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Ceding BSB power to AETOs: accessibility or impenetrability?

There has been much discussion of the Solicitors' Regulation Authority's introduction of the SQE and its consequent abandonment of the Qualifying Law Degree as a pre-requisite for qualifying as a solicitor. Over the same period the Bar Standards Board (BSB) introduced its own reforms, which generally received a more favourable response from the legal education community. This year they have consulted further and you can find this new consultation at

<https://www.barstandardsboard.org.uk/news-publications/consultations.html>. The consultation period concluded in April and this brief article explains the proposals and how the Association of Law Teachers has responded.

The proposals form part of the BSB's continuing response to the Legal Services Board's Legal Education and Training Review of 2013 and are designed to 'modernise and simplify our approach to regulation, to remove unnecessary barriers and to put in place only those requirements that are proportionate and necessary, whilst upholding the four key principles of training reform: accessibility, flexibility, affordability and sustaining high standards.' To this end they propose four key changes.

The first is to amend the definition of academic legal training, largely to remove 'unnecessary' prescriptive detail. We have not objected to this proposal and recognise that it allows for flexibility in the future, to respond to changing circumstances and to enable the BSB to maintain a review of the effectiveness of the changes they propose.

The second is to change the requirements of academic legal training. This will take the form of a degree at level 6; a degree at level 6 plus a conversion course (such as the GDL); or an equivalent qualification (and they mention the SQE as one such). The existing requirement of a lower second class degree will go. However, applicants must demonstrate a number of Competences which appear in the Professional Statement:

Legal knowledge, skills and attributes:

Barristers will:

Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers should:

a) Be able to recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice specified by the Bar Standards Board.

b) Be able to keep up to date with significant changes to these principles and rules.

Competence in respect of the academic component incorporates the need for prospective barristers to be able to demonstrate good knowledge and understanding of the “seven foundations of legal knowledge” subjects: Criminal Law, Equity and Trusts, Law of the European Union, Obligations 1 (Contract), Obligations 2 (Tort), Property/Land Law, Public Law (Constitutional Law, Administrative Law and Human Rights Law).

This maintenance of the seven foundations of legal knowledge is significant for law schools seeking to attract potential barristers to their degree programmes.

The third key change is to transfer the responsibility for checking eligibility to enter Bar training from the BSB to Authorised Education and Training Organisations (AETOs), the institutions offering the Bar course. We approve of this suggestion, but warn that different AETOs may apply different standards and incur extra costs in doing so. We address this further in our comments below.

The fourth key change is to abandon the requirement that non-graduates and overseas applicants obtain a Certificate of Academic Standing before joining a GDL course. We endorse this proposal, although we question the flawed rationale on which the BSB bases it. Their justification is that they do not require such a certificate for entrants to an undergraduate degree and therefore should not require one for entry to the GDL. This misses the point that the GDL is a postgraduate course for which level 6 education or its equivalent is essential. However, we agree that AETOs are in a good position to make decisions about applicants’ preparedness for entry to these programmes.

Thus far, it appears that we are generally happy with the proposals raised in the Consultation Document. However, as usual, the devil is in the detail. We were also asked whether there are any potential equality impacts that they may not have considered. We pointed out that their reference to the SRA’s SQE1 as a qualification that might be regarded as equivalent to a UK law degree may have an equality impact given that this examination is in large part based on Multiple Choice or Single Best Answer questions. There remains an unexplained impact on the performance of some categories of BAME applicants of this type of assessment.

Moreover, we drew the BSB’s attention to a number of concerns that we had identified. In so doing we encourage them to take advantage of the valuable work undertaken in preparing the current Law Benchmark Statement and the Legal Education and Training Review (to which they refer as guiding their approach). These are our further observations:

- a) Your proposal to shift the decision-making on admissions from the BSB to AETOs, and to make the simplifications that you describe will have an impact on the way costs are incurred. It should provide the BSB with a considerable saving in that you will no longer have to deal with requests for exemptions or

waivers. Instead, where AETOs have to address appeals from their decisions as to admissions (applying the criteria in the new Curriculum and Assessment Strategy and BSB Guidance) they will incur extra cost. This will arise at a time of considerable financial constraints on universities and perhaps even more constraints on many student applicants. Universities will need to find funds to meet these costs and may have no option but to reflect them in the fees they charge. It is therefore important that the BSB reduces the charges they impose on entrants, so that there is no greater burden on individual student applicants.

- b) The level of independence expected of the practising barrister is greater than that required of other branches of the legal profession. This is one justification for retaining a distinct profession of barrister and a distinct set of standards to the pathways for acquiring the qualification. It requires a sound basis in critical academic study of core concepts and material, on which is then built the professional knowledge and skills provided by the vocational component and the work-based learning. For these reasons, we take the view that the BSB should maintain a requirement that applicants for the vocational component should continue to demonstrate that they have acquired the characteristics laid out in the LETR 2013 review. This may be done by successfully completing a degree (within any jurisdiction and in any discipline) or demonstrating that through other means they have acquired an equivalent experience and discipline. A valuable source of guidance to AETOs exercising admissions decisions is the current (2023) Law Subject Benchmark Statement, published by the Quality Assurance Agency to which we believe the BSB's guidance should make reference. For example, reference to the inherent skills itemised in para 3.4 of that Statement, including self-knowledge, ethics, values and independence of mind would be valuable. Given that it is not prescriptive, but designed to support the work of PRSBs such as the BSB, it is a useful reference point for assessing the qualifications and experience of applicants from other jurisdictions and presenting alternative pathways to applying for the vocational stage. This should be specified in the Guidance for AETOs to be published by the BSB.
- c) What is more, flowing from the same observation about the independence of barristers (and also referenced in the LETR Report), we consider that the BSB's Guidance should introduce the expectation that Recommendation 7 of the LETR Report: "The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values", relating as it does to the Academic Component, be addressed. The opportunity for applicants to study professional ethics in the Vocational Component and to be assessed in it during their work experience does not substitute for these values to be addressed in the Academic Component.

- d) A further point flowing from this observation relates to the suggestion (para 21, bullet 4) that successful completion of the Solicitors' Qualifying Examination might be regarded as equivalent to a UK law degree. This begs the question of whether the SQE1 is adequate evidence of meeting the standards of an academic law degree, given the limited diet of assessments available within SQE1 and the limited learning outcomes it is capable of assessing. Whether the SQE1 (as opposed to the undergraduate and vocational courses aspirant solicitors actually undertake) is a reliable indicator of possessing the necessary knowledge, skills and characteristics to join the profession has not yet been established. In our view it would be unwise for the BSB simply to adopt the SRA's approach, given the lack of evidence of its validity, and the fact that it fails to address many of the Recommendations of the LETR report, which you seek to implement in these proposals.

To conclude, we consider there to be much of merit in the BSB's consultation paper, but that elements of their proposals carry risks and that there are missed opportunities. We now await their further proposals in the light of consultation responses.

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