment provider. A decision to partially approve or refuse, or to issue a warning notice carries the same risks. We have carefully considered all of the issues in considering and assessing this application to mitigate risks.
<b>Comms and engagement:</b>	A communication plan to accompany our decision is being developed and will be finalised when the Board has made its decision.
<b>Resource:</b>	N/A

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
The whole paper and Annexes A and B	S22 - intended for future publication	30 November 2020

## **Annex A – Outcomes from LSB’s statutory guidance on regulatory arrangements for education and training**

1. The guidance sets out five outcomes that we expect regulatory bodies to address through their regulatory arrangements:
  - (i) Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation.
  - (ii) Providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required.
  - (iii) Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements.
  - (iv) Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis.
  - (v) Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession.
2. The full guidance can be found here:  
[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Guidance.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf)

## **Annex B – Detailed assessment of five key issues most likely to engage the refusal criteria**

1. This Annex explains the five key issues that the Executive and the Board member SQE working group considered most likely to engage the refusal criteria under the Act. For each issue, the Annex explains:
  - The concerns
  - The SRA response
  - The Executive’s assessment
2. Detail on the assessment of the full range of issues considered is contained in the assessment tables on Standards and EDI.
3. References in this Annex to “the March 2018” decision are to the LSB’s decision to approve the SRA’s first application regarding the SQE and its new education and training framework. This decision provided approval for *“the framework that will allow for further development and potentially implementation of the SQE”*.

### **(i) Qualifying Work Experience (“QWE”) and professionalism and ethics**

4. The current application does not set out regulatory arrangements of direct relevance to QWE, as these were approved by the LSB in March 2018. However, the March 2018 decision set a clear expectation for the SRA to produce an updated Equality Diversity and inclusion (“EDI”) impact assessment and to take appropriate action to respond to EDI risks. Since March 2018, new information and concerns have arisen around the potential EDI risks associated with QWE, which has made this a key consideration in our assessment, given that approval of this application would allow for the new framework to be implemented.
5. In addition, whilst the framework regulatory arrangements were approved in March 2018, the current application provided an opportunity to consider how the detail of the SRA’s expectations had developed in the intervening period.

#### *Quality of QWE*

6. In November 2019, the Board identified QWE as a key area of interest for our assessment of this application. Concerns focused on the lack of a clear articulation around the SRA expectations for robust, good quality QWE. Some stakeholders also questioned the quality of QWE that will be provided, as no clear standard or expectation for QWE had been set by the SRA.
7. We also identified professionalism and ethics as a key issue, requesting explanation of how, under the new framework, the SRA expects that ethical practise and the concept of professionalism will be acquired and assessed through QWE.

#### *Risk of exploitation*

8. Some stakeholders (particularly the Junior Lawyers Division and the Socio-Legal Studies Association (“SLSA”)) have raised the concern that the scope of QWE may increase the risk of exploitation of individuals aspiring to be solicitors by less responsible firms, which could have a negative impact on professional standards,

and equality and diversity. For example, there are concerns that individuals aspiring to be solicitors may be put under pressure to undertake QWE on an unpaid basis, as the SRA has stated that unpaid internships can count towards QWE.

9. Linked to the above points around the potential for exploitation, SLT and members of the Board's SQE working group noted concerns about the level of regulatory oversight that the SRA was proposing to take to QWE, noting in particular absence of clear and direct regulatory requirements on the provision of QWE.
10. The LSB has raised a number of issues with the SRA on QWE to seek further information and assurance on the above concerns. In particular, we asked the SRA for the draft QWE guidance that it is currently developing.

#### *SRA response*

11. The SRA said it is engaging with a range of stakeholders including small, medium and large firms, the Sole Practitioners' Group, the Clinical Legal Education Organisation, the Law Society and the Junior Lawyers' Division to get their feedback and develop its final QWE guidance for publication in November. In the meantime, the SRA has provided us with a detailed outline of what its guidance will cover.
12. The information provided below reflects information in the SRA's application and additional information provided to the LSB in response to questions raised with it.

#### *Quality and professionalism and ethics*

13. In terms of quality, the outline guidance that the SRA has shared with the LSB sets out clear expectations for what the SRA would consider to be an acceptable quality of QWE. It has also set out how this is supported through its rules and requirements (explained further below).
14. The SRA will publish data on SQE pass rates by QWE provider which will encourage those providing QWE to provide a good quality experience and help candidates to decide where to train. It argues that this provides greater transparency than is possible in the current system, about which organisations are good places to train in.
15. In relation to professionalism and ethics, the outline guidance records the SRA's expectation that the purpose of QWE is not only to help candidates develop the competences for practise as a solicitor but to enable them to learn from role models how to behave ethically and professionally in accordance with the code of conduct. Moreover, solicitors must sign off a candidates' QWE to confirm that there are no issues which might affect the candidate's character and suitability to enter the profession.
16. Beyond QWE, the SRA has said it will work with training providers to make clear the importance of ethics and professional conduct in the SQE. It has also explained its approach to assessing ethics through the SQE.

## *Risk of exploitation*

17. In its application, the SRA notes a challenge from the current system that it believes will be improved through the introduction of QWE. It notes that some candidates currently take on paralegal roles in the hope that they will eventually be offered a training contract but under the current system, they can get only limited credit for this type of work experience and many candidates are not able to progress to admission. When SQE is introduced, those in similar paralegal roles should be able to count this experience as QWE.
18. The SRA considers that its Code of Conduct for firms and individual solicitors would provide meaningful safeguards in relation to exploitation, as SRA requirements include the stipulation that firms/solicitors do not take unfair advantage and properly supervise and manage staff. The SRA can take enforcement action where it has evidence that employers are not meeting this obligation. The SRA has confirmed that these requirements will be articulated and explained within the final guidance, including direct references to the specific requirements in the Code of Conduct for firms and individuals that could be engaged.
19. The SRA will require QWE to be signed off by a solicitor or Compliance Officer for Legal Practice (COLP), both of whom they regulate and who are subject to the requirements in its Code(s) of Conduct. The SRA say the requirement for a solicitor or COLP sign off is an important protection and means it can take disciplinary action if a false declaration is submitted or, for example, if an individual refused to sign off experience where it had been properly completed to keep the candidate in an unqualified and therefore lower paid position.
20. In response to LSB questions, the SRA has agreed to establish a dedicated hotline for QWE candidates to report issues with QWE. Staff will be trained to support distressed callers. The SRA expects this hotline to provide early warning of systemic issues, or serious or repeated concerns in relation to a particular provider which need follow up action.
21. The SRA say that where it has evidence that standards have not been met, it will apply robust and proportionate sanctions. In terms of poor treatment, the SRA asserts that it would take action were employers to take unfair advantage of candidates, act without integrity in their dealings with them (including bullying, harassment or other poor workplace practices) or fail to promote equality, diversity and inclusion.
22. The SRA explains that it does not want to minimise the benefits of QWE by placing prescriptive requirements on training providers which would unnecessarily restrict the flexibility and availability of QWE opportunities and perpetuate the problems of access to work experience in the current system. It also notes that poor practice does occur under the current system.
23. The SRA has set up a community of interest for QWE employers, which will include opportunities to meet and share best practice and concerns about QWE. The SRA hopes that this will provide insights into how QWE is working in practice and provide information which the SRA can use to develop QWE resources – both for employers and candidates.

### *Commitments to monitoring and evaluation*

24. The SRA has set out a range of measures to monitor whether its expectations are being met and whether candidates are being treated fairly, which includes:

- Conducting an annual survey of candidates to get feedback on their experiences of QWE, which will provide insight into specific QWE environments, including the need for the SRA to take appropriate action where there may be difficulties.
- Reviewing monitoring information such as referrals to its dedicated QWE hotline.
- A focused evaluation of how QWE is working in the second year after the SQE is introduced.
- A wider evaluation programme through the SRA's market studies (which will take place at 2, 4 and 5-7 years), which will look at the availability of QWE opportunities and how employers have reacted to QWE. Through perception studies (which will also take place at 2,4 and 5-7 years) the SRA will explore candidate and employer perceptions of the new system, including their experiences of QWE.

**LSB assessment:***Quality and professionalism and ethics*

Our concerns around quality and professionalism and ethics largely arose due to the lack of detail in the material that was initially presented to us around what the SRA expected and how this would be overseen. Now that the SRA has provided us with its outline guidance, including making clear the role of QWE in enhancing professionalism and ethics, its expectations are clearer. It has also explained how its wider regulatory arrangements will support these expectations and what action it can take if concerns do materialise. Further, it has set out clear plans for monitoring and evaluating the position.

We also note that the SRA's intention to create transparency for candidates by publishing data on SQE pass rates by QWE provider will provide incentives to those offering QWE to provide a high quality of training.

As a result, we consider that the concerns around quality and professionalism and ethics have been appropriately mitigated and that this issue does not raise sufficient grounds for refusing the application.

It will be important that the SRA follows through on its commitments around monitoring and evaluation and we will be able to hold them to account for this through our regulatory performance framework.

*Risk of exploitation*

While we acknowledge the risks of exploitation identified, we also consider that the introduction of QWE could help to address some of the risks inherent in the current system. For example, it should be less likely that aspiring solicitors are kept in paralegal roles without being offered the opportunity to train and qualify.

We consider that the SRA has set out proportionate and targeted measures to minimise the risk of exploitation. In particular, we welcome the commitment to include clear references in the guidance to the relevant rules within the SRA's Codes of Conduct which might be engaged through poor practice. We also welcome the enhanced commitments to monitoring the situation in practice, through annual surveys and building QWE evaluation into the SRA's wider evaluation plans. The establishment of a dedicated QWE hotline to provide support to candidates and intelligence to the SRA on issues arising is also seen as a meaningful mitigation for the risks.

Therefore, we consider that the risks identified in respect of QWE have been appropriately mitigated and do not provide sufficient grounds for refusing the application.

## **(ii) Training provider risks**

25. Training provider risks were considered in the March 2018 decision and the LSB noted that it was an aspect of the arrangements that the LSB would expect the SRA to monitor.
26. Currently the SRA provides authorisation and a degree of quality assurance of its training providers. Under the proposed arrangements, the SRA no longer intends to approve training providers. It is expected that many providers of relevant SQE training will be educational organisations that currently fall under the remit of existing oversight for higher education providers. However, the SRA also expects that a range of new providers will enter the market who may not fall under existing higher education oversight arrangements.
27. Concerns have been expressed by stakeholders about how candidates will be able to navigate the training market and understand the quality of training that they may be offered in the early years, when the training market will be evolving and before data on performance is available.
28. There are also related concerns about financial viability of training providers who are not subject to any oversight. The concern here is that providers might go into administration mid-way through delivering training that candidates have paid for and without protections in place for these candidates.

### *SRA response*

29. The SRA has explained why it does not consider that quality-assuring teaching is the best way to assure the outcomes of that teaching or encourage high quality teaching. Its experience with the LPC and with CPD providers is that it is very difficult to quality assure providers through input measures and related quality assurance activity and it can be misleading to candidates. It considers that its proposed open approach to data (publishing SQE pass marks by training provider) will create a more transparent and accountable market in which candidates can make judgments about value for money, pass rates and whether to purchase providers' services.
30. The SRA notes that many of the providers planning to offer SQE preparatory training are existing providers which are regulated by the Quality Assurance Agency for Higher Education and the Office for Students ("OFS"). Potential candidates can choose among a range of providers, including new entrants, or those with an established reputation in the provision of legal education in this jurisdiction, or abroad; or those who operate within, or outside, the regulated higher education market.
31. The SRA also considers that for all providers, the desire to retain their reputation and market share, and the knowledge that the SRA will be publishing their pass rates, will encourage them to offer quality training. In addition, the SRA has trademarked the term 'SQE'. Any provider wishing to use the term SQE in their advertising must sign up to the trademark terms and conditions of use. This enables the SRA to take action to prevent market abuses (such as publication of false pass rates or misleading advertising). The policy behind the licence is that it is intended to

protect the integrity and reputation of the SQE qualification and to promote a fair and competitive market in which training providers can operate.

32. We asked the SRA to confirm what risks it had identified in relation to viability of training providers and how it proposed to mitigate these. In response, the SRA provided the following explanation and commitments:
- a. The SRA expects that the majority of SQE training providers (and the largest providers) will be regulated by third parties, such as the OFS. The OFS's position is that it will not intervene to prevent a university exiting the market, but it will intervene to ensure that students are protected from a disorderly exit. OFS therefore requires providers to have in place a Student Protection Plan identifying risks (including in relation to institution viability) and measures in place to mitigate those risks. It recently consulted on strengthening these arrangements, by requiring a Market Exit Plan, where it reasonably considers that there is a material risk a provider will exit the English higher education sector.
  - b. The SRA will issue guidance that makes it clear that the SRA regulates the SQE assessments but does not regulate SQE training providers, courses or materials. The guidance will provide pointers for candidates on what to look for when choosing a provider. This will include advice to candidates to check what protections providers have in place and to consider questions such as whether the provider offers the facility to pay for the course in instalments, rather than paying the full fee upfront.
  - c. The SRA will use the community of interest it has established with training providers to keep this issue under review. The community of interest will give the SRA insight into the training market, what support candidates might need and where possible risks might lie. The SRA has stated that it will use this forum to encourage providers to explore ways to work together in the interests of candidates. It will also be able to facilitate discussions between providers if it becomes aware of a possible risk materialising.
  - d. The SRA will keep the training market under review through its routine horizon scanning and engagement with the wider education and training landscape, and through its formal evaluation. There is a built-in review point through the planned initial market study after two years of operation.
  - e. The SRA has committed that where the evidence suggests concerns are materialising about providers' financial viability, it will consider whether it needs to take further action. For example, if necessary, it could consider a light touch system of monitoring for providers who are not already regulated. This could involve a requirement for providers to share financial information with the SRA and put in place a student protection plan in relation to financial viability.
33. Overall, the SRA will monitor the training market as part of its evaluation (in years 2,4 and 5-7 years) and will review its approach if any concerns arise.

**LSB assessment:**

We are satisfied with the SRA's explanation for moving from an inputs-based approach to oversight of training to one based on transparency around outcomes.

However, we recognise that this new system does come with inherent risks to candidates, particularly in relation to navigating the training market in the first few years of the SQE's operation. These arise because training providers will be learning what is expected of them and the SRA's intended publication of pass rates will not have taken root.

We have taken assurance from the SRA's planned mitigations for this risk. In particular, we:

- accept the SRA's argument that even in the early years providers will be incentivised to provide high quality training due to future publication of pass marks
- consider that the SRA has recognised the potential for market abuse and has committed to monitoring the market closely
- acknowledge the SRA's plans to publish materials for candidates to help guide their decision on which training provider to enrol with
- note commitments to monitor and review the situation in practice and respond to signs that risks are materialising in practice.

In relation to concerns about viability risks to candidates, we note the mitigations that the SRA has set out in response to our enquiries, as recorded in paragraph 32 above. Whilst these will mitigate the identified risks to some extent, if we approve the application, in our decision notice we will set a clear expectation for the SRA to work with incoming providers and other key stakeholders such as The Law Society, prior to implementation, to establish the viability of introducing additional safeguards to protect students. This should include consideration of student protection plans or market exit strategies, payment by instalments or mandatory disclosure of providers' arrangements before accepting payment. We would expect the SRA to report to the LSB on progress in this regard.

On the basis of the above, including the commitments to monitoring and evaluation and articulating a clear expectation in relation to additional safeguards to address viability risks, we do not consider that this issue sufficiently engages the refusal criteria so as to merit refusing the application.

### (iii) Costs/affordability

34. The LSB's March 2018 decision made clear that we would expect to see detailed costs information in the next application.
35. Some stakeholders have emphasised that SQE costs do not include the cost of training and courses likely to be taken in preparation for the SQE and suggest that this is borne out to some extent by indications that some firms may require candidates to complete SQE1 and SQE2 before QWE. As a result, they argue that the overall cost may be the same as or even higher than the costs of the existing route.
36. Further, some stakeholders have questioned the figures provided by the SRA in its application for the LPC, noting that there are many cheaper options.
37. Concerns have also been expressed that government funding will not be available for most SQE training, whereas currently some candidates may be eligible for government loans for GDL and LPC courses. This could serve to make qualification less affordable than the current system.
38. The LSB also raised an issue with the SRA concerning the potential for the proposed monopoly assessment provider to raise assessment fees in the future, thus increasing the overall costs of qualification.

#### *SRA response*

39. Since the March 2018 decision, the SRA has appointed Kaplan as the sole assessment provider for SQE and has now confirmed that the cost of assessments will be £3,980. This has allowed it to undertake costs modelling.
40. The SRA expects the SQE to offer candidates a far wider range of choices than under the current system. While it is possible that some routes to qualification may be more expensive than is currently the case, the cost modelling indicates that many routes should be cheaper and all candidates will be held to the same standard, regardless of their choice of pathway. The SRA points out that under the new framework, it will be easier for candidates to earn whilst they learn, making qualification more affordable in practice, regardless of overall cost.
41. The SRA has provided indicative costs and savings of the SQE for the different pathways in a confidential<sup>5</sup> Annex to the application which has been made available to Board members. This modelling works provides comparisons with indicative costings of **£43,250** for the existing law degree and LPC route and **£53,250** for the non-law degree and LPC route. Against these indicative current costs, the SRA has identified indicative savings for a number of possible pathways (based on fees that some providers have published for SQE training):

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<sup>5</sup> The SRA has asked that this Annex be marked as confidential as it contains commercially sensitive information.

• Route	• Indicative cost	• Indicative saving
• Law degree incorporating SQE1 preparatory training, qualifying work experience (QWE) and SQE2 preparatory training	• £35,260	• - <b>£7,990</b> compared to existing law degree route
• Degree (law degree without SQE1 preparatory training), SQE1 preparatory training, QWE and SQE2 preparatory training	• £38,760	• - <b>£4,490</b> compared to existing law degree route
• Degree (non-law degree), Conversion Course, SQE1 preparatory training, QWE and SQE2 preparatory training	• £48,760	• - <b>£4,490</b> compared to existing non-law degree route

42. It has also modelled the following savings for other routes:

- 21% saving for CILEx fellows if they were to qualify as a solicitor through taking SQE1 and SQE2 instead of the existing LPC route
- 38% savings for apprenticeships funded through the apprentice scheme, compared to the old law degree route.

43. In response to questions we raised, the SRA provided further detail to justify the indicative costs it has used for the LPC and confirmed that VAT will not be paid by candidates on SQE assessment fees.

44. The SRA recognises that some firms will require completion of SQE1 and SQE2 before QWE, and if so, it is possible that lack of access to funds could disadvantage those from lower socio-economic background for whom the upfront cost may be less affordable, thus limiting some of the potential benefits of the new approach in terms of affordability. However, the SRA explains that it sees no regulatory justification for restricting the flexibility in how employers recruit and train their future solicitors. It envisages a range of different approaches emerging in the market, pointing out that two firms have publicly announced they will be introducing a training system which will integrate QWE with SQE1 and SQE2 to support candidates to earn and learn. It considers that flexibility for all firms and employers, as well as for the candidates, offers opportunities for all concerned. The SRA says that its engagement with the sector suggests that some employers are considering paying SQE costs for employees, as they currently do.

45. The SRA has addressed cost and affordability in some detail in its EDI risk assessment, which accompanies its application.

46. The SRA also highlights that funding for SQE costs is available through the solicitor apprenticeship levy and that this can include graduates for the last years of their training. The independent Bridge Group report (which the SRA submitted as an annex to its application) also describes graduates' ability to join an apprenticeship

programme to complete QWE and hence have access to funding, as a 'positive development'.

47. The SRA sets out in its application the wide range of training models that it expects to emerge, which will include SQE inclusive law degrees and new post-graduate professional law programmes which may include the current GDL content within an SQE training package. This will mean government funding for SQE for these routes will still be available.
48. In response to the LSB's query relating to Kaplan's future fees, the SRA provided a confidential response which identified a number of controls related to future fee increases.

**LSB assessment:**

We were satisfied with the controls the SRA has identified in relation to future fee increases by Kaplan.

We have interrogated the SRA's costs modelling and are satisfied that the assumptions that they are based on are reasonable. The modelling clearly demonstrates that cheaper routes to qualification will be available. Whilst employer preferences and practices might serve to maintain some more expensive pathways, the availability of cheaper pathways should have a positive impact on diversity and the regulatory objective to encourage a strong and diverse legal profession.

Whilst largely out of the SRA's hands, the likely lack of government funding for some routes for SQE training will not help with affordability. Against this must be considered the lower overall cost and the fact that the market should offer more opportunities for candidates to earn as they learn and therefore avoid or reduce the need for loan funding.

The extent to which employers embrace the new system and adopt practices which support earn as you learn and do not place additional requirements for expensive training will have an impact on cost and affordability for some candidates. The Bridge Group consider this in its report and notes that overall, the SRA will only achieve modest EDI gains without corresponding action from employers and other stakeholders. Whilst it suggests that the recruitment practices of some firms are not a compelling reason to maintain the current position, it makes a number of suggestions for the SRA to seek to build trust amongst stakeholders to encourage them to embrace the reforms. The SRA has shared some details on its plans in this regard, which will include engaging closely with The Law Society and other solicitor representative groups to maximise QWE opportunities.

Taking all these factors in the round, our assessment is that cost/affordability is unlikely to give rise to a negative impact on the regulatory objectives or to sufficiently engage any of the refusal criteria to warrant refusing the application.

#### **(iv) Differential attainment**

49. The March 2018 decision noted the need for the next application to provide an updated EDI impact assessment. Differential attainment is an EDI risk that has been identified through piloting and is reflected in the SRA's updated EDI risk assessment.
50. We have noted the differential attainment in the performance and pass rates of different groups of candidates of the SQE1 and 2 pilots. Some stakeholders have also raised concerns around this. The Kaplan report for SQE1 found that ethnicity and disability were both factors adversely affecting performance. This outcome from the pilot and recommendations made by Kaplan resulted in the SRA removing the skills test from SQE1. The Junior Lawyers Division has raised that it is not clear whether the barrier to qualification for BAME candidates which was identified in the SQE1 pilot and resulted in the skills test removal will reappear at SQE2.
51. More generally, the pilots noted a difference in performance by binary ethnicity<sup>6</sup> in other assessments with BAME candidates performing worse as a group overall than white candidates across both the Functioning Legal Knowledge ("FLK") and skills assessments.

#### *SRA response*

52. The SRA's application explains that the issue of differential attainment is not something unique to the SQE, rather it is a known problem across higher education and other professional assessments. The SRA says it found no evidence that the differential performance identified in the SQE1 and SQE2 pilot was due to the design of the assessments or the assessment tasks, but that the pilot did show that differential performance is an issue which it must monitor in the live assessments.
53. Candidates on the pilots were broadly representative of those that seem likely to take the SQE. The SRA has said that the pilots conducted by Kaplan have incorporated detailed analysis of differential attainment. This has included:
- Univariate analysis of performance by candidate demographics and multivariate regression analysis to try to establish the "true" predictors of candidate performance in a situation of confounding variables.
  - Differential item functioning, looking at whether questions disadvantaged particular groups over and above any general difference in performance between those groups.
54. The SRA does not consider that further pilots would answer any new questions.
55. The application sets out measures that Kaplan will introduce to minimise the risk of unfairness to candidates from protected minority groups. The stated measures are:
- recruitment of a diverse range of assessors, markers and question writers
  - diversity training for all assessors
  - monitoring of outcomes by assessors for evidence of unconscious bias
  - statistical analysis of individual questions to check for patterns of differential performance

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<sup>6</sup> Binary ethnicity refers to binary categories (Black, White, ethnic minority) rather than more detailed levels of ethnic groupings

- statistical monitoring of the performance of protected groups.
56. The SRA's application also stipulates that the SRA will be commissioning independent research in 2020/21 to investigate what might be the underlying causes of differential attainment. This research will be informed by the results of the first cohort of SQE students.
57. The introduction of the SQE as a national qualifying exam will enable, for the first time, collection and analysis of a large data set covering all candidates who have sat the same exam. The SRA consider this will provide a sound basis from which to research differential outcomes and their causes and to measure the effect of actions taken to improve equality of opportunity.
58. Monitoring differential attainment is a key part of the SRA's monitoring and evaluation plans, which will initially include a two-year review point.
59. The SRA's application notes that whilst it is not possible to accurately assess performance across different groups under the current system, there is some concerning data on drop out rates for the GDL and LPC. For example, for the academic year 2017/18:
- For the GDL, the drop out rate was 57% for Black (African, Caribbean/Black British) candidates and 51% for Asian/British Asian candidates, compared to 32% for white candidates.
  - For LPC candidates, the drop out rates were even more marked with 65% for Black candidates and 52% for Asian candidates, compared to 34% for white candidates.
60. The Bridge Group report, which is annexed to the SRA's application, contains a section on differential attainment. Some of the key points from its assessment include:
- Acknowledging references in the SRA's EDI risk assessment to the wider challenge in higher education and other professional examinations in relation to differential attainment
  - Commending the SRA's decision to undertake further analysis to embed an understanding of factors contributing to differential performance and making recommendations for how to conduct this analysis
  - Noting that in relation to single best answer multiple choice questions, its view is that these are as objective an evaluation methodology as possible.

**LSB assessment:**

Concerns about differential performance are relevant to the following regulatory objectives:

(a) protecting and promoting the public interest

(f) encouraging an independent, strong, diverse and effective legal profession.

This issue therefore had the potential to engage the refusal criteria. However, we recognise that there are significant concerns with differential attainment under the current system. The drop out figures from the GDL and LPC demonstrate a significant difference by ethnicity which is very concerning. Of equal concern, is that the current framework makes it difficult to properly track and understand attainment for those who do sit exams.

It is in this regard that the new approach could have significant benefits. The SRA will be able to monitor and report on performance in SQE assessments by a range of factors, including ethnicity. This in turn will provide the basis for better understanding what may be contributing to differential attainment and to targeting activity to address this.

We note and are satisfied that the SRA has carefully considered the results of the pilot and the measures it will undertake to address differential attainment. We also recognise that neither the independent reviewer nor the Bridge Group believed that the differential attainment was due to the design of the assessments or the assessment tasks.

The SRA has made a commitment to commission independent research into this area over the coming year and to monitor and evaluate the position thereafter as a key strand of its wider evaluation plan. It has also committed to respond to the findings of its research and monitoring, to seek to address any issues identified that may be contributing to differential attainment.

Overall, on the basis of the SRA's commitments to monitor, publish and respond to identified issues with differential attainment, we do not believe that this issue sufficiently engages the refusal criteria so as to merit refusing the application. In fact, the new framework appears to provide an important opportunity for significant progress to be made in terms of understanding and responding to existing concerns about differential attainment.

If the application is approved, we intend to hold the SRA to account for carrying through on the important commitments it has made in this regard and to responding appropriately to the emerging evidence.

**(v) Provision of SQE in Welsh**

61. The LSB's March 2018 decision noted that the SRA's decision on offering SQE assessments in Welsh would be relevant to our consideration of the second application and encouraged the SRA to continue to engage with the Welsh Language Commissioner as it developed its approach.

62. The SRA has acted on stakeholder concerns in the time between its first and second application. The SRA now proposes a phased approach to development of the SQE in Welsh. Starting from Autumn 2021, candidates will be able to provide responses to SQE2 written assessments in Welsh. In the second year of the SQE, candidates will be also able to provide their responses to SQE2 oral and written assessments in Welsh. In the third year of the SQE, questions for oral and written skills from the assessments will be translated into Welsh. In the fourth year of SQE, the Functioning Legal Knowledge questions for SQE1 will be translated into Welsh – which will mean full parity of assessment achieved for both SQE1 and SQE2.
63. The SRA has confirmed to the LSB that the LPC is offered in Wales by the Universities of Cardiff, Swansea and South Wales. These courses are largely taught and assessed in English. Although students can request assessments in the medium of Welsh, the SRA's understanding is that there are very limited examples of this having been done. The only example the SRA is aware of is one university running a limited number of interviewing/advocacy assessments in Welsh.
64. The SRA's application explains that it has discussed its proposed approach with stakeholders in Wales and also references comments made by Counsel General Jeremy Miles to the Welsh Parliament, welcoming the fact that the SRA has agreed to offer the SQE in Welsh. In reply to our request, the SRA has provided a copy of a letter from Mr Miles to the SRA dated 30 June 2020, where he states "I welcome the Board's decision of taking a phased approach to providing the SQE in Welsh until there is full commitment to parity between Welsh and English within 4 years of introduction." In response to an LSB request for further assurance on its proposals, the SRA outlined its engagement with stakeholders including the Welsh Government, the Coleg Cymraeg Cenedlaethol, the WJEC, the Welsh Justice Commissioner, Welsh-speaking staff and students at the University of Swansea and the Translation Service at HM Courts and Tribunals Service in Canaerfon.
65. The SRA has set out in its response that it has adopted a phased approach to the introduction of SQE in Welsh to make sure that provision is of the highest quality and consistent with provision in English. The SRA states that the four year implementation period reflects the scale of the tasks to be completed prior to introduction and the need for quality assurance at each stage. The SRA has stated that attempting to implement any earlier will create risks for successful introduction of the SQE in Welsh.

**LSB assessment:**

The SRA's agreement to provide full parity of assessment in Welsh and English, which follows significant engagement with, and input from, a number of Welsh stakeholders should help to promote the regulatory objective to encourage a strong and diverse legal profession.

While a shorter implementation period would be preferable, taking account of the limited existing provision of assessment in Welsh and the SRA's arguments around the scale of work required, we have concluded that its approach is reasonable in the circumstances.

We do not consider this issue to engage the refusal criteria.