

**FROM THE FIELD: SOME NOTES ON THE ‘CLINICS AND SQE – WHAT NEXT?’
CONFERENCE ABOUT THE NEW ROUTE TO QUALIFYING AS A SOLICITOR
IN ENGLAND AND WALES**

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On 5 June 2019, Coventry University and the Clinical Legal Education Organisation hosted an event entitled ‘Clinics and SQE – what next?’³.

To the uninitiated, at least two questions flow from that title. First, what is SQE? Second, whatever it is, what does it mean for law clinics?

SQE stands for ‘Solicitors Qualifying Exam’.⁴ SQE is a big deal for any readers in England and Wales who are concerned with legal education. Two quickfire clarifications. 1) For ease I’ll just say ‘England’ rather than ‘England and Wales’ as shorthand from now on, but stay tuned for another Welsh-interest point. 2) The phrase ‘concerned with legal education’ can be used broadly: naturally there are those who *provide* education, which might be thought of as my main interest, but of course there are also those who *participate* in legal education, and also those who want to *benefit*

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² Thanks to the School of Law at the University of Aberdeen (my former employer) for facilitating my attendance at the event that forms the basis of this note.

³ See <https://www.eventbrite.co.uk/e/clinics-and-sqe-what-next-tickets-60520905658#> accessed 28.06.2019.

⁴ See <https://www.sra.org.uk/sqe/> accessed 28.06.2019.

from educated individuals (i.e. employers, but also society more generally). For this note I will pay more attention to the educators though, and particularly clinicians.

SQE 1 and SQE 2 are two separate assessment exercises which will soon – it seems – be playing a gatekeeper role for access to the legal profession in England, albeit it will operate with the additional requirements of having a certain amount of eligible experience undertaking legal activity in a verifiable way (this being known as ‘qualifying work experience’), and also the requirements of probity expected of solicitors, namely to be an ethical and professionally aware soul (the ‘character and suitability requirements’). There was an initial proposed roll out date of 2020, but this has slipped back to 2021. SQE 1 and SQE 2 – taken together as SQE – will assume the gatekeeper role that is currently by the Legal Practice Course (LPC) qualification, whilst also rendering the Graduate Diploma in Law (GDL) conversion route from one degree to another otiose.

Much more could be written about all of this. For now, it can be noted that some remain sceptical about the SQE on its own merits, with various points relating to this being touched on below. Others seem firmly of the view that the SQE train is coming and it is a bit late to try to stop it outright. Depending on when you are reading this and what has actually happened, this description might already seem dated or simplistic, but I suppose that is an inherent risk in notes such as this. This note will simply proceed by accepting that appointed timeline and the necessity of adapting to

SQE quickly, with a side order of an explanation as to why a Scot might be interested in all of this.

Why else was a Scot interested in the event? The functional reason for my attendance was that one of the representative bodies for law clinics – the Clinical Legal Education Organisation (CLEO)⁵ – had its AGM at Coventry on the day of the conference. I am a trustee of CLEO, and there was also a trustee meeting. On the assumption that the fine detail of the governance of CLEO is not something that will engage readers too much, I will forgo discussion about that and instead take the opportunity in this note to set out some of the discussions about the acronym that is gloriously monosyllabically rendered as the phonetic ‘*squee*’ (which sounds like the kind of noise a child would emit whilst having lots of fun in an Enid Blyton-esque way, before drinking lashings of ginger beer).

Before doing that, I’ll briefly explain what this might mean to a Scot, and indeed to this Scottish writer. A first point is that several Scottish law schools offer English law qualifications. Another point is that what happens in the larger jurisdiction of England might have an impact or at least an influence on the direction of legal education and training in Scotland. Don’t get me wrong, this is an issue that periodically arises in Scotland anyway – with discussions being instigated either by the

⁵ See <http://www.cleo-uk.org/> accessed 28.06.2019.

regulatory/professional body (2017),⁶ by politicians (2018),⁷ or as part of wider review of legal services triggered by government (the Robertson Review, 2018).⁸ It's just that whenever the biggest jurisdiction in the UK does something this can have a ripple effect elsewhere, in terms of copying what is seen to work or being cautious over what does not work. A further point is that what the (larger) clinic sector does in England is of more than passing interest to the (smaller) jurisdiction of Scotland, and if the clinic sector down south is moving and innovating, the question of whether Scotland should also innovate is almost entirely independent to the reason for England's innovation. In the meantime, though, and for the purposes of this note, I suppose the writer's Scottish perspective might offer a chance to offer a relatively detached perspective on what is happening with SQE now.

Returning to the question I omitted from the above, what does it mean for clinics? A few things, and that was the central theme of the conference. Here comes the main thrust of this note accordingly, with the following largely representing my conference notes in roughly chronological order in a polished form. That is a disclaimer in itself, but please also note the further disclaimers that no firm conclusions are reached here, and also that I might be horribly parsing or paraphrasing other people's views here.

⁶ See <https://www.lawscot.org.uk/news-and-events/news/do-we-need-alternative-routes-to-the-profession-in-scotland/> accessed 28.06.2019.

⁷ See <https://digitalpublications.parliament.scot/Committees/Report/I/2018/9/23/Training-the-next-generation-of-lawyers--professional-legal-education-in-Scotland#Introduction> accessed 28.06.2019.

⁸ Robertson Review, (2018). Available at: <https://www.gov.scot/news/report-of-the-independent-review-of-legal-services/> accessed 28.06.2019.

CLINICS AND SQE – WHAT HAPPENED?

Panel 1 – SQE, Law Schools and the role of clinics in legal education

Before setting out what was discussed, I will offer one point on the title of the panel. No criticism of that title is intended, I stress, which was absolutely fit for the purpose of the day, it is just that it might be worth noting that there is a healthy amount of literature on what role law clinics can play in legal education *anyway*, not least in this open access journal, and also in my 2014 article in *The Law Teacher*⁹ and a more recent analysis by Stephan van der Merwe in the *Stellenbosch Law Review*.¹⁰ It can also be noted that the potential to use clinical work as part of qualifying work experience has also been subject to some academic analysis.¹¹ Such scholarship notwithstanding, the event (and in turn this note) uses SQE as both the springboard and the setting for the discussion.

We were welcomed to the conference by Stephen Hardy (Head of Coventry Law School), who began with the wistful observation that clinic had developed somewhat to what it was when he was younger, namely something that you did on a Wednesday afternoon if you were rubbish at sport. He introduced a panel of Julie Brannan (from

⁹ Combe, M. 'Selling intra-curricular clinical legal education'. (2014) *The Law Teacher* 48(3) 281.

¹⁰ van der Merwe, S. 'A Case Study in Advocating for Expanded Clinical Legal Education: The University of Stellenbosch Module' (2017) *Stell LR* 28(3) 679.

¹¹ Dunn, R., Roper, V. & Kennedy, V. 'Clinical legal education as qualifying work experience for solicitors'. (2018). *The Law Teacher* 52(4) 439.

the Solicitors Regulation Authority, aka the SRA¹²), I. Stephanie Boyce (from The Law Society [of England and Wales], but speaking on the day as a consultant), and Professor Elaine Hall (Northumbria University). Stephen played chair for that session and was ably supported on the day by Alan East (also Coventry) and Lucy Yeatman (Liverpool). It was also observed early in proceedings, I think by Stephen, that external changes to the curriculum are not necessarily a bad thing, and that they could properly be designed to change and challenge us.

The first panel member to speak was Julie from the SRA. For non-English readers, it is worth recalling that there is a regulatory and professional representation split in England: the SRA is in charge of regulating the profession, and the role of representing the profession falls on the Law Society¹³. Different approaches are available: for example, in Scotland the Law of Society of Scotland¹⁴ retains the regulatory role, whilst also representing the profession.

The SRA is pushing for route to the profession reforms in principle and is now seeking implementation in good time. Julie noted the new system envisages everyone who qualifies must have a degree or equivalent, then SQE 1 (knowledge) and SQE 2 (skills), mixed with two years of qualifying work experience (represented by the acronym QWE, gloriously phonetically rendered as 'quee', details of which can be found in the

¹² See <https://www.sra.org.uk/home/home>

¹³ See <https://www.lawsociety.org.uk/>

¹⁴ See <https://www.lawscot.org.uk/>

regulations available online¹⁵), and satisfaction of the character requirements. She stressed there was no particular order (so you could do SQE 1 *after* SQE 2, a point that was clarified in the Q&A); all that mattered was that students had all of those by the time they applied to get a practising certificate and on the roll of solicitors.

Why was this reform being brought in? The main reason, which was returned to a couple of times, was a hope to remove some of the barriers in the current system, in terms of cost and availability of training contracts. Regarding the cost, it was noted SQE might weigh in at £3000 – £4,500.

Another related point was the conversion rate of the present route to qualification, which involves the vocational qualification the Legal Practice Course. Apparently where a candidate is financed through the LPC by a law firm, this brought a conversion to solicitor of 95%. When trying another route (such as support from the ‘Bank of Mum and Dad’), the conversion rate was 70% or so. The gamble of doing the LPC without having a contract was raised.

What would the new qualification route mean for clinics? Julie noted working in a law clinic *might* be within the umbrella of what can contribute to qualifying work experience – i.e. under the supervision of a solicitor (that is to say a solicitor on the roll, not necessarily in practice). It was also noted that QWE could be built up in ‘no more than four organisations’ – and a law clinic could be an overarching single

¹⁵ See <https://www.sra.org.uk/sra/policy/future/resources.page#resources>

organisation (that is to say, you might also include within that law clinic allocation some placements led by the university, meaning you do not use up another one of the four).

The second speaker, Stephanie, mentioned a concern for the Law Society of England and *Wales*, namely that Welsh language resources for the assessment might not be available in good time, which is pretty important as there is a legal need for this to be the case. As someone with an interest in minority languages, this was more than a bit interesting to me – any remaining doubts about the SQE aside, it would be quite something if provision of materials in Welsh slows the SQE roll out down.¹⁶

Elaine was the third speaker, and she noted that she remained of the view the SQE was not a good idea, and that she had not given up on the idea of stalling or perhaps even scrapping it. I am conscious I don't want to put words into anyone's mouth, so please count this as paraphrasing. Anyway, as part of her presentation, she took some figures from the SRA website (a website that she noted was lovely and thanked the SRA for that), and basically noted that with ~192,000 solicitors on the roll, of which ~147,000 are practising, where were all the current law students going to fit into this irrespective of the SQE? Based on figures from the Law Society, 2017/18 saw 18,850

¹⁶ See Mac Síthigh, D. 'Official Status of Languages in the UK and Ireland' (2018). *Common Law World Review*, 47(1), 77-102. And for a flavour of my own interest, see this post on my WordPress blog: Combe, M. 'Scots Gaelic, Scots law and Scots attitudes' (2015). <https://basedrones.wordpress.com/2015/09/04/scots-gaelic-scots-law-and-scots-attitudes/> accessed 28.06.2019.

From the Field Report

UK students enrolled on undergraduate courses, and then there are roughly 6,000-7,000 new members coming on to the roll in a year, so there might well be fewer law-type jobs than that. (Fewer than half of law graduates will have even a law-related job, never mind be a barrister or solicitor.)

Returning to the SQE, Elaine then channelled Tolkien as a means to critique the cult around the new expected journey: one exam to rule them all, one exam to find them, one exam to bring them all, and in the darkness bind them. (It works better when 'ring' and 'bring' rhyme and scan, but kudos to Elaine as I geekily enjoyed this.) She also wondered whether all the problems with the present system that were cited really were problems, and, wondered if we were spending lots of time and money to replace something that is basically working.

That broadside towards SQE aside, what about SQE and law clinics? In her view, [qualifying] work experience in clinics cannot just be aimed towards ticking SQE boxes, clinical work should also be about making people better, more self-aware, more ethical, and so on. That is to say, clinic experience should be a more holistic affair, and not ousted by technical QWE requirements.

If they can align though, all well and good, but how much in the way of clinical experience could be given over a three or indeed four-year degree programme? Taking two years' experience as 3,248 hours (although Julie stressed this number was *not* regulated by SRA – this being the two years FTE equivalent from the UK

Government, and the SRA says they won't count hours), how much could be done? Taking her amazing, lovely university with its developed clinic and also including potential summer work and everything else students might do for a clinic in their free time, Elaine reckoned students could still only realistically get to 50% of the hours. Someone would still need, for example, a handy uncle with a handy law firm to top up the hours. She also feared that promising loads of hours could open universities/clinics up to advertising problems, and the last thing she wanted was for the Advertising Standards Authority to be after her for promising more hours than might be delivered. Julie did respond by noting the hours requirement was permissive rather than directory, and then the session opened up into a Q&A discussion.

One big question was 'How will this system actually differ?' It was speculated that people coming to the legal profession from other professions might do things more quickly than they would under the current system.

On what the system will mean for supervisors (and clinicians), it was asked whether barristers could sign off, and the answer was 'no'. Why? Because the SRA cannot regulate barristers, so barristers making any kind of dishonest declaration could not be chased by the SRA.

What does a solicitor need to do (in relation to QWE)? A solicitor needs to make an honest declaration, and *not* necessarily make a statement about reaching a certain

From the Field Report

competency. The supervising solicitor simply says they have had the *OPPORTUNITY* to reach those standards, and those standards would be finally signed off by SQE 2.

The solicitors in the room asked for further details: if it is not an exact hours issues, and not a competency point, when will a signing off solicitor be pulled up by the regulator? The example given was a solicitor saying (for example) a student has done three months instead of one.

What else might allow for QWE to be topped up? a) A formal training contract for a year. b) Acting as a paralegal. c) Involvement with suitable unregulated services.

This being so, the point that was returned to is that there will still only be 6,000 or so jobs for people navigating the system, notwithstanding these changes. Another point was raised about whether Magic Circle [big London] firms would even be interested in what is happening at Clinic, or indeed QWE as a whole: would they not just put people through their own training regardless?

Returning to clinics as a whole, one delegate noted SQE doesn't harm what clinics are or should be doing, so whilst people may still have wider reservations Clinic still can have a role. Another delegate later in the day stressed SQE would not change her clinic's focus on access to justice. That being said, the potential danger of a university and its clinic(s) coming a cropper in terms of marketing was returned to, and there was a point made about the huge burden of record keeping that could/would emerge.

One point that would be relevant for many clinics though was that SQE 1's knowledge

requirements did not cover some key clinic subjects: for example, there was no social security law or family law in SQE 1 (with 'company and commercial' being the only topic that is a non-reserved¹⁷ solicitor area which SQE 1 covers). This *might* have the danger of skewing clinic activities in some cases.

In terms of other comments made as this panel concluded, one person rather pessimistically noted they felt the new route was but a 'paint job with a new name' and was not actually about increasing access to the profession, with it also being noted that the whole SQE innovation brings together the worst stuff of the LPC and/or the Law Society finals. That being the case, another noted the SQE was never going to be able to solve everything, so maybe people were being a bit too downbeat. A final point that was made here is that this SQE system is but the starting point, and it might be tweaked in future. That brought the morning session to a close.

Panel 2 – Social Justice and SQE

The afternoon featured another panel discussion, with three clinicians and one consultant. The one SQE-er, so to speak, in this case was not so much someone who had been sent out to bat for SQE on the day, but rather someone who had been involved with its planning yet was not involved in its implementation. This was Crispin Passmore, a consultant who knows the legal market well and who previously

¹⁷ That is to say, the specific legal services activities that only those who are authorised (or exempt) can carry on, per section 12 of the Legal Services Act 2007.

ran a successful law centre in Coventry, albeit he is not a lawyer himself. Katherine King (Central England Law Centre), Stephanie Jones (University of Central Lancashire) and Elizabeth Fisher-Frank (Essex Law Clinic) brought current pro bono perspectives to bear on this discussion. They spoke variously about:

- outreach work in particularly deprived areas (including areas where the clients could not even afford to get to a university campus);
- the potential for a commercial law clinic (and how, despite potential criticisms that this could be a distraction from 'at the coalface' access to justice activities, it in fact perpetuates access to justice by sustaining the economy at a local level, plus also providing opportunities to three student interns with 10-month positions, who in turn provided client continuity over their period of office);
and
- placement models (linking Coventry with the Central England Law Centre, with a connected course featuring a reflective diary).

With those situations in mind, one of my favourite observations of the day was made: clinics help students to think like clients rather than like lawyers. That is to say, when someone presents with a situation that boils down to 'I have X legal problem', do not just tell them what the law says about X, rather tell them what they need to do.

What about funding for clinics? In the brave new SQE world, there may be a need to come up with further justifications for a clinic's existence. Sure, budgets might get

squeezed but teaching still needs done, and clinics can be part of that. That said, returning to a theme from earlier in the day, would students be driven to complete clinic tasks that are covered in the SQE 2 test (i.e. those within the reserved activities or 'company and commercial matters), with pressure from (for example) the market on universities to facilitate that? Once again, a response to this proposed incarnation was this is still a pilot phase, so it could still be possible to make a case to tweak this in the near future.

Returning to the overall clinic point, how does the clinic sector convince people 'we need more not less' in terms of clinic? Can the views of employers play a role here? Can the importance of clinics be stressed to university administrators? Then came a pretty interesting question, namely: 'would clinics end up competing against each other?' I suppose this might happen when QWE in one clinic ticks boxes and seems sexier than QWE in another, but this can quickly be countered by the fact this is probably unlikely to be so much of an issue in and of itself where demand outstrips supply, and that does seem to be the case in (parts of) England at the moment. There was also brief discussion along the lines of whether there might be scope to offer commercial advice to people who might even pay a bit for that, and then feeding back proceeds into social welfare law work.

Other than a quick discussion about the confidentiality of clinic work in the context of QWE (which most delegates thought would be manageable) plus some later

workshopping about clinics and QWE, that was the end of the main SQE chat on the day.

There was then some further discussion about what clinics can do more generally, with action in relation to climate challenges being a possible focal point. On this, one delegate (Brontie Ansell) noted the possibility of helping community groups who try to bring in local food solutions or recycle old furniture, I recalled some discussion at the 2017 IJCLE conference in Northumbria about students taking action in relation to a local emitter, and I also made a quick reference to a partnership of Scottish universities and the Development Trusts Association for Scotland's Scottish University Land Unit (SULU) initiative¹⁸ in terms of helping local communities overcome land-based barriers to sustainable activities, and wondering if there might be an equivalent down south relating to the Localism Act 2011 and its assets of community value. Such steps might seem small in the overall climate challenge that we face at the moment, but the words of Patrick Geddes seem appropriate here: "think global, act local".

Conclusion

Although this note has been drawn together by one author, it has very much been a team effort drawing together the thoughts of many people much more *au fait* with

¹⁸ See <https://dtascommunityownership.org.uk/community/community-asset-transfer/build-land-law-law/scottish-university-land-unit-sulu> accessed 28.06.2019.

SQE and English law clinics than I am. As such, it seems fitting to once again borrow from someone else to offer some edited highlights from the event in an attempt at a conclusion.

After the event, Lucy Yeatman drew together various headline points and circulated them to the CLEO network. On SQE, and from Julie Brannan's contribution from the SRA in particular, the following headlines were noted:

- Only a solicitor can sign off the qualifying work experience. This is because the SRA need to be able to take action against anyone who falsely certifies that qualifying work experience has taken place.
- The SRA has no definition of 'full-time'. They do not plan to count the hours that a potential solicitor has undertaken in their work placement. It is up to the solicitor certifying that the work has been done to decide what full time looks like.
- The regulations have been drafted to allow an 'umbrella' organisation to sign off work, so that a law clinic student who has volunteered in the CAB and done more than one project in an internal clinic and bundle this together as one of their four pieces of work experience. It is the professional responsibility of the person signing off the work to be satisfied that it has taken place.
- There is no need to comment of the standard achieved in the work. The SQE 1 and SQE 2 are the tests of competence. The requirement of the qualifying work

experience is only that the prospective solicitor has had opportunities to develop skills and knowledge needed to be a solicitor.

Thereafter, there were some small group discussions and the feedback from them was that guidance on qualifying work experience in law clinics would be helpful, with that help potentially entailing:

- Guidance clarifying the points above so that law clinics planning to certify experience as part of the qualifying work experience are clear about what is involved.
- A template or document for students to use as a reflective diary linked to the competency statement demonstrating how they have developed the skills and knowledge needed to be a solicitor.
- Support on training students to talk about their experience without breaching confidentiality.

By way of final conclusion, I should note a 'well done' to Coventry and the team at CLEO for putting on such a useful event. I certainly left the day better informed, and in turn I hope this note might play a part in bringing you up to speed with the important changes that are on the horizon.