



Bar Council response to the Training for Tomorrow: assessing competence consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Solicitors Regulation Authority consultation paper entitled Training for Tomorrow: assessing competence.¹
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. The only element of this consultation to which The Bar Council wishes to respond (taking as it does the view that the training of solicitors is very much a matter for the SRA to discuss with the Law Society) is the section relating to the academic level of training, and then only to Questions 5 and 14, where the level of training under discussion is common to both solicitors and the Bar.
5. Put shortly, our view is that the academic stage of training provides a solid basis for further professional training. Students do not currently have to decide whether they want to pursue a career at the Bar or as a solicitor before they commence a law degree or the GDL. Moreover, some students undertake the academic stage of training with a view to legal practice but, during the course of their studies, decide that they do not want to pursue a career in law.

¹ Solicitors Regulation Authority, 2016, 'Training for Tomorrow: assessing competence'

6. Accordingly, the Bar Council is not of the view that changes need to or should be made to the academic stage of training.

Q5 - Do you agree that the standard for qualification as a solicitor, which will be assessed through the SQE, should be set at least at graduate level or equivalent?

7. In our view, regardless of any changes that the SRA may consider in relation to solicitors' training, the Bar should remain a graduate-only profession. If the SRA remove the graduate level requirement for solicitors, fewer candidates seeking a legal profession would undertake a degree. We are concerned that a side effect of this would be that the pool of candidates for the Bar would diminish. Most students only take a view as to whether to pursue a career as a solicitor or a barrister once they have undertaken some legal training, either on an undergraduate course or during the GDL. Until that point in time they are not sufficiently informed to make a decision as to which branch of the legal professions to follow. By dissuading students from studying to graduate level, the SRA will diminish the numbers of those who will consider a career at the Bar.

8. At this point, we think it worth repeating views expressed by the Bar Council in past responses concerning the need for graduate entry to the legal professions. With regard to the Bar, there is a direct correlation in the type of skills learned in undergraduate studies and those practised at the Bar. We therefore believe that graduate-equivalence is necessary. A lower standard is not appropriate for the level of legal service provision – often of a highly academic nature – required by barristers. We would be surprised if the same remark did not also apply to Solicitors.

9. We wish also to draw attention to the following possible consequences that might flow from the adoption of non-graduate pathways:

- (a) the risk to consumers if practitioners no longer possess a common body of knowledge acquired through a recognised course;
- (b) the substantial variations of standards of legal advice on offer that may result;
- (c) the risk of over-specialisation at too early a stage of legal education and training, before the practitioner's views as to choice have fully formed; and
- (d) (crucially) the potential damage to the UK economy through international reputational damage if lawyers in England and Wales are compared with their foreign counterparts.

10. We are also concerned that the disparity between the training routes would affect social mobility. Those students who are less well off or come from a less well-informed or sophisticated background would not have the necessary information to make such an important choice at this early stage. The single access point to the professions which currently exists will be destabilised and disappear.

Q14 - Do you agree that not all solicitors should be required to hold a degree?

11. The Bar Council is concerned that, if the SRA were to remove the requirement that solicitors should have a degree, then it would create a disconnect between barristers and solicitors where the BSB requires barristers to have a degree and the SRA does not require solicitors to have one.

12. This would create a potential problem for students who, without studying any law, would be required to choose whether to become a barrister or a solicitor at the age of 18 when they are leaving school and making a choice about university. There is added concern that, because students from non-traditional backgrounds tend to be less well informed than other candidates, these students would not be in a position to make an informed decision about their career path at such an early stage.

13. We are also concerned that those universities which currently teach qualifying law degrees may cease to provide this option to their students. This will decrease the options available for those students who would need a qualifying law degree to pursue a career at the Bar. Rather than widening access the suggestion will reduce available training for aspiring solicitors and barristers.

14. More positively, we take the view (summarised in our response to Q5 above, and which we have also expressed in our response to the similar Future Bar Training consultation that the BSB has recently conducted) that the opportunity for mental training and development that a degree confers is a critical part of the skillset of any practising lawyer, whether solicitor or barrister. The SRA is invited to read the reasons upholding that view which are expressed more fully in the responses by the Bar Council and the Council of the Inns of Court to the Future Bar Training consultation, which are available on the BSB website.

15. The current system, whereby solicitors undertake an undergraduate degree or the GDL, also gives those students adequate time to understand the legal system and to make informed choices as to what practice areas and what sorts of work they would like to do. This helps social mobility, as it means all potential solicitors or barristers are better informed as to the career paths and opportunities available to them.

16. We are also sceptical that the proposition that the SQE can be designed to allow through only those candidates who have acquired the mental skills through other means. We suspect that the creation of the SQE for non-graduates will simply lead to the emergence of course providers offering unsatisfactory teaching to the test.

17. In terms of social mobility at later stages we are concerned that the proposals will make it more difficult for those who wish to change profession, from solicitor to barrister, at a later point in their career. Such a change would be likely to be more difficult and more expensive than is currently the case.

18. We are confident that the Law Society will raise other pertinent points relevant to their profession. We would comment that it seems likely that even if the proposed change did take place, and solicitors were not required to have a degree, large and magic circle solicitors' firms will still most likely want applicants and their solicitors to hold a qualifying law degree. There is therefore a danger that the proposals would bifurcate the solicitors' profession.

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² Prepared for the Bar Council by the Education and Training Committee and the Young Barristers' Committee