

SRA response to the Commission for Justice in Wales: Call for Evidence

Introduction

1. The SRA is the regulator of solicitors and law firms in England and Wales, protecting consumers and supporting the rule of law and the administration of justice. The SRA does this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. Further information is available at www.sra.org.uk.
2. We are pleased to have the opportunity to provide a response to your initial call for evidence. We are doing more work in Wales, for example we are meeting with the public and solicitors in Wales as we design our new IT systems. Our Board meets annually in Cardiff and we publish an increasing range of our publications in Welsh.
3. At this stage, we have limited our response to some general comments about our programme of regulatory reform. We also set out some detail on the Solicitors Qualifying Examination (SQE) and the progress we have made on this to date – and how this relates to qualification in Wales.
4. Jurisdictional arrangements and decisions about any other devolution issues are issues for the Welsh assembly and the UK government to consider. The same applies to wider justice issues, such as access through legal aid. However, our regulatory model is not dependent on jurisdiction and would be equally as effective and relevant, whether or not England and Wales become separate jurisdictional models in the future. This is in line with the four country regulation model used by UK wide regulators, in the health sector for example where regulation remains a reserved matter in order to support professional labour market mobility as well as reflecting the mobile population of service users.
5. Our reforms are designed to ensure that we focus on high professional standards rather than complex and prescriptive bureaucracy. That means that we have built in flexibility and future proofed our core approach. This will allow us to continue to provide proportionate oversight regulation, whatever future arrangements are made by the Welsh assembly and UK government.
6. We are making good progress towards the introduction of a new centralised qualification – the SQE. We think that a single qualification for England and Wales will remain suitable under any jurisdictional arrangement. The qualification has been designed to assess the core skills required to practise law and will cover both English and Welsh law, with flexibility to recognise emerging or increasing distinctiveness between the two.
7. We are happy to discuss any aspect of this response with you and look forward to continuing to work closely with you as your review moves forward.

A high-level overview of our reforms

8. Since 2014 we have been developing and delivering an extensive reform programme to help us focus on setting and maintaining clear, high professional standards. The timeline for implementing our reforms is likely to coincide with the Commission's review, with new Principles, Codes and rules being implemented in early 2019. Key to our reforms have been:
 - reducing unnecessary bureaucracy
 - reducing costs for the users of legal services and those we regulate
 - removing constraints that prevent the development of a flexible, innovative and competitive legal services market
 - increasing access to legal services and driving competition.
9. The aims of our regulatory reform work are to:
 - set clear, high professional standards for those we regulate
 - offer flexibility, both for legal services providers in how they structure their businesses and for consumers in how they choose to access legal services
 - allow us to keep pace with rapid developments in the market while also maintaining appropriate protections for consumers and the public
 - make sure our regulation is user friendly, so our rules can be understood by the people and businesses we regulate and their customers
 - ensure that consumers have the information they need to make informed choices about the purchase of legal services.

Simplified rules

10. Simplifying our rules has been a key part of the review. We have reviewed more than 648 pages of rules and have heard views from thousands of stakeholders in both England and Wales. We have consulted on a wide range of areas including our Principles and Codes and our Accounts Rules. We have developed a set of Codes and Standards which are accessible, clear and focused on the high professional standards that matter.
11. These changes will allow law firms and solicitors in both England and Wales to concentrate on providing good quality, affordable services – instead of spending time and money on navigating complex and prescriptive rules.

Flexible practice

12. A simple, streamlined set of regulatory arrangements goes some way to meeting our overarching aims, but the most important element of the review is our decision to free up solicitors to provide legal services outside of firms we regulate. These new ways of working are briefly summarised below
13. At the moment, anyone *but a solicitor* can provide non-reserved legal advice to consumers and call themselves a lawyer. Solicitors, who are competent, ethical, professionals cannot. They can only practise from within firms that we regulate.
14. We do not think that this is justified, nor is it in the best interests of consumers of legal services. Our changes will allow all solicitors to have the option of practising in two new ways:
 - they will be able to offer non-reserved services to the public outside of a regulated law firm (either through existing or new services or businesses)
 - they will be able to offer a full range of legal services (including reserved legal activities) to the public without being authorised as a “firm”, if they are genuinely practising on their own as freelance solicitors, and contract directly with the client.
15. The first of our reforms puts solicitors into the currently unregulated legal services market. It allows them the flexibility and the same opportunity to offer their services to the public as other lawyers.
16. The second reform has similarities to the direct access model that barristers can, and do, already use.

Better information

17. Too many people and small businesses struggle to access legal services, with only one in ten people using a solicitor or barrister when they have a legal problem. A key reason for this is for this is the lack of information about legal services makes it hard for people to make informed decisions and weakens competition within the marketplace.
18. We are introducing new transparency rules which will make information about firms, the prices they charge and the services and protections they offer more easily available to the public.
19. These changes should make it easier for the public to find and choose legal services that meet their needs.

Consistent approach to qualification – the SQE

20. We are reforming the way in which solicitors qualify by introducing the SQE, which will make sure all solicitors in England and Wales meet consistent, high standards at the point of entry to the profession. Under the SQE, all aspiring solicitors take the same exam to enter the profession, regardless of their training route. This consistent approach will make sure that everyone knows that all solicitors meet the high professional standards the public expects. The SQE will be available in Wales. We

are investigating whether (unlike the Legal Practice Course) it can be offered in Welsh.

21. In summary, the SQE will benefit:

- **the public** – who can trust that solicitors are meeting the same high standards; four out of five people we surveyed believe everyone should pass the same final examination
- **law firms** – who will have a better guarantee of standards and could benefit from a **potential** widening of the talent pool. They will also have more flexibility to tailor their training in a way in which best works for their trainees and meets their business needs
- **education providers** – who can clearly demonstrate, through a transparent comparable assessment, how effectively they are training their students. The best education providers will thrive
- **would-be solicitors** – who can make choices, based on clear evidence, about how to train and which providers to choose. It will give the best candidates, from all backgrounds, a fair opportunity to qualify as a solicitor. Importantly, the SQE will not only validate different routes into the profession, it will also remove the training contract bottle-neck.

The shape of the legal services market in Wales

22. Our internal data on firms we regulate (see previous briefings for more detail) shows that of the 10,000 plus law firms we regulate in England and Wales, fewer than 400 are currently based in Wales. Firms that are based in Wales tend to be small, with relatively modest turnover of typically less than £500,000. The number of fee earners in each firm tends to be low – more than half the firms we regulate in Wales have less than five fee earners.

23. The relatively small number of firms in Wales are also concentrated in more urban areas of high population, meaning there is a lack of legal services in some areas. This is not good for consumers, but nor is it good for aspiring Welsh solicitors – as opportunities for them to practise in Wales are limited. This is exacerbated by the current, inflexible model of qualification through training contracts – our data shows that in 2016/17 a total of 165 training contracts were awarded in Wales.

24. We do provide the practising certificate in Welsh (around 700 each year). These are largely requested by solicitors in North Wales.

Supporting and developing a sustainable profession - the SQE

25. In addition to the benefits that our new regulatory arrangements may bring, we think that the SQE will also bring benefits to Wales and help to support and develop a vibrant, diverse and sustainable legal profession. In brief, the SQE enables us to be more flexible in our training requirements and provides increased flexibility to those seeking to qualify as solicitors.

26. These new freedoms offer opportunities in relation to the practice of law in Wales. Firms will be able to work with law schools to design courses which meet their

particular needs, including the challenge of delivering legal services in bilingual or rural communities. From a consumer perspective, we think that it is important that consumers can access legal services in the language of their choice.

27. Firms will be able to recruit and develop staff in a number of ways and through a variety of routes. There will be a greater range of ways to train, and new ways of integrating work-based and classroom learning. For example, law firms might establish closer relationships with universities, taking on graduates as paralegals, before training them in-house and putting them forward for the SQE. This would have a number of benefits, not least that it would increase the number and diversity of solicitors qualifying into Wales and Welsh firms.
28. We recognise that Welsh law is increasingly divergent from English law, but do not think that this yet has any significant implications for the SQE. Based on the advice from the Welsh law schools we have spoken to, we do not believe there are any great differences between England and Wales in the law which is currently included within the SQE¹. This is because the SQE only assesses core legal knowledge, not the law needed for specialist practice. As part of the SQE we will, however, expect all candidates to be aware of the implications of the devolutionary settlement and the legislative powers of the National Assembly of Wales.

¹ The only differences we have identified so far are differential rates of stamp duty land tax (which we would not expect candidates to memorise) and different rules of succession in relation to residential tenancies.