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Mason, L. and Guth, J

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Reclaiming our discipline

Luke Mason and Jess Guth

In this editorial we are taking the opportunity to set out our views on the current legal education and training reforms. In doing so we are perhaps taking a slightly unusual approach for an editorial but the issues currently facing us all as legal academics and educators are, we feel, too important for us to miss this opportunity. We should perhaps draw explicit attention to the fact that the views we express here are ours and not those of our employers, at least not in so far as they would ever publicly admit. But this is not a time to hide behind carefully drafted meaningless statements focused on maintaining good relationships and keeping everyone happy. This is a time to (re-)claim our discipline and our expertise and clearly state that the reforms introduced since the Legal Education and Training Review (LETR) was published in 2013,[1] Julian Webb and others, "Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales" (2013) <http://letr.org.uk/the-report/index.html> accessed 2 October 2018.View all notes particularly those being introduced by the Solicitors Regulation Authority (SRA), are not appropriate.[2] For information on the reforms see the contributions by the regulators in this issue as well as their respective websites <www.sra.org.uk/sra/policy/sqe.page>, <www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-requirements/future-bar-training/> and <www.cilexregulation.org.uk/about-us/education-and-training/legal-education-and-training-review> all last accessed 2 October 2018.View all notes In our view not only are they significantly flawed in terms of their regulatory objective and pedagogy but they also do significant violence to law as an academic discipline and to our colleagues and students in our academic and professional communities. The Solicitors Qualifying Examination (SQE) has not even been introduced but already the damage it has the potential to cause is becoming visible in law schools across the country.[3] Anecdotally we know of several instances of multiple-choice tests being introduced into core modules to help prepare students for SQE-type assessment. We are part of regular discussions across institutions where staff express concern about how non-SQE subjects will be squeezed out of the curriculum and many Legal Practice Course (LPC) staff in particular are anxious about what the future holds for them.View all notes Doug Morrison's contribution for example explores how the dominant assessment method in the SQE can stifle creativity and deep learning whereas Emma Jones draws our attention to the lack of engagement with the affective domain in legal practice from all of the regulators.

This special issue and the event on which it is based were aimed at providing a space for reflecting on the last five years, the recommendations made by the LETR and what

the future might hold.[44] The event “The Legal Education and Training Review: 5 Years On” was held at Leeds Law School, Leeds Beckett University on 25 June 2018 to mark five years since the publication of the report and the contributions to this special issue as well as additional papers not yet ready for publication were presented there.View all notes This special issue contains a unique contribution from the three regulators about their approach and ongoing reforms as well as reflections from the LETR research team. It will come as no surprise however that many of the other contributions focus primarily on the SRA and the SQE, with its revolutionary changes. While the LETR was not simply about solicitors, and other things have been happening in the intervening period as outlined in the Policy and Education Developments section of this issue, it is the SRA’s actions and proposals which require the most scrutiny and comment.

Throughout the process of introducing the SQE, the SRA has made a series of claims that we think are, at best, misguided. Given that the justifications for the SQE rest on these claims, this is rather worrying. The first claim is that the regulation of entry into the profession is about outcomes-focused regulation which rightly focuses on knowledge and competencies at day one of admission to the profession. The claim suggests that these things can best be tested by a centralised assessment and the regulation is therefore decoupled from and irrelevant to legal education and training. Put another way: the SRA regulates only the assessment to join the profession and does not care about, nor regulate in any way, the pathway(s) to that assessment. However, as Guth and Ashford pointed out in response to the LETR, the claim that what the regulators do will not impact on legal education and training is at best naïve.[55] Jessica Guth and Chris Ashford, “The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?” (2014) 48 The Law Teacher 5. See also the ALT responses to the various consultations at <www.lawteacher.ac.uk/alt-activities.asp> accessed 10 October 2018.View all notes In fact it becomes rather obvious when listening to the SRA that it is relying on university law schools doing much of the work to prepare future solicitors for the SQE. At recent roundtable events the SRA suggested that university law schools now have greater freedom to use their expertise to train their students. It also repeatedly pointed towards the opportunities for employers to now work with universities to create programmes which serve them better. The SRA thus suggests that the reforms represent an opportunity to free the undergraduate law programme from the shackles of the qualifying law degree (QLD) (without having any regard to the Bar Standards Board (BSB) still requiring a QLD or the fact that if universities are to train students for the SQE the shackles are rather tightened, not removed). In the SRA’s view, it seems, the market will decide and in its view that is in no way problematic.

This leads us directly to two further claims, the first of which is one not made explicitly or maybe even consciously. It is a claim about what law and legal knowledge are. The SRA prioritises a particular conceptualisation of law as a discipline and the SRA’s actions can be seen as an attempt (whether conscious or not) to redefine the nature of law, or at least legal knowledge, itself. The understanding of law and legal knowledge which is contained within the SQE1, the first part of the new “super exam”, is an extreme departure from the ecumenical and open approach which

has traditionally been taken to legal knowledge within legal education and training in England and Wales. By constructing a specific form of centralised assessment based on a multiple-choice examination, the SRA's reforms embody an account of law which is entirely divorced from the numerous forms of reason, argument, justification and context which constitute legal knowledge and thought. This argument is taken up further in the jurisprudential deconstruction of SQE1 in Luke Mason's contribution to this special issue. The SRA has taken it upon itself, through the combination of the abolition of the QLD (at least for its own purposes) and the instigation of SQE1, to radically redefine the nature of legal knowledge. It has done so in an entirely inappropriate manner. The reason why so many legal scholars have been alarmed by SQE is not, as has been suggested at times, due to either conservativism or a desire to protect the role of the legal academy. Indeed, there is no desire to protect a particular way of doing things. As the QAA Subject Benchmark Statement for law spells out, "There are many ways of [teaching law] and different higher education providers will choose different approaches."[6] [6] The Quality Assurance Agency for Higher Education, "Subject Benchmark Statement: Law" (QAA 2015) 6.View all notes Legal knowledge and learning is extremely open and often innovative as this journal has showcased for over 50 years for example. The notion that law schools are trying to protect a particular model of learning is absurd. There is no such model. The reason legal academics are so concerned is the same reason law firms are sceptical about the SQE: they do not think this exam will provide useful information about a prospective lawyer's legal knowledge or ability to use, interpret or apply it.

The reason legal academics are qualified to judge this is that they are experts on the nature of law and legal knowledge. It is the duty of legal scholars in such circumstances to point out the flaws in the SRA's plans. Legal academics, in particular those who make up the readership of this publication, are also experts in legal education and assessment. They are aware of the impact of the change in assessment practices on the syllabus, and on the learning of students. The specific nature of the changes proposed by the SRA leaves us extremely concerned about all of these things and Elaine Hall's contribution both highlights our expertise and explores some of the concerns further. There is however also a broader concern for the quality of legal education more generally and the status of the law degree as a genuine engine for both social mobility and intellectual development through its hard-won status in England and Wales as a prestige liberal arts qualification. Anthony Bradney's contribution to this issue subtly underscores the risk of moving away from this winning model of legal education towards degrees which make impossible professional promises but in fact deliver very little, on that or any other front. The SRA does not have the competence to regulate these matters, but its reforms will have this effect if other stakeholders respond to pressure to re-invent their offerings and practices in line with the new realities of the SQE.

The third claim ignores the practical realities of how "the market" perpetuates and reinforces inequalities. The SRA has stated from the beginning that the SQE will widen access to the profession and will address the equality and diversity concerns highlighted by the LETR and other studies.[7] [7] Julian Webb and others, "Setting Standards: The Future of Legal Services Education and Training Regulation in

England and Wales" (2013) <http://letr.org.uk/the-report/index.html> accessed 2 October 2018; Hilary Sommerlad's work generally but for example Hilary Sommerlad, "'A Pit to Put Women In': Professionalism, Work Intensification, Sexualisation and Work–Life Balance in the Legal Profession in England and Wales" (2016) 23 International Journal of the Legal Profession 61; Hilary Sommerlad, "The 'Social Magic' of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession" (2015) 83 Fordham Law Review 2325; Hilary Sommerlad and others, *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices*(University of Westminster Law Press 2013), first published 2010, reissued 2013 with Legal Services Board Foreword.View all notes One of the key arguments here is that qualification under the new regime will be cheaper. The other is that there is a variety of pathways which all eventually lead to the same thing – the SQE and qualification as a solicitor. Rachel Dunn and colleagues explore what this might mean for the work experience element of qualification in the context of university law clinics and show that this needs careful thinking through if it is to work at all. Future solicitors can choose the pathway which suits them best. However it is not at all clear that the SQE will be significantly cheaper than the traditional route to qualification. It is worrying that at this advanced stage of the proposals the SRA is unable to provide even an estimate of the costs.[88] The current LPC fees range from just under £8000 to over £15,000 but are on average around £10,300 (see <www.chambersstudent.co.uk/law-schools/legal-practice-course/lpc-providers-compared>) whereas the current fees for the Qualified Lawyers Transfer Scheme assessments on which the SQE is clearly based but which are less onerous than the proposed SQE are £565 plus VAT for the multiple-choice test (MCT) (in two parts with 180 questions in total whereas the SQE will likely be split into six MCTs) and the cost of the skills part comes in at £2925 plus VAT and it is not quite clear how this part compares to the proposed SQE2 (see <https://qlts.kaplan.co.uk/test-dates-arrangements>).View all notesCandidates will need a degree or equivalent and will then need to pay for the SQE which does not seem like it is going to be significantly cheaper than the current Legal Practice Course (LPC). It seems highly unlikely that it will be cheaper once the almost certainly obligatory crammer course for the test is added into the mix. Of course if university law schools teach SQE-ready degrees, so the argument goes, there is no need for crammer courses. Except of course that there is a need because the SQE is taken at one point in time and not spread over the duration of the degree and some form of "revision" will always be required. Even the US Bar Exam, which the SRA has frequently referred to as a successful example of a centralised admissions test, requires candidates to take and pay for courses to prepare them in order to pass. It is difficult to see how there will not be significant additional cost to potential future solicitors. Therefore the claim that the SQE regime will be significantly cheaper can be dismissed.

The claim that the different pathways will all lead to the same thing is also an interesting notion. While all solicitors will have to pass the SQE, the context in which they do so and the job prospects following the SQE are very, very different. In reality we suspect that almost nothing will change for students at Russell Group universities heading for Magic Circle firms. Instead of paying for the LPC, firms will pay for the

SQE and will likely offer their own bespoke SQE training courses. Students attending a lower ranked university undertaking an SQE-ready degree will not get any closer to a Magic Circle firm than they do now. The top firms will continue to value the critical thinking skills and deep analysis that students having read for a degree at one of the top universities will bring and the SQE, like the LPC now, will just be a hoop to jump through. Those students who opt for SQE-ready degrees will be those who do not have the social capital to navigate the complexities of a system which appears equal but is not. Even if they score very highly on the SQE (and we do not know whether the score will be available to candidates and employers or whether it will simply be scored on a pass/fail basis; the SRA has said both during its consultation events), employers will still look to other skills, many of which will have been squeezed out of the degree to make room for the SQE syllabus. Jessica Guth's contribution to this issue explores some of these issues in the broader context. However, even if the SQE were to be made more sophisticated in its ranking and classification system, if the qualification itself does not provide employers and others with the guarantee of a sophisticated, well-rounded candidate, they will look past the SQE in favour of traditional markers of quality in their eyes: A levels, school, accent, demeanour, style of dress, and so on. Students who are sold access to the legal industry through an SQE-focused law degree will be those who are most harmed by this change. In short, the SQE risks exacerbating inequality and is a step backwards for genuine diversity in the profession and perpetuates and potentially widens the split in the profession between high street and Magic Circle firms. What is worse, it does so by creating an illusion of equality.

The LETR was an opportunity to think deeply in a collective manner about the nature and goals of legal education, and indeed the nature and goals of the legal profession. It is a mistake to take the SRA's claims at face value and it is certainly a mistake to underestimate the links between legal education and the profession. The nature of this relationship is extremely complex, and one can do great violence to both if laudable goals are pursued in inappropriate ways. We are running out of time to reclaim our expertise and our discipline and to ensure that the violence is not done.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes

1 Julian Webb and others, "Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales" (2013) <http://letr.org.uk/the-report/index.html> accessed 2 October 2018.

2 For information on the reforms see the contributions by the regulators in this issue as well as their respective websites <www.sra.org.uk/sra/policy/sqe.page>, <www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-requirements/future-

bar-training/> and <www.cilexregulation.org.uk/about-us/education-and-training/legal-education-and-training-review> all last accessed 2 October 2018.

3 Anecdotally we know of several instances of multiple-choice tests being introduced into core modules to help prepare students for SQE-type assessment. We are part of regular discussions across institutions where staff express concern about how non-SQE subjects will be squeezed out of the curriculum and many Legal Practice Course (LPC) staff in particular are anxious about what the future holds for them.

4 The event "The Legal Education and Training Review: 5 Years On" was held at Leeds Law School, Leeds Beckett University on 25 June 2018 to mark five years since the publication of the report and the contributions to this special issue as well as additional papers not yet ready for publication were presented there.

5 Jessica Guth and Chris Ashford, "The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?" (2014) 48 The Law Teacher 5. See also the ALT responses to the various consultations at <www.lawteacher.ac.uk/alt-activities.asp> accessed 10 October 2018.

6 The Quality Assurance Agency for Higher Education, "Subject Benchmark Statement: Law" (QAA 2015) 6.

7 Julian Webb and others, "Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales" (2013) <http://letr.org.uk/the-report/index.html> accessed 2 October 2018; Hilary Sommerlad's work generally but for example Hilary Sommerlad, "'A Pit to Put Women In': Professionalism, Work Intensification, Sexualisation and Work–Life Balance in the Legal Profession in England and Wales" (2016) 23 International Journal of the Legal Profession 61; Hilary Sommerlad, "The 'Social Magic' of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession" (2015) 83 Fordham Law Review 2325; Hilary Sommerlad and others, *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices* (University of Westminster Law Press 2013), first published 2010, reissued 2013 with Legal Services Board Foreword.

8 The current LPC fees range from just under £8000 to over £15,000 but are on average around £10,300 (see <www.chambersstudent.co.uk/law-schools/legal-practice-course/lpc-providers-compared>) whereas the current fees for the Qualified Lawyers Transfer Scheme assessments on which the SQE is clearly based but which are less onerous than the proposed SQE are £565 plus VAT for the multiple-choice test (MCT) (in two parts with 180 questions in total whereas the SQE will likely be split into six MCTs) and the cost of the skills part comes in at £2925 plus VAT and it is not quite clear how this part compares to the proposed SQE2 (see <https://qlts.kaplan.co.uk/test-dates-arrangements>).