

Will the SQE's Legal Research Assessment Produce Solicitors Who Can Carry Out Legal Research Effectively?

Abstract: With the Solicitors Qualifying Examination (SQE) having been introduced in 2021 the training of solicitors has changed. But what impact will its legal research assessment have on their ability to do this sort of work? Here **Greg Bennett**, who works at BPP in London – where in addition to being a law librarian he is also studying the LPC – gives an overview of the situation and outlines his own concerns.

Keywords: education and training; legal education; professional legal education; law colleges; legal research

INTRODUCTION

The Solicitors Qualifying Examination (SQE) has now largely replaced the Legal Practice Course (LPC) as the qualification that aspiring solicitors take. There is still a transition period, and people will still be able to qualify via the LPC route. However, the vast majority of aspiring solicitors will now qualify via the SQE route, not the LPC route, despite the transition period running up to the end of 2032.

The SQE was brought in, in part, to attempt to increase diversity of background of future solicitors “by removing artificial and unjustifiable barriers”.¹ And, in part, to standardise the assessments that future solicitors would take, so as “to deliver a single, rigorous assessment for all those who want to join the profession”.²

The success or otherwise of the first goal has been written about elsewhere,^{3 4 5 6} so that aspect of the SQE will not be discussed in this article. However, the focus here will be on the second goal highlighted above, namely, whether the SQE is achieving a “rigorous assessment for all those wanting to join the profession”.⁷ In particular, since I am not an expert in the other aspects of the assessment, but do have expertise in legal research, my focus will specifically be on the legal research element of the Solicitors Regulation Authority's (SRA) centrally-set SQE2 exam.

THE DIFFERENT ASSESSMENTS (LPC V SQE)

Both the LPC and the SQE contain a legal research element. However, the assessment is quite different in each. Historically the LPC's legal research assessment has been carried out over a reasonably long period of

time (at BPP University, where I work, the practical legal research assessment takes place over 36 hours). Students are given a scenario in which they will have to advise a client on various legal issues. They are then expected to research those legal issues using a law library (this tends to be done using almost exclusively digital resources these days), and produce a note of advice to the client, based on the research that they have carried out.

Ahead of this assessment, at BPP, librarians train the students in legal research techniques. In particular, the difference between primary law sources and secondary sources are made clear, as is the importance of using practitioner texts and encyclopaedias like Halsbury's Laws, rather than academic texts and journal articles to carry out real-life practical legal research (or, for that matter, the free Internet). The students then carry out the assessment, finding all the documents that they use to produce their note of advice themselves.

This means that, for students to pass this assessment, they must have carried out some relatively in-depth legal research. It may not be obvious to librarians in law firms, but all LPC-qualified trainees should therefore have developed a reasonable level of legal research expertise by the time they started their training contracts.

The SQE's legal research question is similar in some respects, but markedly different in others. Just as with the LPC, students are faced with a scenario for which they must give legal advice to a client. However, the assessment just takes one hour, in an SRA-approved assessment centre. The students do not have the opportunity to search for answers to their legal question themselves using a law library. Instead, they are simply provided with several documents, which all come from within legal databases. Some of the documents are



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primary law sources, and some are commentary. They then have to look at the documents, and determine which are useful to their scenario, and which aren't. They then write advice to their client based on the information in the relevant documents. (The SRA has made a sample question available on its website.⁸)

THE PROBLEMS WITH THE SQE2 LEGAL RESEARCH ASSESSMENT

On hearing this, most law librarians might wonder whether this assessment tests the students' legal research skills at all. It certainly tests their ability to apply legal information to a particular scenario, but they don't have to find any of that legal information itself. Instead, they need to determine, from a small set of documents, which ones are relevant, and which aren't.

In reality, when researchers start to research a topic, they are unlikely to simply be choosing from a handful of documents. Instead, the goal of effective legal research is to find answers from within the huge corpus of materials that makes up a law library (most of that corpus sits inside the big subscription databases). So, why does the SRA's SQE2 legal research assessment bypass this activity?

The SRA was certainly satisfied that its SQE2 assessment (into which the legal research element falls) met its

criteria of being a reliable, valid, manageable and cost-effective assessment.⁹ As a law librarian, I feel less convinced of the validity of a legal research assessment that doesn't require students to find any legal information. The SRA's Statement of Solicitor Competence, which is the framework on which the SQE has been designed,¹⁰ has the following description of what is required knowledge for solicitors when it comes to legal research:

"B2 Undertak[ing] legal research, includ[es]:

- a. Recognising when legal research is required
- b. Using appropriate methods and resources to undertake the research
- c. Identifying, finding and assessing the relevance of sources of law
- d. Interpreting, evaluating and applying the results of the research
- e. Recording and presenting the findings accurately and clearly." ¹¹

SQE2 does successfully test d and e. Perhaps it could be argued that it tests c, at least in part. However, it is very questionable as to whether SQE2 tests either a or b at all.

In fact, the setting of the legal research element of SQE2 is a somewhat contrived one. As mentioned above, when carrying out real-life research, the researcher won't

be simply handed the final correct answer amongst a few red herrings. This contrived setting is surely a by-product of the SRA wanting to achieve the aforementioned “single, rigorous assessment”. The SQE has been designed to reduce the obstacles in the paths of future potential solicitors. One of those obstacles is cost. The LPC was delivered and assessed by various providers (including BPP). Those providers could then charge an appropriate amount for the entire course. The SQE, on the other hand, is assessed centrally through the SQE1 and SQE2 exams, and the fees are set by the SRA.

Theoretically, then, students could sit the new SQE exams without having to pay a traditional provider to prepare them for the exams. In which case, they could pay a substantially lower amount to get the SQE qualification than to pass the LPC (if you pass both SQE1 and SQE2 first time, you would currently need to pay just £4564).¹²

So, standardised exams (produced by Kaplan on behalf of the SRA)¹³ can potentially reduce costs to students (and therefore hopefully encourage a wider set of candidates qualifying to become a solicitor). However, particularly in the area of legal research, it appears that those candidates are not being assessed as rigorously as their LPC-trained counterparts. As mentioned above, the practical legal research element of the LPC takes place over a couple of days, and students are expected to carry out some reasonably in-depth research in order to find the appropriate primary law sources to be able to answer the legal question in front of them.

There is certainly a simplicity to the SQE assessments, in that they can be taken at any SRA-approved examination centre, and no extra materials are needed. Whereas, a two-day assessment cannot be easily taken in a test centre, and access to a law library is needed to be able to take the LPC’s practical legal research assessment. However, the simplicity of the “single, rigorous assessment” of the SQE, seemingly leads to the assessment becoming less rigorous in fact, at least specifically in legal research, than the LPC had been.

FIXING THE SHORTCOMINGS OF THE SQE AT BPP

This deficiency in the new assessment is something that we at BPP have been keen to ameliorate. So, we librarians deliver additional training to our SQE students, entitled, ‘Legal research skills for SQE and practice’. We deliver this training whilst the students are studying towards SQE1, not SQE2 (the legal research assessment falls under SQE2). That way, the training will produce knowledge for the students early on in their course so that they can then use it throughout the course. I have experienced over many years of training students that if students can be given tools to enable them to carry out relatively advanced research at an early enough stage, they will then employ those tools such that they further develop the skills they have. There is a clear snowball

effect to research skills. Once there is a critical mass of knowledge, more expertise is likely to follow.

But the training is also intended to prepare the students for practice, where they are likely to have to carry out actual legal research, i.e. where they will have to find relevant cases and legislation for themselves. So, we prepare them for that too. This means that future BPP-trained SQE graduates will have a fuller expertise than the basic requirements of the SQE (we are doing this in other areas than just legal research, but it is specifically legal research that I am involved with).

WHAT ABOUT NON-BPP-TRAINED SQE STUDENTS?

However, not all future graduates of the SQE will benefit from this approach to produce well-rounded graduates. In which case, it would seem likely that there will be a decline in the legal research skills of future trainee solicitors.¹⁴ One of the positive outcomes of the new SQE is that there is greater diversity in routes to qualification. But perhaps there might be a downside, in that, if SQE students do not get the well-rounded training as delivered in places like BPP, they might well pass the exams, but may well not have the full skills expected in the Statement of Solicitor Competence.

In the area of legal research, this will surely impact on the training that will need to be given to all new trainees within law firms. Quite possibly some very basic skills will need to be taught. After all, there is no longer a requirement with the SQE route to qualification that any law degree (or law conversion course) needs to be taken. In which case, it could well be that the only legal research that an SQE-qualified trainee has ever done is the bare minimum of the requirements for SQE2.

This issue seems to have been picked up by many law firms. I, personally, have had several law firm librarians contact me to find out exactly what we at BPP are doing to rectify this deficiency in the SQE. And at BPP, in the workshops for our SQE1 programme, students undertake research exercises in different practice modules which reflect the tasks which they might be required to do in practice. In both our SQE1 and SQE2 programmes, the students are thoroughly prepared for the SQE2 research assessments by developing their understanding of the purpose of legal research and honing their ability to quickly seek solutions within primary and secondary sources to craft client-focused advice. The library team also holds legal research workshops, mentioned above, covering legal research in both the SQE regime and in practice.

But perhaps this will mean that law firms, when hiring, will prefer to take on people who studied for their SQE exams at traditional providers of teaching for professional legal qualifications, like BPP. If that does happen, then one of the goals of the SQE – “the development of new and diverse pathways to qualification, which

are responsive to the changing legal services market and promote a diverse profession by removing artificial and unjustifiable barriers”¹⁵ – might be overridden (at least, slightly, perhaps). And the places that teach their students more than the basic requirements of the SQE, might end up dominating the market.

CONCLUSIONS

The SRA’s assessment of legal research skills in SQE2 is certainly a less rigorous assessment than the LPC’s. This will have to be factored into the training given by law firm librarians when they get their new trainees, to ensure that future solicitors will maintain the same level

of legal research skills as their LPC-trained predecessors. Firms might prefer receiving trainees who have studied with providers like BPP, where additional training to augment the requirements of the SQE is delivered. But they might like to train all new trainees from scratch, assuming very little knowledge of legal research. That way, they would be responsible for teaching the totality of their new trainees’ legal research skills.

It is also worth mentioning that the future, surely involving more AI in a legal setting, will probably not require solicitors to be as skilled in legal research as they once needed to be.¹⁶ In which case, the failings of the SQE in this area might well end up having little future significance.

Footnotes

¹ Solicitors Regulation Authority, ‘Solicitors Qualifying Examination (SQE) Briefing’ (August 2020) para 7 <<https://www.sra.org.uk/globalassets/documents/sra/news/sqe-briefing.pdf?version=4a3d31>> accessed 2 January 2024.

² *ibid* para 5.

³ Jemma Slingo, ‘Fees for SQE Fail Diversity Test’ [2021] Law Society’s Gazette 9.

⁴ Ciara Bartlam and Crash Wigley, ‘We Are Concerned That the SQE Fails to Reduce High Up-Front Training Costs’ [2021] Legal Action 19.

⁵ Niamh Dunne, ‘Liberalisation and the Legal Profession in England and Wales’ [2021] Cambridge Law Journal 274.

⁶ Emily Hinkley, ‘Report Flags Differences in SQE Pass Rates between White and BAME Candidates’ (*Legal Cheek*, 16 March 2023) <<https://www.legalcheek.com/2023/03/report-flags-differences-in-sqe-pass-rates-between-white-and-bame-candidates/>> accessed 31 January 2024.

⁷ Solicitors Regulation Authority, ‘Solicitors Qualifying Examination (SQE) Briefing’ (n 1).

⁸ Solicitors Regulation Authority, ‘Legal Research (Sample Practice Area Criminal Litigation)’ <<https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-sample-questions/legal-research>> accessed 29 January 2024.

⁹ Solicitors Regulation Authority, ‘SRA Response to the SQE2 Pilot’ (8 June 2020) <<https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/pilot/sqe-pilots/sqe2-pilot/sra-response-sqe2-pilot/>> accessed 8 January 2024.

¹⁰ Solicitors Regulation Authority, ‘Solicitors Qualifying Examination (SQE) Briefing’ (n 1) para 35.

¹¹ Solicitors Regulation Authority, ‘Statement of Solicitor Competence’ (24 March 2015) <<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/>> accessed 8 January 2024.

¹² Solicitors Regulation Authority, ‘Costs and Fees | SQE | Solicitors Regulation Authority’ <<http://sqe.sra.org.uk/about-sqe/costs-and-fees>> accessed 17 January 2024.

¹³ ‘The Solicitors Qualifying Examination’ (SQEWebsite) <<https://sqe.sra.org.uk>> accessed 31 January 2024.

¹⁴ I am aware that the SQE no longer requires its graduates to complete a training contract as such, rather two years of Qualifying Work Experience (QWE) is what is required, but I have used the term trainee throughout this article to mean someone who has passed their exams, but who hasn’t yet completed two years of experience.

¹⁵ Solicitors Regulation Authority, ‘Solicitors Qualifying Examination (SQE) Briefing’ (n 1) para 7.

¹⁶ Greg Bennett, ‘Is ChatGPT Any Good at Legal Research – and Should We Be Wary or Supportive of It?’ (2023) 23 Legal Information Management 219.

Biography

Greg Bennett retrained to become a librarian after a brief career in pensions in the City of London. His trainee year was at the Institute of Advanced Legal Studies, where he discovered a love for specifically law librarianship. He came back to work at IALS after his MA, and then worked at the law firm Slaughter and May before returning to the academic sector at the University of Essex. From 2018 to 2021 he worked for Goldsmiths, University of London, and during that time he completed an LLM by distance learning. He now works at BPP in London, where, in addition to being a law librarian, he is studying the LPC.