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Clinical Legal Education as Qualifying Work Experience for Solicitors

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Clinical Legal Education as Qualifying Work Experience for Solicitors

The Solicitors Regulation Authority (the “SRA”) is proposing radical changes to solicitor education and training. The Solicitors Qualification Examination (“SQE”) has been extensively debated, but less attention has been paid to the proposed changes relating to qualifying work experience (“QWE”). In future, a much broader range of work experience, including that gained through clinical legal education, will potentially be able to count as QWE. This article addresses the key questions arising from the proposals, as yet uncharted in any depth in journals and scholarly writing. The background and detail of the SRA’s plans is analysed, before consideration is given to both the arguments for and against clinical legal education counting as QWE. The practical challenges are then deconstructed. Who will be able to supervise and sign off clinical legal education as QWE? What type of clinical legal education could count? How much time should students be credited for? What policies will law schools need to put in place? Practical advice is offered based on the authors’ experience and knowledge. The discussion is intended to stimulate further debate and the development of consensus on best practice.

Keywords: clinical legal education, law clinic, legal clinic, qualifying work experience, solicitor training

Introduction

The Solicitors Regulation Authority (the “SRA”) is proposing radical changes to the education and training of solicitors. The plans have proved to be controversial, and have met with

criticism.¹ Much of the debate has focused on the introduction of centralised assessments, and what impact they will have on undergraduate law degrees in particular. Much less attention has been paid to the proposed changes relating to solicitor training, which in future will be referred to as “qualifying work experience” (“QWE”). The SRA has decided to retain a work experience requirement but in future a much broader range of work experience, including that gained through clinical legal education (“CLE”), will be able to count as QWE. This means that institutions providing CLE opportunities will be able to “sign off” the work students do as having given them the opportunity to develop the competences set by the SRA. How signing off works, and who can do it, will be explored in detail in the later section “The practicalities of offering CLE as QWE”. It has been suggested that this and other proposed reforms will lead to clinical methods being more integrated into law degrees and that law schools that have already embraced CLE appear best placed to adapt to the proposed changes.² Recent conferences have sparked dialogue about the implications the reform of QWE will have for both students and institutions.³ This article addresses the key themes and questions arising from these conferences, as yet uncharted in any depth in journals and scholarly writing. The background to the SRA’s plans is explored, before consideration is given to both the arguments for and against CLE counting as QWE. The practical challenges are then deconstructed. The article analyses who will be able to supervise and sign off clinical legal education as QWE, something which we have information about but which has not yet been applied in detail to

¹ For example, John Hodgson, *ALT Response to the SRA Consultation, “A New Route to Qualification: The Solicitors Qualifying Examination”* (Association of Law Teachers 2017) available at <http://www.lawteacher.ac.uk/docs/ALT_SRA_SQE_Jan_17.pdf> accessed 28 July 2018.

² Vicky Kemp et al., *Clinical Legal Education and Experiential Learning: Looking to the Future* (University of Manchester 2016), 40 available at <<http://www.law.manchester.ac.uk/about/news/Headline-509119-en.htm>> accessed 30 October 2017.

³ Qualifying work experience was a topic of discussion at the following conferences: (1) Commercial Clinics Roundtable, Sheffield, March 2018; (2) The Legal Education and Training Review – Five Years On Conference, Leeds, June 2018; and (3) the Clinical Legal Education Organisation/LawWorks Workshop, The Solicitors Qualifying Exam - Fit for Purpose? Fit for Pro Bono?, Nottingham, June 2018.

CLE specifically. However, many other practicalities are still uncertain and may ultimately be left to institutions to self-regulate. What type of CLE could count? How much time should students be credited for? What policies will law schools need to put in place? Practical advice is offered based on the authors' experience of an in-house live client law clinic, and their knowledge of other forms of CLE. The discussion in the article is intended to stimulate further debate and, ultimately, the development of consensus on best practice.

The Legal Education and Training Review

The foundations of the SRA's current reforms were laid by the Legal Education and Training Review 2013 (the "LETR").⁴ The LETR was undertaken by a team of researchers on behalf of the three commissioning regulators: the SRA; the Bar Standards Board; and ILEX Professional Standards.⁵ The LETR was intended to provide the regulators with the evidence they needed to make decisions on education and training policy going forward and made a number of recommendations.⁶ In relation to work-based training, Recommendation 15 advised, "arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification". The recommendations did not, in themselves, determine the future of legal education and training, "rather the future will be determined by what the three commissioning regulators decide to do in response to, because of, or notwithstanding the LETR Report".⁷

⁴ Julian Webb et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales: The Legal Education and Training Review (LETR)*, (ILEX Professional Standards, Bar Standards Board, Solicitors Regulation Authority 2013). Available at: <<http://letr.org.uk/the-report/index.html>> accessed 13 July 2018.

⁵ Ibid at ix.

⁶ Ibid at vi.

⁷ Melissa Hardee, 'To Prescribe or not to Prescribe? That is the Question (2014) 48:1 *The Law*

The SRA's Response to LETR

Of the three commissioning regulators, the SRA's response to the LETR presents the most radical overhaul. Currently, most aspiring solicitors study a Qualifying Law Degree ("QLD"), or the Common Professional Examination/Graduate Diploma in Law if their undergraduate degree was not in law, and then go on to study the compulsory Legal Practice Course ("LPC").⁸ Around 35 providers offer the LPC and each sets and assesses its own assessments.⁹ On completion of the LPC it is then necessary to undertake a two-year "period of recognised training", in the majority of cases this is satisfied by completing a training contract with a law firm (usually on a full time basis).¹⁰ Competition for training contracts is fierce as the number of available training contracts is significantly lower than the number of LPC graduates.¹¹ The SRA has noted that "there is evidence that the requirement for a training contract or [period of recognised training] may constrain the diversity of the profession".¹² Once implemented, the SRA's plans will reform each stage of solicitor education and training with the aim of increasing diversity and access to the profession.

The Solicitors Qualifying Examination and Solicitor Competences

Teacher 69, at 69.

⁸ <<https://www.sra.org.uk/students/academic-stage.page> > accessed 15 July 2018.

⁹ <<https://www.sra.org.uk/students/courses/lpc-course-providers.page> > accessed 15 July 2018.

¹⁰ SRA Training Regulations 2014 – Qualification and Provider Regulations. Regulations 5.1 and 5.2. Regulation 5.2 states the period shall normally be not less than two years full time or pro-rata if part time. Available at <<https://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page>> accessed 1 August 2018.

¹¹ The SRA reported in 2015-2016 that there were 6,961 students who had completed the LPC but only 5,909 training contracts registered. SRA, *Authorisation and Monitoring Activity September 2015 – August 2016*, at 7 and 19. Available at <file:///C:/Users/LSWR4/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/Temp/State/Downloads/Authorisation%20and%20Monitoring%20Report%202017.pdf > accessed 17 July 2018.

¹² SRA, *Training for Tomorrow: Assessing Competence* (7 December 2015) at 23. Available at <file:///C:/Users/LSWR4/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/Temp/State/Downloads/t4t%20consultation.pdf > accessed 17 July 2018.

In future, instead of a QLD (or equivalent) and the LPC, students will be required to pass a centrally set and assessed 2 stage examination known as the Solicitors Qualifying Examination (“SQE”). In March 2015, the SRA published a Competence Statement for Solicitors. This defines the standards for practice as a solicitor and therefore the knowledge and competences that aspiring solicitors need to demonstrate in order to qualify.¹³ The statement consists of three parts (a Statement of Solicitor Competence, the Threshold Standard and a Statement of Legal Knowledge).¹⁴ SQE 1 links to the Statement of Legal Knowledge, testing the knowledge that solicitors are required to demonstrate at the point of qualification. SQE 2 will test a candidate’s competence in a range of skills such as drafting and legal research. All candidates who have passed SQE 2 will have demonstrated the competences specified in the Statement of Solicitor Competence to the standard expected of a newly qualified solicitor as set out in the Threshold Standard.¹⁵ Candidates will have to have a degree or equivalent (but not necessarily a law degree) and the way in which candidates prepare for SQE will not be prescribed.

Qualifying work experience

When the SRA consulted on whether to retain a period of QWE, there was strong support for keeping this requirement¹⁶, and there was some concern from the profession that the SRA would dispose of it altogether.¹⁷ The length of QWE will remain the same, but in an attempt

¹³ <www.sra.org.uk/sra/consultations/t4t-assessing-competence.page> accessed 17 July 2018.

¹⁴ <www.sra.org.uk/solicitors/competence-statement.page> accessed 17 July 2018.

¹⁵ SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE)*, (October 2016), at 11. Available at

<file:///C:/Users/LSWR4/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/Temp State/Downloads/SQE%20consultation.pdf> accessed 17 July 2018.

¹⁶ SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE). Summary of Responses and our Decision on Next Steps*, (April 2017) at 9.

¹⁷ Law Society of England and Wales, *Global Competitiveness of the England and Wales Solicitor Qualification* (July 2015) at 8-10. Available at <<http://www.lawsociety.org.uk/support-services/research-trends/global-competitiveness-of-the-england-and-wales-solicitor-qualification/>> accessed 28 July 2018.

to address the concerns regarding barriers to entry into the profession, the SRA intends to allow a greater variety of work experience, obtained across a number of different work places, to be recognised as QWE. The Draft SRA Authorisation of Individuals Regulations (as amended) (the “Draft Regulations”)¹⁸ provide that:

2.1 Qualifying work experience must:

- (a) comprise experience of providing legal services which provides [the candidate with] the opportunity to develop the prescribed competences for solicitors;
- (b) be of a duration of a total of at least two years’ full time or equivalent; and
- (c) be carried out under an arrangement or employment with no more than four separate firms, educational institutions or other organisations.

The Draft Regulations make reference to QWE comprising of experience of “providing legal services” which may indicate that purely simulated work will not count. The purpose of undertaking QWE will be “to socialise candidates into the legal profession, expose them to ethical problems, and make sure they have the opportunity to develop the competences”.¹⁹

Regulation 2.3 (discussed further below) makes it clear that a candidate only has to have the

¹⁸ Draft SRA Authorisation of Individuals Regulations, Regulation 2.1. Available at file:///C:/Users/LSWR4/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/Temp State/Downloads/Draft%20SQE%20Regulations%20Board.pdf > accessed 17 July 2018.

¹⁹ SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE). Summary of Responses and our Decision on Next Steps*, (April 2017) at 9.

opportunity to develop *some*, not necessarily all, of the competences in any one QWE arrangement. There is no requirement that the two years should be undertaken in one single block, removing what the SRA view as a “barrier which has created a real block on numbers and diversity”.²⁰ The QWE must be carried out under an arrangement²¹ or employment with “firms, educational institutions or other organisations” (all undefined). The SRA has elaborated that “periods of work experience acquired under a formal training contract, through working in a student law clinic, as an apprentice or a paralegal, or through a placement as part of a sandwich degree could all contribute to this requirement.”²² By way of rationale, the SRA has suggested that this will encourage innovation and give organisations greater flexibility to offer a training experience than under the current system.²³

It appears the SRA is not proposing to impose a minimum time period for any QWE arrangement “because this might prevent students from including experience gained through clinical legal education and...in student law clinics”.²⁴ The Draft Regulations state that QWE must be undertaken with no more than in four organisations. However, educational institutions should note that the SRA has indicated that multiple clinical experiences undertaken with the same institution will only count as one “arrangement”.

The Draft Regulations do not prescribe any particular area of law that must be undertaken during the QWE. Clinics currently undertake a wide range of work²⁵ and this lack of

²⁰ Ibid.

²¹ Presumably the word “arrangement” was deliberately included to make it clear that experience gained through non employer/employee relationships would also count.

²² SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE)*, (October 2016), at 21.

²³ <www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page> accessed 17 July 2018.

²⁴ SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE). Summary of Responses and our Decision on Next Steps*, (April 2017) at 9-10.

²⁵ Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, *The LawWorks Law School Pro Bono and Clinic Report 2014* (LawWorks, 2014), at 4 (the “2014 LawWorks

prescription means if a law school does decide to sign off on QWE it will not be forced to change the type of work it does. Some clinics may decide to align their work more closely with the SQE. In order to pass the SQE students will need to demonstrate an understanding not just of personal legal matters (traditionally the mainstay of CLE) but also commercial and business law, a recent area of growth for CLE.²⁶

Davies has queried whether work experience in undergraduate clinics is able to count as QWE at all because of “indications that the workplace element of training is likely to come after SQE 1”.²⁷ QWE may *likely* come after SQE 1, but the SRA has been clear that this is only guidance and that “the workplace experience could be undertaken at any point ahead of qualification”.²⁸ Of course, if a candidate sits SQE before undertaking QWE, the primary purpose of QWE as an opportunity to develop the solicitor competences will be lost.

Whilst the SRA has made explicit reference to “clinical legal education and working pro bono or in student law clinics” as counting toward QWE²⁹, Davies notes that the SRA is “yet to provide detail of workplace experience content requirements in terms of breadth and type of experience”.³⁰ It is contended that whilst the SRA may issue some limited further guidance in this regard, it is unlikely to be very detailed. It is suggested that the key question each law school must accordingly ask themselves is whether their students undertaking CLE are

Survey”). Available at <<https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf>> accessed 17 July 2018.

²⁶ See further discussion in Victoria Roper et al., ‘Understanding the Scope of Business Law Clinics: Perspectives from the United Kingdom, Israel and the United States’ (2018) 5:1 *Journal of International and Comparative Law* 217.

²⁷ Mark Davies, ‘Changes to the Training and Education of English and Welsh Lawyers: Implications for the Future of University Law Schools’ (2018) 52(1) *The Law Teacher* 100 at 121.

²⁸ SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE)*, (October 2016), at 22.

²⁹ See for example SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE). Summary of Responses and our Decision on Next Steps*, (April 2017) at 10.

³⁰ Davies (n 27).

provided with “the opportunity to develop some or all of the prescribed competences for solicitors” as this is what will be required to satisfy the Draft Regulations.³¹ This leads us to consider the current role of CLE in legal education and whether it can, and should, be employed to give students the opportunity to develop solicitor competences.

Clinical Legal Education in the UK

What is CLE?

The SRA have explicitly referred to “clinical legal education” and work undertaken in “student law clinics” counting as QWE. However, it is worth noting that neither term has any legal or universally accepted definition. CLE is a term that can be used to describe a variety of different learning activities that involve law students. It integrates the academic and vocational stages of legal education, manifesting itself in a variety of forms from live client work to simulated learning experiences. Kerrigan and Murray argue that it involves “learning through participation in real or realistic legal interactions coupled with reflection on [the] experience”.³² Without the reflective element, Grimes suggests that such activities do not constitute CLE.³³

How prevalent is CLE in UK law schools?

CLE has become an increasingly mainstream element of university legal education in the UK. This can be demonstrated by a significant increase in the number of law schools offering it.³⁴

³¹ Regulation 2.2.

³² Kevin Kerrigan and Victoria Murray (ed), *A Student Guide to Clinical Legal Education and Pro Bono*, (Palgrave Macmillan 2011) at 5.

³³ Richard Grimes, 'Learning law by doing law in the UK' (2000) 1 *International Journal of Clinical Legal Education* 54 at 54. Under the current system trainees are responsible for reflecting on their own experience but it is not clear how supported this is throughout different firms, compared to how it is supported through CLE.

³⁴ Ulster University, *Access to Justice through University Law Clinics' October 2015*

In 2006, a LawWorks³⁵ survey found that 46% of law schools were doing pro bono work and/or clinical work;³⁶ by 2014 that figure had risen to at least 70% of all UK law schools (“2014 LawWorks Survey”).³⁷ The 2014 LawWorks Survey also revealed that law schools in the UK now have a much greater range and number of pro bono clinics compared to previous years.³⁸ It is estimated that between 6,000 and 10,000 law students are involved in law clinics/pro bono activity in the UK.³⁹

CLE can be extracurricular and voluntary, or integrated into the curriculum and credit-bearing. The 2014 LawWorks Survey suggested that clinical work is increasingly becoming a credit-bearing, assessed part of the UK law curriculum.⁴⁰ For CLE that is undertaken as part of a degree, the primary method of assessment is by way of a reflective portfolio (90%).⁴¹

Forms and models of CLE

Sandefur and Selbin have suggested that because CLE is somewhat of a catch all term its practices and methodologies are not easily summarised.⁴² Whilst this may be true, it is generally possible to distinguish different types of clinic according to a) the supervisory model they employ and b) the type of service they provide. Whilst many consider simulated activities

www.ulster.ac.uk/data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf > date accessed 17 July 2018.

³⁵ LawWorks is a charity which works in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid. See <<https://www.lawworks.org.uk/>> accessed 24 October 2017.

³⁶ LawWorks, *LawWorks Students Project Pro Bono – The Next Generation*, (LawWorks 2006) at 3 – available at <<http://www.probonogroup.org.uk/lawworks/docs/Student%20report%20Final.pdf>> accessed 24 October 2017.

³⁷ The 2014 LawWorks Survey at 4.

³⁸ *Ibid.*

³⁹ *Ibid* at 5.

⁴⁰ *Ibid.*

⁴¹ *Ibid* at 34.

⁴² Rebecca Sandefur and Jeffrey Selbin, ‘The Clinic Effect’ (2009) 16 *Clinical Law Review* 57 at 58.

to be of great educational value, our discussion will focus on CLE involving legal services to real clients given that the Draft Regulations may be interpreted as suggesting simulated work will not count as QWE. A 2016 report by Nottingham Law School (discussed further below) also suggested simulated work may have its limitations compared to real life experiences (although only simulated work in LPC courses was considered and there may be more sophisticated simulated work in other contexts).⁴³

In terms of supervision, Grimes notes that there are two models: internal supervision by suitably qualified academic staff or external supervision, usually by a local law firm.⁴⁴ The level of service varies; CLE can extend to full advice, drafting and representation, but may also be limited to initial advice or referral to other legal services.⁴⁵ The most resource intensive is the full service in-house law clinic.⁴⁶ This seeks to replicate, as far as possible, a law firm environment whereby legal services are provided by students to members of the public under internal supervision.⁴⁷

Can CLE give Students the Opportunity to Develop the Solicitor Competences?

There is some evidence to suggest that CLE can offer an appropriate environment to develop solicitor competences. The 2016 Nottingham Law School Report, mentioned above, was produced for the SRA to help inform its proposals with regards to the work experience

⁴³ Jane Ching and Pamela Henderson, *Pre-qualification Work Experience in Professional Legal Education*, (Nottingham Law School, 2016) at 39 (the “Nottingham Report”). Available at file:///C:/Users/LSWR4/AppData/Local/Packages/Microsoft.MicrosofEdge_8wekyb3d8bbwe/TempState/Downloads/SRA%20workplace%20report.pdf accessed 17 July 2018.

⁴⁴ Kemp et al (n 2) at 2.

⁴⁵ Ibid. See also discussion in Kerrigan and Murray (eds) (n 32) at 1-3.

⁴⁶ Kerrigan and Murray (eds) (n 32).

⁴⁷ Kerrigan and Murray (eds) (n 32) at 1.

component of qualification (the “Nottingham Report”). The findings were that

a number of [solicitor] competences (e.g. legal research, taking responsibility for one’s own learning, taking steps to obtain help, communicating clearly, analysing problems, obtaining facts and drafting) appear in most kinds of work experience

including student law clinics (undefined in the report and therefore open to respondent interpretation).⁴⁸ This was supported by a mapping exercise, which asked respondents with various work experience to compare the type of experience obtained with the competences in the Statement of Solicitor Competence.⁴⁹ This exercise suggested that the activities currently undertaken within a law clinic have the ability to map onto the competences (i.e. the respondents generally felt they had the opportunity to do something they believed matched the description of the competence), which suggests that law clinics can potentially provide students with the opportunity to develop them.

At Northumbria University, all students undertaking the MLaw Degree⁵⁰ undertake CLE as a 60 credit, assessed, module in their final year, known as Student Law Office (“SLO”). The students provide legal advice and may also represent clients at court or tribunal and/or draft legal documents. Mapping the Statement of Solicitor Competence onto the work commonly undertaken by students in the SLO indicates that students are given the opportunity to develop a wide range of competences.⁵¹ An extract of this exercise is presented below which other

⁴⁸ The Nottingham Report at 1.

⁴⁹ The Nottingham Report at 21.

⁵⁰ Students obtain a QLD, LPC and a Masters.

⁵¹ It is acknowledged that not all students will have the opportunity to develop all of the competences.

institutions are welcome to adapt for their own purposes⁵². The table could also be adapted for use by students who could be required, or advised, to keep a note of their experience and which competences they have had the opportunity to develop during their QWE.⁵³ This could be incorporated in a reflective portfolio and the portfolio could be referred to at the point the confirmation is given.

Table 1 – Example of Northumbria’s Student Law Office mapped to the Statement of Solicitor Competences⁵⁴

Competency	Competence Description	Mapping to activities in Student Law Office	Mapping to assessment criteria
A1	Act honestly and with integrity, in accordance with legal and regulatory requirements and the SRA Handbook and Code of Conduct, ...	Students are regularly exposed to ethical dilemmas and the Code of Conduct is regularly discussed.	Understanding of client care and professional conduct.
B3	Develop and advise on relevant options, strategies and solutions, ...	All students are encouraged to consider a client’s individual circumstances and are to cover the advantages and disadvantages of different options where relevant.	Case management and strategising.

⁵² The authors are happy to provide a copy of the full mapping exercise on request.

⁵³ This approach was suggested and discussed at the Clinical Legal Education Organisation/LawWorks Workshop, The Solicitors Qualifying Exam - Fit for Purpose? Fit for Pro Bono? June 2018, Nottingham.

⁵⁴ The table is best read alongside the whole of the Statement of Solicitor Competence, including the behavioural characteristics. Available at <<http://www.sra.org.uk/solicitors/competence-statement.page>> accessed 17 July 2018.

Not all CLE may be suitable for developing a broad range of solicitor competences though and there may be little point in signing off CLE as QWE if the experience is of very short duration or only gives students the opportunity to develop a few of the competences. Furthermore, a respondent to the Nottingham Report commented:

I don't think it is reasonable to conflate work experience from a training contract with that from a university law clinic ... Pre-training contract work experience tends to be limited in terms of responsibility, actual legal work done and lack of charging responsibilities⁵⁵

The respondent to the survey raises a valid limitation of clinic work. By virtue of its pro bono nature CLE rarely, if ever, involves experience of billing clients. The Nottingham Report also noted that the pace of work in clinic was often much slower than private practice.⁵⁶ However, students may be able to experience these things in their other QWE, and each clinic should be judged on its own merits. In the SLO students do not bill, but are required to time record and often deal with disbursements and have to work to court deadlines. The Nottingham Report suggested that students in some (but not all) student law clinics may actually be exposed to more direct client contact, something which is not always possible in a formal training contract.⁵⁷ This is partly due to the fact that student law clinics are able to select the clients that they take instructions from, therefore they are able to tailor exposure to legal problems (including ethical issues) that would specifically teach the students how to handle those cases

⁵⁵ The Nottingham Report at 16.

⁵⁶ The Nottingham Report at 28.

⁵⁷ The Nottingham Report at 45.

and situations.⁵⁸

Davies argues, implicitly, that clinic work undertaken as part of an SQE aligned law degree is more likely to be suitable as QWE than those that are not. He opined that the value of the workplace experience may differ according to the student's knowledge of practice related/SQE subjects. Perhaps this has an element of truth, but the key question should be whether the clinical experience itself gives students the opportunity to develop the required competences.

It seems reasonable to assume that law schools with existing CLE provision are more likely to consider signing off on QWE than institutions that currently have no such provision. Moreover, those law schools with curriculum integrated, larger scale, assessed clinics are likely to be better placed to offer QWE and offer students the opportunity to develop a broad range of competences than those which only have smaller scale, extra-curricular initiatives. Institutions that have only a limited number of CLE opportunities could actually find offering QWE to a select few leads to complaints from those students who are denied the opportunity.⁵⁹

Should CLE be Signed Off as QWE?

The Arguments Against

It is acknowledged that some clinics, cognisant of the need to balance student learning with delivery of a professional client service, may be reluctant to also throw QWE into the mix. As has been argued:

⁵⁸ The Nottingham Report at 24.

⁵⁹ This issue was discussed at CLEO/LawWorks Workshop, The Solicitors Qualifying Exam - Fit for Purpose? Fit for Pro Bono? June 2018, Nottingham Law School, Nottingham.

Legal clinics offer students a range of opportunities dependent upon the work the clinic undertakes, the experience and ability of individual students, the balance it strikes between student learning and client care, the needs of the community the clinic serves, the resources available and the attitude of the legal community in which the clinic operates.⁶⁰

To add delivery of QWE to this list of considerations may be viewed by some institutions as an undesirable further complication. CLE is also generally a more time and resource intensive form of teaching than traditional lectures and seminars, and formalising it as QWE adds further complexity. Moreover, not all universities are well placed to start offering/sign off CLE as QWE, having predominantly academically qualified rather than practice experienced staff.

In addition, not all law students want to qualify as solicitors and we know that currently fewer than half of law graduates ultimately proceed to qualify as practitioners.⁶¹ For those students who have decided to pursue careers in other professions, QWE will probably be irrelevant. Even for those students who do want to qualify as a solicitor, law firms may be reluctant to reduce a two-year training contract period to take into account time spent working in a clinic and could make it a contractual requirement for all trainees to work for a full two years regardless.⁶²

It seems unlikely that many students would be able to satisfy the QWE requirement by working solely in a clinic. Some CLE modules are of short duration (e.g. one semester). Even those

⁶⁰ Toney Foley et al., 'Teaching professionalism in legal clinic - what new practitioners say is important' (2012) 17 *International Journal of Clinical Legal Education* 5 at 18.

⁶¹ Fewer than half qualifying law degree students ultimately proceed to qualify as practitioners – Davies (n 27) at 106.

⁶² Some firms have confirmed they will be retaining their current Training Contract structure - Law Society of England and Wales, (n 17) at 14.

that are offered across a whole academic year are still only undertaken on a part time basis. This means that, when converted to full time equivalency, they are very unlikely to equate to more than a couple of months QWE at most. The fact that multiple clinical experiences undertaken with the same institution will only count as one arrangement is helpful, but even if an institution offers lots of different opportunities and the student grasps them all, it is still hard to envisage this will amount to more than a few months QWE in total.

The Arguments in Favour

Notwithstanding the above points, the authors believe some law schools should consider the possibility of offering QWE. Law schools that have already invested time and resource in developing students' legal skills through CLE may conclude that signing off on QWE will not require any significant changes to their supervisory practices. Moreover, they may decide that clinical experiences are deserving of recognition and that it would be unfair not to sign off on QWE, when this could count. The SRA's decision to embrace a wider spectrum of QWE is predicated on evidence that the requirement for a training contract may constrain the diversity of the profession.⁶³ Law schools may therefore also wish to do their part to ameliorate these diversity issues, and one way of doing so would be to offer CLE as QWE.⁶⁴

Whilst students are unlikely to be able to satisfy the QWE requirement wholly through CLE, it may be useful to those who have not obtained a training contract, but who may have other work experience that collectively, when combined with CLE, might allow them to reach two years

⁶³ SRA, *Training for Tomorrow: Assessing Competence* (7 December 2015) at 23.

⁶⁴ It has been suggested the SRA's proposals might just create a 'two-tier' qualification system where solicitors who have undertaken a training contract are looked on more favourably in the market than those who have obtained their QWE in other ways. There is also an argument that the SRA's proposals might just move the 'bottleneck' from the stage of trying to obtain a training contract to the point of qualification.

full time equivalent. Signing off on QWE will at least give students the option. Having QWE may also help to enhance a student's CV and allow them to stand out in vacation placement and training contract interviews.

If a law school's direct competitors have decided to sign off CLE as QWE, it may feel obliged to do the same. The 2014 LawWorks Survey suggested that the increase in the provision of clinics "...may, in part, be as a consequence of clinical legal education being used as a marketing tool to attract students...".⁶⁵ This trend may gain further momentum with the introduction of the SQE and changes to QWE.

The practicalities of offering CLE as QWE

Supervision and sign off

The Draft Regulations do not prescribe supervisory arrangements for QWE. However, there are specific rules about who can sign off on QWE (referred to as providing "confirmation") which will influence in practice who can supervise CLE if it were to be offered as QWE. Regulation 2.3 of the Draft Regulations sets out what the relevant person must confirm:

2.3

- (a) details of the period of work experience carried out;

- (b) that it provided [the candidate] with the opportunity to develop *some or*

⁶⁵ The 2014 LawWorks Survey at 18.

all of the prescribed competences for solicitors; and

- (c) that no issues arose during the period of work experience that raise a question as to [their] character and suitability to be admitted as a solicitor, or if such confirmation cannot be given, then details of any such issues.

The person giving the confirmation must have taken sufficient steps to satisfy themselves as to these matters.⁶⁶ A respondent to the SRA's consultation on the Draft Regulations noted that "some" of the competences was "extremely vague" and queried how many this meant.⁶⁷ In response the SRA reiterated that organisations who offer QWE will not have to make judgements about whether an individual has acquired the competences required to practice as a solicitor: "instead, we would test the candidate's competence through SQE stage 2",⁶⁸ and therefore it is unnecessary for the declaration to cover all the competences.⁶⁹ The SRA has highlighted that the new system would allow candidates to obtain QWE with more than one organisation, so they could be developing different competences at different times and places.⁷⁰

The confirmation can only be given by the persons specified in Regulation 2.2:

2.2

⁶⁶ Draft SRA Authorisation of Individuals Regulations, Regulation 2.3.

⁶⁷ SRA, *A New Route to Qualification: New Regulations. Consultation Response*, (November 2017) at 12.

⁶⁸ SRA, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE)*, (October 2016), at 22.

⁶⁹ SRA, *A New Route to Qualification: New Regulations. Consultation Response*, (November 2017) at 12.

⁷⁰ *Ibid.*

- (a) the organisation's COLP;
- (b) a solicitor working within the organisation; or
- (c) if neither (a) or (b) are applicable, a solicitor working outside of the organisation who has direct experience of your work and who has, in order to be so satisfied:
 - (i) undertaken a review of the work [the candidate has] done during the relevant period of work experience, which may include review of a training diary or portfolio of work; and
 - (ii) received feedback from the person or persons supervising [the] work

Few legal clinics will have a COLP, but many will involve solicitors who work for the institution acting in a supervisory role. Sign off by such persons will satisfy Regulation 2.2(b). It is worth highlighting that the definition of "solicitor" for these purposes will include solicitors on the roll who do not have current practising certificates.⁷¹ This could be of use to clinics that adopt an internal supervision model involving non-practising solicitors.⁷² It is also worth noting that the Draft Regulations refer to solicitors working for the "organisation", which may suggest any solicitor working for a law school, even if not directly involved in the clinic, could sign off on QWE provided they take sufficient steps to satisfy themselves of the relevant matters. Where the clinic involves multiple supervisors, a decision would need to be made as to whether each solicitor will sign off the student(s) they have supervised, or whether one

⁷¹Ibid at 14.

⁷² This proposal has attracted criticism, with some voicing concern that a solicitor who has not held a practising certificate for a long time may not be suitable to supervise and sign off on QWE.

solicitor will be nominated to provide all the confirmations.

Regulation 2.2(c) proved to be controversial during the consultation process and the provisions in (i) and (ii) were added to assuage concerns that a solicitor working outside of the organisation would not have sufficient experience of a candidate's work to give the required confirmation.⁷³ Although probably not what was intended when drafting, CLE involving only external supervisory models could potentially fall within Regulation 2.2(c). It would have to be confirmed in advance that the relevant law firm(s) are agreeable to their solicitors signing off on QWE and problems might arise if the relationship ceases for any reason. Regulation 2.2(c) seems to indicate that a university that offers CLE but which does not involve a solicitor in any capacity (internal or external) and does not otherwise employ a solicitor could still offer QWE if it could persuade an external solicitor to give the confirmation. Presumably most solicitors would be reluctant to do so, although perhaps the institution's external lawyers might be willing to undertake this role to further cement the client/law firm relationship.

Thought would also need to be given to how much QWE time the candidate is credited with given that nearly all CLE is undertaken on a part time basis. The responsibility for deciding this will fall to the institution rather than the SRA. The Draft Regulations require QWE to be of a total duration of at least two years full time "or equivalent" as noted above.⁷⁴ The SRA has stated that they expect people to take a:

⁷³ SRA, *A New Route to Qualification: New Regulations. Consultation Response*, (November 2017) at 13.

⁷⁴ The SRA currently advise that the total length of time spent training depends on the usual number of days worked each week (not including overtime or weekend work). A full-time training period, in which the trainee works five days per week, is for two years (730 calendar days, or 522 working days). See <<https://www.sra.org.uk/faqs/contact-centre/training-providers/02-period-of-recognised-training/how-long-prt.page>> (accessed 4 May 2018).

common sense approach to deciding how long the period of qualifying work experience should be if the candidate does not work on a full time basis or if a candidate has to take any extended time off, for example, through illness.⁷⁵

They do not intend to issue detailed guidance in this regard as they believe that it is not possible to draft a regulation which covers every individual situation.⁷⁶ The most recent guidance from the SRA is that it will require organisations to consider each student individually and the amount of time they have worked. This means that it will not be possible just to estimate the amount of time a student has spent working on clinic matters or take the average time commitment a CLE activity involves. Students could be asked to time record, but even this could be problematic and could lead to concerns about students “exaggerating” the time they have undertaken or spending too much time on CLE at the expense of their other studies. One way of addressing this may be to have a maximum amount of time the institution will sign off. More robust systems for documenting attendance and absence will be required where these are not already in place. Institutions would be advised to have clear policies to ensure a consistency of approach. The Clinical Legal Education Organisation (CLEO),⁷⁷ has set up a working group to consider the practicalities of CLE as QWE and intends to issue best practice guidance, following consultation with members.

Conclusion

In the spirit of Recommendation 15 of the LETR, the SRA is embracing a more flexible concept of QWE which has the potential to extend to CLE undertaken by law students. In their current

⁷⁵ SRA, *A New Route to Qualification: New Regulations. Consultation Response*, (November 2017) at 14.

⁷⁶ *Ibid.*

⁷⁷ The Clinical Legal Education Organisation (CLEO), is a charity dedicated to "promoting the advancement of legal education". See <<https://www.cleo-uk.org/about-us/>> (accessed 4 May 2018).

form, the rules for supervision and sign off for QWE should not constrain law schools from offering CLE as QWE if they wish to do so. The Draft Regulations are worded widely enough to cover a wide range of supervisory models in clinic as long as a solicitor, working inside or outside the organisation, can sign off on the CLE experience. Further, it does not seem that only in-house clinics can count and generalisations about the kinds of CLE which can be signed off as QWE should be avoided. The key question to consider is whether students are given the opportunity to develop some or all of the competences.

The authors recommend that any institution which is considering CLE as QWE undertake a mapping exercise of the solicitor competences against the tasks which are undertaken by their students on CLE courses. This will help to locate which competences the students will have an opportunity to develop and may be used as a record for the students to track their development also. There are a number of arguments for and against offering CLE as QWE. Each law school will have to weigh these in balance and decide what is best for their own institution and its students. Perhaps the most persuasive arguments for offering CLE as QWE are that it sends a message about how we, as clinicians, value the work done by our students and want to support efforts to increase access to the profession. Some law schools that already have well established CLE provision may decide that offering QWE will necessitate little change or extra resourcing. For others though, scaling up and resourcing could be significant potential barriers to offering CLE as QWE.

How useful aspiring solicitors will find the SRA's changes to solicitor training, and the appetite for CLE specifically to "count", remains to be seen. It may be that only a handful of institutions with well-established in-house clinics ever decide to make the foray into QWE. Alternatively, signing off CLE as QWE could, at least in the longer term, become relatively routine in CLE and lead to clinical methods becoming ever more integrated into law degrees. All change

presents an opportunity for development and innovation, and the SRA's proposals in relation to QWE are no different. To fully embrace this opportunity though clinicians need to work together to overcome obstacles and develop best practice. This article is intended to facilitate such collaboration, and the authors welcome any feedback and comments.⁷⁸

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⁷⁸ Any comments received will also be fed into the CLEO working group mentioned above.