

Meeting: Legal Services Board

Date: 22 October 2019

Item: Paper (19) 46

Title: SQE next steps

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Status: Official

Introduction: Purpose of the paper/ Issue

This paper sets out a range of issues that are likely to be the focus of the Board's scrutiny as the SRA continues to develop its proposals in relation to SQE. It is not intended to be exhaustive or to otherwise fetter the Board's discretion in exercising its statutory responsibilities.

The Board is invited to agree to the areas set out as the basis for future engagement with the SRA.

Recommendation(s)

The Board is invited to:

- **Discuss** the proposed articulation of the Board's primary areas of concern (summarised at paragraphs 10 to 17), identify any additional issues that are not captured and ultimately **agree** to the areas set out as the focus for future engagement with the SRA.
- **Note** the proposed next steps.

Timing

The SRA expects to submit its second SQE application to the LSB in July or August 2020.

This paper proposes a number of next steps to be pursued in the intervening period.

Background

1. This paper follows on from previous briefings and engagement with the SRA on the development of its new education and training framework.

2. In March 2018 we approved the SRA's first application in relation to its new education and training framework. The effect of this decision was to approve the overall framework upon which the SRA Board could seek to introduce new requirements for individuals to pass a centralised SQE. Our decision notice was clear that the SRA will need to submit another application for approval in order to implement this new framework.
3. The SRA intends to submit its second application in July or August 2020. When this application is received, it will be assessed against the statutory refusal criteria in Schedule 4 of the Act. The criteria that are most relevant are:
 - granting the application would be prejudicial to the regulatory objectives
 - granting the application would be contrary to the public interest.
4. Our March 2018 decision notice set out what we expect the SRA's next application to contain in terms of content, which includes:
 - Awarding Rules – covering rules on re-sits, time taken to pass the SQE, timing of taking assessments and making a complaint or appealing the outcome of an assessment
 - Assessment Specification with details on how SQE assessments will operate (potentially not a regulatory arrangement so would not require LSB approval – to be confirmed upon review of draft¹)
 - Updated Equality and Diversity and Inclusion impact assessment
 - Detailed costs information.
5. We have been clear with the SRA and in public communications that despite the limited content of regulatory arrangements that will require approval, the second application will be assessed more broadly as the overall “switching on” provisions for the scheme. This is appropriate and necessary given the number and range of substantive issues that were raised during the first application and for which we did not have sufficient evidence to conclude our assessment.
6. Our March 2018 decision notice identified issues for which we were not able to conclude our assessment in the first application and expect to return to when we receive the SRA's second application, which included:
 - (i) Quality concerns
 - (ii) Cost and accessibility of assessments
 - (iii) E&D implications
 - (iv) Provision of assessment in Welsh
7. It is now 18 months since our decision was issued. In this time the SRA has appointed an assessment provider, undertaken pilot assessments and published further detail on how SQE assessments will work and what they may cost. Stakeholders have continued to respond to the emerging details and raise

¹ The Assessment Specification will be tested against the definition of, “regulatory arrangements” under section 21 of the Legal Services Act 2007.

concerns. Now is a good opportunity to reflect on the key issues the Board expects to be addressed fully in the next application.

Proposal

8. It is proposed that following the Board's discussion of this paper the Executive writes to the SRA to set out a non-exhaustive list of key issues that we will expect to be fully addressed in its second application, alongside addressing other issues that have been raised by stakeholders. Nothing in the proposed key issues correspondence or informal/roundtable discussions will fetter the Board's statutory decision making on receipt of the formal application.
9. Set out below are the main themes that the Executive has recorded from recent Board discussions. The Board is invited to discuss these and identify any additional areas not captured that should be included in our feedback to the SRA.

Qualifying work experience (QWE)

10. In relation to QWE, stakeholders have expressed concern about sign off arrangements, the risk of those undertaking it being treated poorly and getting limited utility from their time and the overall lack of any quality assurance of the process by the SRA.
11. This highlights an issue about the clarity of what is expected from QWE and expectations around development of meaningful quality criteria for assessing QWE. This is an area where we will expect the SRA to provide further evidence to justify its position.

Cost

12. One of the core aims of the SQE is to make admission as a solicitor more affordable and more accessible. It will be important to ensure clarity about how and the extent to which these benefits will be delivered across the full range of routes to admission.
13. Our March 2018 decision notice emphasised the need for detailed costs information. Information is beginning to emerge on new training offerings for the new framework, which should help to inform the provision of meaningful cost modelling to demonstrate indicative costs for some of the pathways to admission that may emerge.

Equality impact

14. The SRA's first application included a comprehensive Equality, Diversity and Inclusion impact assessment. Through our March 2018 decision notice we have made our expectation clear that we will need to see an updated EDI with its next application. This should include the issues, analysis and evidence that are identified and generated through the development of the SQE assessment frameworks.

Quality concerns

15. It is important that the SQE provides a fully valid assessment of competence and that quality, and perceptions of quality, are not compromised.

16. As set out above, quality is an issue that our March 2018 decision notice identified as needing to be revisited when the second application is received.

Evaluation of impact

17. It is apparent from our assessment of the first application and recent discussions, that the SRA's plans for evaluating the impact of the changes (if they are approved) will be a significant consideration in our assessment. We will expect to see evaluation built in to the design from the start and clear commitments to monitor, review and respond to emerging evidence. It would be beneficial if this included articulating what the SRA would do if the evidence suggested that the change was resulting in poor outcomes.

Risks and mitigations	
Financial:	N/A
Legal:	This proposal is likely to attract significant public debate. It will be important to ensure, as always, that the approaches we adopt are consistent with the legislative framework governing such decisions.
Reputational:	The SQE is high profile and all of the LSB's activity will be scrutinised.
Resource:	Undertaking the proposed next steps should not result in a significant unplanned call on resources.

Next steps

18. It is proposed that the next steps comprise:

- a letter from the Chief Executive to the SRA setting out a range of issues that are likely to be the focus of the Board's scrutiny as the SRA continues to develop its proposals in relation to SQE.
- a roundtable discussion on the SQE, to be arranged by the SRA with representatives from the LSB, Law Society, the Junior Lawyers Division and the Justice Select Committee. This would provide further opportunity to consider stakeholder concerns and how the SRA is responding to these.

19. The legal team will advise through both of these stages.

Annexes

N/A

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
N/A	N/A	N/A