

Legal Education and proposed regulation of the legal profession in England and Wales: A Transformation or a Tragedy?

Introduction

In 2007 the Solicitors Regulation Authority (SRA) was created by the Legal Services Act 2007. This legislation created an independent regulatory arm of the Law Society (LS) who had previously overseen the regulation of solicitors. The 2007 Act separated regulation and representation by creating the SRA who now regulate the work of solicitors; whilst leaving the LS to represent solicitors.¹ This change has allowed the SRA to set the standards required for qualifying solicitors in England and Wales. The SRA monitor the legal training undertaken by trainee solicitors; produce and implement the rules of professional conduct, along with guidance on ethical issues that will have an impact on the work of solicitors. The overreaching aim of the SRA is to protect consumers by ensuring the standards of legal services provided by solicitors are fit for purpose. This is enshrined in their vision statement:

We will be the leading regulator of legal services, protecting the public, empowering, supporting and developing our people, providing value for money, fair and transparent outcomes and service excellent in everything we do.²

The role of the LS is to support solicitors (members) by providing advice and guidance on areas of practice. The LS also promote equality and diversity and try to ensure the legal profession reflects all sectors of society. The funding of the LS is partly from the solicitors who pay an annual practising certificate fee to the SRA and the LS receive around 30 per cent, of this fee in order to support their members and promote the profession.

¹ See Department for Constitutional Affairs, The Future of Legal Services: Putting Consumers First AQ3 (White Paper, Cm 6679, 2005).

² Solicitors Regulation Authority Standards Charter, page 1, available at <http://www.sra.org.uk/sra/how-we-work/our-charter.page> (26/11/2016)

The SRA have undertaken a review of legal education and have produced a new pathway to 'train' and qualify as a solicitor in England and Wales. They are implementing a number of radical changes which will have a direct effect on legal education and how educational provision will be delivered to students who wish to practise law in the near future. The SRA have put forward a new pathway: the apprenticeship model. Their proposals have far reaching implications for Higher Educational Institutions (HEIs) and will also have a direct impact on the current business model(s) that HEIs are using to deliver educational provision. If the SRA's proposals come in to force they will either remove or diminish the current pathways available to study and qualify as a solicitor. Alternatively, they may be received as supplementing the current system and merely providing for a long-awaited reform which will present an alternative pathway to qualify as a solicitor in England and Wales.

The replacement pathway offered by the SRA has sent shock waves through HEIs who have worked alongside the SRA by investing in an infrastructure which provides legal education provision for their students who wish to practise law. So why are the SRA making these changes? The SRA believe the changes they are introducing will provide a framework that is flexible and is not purely reliant on a sequence of exams. The SRA believe the current system is prescriptive and does not provide consistent standards throughout HEIs. The SRA are critical of the academic standards of HEIs who deliver the Qualifying Law Degree (QLD) and Legal Practice Course (LPC). They are not confident that trainee solicitors are competent to practise after completing their two year training contract. They believe this is compounded by increased tuition fees³ and one of their major criticisms of the current system is the way the LPC assesses specified standards at specific intervals. They believe the current standards are not universally applied and there is a lack of transparency and consistency across the higher education sector. In response to these concerns the SRA have produced a new model which they refer to as the 'trailblazer,' otherwise known as the apprenticeship model.

³ SRA, "Policy Statement: Training for Tomorrow – Ensuring the Lawyers of Today Have the Skills for Tomorrow" (2013), available at <http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page> (accessed 16 February 2016), p. 6.

The apprenticeship model

As a regulatory body the SRA ensure standards and as an independent body they are able to intervene and respond as and when is needed. In the past they have used a number of regulatory tools to maintain standards in the legal profession, such as a Code of Conduct, which filter through the current educational provision which is instilled within the LPC. This in itself mitigates risk and such tools are used, to some extent, as key performance indicators (KPIs) when delivering legal educational provision. This should reduce the risk of infringing standards and maintain a level of conduct for those who deliver and assess legal services. However, the SRA are not satisfied with the current educational provision and how it is being delivered in HEIs. They believe the introduction of the apprenticeship model will enhance the quality of legal services. The SRA feel these changes are necessary and are in the public interest.⁴

The Pathway to Changing Legal Education

In October 2013 the SRA outlined their proposed changes for legal education in England and Wales: “Training for Tomorrow – Ensuring the lawyers of today have the skills for tomorrow”.⁵ These proposals have since been developed in the SRA’s consultation paper: “Training for Tomorrow: assessing competence”, December 2015.⁶ Their proposals have received a mixed review and even the SRA openly admit their “... plans for reform of the education and training system are radical”.⁷ Their argument for change is based upon a number of reasons but the two main points are:

⁴ Ibid, p.8

⁵ SRA, supra n. 3.

⁶ RA, “Training for Tomorrow: Assessing Competence”, Consultation Paper (7 December 2015),

available at https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page#heading_toc_j_0 (accessed 26 November 2016).

⁷ SRA, supra n. 3, p. 4.

1. Creating wider access for those who wish to train and qualify as a solicitor in England and Wales, and
2. The current Legal Practice Course is not fit for purpose.

This is reflected in the SRA's statement taken from their consultation paper in 2015. They are critical of the way law students are recruited and the way legal education is delivered in England and Wales. They believe:

... there is no standard basis on which to measure the quality of students who emerge from the education and training process. Some Legal Practice Course (LPC) providers have success rates in excess of 90%, while others are below 50%. Some undergraduate law schools require A and A A-level grades from entrants, other admit students with B, C and D grades ... It is noteworthy that fewer than 1% of full time students on the Graduate Diploma in Law (GDL) fail and only 2% of those with training contracts are not admitted.⁸*

This is a damning statement from the SRA as it is loaded with a number of judgements. For example, it suggests students with lower A level grades should not be accepted on to law degrees; that higher educational institutions are manipulating their pass rates and students are only passing their exams because the academic standards are low, and not because the student is able and competent. The SRA are using this argument to introduce and create the apprenticeship pathway which will be "overseen by a variety of providers".⁹ The SRA do not say who will oversee the delivery of education and assessment or the finer detail such as how learning will take place. The SRA believe the flexibility of the apprenticeship model will result in "... opening up the profession to applicants from varied backgrounds"¹⁰ and this in itself is a welcome approach. However, there may be other reasons why the SRA are supporting the apprenticeship model which may not be related to academic standards but, instead, are linked to Government policy which is driving the apprenticeship model. This will be explored and developed later but it is first worth considering

⁸ SRA, supra n. 6, p. 4.

⁹ Ibid., p. 4.

¹⁰ Ibid., p. 4

their argument dealing with fairer access and creating an opportunity to train and qualify as a solicitor in England and Wales.

An Opportunity to Qualify as a Solicitor

The argument for providing equal access and, in particular, providing an opportunity for applicants from a variety of backgrounds to qualify as a solicitor should be encouraged and supported. This is a positive proposal as the Law Society's statistics for 2015 indicate a growing discrepancy between law graduates and the number of places to train and qualify as a solicitor. For example, the following statistics were taken from the Law Society Annual Statistics which found in 2015, 15,431 students graduated with a QLD from Universities in England and Wales. These figures were made up of 5,682 males and 9,749 females.¹¹ In July of 2015 there were only 5,457 trainee solicitors registered of which 2,030 were male and 3,427 were female. These figures illustrate there are too few traineeships available in comparison to the number of law graduates. In 2015 the total number of applicants who applied to study for a QLD law in the UK was 33,010. This figure is made up of 11470 males and 21540 females. The total number of students accepted was 22320: 7630 males and 14690 females. The total figure included 6935 students who were categorised as being of Black, Asian and Minority Ethnic origin (BAME). If the current system continues many of these students are not going to qualify as there are too few training contracts for the number of graduates each and every year. The apprenticeship model may address this problem but it is difficult to see how the SRA's proposals will address the issue dealing with social mobility and fair access to qualifying. The SRA need to explain how these apprentices will be supported throughout their apprenticeship and how the level of academic standards will be maintained and, more importantly, how the competency of the apprentice will be assured.

¹¹ The Law Society, Trends in the Solicitors' Profession Annual Statistics Report 2015 (April 2016).

The SRA do not specifically state what they mean by a variety of backgrounds but it is assumed they are referring to social mobility and this involves access to Higher Education and the financial means to study law. Higher education is an important mechanism for improving social mobility and allowing students to realise their potential. It is fair to say that the SRA will not be able to deal with many of the issues that affect an individual's ability to study law. If the SRA are able to implement a model that will address some of the inherent inequalities, creating a system which will provide a 'real' opportunity for everyone, regardless of their background to qualify as a solicitor this should be supported. The Law Society's figures are to some extent encouraging but one of the main hurdles for students is how they finance their studies. The SRA make reference to tuition fees and this is undeniably a barrier for individuals who have to pay their own tuition. Undertaking a three year law degree in England and Wales is likely to cost students in the region of £9,000 for each academic year. Students also need to successfully complete the LPC which will cost £9,000 - £12,000 for full-time students. Then there is the living expenses, such as rent and this will vary depending on where you decide to study. There will be other costs and these will depend upon personal preferences and circumstances.

Addressing the Economic factors facing Law Students

The economic factors faced by many students today may be addressed through a combination of the apprenticeship model and the delivery of educational provision online. Online educational provision affords students a 'real' opportunity to manage their time and studies. Many students are employed whilst undertaking their studies and flexibility is a key factor; this is something the SRA need to consider. Studying online or through a blend of learning, such as attending a day-school once every six weeks whilst ongoing learning is taking place would develop the SRA's framework by putting in place the educational provision that will support these apprentices. Studying law online is not something new but is becoming the norm for many law students today.

Even more so with the introduction of course fees being met by students. Online or blended learning reduces some of the costs faced by students in higher education, such as travel, the need to move location and finding affordable accommodation. These are but a few of the reasons why many higher educational institutions are developing and delivering educational provision which is available online. The growth of online educational provision is summed up by Tiffin and Rajasingham:¹²

There has to be a better way to respond to the global demand for university education and to manage how this is done without turning universities into corporate boot camps. There has to be a way that is more economic and therefore possible, more matched to the times we live in and the technology we work with, more open to people with languages other than English and more concerned with the curricular needs and the cultural concerns of globalisation itself.

The conveyance of information is key to the understanding of a body of knowledge. Professional bodies such as the SRA set standards and provide statements of competencies which stipulate how this knowledge is used in order to qualify as a solicitor. This is why many HEIs have responded and produced a model which accommodates the current SRA Competence Statement. The current pathways to qualify as a solicitor have a number of different routes, such as recognition of prior qualifications. A classic example, is the Legal Executive who is a practising lawyer in their own right but may decide to also qualify as a solicitor. The SRA's proposal to introduce a pathway which will allow apprentices to learn and earn at the same time suggests this will overcome some of the financial barriers but the proposals have not said how educational provision will be delivered. The SRA have outlined the Assessment Plan which is contained in the "Apprenticeship Standard Leading to Qualification as a Solicitor" 2015 document.¹³ The Assessment Plan has been designed by a number of law firms, who represent a broad range of the legal market, and has been developed by the SRA. There is no indication that

¹² J. Tiffin and L. Rajasingham, *The Global Virtual University* (London, RoutledgeFalmer, 2003), p. xv

¹³ Apprenticeship Standard Leading to Qualification as a Solicitor Assessment Plan (2015) available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458232/Solicitor_Apprenticeship_Assessment_Plan.pdf (accessed 28 November 2016).

these law firms or the individuals involved have a background in the development of educational provision or how learning takes place. This is an essential point that needs to be considered when designing educational provision, alongside training and method of assessment. The SRA are proposing to introduce the centralised system referred to as the Solicitors Qualifying Exam (SQE). The SQE will be a common professional assessment which will be designed to assess the competence of all would-be solicitors. It will be in two parts. Part 1 will deal with the assessment of knowledge, and is referred to as the Functioning Knowledge Tests. Apprentices must complete and pass Part 1 before they are allowed to undertake part 2, which is referred to as the Standardised Practical Legal Examination. Part 2 assesses a broad range of skills and knowledge acquired throughout the apprenticeship. Part 2 will need to be completed no later within the last six months of the apprenticeship. This is, to some extent, outlining the framework of the assessment process but the SRA have not said how apprentices will develop the knowledge needed to undertake these assessments or who will be producing the materials used in the assessments.

Continuing Competence of Solicitors

On 11 March 2015 the SRA approved their Competence Statement which will form part of the apprenticeship model. It is made up of three elements: a statement of solicitor competence, threshold standard and a statement of legal knowledge. However, the SRA's consultation has not provided any reassurance that this 'trailblazer' will provide the educational standards needed to qualify and practise as a solicitor, or how apprentices will prepare for this mode of assessment. There is reference to what the apprentice will achieve but no evidence as to how the apprentice will be supported in order to obtain the necessary education and skills in order to pass the SQE.

Where is the Educational Provision for these Apprentices?

When designing, implementing and delivering legal education it is vital that pedagogic practices are identified. This is essential when considering any

changes to the curriculum, or introducing a new framework such as the apprenticeship model. The SRA need to provide the necessary information at the front end of their proposals in order to put in place the necessary teaching, learning and training provisions that are needed to support these changes. For example, standards are maintained in HEIs in the UK by demonstrating the framework and resources to support any proposed award or pathway. HEIs must demonstrate how they will comply with any professional body requirements and the proposals are externally scrutinised before they are validated. Higher Educational institutions must demonstrate their academic standards are in line with the Framework for Higher Education Qualifications in England, Wales and Northern Ireland (FHEQ). The FHEQ provides clear guidance that a qualification must be linked to specific outcomes and not just to a number of years of study. These outcomes must be evident through a coherent programme of study. This is particularly important when constructing and delivering legal education and providing the right level of study, subject content and integrating the appropriate skills required for a law graduate. Guidance is provided by the Quality Assurance Agency (QAA) Subject Benchmark Statement dealing with legal education.¹⁴ The Benchmark Statement forms part of the UK Quality Code for Higher Education which needs to be implemented by all HEIs who are providing legal education. Yet, even with these mature and well established safeguards in place the SRA believe current standards are not good enough. In their Consultation Paper¹⁵ they are critical of the existing educational provision: "... the limitations of our existing regulatory approach to [legal] education and training which is out of step with, and not integrated into, our outcomes-focused risk-based approach to regulation". Yet, the SRA have designed and are implementing the solicitor apprenticeship framework but where is the evidence that the apprenticeship model will provide appropriate standards? This question has not been addressed throughout the consultation process. The SRA appear to be self-regulating and who is monitoring the design behind their framework? There

¹⁴ Quality Assurance Agency, "Subject Benchmark Statement: Law" (July 2015), <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> (accessed 18 February 2016).

¹⁵ SRA, *supra* n. 3, p. 6.

seems to be a lack of focus on how learning will be developed and this is raising more questions than answers.

Transference of Education and Skills

The transference of education needs to be thought through by the SRA and does not appear to have been considered throughout the consultation process. For an educationalist the starting point would be the design: how to structure the learning journey for the student (apprentice) and the type of assessment(s) that will take place to demonstrate the learning outcomes. This is a classic model when designing a new pathway and is supported by the work of the neo-behaviourist Benjamin Bloom¹⁶ who developed the hierarchical framework dealing with cognitive outcomes from the basics such as describing or identifying, to the higher end of cognition which requires evaluative and analytical outcomes.¹⁷ This approach is commonly referred to as 'Bloom's taxonomies' and supports curriculum planning. It is difficult to see the application of Bloom's model dealing with education and behaviourism in the SRA's apprenticeship model. The SRA have said what a solicitor should be able to do upon qualification. They have not said how the apprentice will be supported in order to prepare and pass the SQE. They have not identified the resources that will be put in place to support the apprentice whilst undergoing the workplace training. They also need to explain how the assessment process will be linked to the SRA's competence statement. If the SQE and work-placement will assess the legal knowledge, threshold standard and statement of solicitor competence the SRA need to reveal the design and provide some evidence that it will maintain standards. If all assessments are taking place through a computer the SRA need to say how specific learning outcomes at different levels will be demonstrated. For example, the higher cognitive skills, such as undertaking a critical evaluation of an area of law. At undergraduate

¹⁶ B. Bloom and D. Krathwohl, *Taxonomy of Educational Objectives: The Classification of Educational Goals*, by a Committee of College and University Examiners. Handbooks 1 to 3: The Cognitive Affective and Psychomotor Domain (New York, Longmans Green, 1956), cited in A. Jordan, O. Carlile and A. Stack, *Approaches to Learning: A Guide for Teachers* (Maidenhead, Open University Press, 2008).

¹⁷ A. Jordan, O. Carlile and A. Stack, *Approaches to Learning: A Guide for Teachers* (Maidenhead, Open University Press, 2008) at p.27.

level students are required to demonstrate the full range of cognitive skills. They develop critical skills by being exposed to a variety of sources and practical skills such as public speaking and leading a debate. These are skills which prepare students for practice. It is concerning when this mode of learning and assessment will be replaced by a computer test. The SRA's consultation paper¹⁸ recognises the importance in obtaining this level of education in order to qualify as a solicitor:

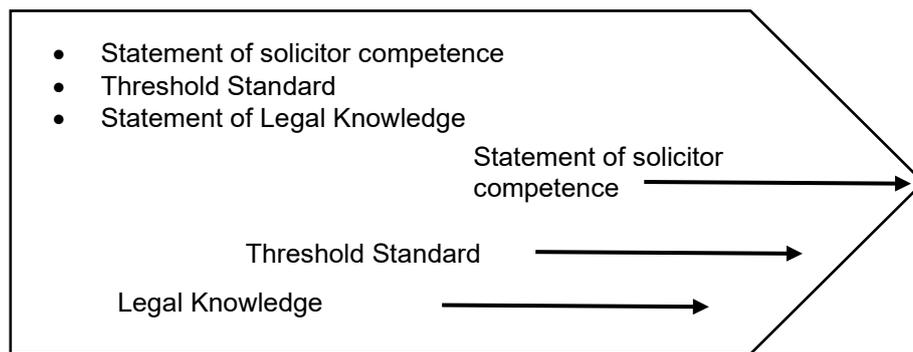
We recognise the important of solicitors having the higher level cognitive skills that are associated with being a graduate. The SQE will assess these skills. However, it is not appropriate to attempt to benchmark the SQE directly to the level descriptors in the FHEQ [Framework for Higher Education Qualification] because that framework is designed for use in a different context and for a different purpose. However the standard required for qualification as a solicitor through the SQE will be set at least at graduate level or equivalent. The standard of the Part 2 assessment will be comparable to the level trainee solicitors currently reach by point of qualification, therefore higher than the current LPC [Legal Practice Course] standard.

What it does not go on to say is how apprentices will obtain the level of cognitive skills that are associated with a graduate. It is clear from this statement that solicitors should be able to demonstrate these higher cognitive skills and they are the types of skills a law graduate is able to demonstrate.

The Compartmentalisation of the Competence Statement

The SRA are acknowledging the level of education needed to qualify as a solicitor. What they are not prepared to do at this stage of the consultation is say how the apprentice will achieve the level of competence that is required of them. The SRA's Competence Statement is compartmentalised in to three sections: Statement of solicitor competence; Threshold standard, and Statement of legal knowledge. The diagram below illustrates the stages taken and how these three distinct area are sub-divided within the Competence Statement:

¹⁸ SRA, supra n. 6, p. 21.



Under the current system the legal knowledge would represent the law degree, which underpins the knowledge needed to qualify as either a Solicitor or Barrister in England and Wales. The Threshold Standard is the LPC. The final stage is the Statement of solicitor competence which is achieved after completing the two year training contract. To an extent all three levels are pervasive and interact but it is also possible to separate them and say how they will be achieved under the current system. Under the apprenticeship model this will have to be achieved by the apprentice solicitor undertaking and completing through Part 1 and Part 2 of the SQE which will reflect the legal knowledge and threshold standard. The work place learning will then assess the competence of the apprentice which will lead to qualifying as a solicitor. The SRA have left out how the delivery of legal education will be provided for Part 1 and Part 2. This should be at the forefront of the SRA's apprenticeship model. Unless the SRA provide a structured pathway which links directly with educational provision their model will not support and prepare these apprentices and the current proposals are not going to work. The solution to this problem is for the SRA to focus on the apprenticeship degree solicitor route which allows apprentices to work and attend University on a part-time basis in order to prepare for Part 1 of the SQE. The SRA would also need to collaborate with the HEI sector in order to set the standards and prepare the apprentice for the assessment. The apprentice must be given every opportunity to develop the appropriate skills and knowledge in order to prepare for the SQE. The SRA's consultation paper has not provided any information on how apprentices will prepare for the SQE or who will be responsible for the assessment process.

There must be a transparent pathway which outlines each stage in order to achieve the Statement of Solicitor Competence. This is only possible if the pedagogical process has been considered in line with the overall outcome. The SRA must appreciate how learning takes place and the different approaches that may be used to deliver legal education. The SRA's proposals are not saying how students will be exposed to materials and how they will have an opportunity to develop a level of understanding of the law in a way that is conducive for them to develop the higher cognitive skills that will support them in their work place and prepare them for Part 1 and 2 of their Centralised Assessment.

Different approaches to developing knowledge and skills

There are a number of theoretical models that may be drawn upon when developing approaches to learning and how knowledge, skills and competencies may be assessed. There needs to be a 'real' connection between the way educational provision has been designed and delivered in order to get it right. Has the solicitor apprenticeship model got it right? At this stage the answer is no. The SRA are focusing on a number of factors but at the cost of pedagogical approaches to meet the developmental needs of the apprentice. This criticism is linked to the argument that education should be sequential, building upon each stage that will achieve the statement of solicitor competence. This is supported by the work of Vygotsky¹⁹ who identified the 'Zone of Proximal Development' (ZPD) and that students, or in this instance apprentices, should be nurtured through various stages and assessing and measuring development should be an ongoing process, not an end product. This approach does not appear to be of primal importance to the SRA as it is not explained in their consultation document. They have not explained how learning, teaching and the cognitive development of the apprentice will be developed within their framework. Vygotsky focused on the process and the linkage between teaching, learning and the development of the mind²⁰ and the

¹⁹ L. Vygotsky, *Thought and Language* (London, MIT Press, 1986)

²⁰ G. Wells and G. Claxton, *Learning for Life in the 21st Century: Sociocultural Perspectives on the Future of Education* (Oxford, Blackwell, 2002), p. 84.

way that students organise and process information in a learning environment. Vygotsky was of the opinion that learning should lead to a changing experience through the development of the mind. Vygotsky believed that the process of teaching, learning and cognitive development should not be considered separately but should be conceptually brought together when developing the curriculum or in this instance the workplace. This approach has been evaluated by Wells and Claxton through a sociocultural framework in relation to teaching, learning and development of children. They used Lev Vygotsky's concepts that a child's mind develops as a result of constant interactions with the social world. They²¹ support Vygotsky's notion that an individual experiences crystallise in 'cultural tools'. They use language as an example of such a tool and believe that this type of tool (language) is reconstructed by the child through the interactions with individuals (tutors) who already possess the knowledge of such a given tool. Therefore, the SRA need to develop their framework to address these concepts and in particular the development of these multifaceted cultural tools that are, arguably, even more relevant to apprentices who will be recruited from various socio economic backgrounds. The relationship between different strata of society coming together, to share a common experience, within the workplace is explicit when approaching a conceptually threefold process: teaching, learning and cognitive development. Therefore, these cultural tools are not only crystallised but developed through the developmental stages within the 'zone of proximal development'.

Work-Based Learning

The apprenticeship model is focused on work-based learning and the SRA have informed us that the apprentice will also be assessed on their performance in the work place. The apprentice's performance will be measured against the SRA's statement of competence. The SRA's proposals are expecting the training provider or employer to certify the level of competence achieved by the apprentice. It will be the employer or trainer who will be monitoring the apprentice's development. This is creating a number of specific issues given

²¹ Ibid., p.87

the design of the SRA's current framework; such as the difference between education and training. Evans²² illustrates the distinction between 'education' and 'training' as follows:

...education is used to describe what goes on in schools and colleges of a formal, theoretical or academic nature ... or where the learning is directed to wider aspects of study, than the work of the organization to which the employee belongs. On the other hand, training is very often used to describe the imparting of specific, practical skills, often manual, to employees, which will be relevant to the employee's present or next immediate job.

Evans is making it clear that educational provision is separate from the skills being acquired in the workplace. A classic example is passing your driving test which requires you to pass your theory and practice test. The theory is undertaken through a computerised test, which involves answering a number of multiple choice questions. Then there is the driving test which requires you to demonstrate a number of skills whilst driving a car. In both instances there must be clear behavioural objectives in order to demonstrate a level of knowledge and skill. This approach is supported by Jordan et al²³ who make the distinction between assessing skills, as opposed to assessing knowledge:

It is commonly held that effective assessment tasks should test the performance of behaviour stated in learning outcomes under the same conditions as those under which they were learnt. For example, if the learning outcomes states that an apprentice carpenters will be able to hang a door, the assessment should require them to hang a door rather than describe the technique in a written examination, which is what often happens.

If effective assessment is to take place there must be stated learning outcomes which will take place within an integrated framework. There must be clear guidance which states how the apprentice will acquire knowledge and identify where the skills will be developed. The pedagogical framework needs careful consideration and, more importantly, the way educational provision is delivered must be made clear for the apprentice and those who will be delivering the

²² D. Evans, *Supervisory Management: Principles & Practices* (5th ed., London, Cassell, 1999), p. 313

²³ A. Jordan, O. Carlile and A. Stack, *Approaches to Learning: A Guide for Teachers* (Maidenhead, Open University Press, 2008), p. 31.

educational provision. Not all apprentices will be the same. They will have different backgrounds and experiences and these variables will have a direct influence on the apprentice's ability to deal with materials and assessment. The mechanisms for delivering educational provision must be clear and provide for a range of apprentices with different abilities who wish to qualify as a solicitor.

The Driver behind the Apprenticeship Model

The SRA are now in a position to issue further guidance which will link directly with their competency statement, threshold standard and statement of legal knowledge. This in turn will allow employers and trainers the opportunity to develop a structured programme which will enable apprentices to prepare for the centralised assessment system (CAS) which is the SQE. The CAS is a computerised assessment which will be undertaken by the apprentice at an assessment centre under timed conditions. There will be Multiple Choice Questions (MCQs) and there will be no limit on the number of attempts an apprentice may undertake the assessment. This approach has been criticised by the City of London Law Society²⁴ who believe:

MCQs do not assess written communication skills, English language skills, unprompted recall of information, thought process, complex problem-solving ability, high-level analytical skills, evidence-gathering ability, the exercise of judgment (sic) and the ability to write convincing arguments.

The monitoring of quality and the process will be undertaken by the SRA who will ensure that the correct level of assessment is being implemented and there is consistency between any successive attempts. The SRA believe the introduction of a centralised system will address their concerns about the LPC by ensuring standards are consistent for every apprentice undertaking the SQE.

²⁴ The City of London Law Society Training Committee, "City of London Law Society Committee Response to the SRA's Consultation on Assessing Competence" (2016), p. 8, available at: [http://www.citysolicitors.org.uk/attachments/article/104/Assessing%20Competence%20\(Consultation%20Questionnaire%20form%20final\).pdf](http://www.citysolicitors.org.uk/attachments/article/104/Assessing%20Competence%20(Consultation%20Questionnaire%20form%20final).pdf) (accessed 16 March 2016).

They believe a centralised assessment will ensure everyone takes the same assessment and their proposals will set higher standards; whilst at the same time widening the opportunity to qualify as a solicitor within England and Wales.

The SRA need to explain that the apprenticeship model is supported and driven by the BIS who have collaborated with the SRA on the introduction of an apprenticeship pathway for solicitors. The *raison d'être* for BIS is economic growth through the investment in the development of skills and education which in turn will promote trade. One of the main priorities identified by BIS is “working with further and higher education providers to give students the skills they need to compete in a global employment market”.²⁵ The SRA need to enter in to discussions with HEIs and work together in order to produce a framework that will support the apprenticeship model, such as the apprenticeship degree pathway. This collaborative relationship is important as HEIs are entitled to state funding for the trailblazer apprenticeship scheme. The apprenticeship is supported by BIS and the Skills Funding Agency (SFA) who have put in place the funding rules that apply to the degree apprenticeship. They have put in place a framework which incorporates the delivery of educational provision which is deemed essential as part of the apprenticeship framework which is then funded as part of the SFA apprenticeship.²⁶ The funding for an individual apprenticeship is dependent on the age of the apprentice and size of the employer. This combination can either allow for full funding, such as for individuals aged between 16 and 18 when they start their apprenticeship at levels 4, 5, 6 and 7, or alternatively, the funding mechanism will allow for co-funding which means that the employer will need to contribute to the costs. It is BIS and the funding mechanism which are driving the new pathway to qualify as a solicitor through the apprenticeship model. Together, the SRA and BIS are implementing central Government policy.

²⁵ Department for Business, Innovation and Skills (2016) at p. 1, available at <https://www.gov.uk/government/organisations/department-for-business-innovation-skills/about> (accessed 30 November 2016).

²⁶ Skills Funding Agency (2016) Apprenticeship Technical Funding Guide for Starts from May 2017, Version 1, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567189/Apprenticeships_funding_-_technical_guide_version1.pdf (accessed 30 November 2016), p. 1.

The SRA's apprenticeship route will take between a minimum of five to six years to complete and for the apprentice to qualify as a solicitor. The SRA have placed an entry requirement on the degree apprenticeship of five GCSEs, which should include English and Maths at grade C or above, and the apprentice should have also passed three A Levels. This framework focuses on competency and we are informed it aligns with the SRA's competence statement which will be assessed under the apprenticeship model through the centralised test (Centralised Assessment). This in turn will be linked to work place learning and will achieve the Competence Statement which defines the standards and skills expected of solicitors at the point of qualification.

The combination of funding and training will be attractive to many legal practices to employ more trainee solicitors through the graduate apprenticeship route. The Trailblazer Apprenticeship Funding for England (2016) has confirmed that the "Trailblazer apprenticeships are funded by employers and the Government on a one third, two thirds ratio. For each £1 the employer contributes, the Government contributes £2 – up to a maximum funding cap."²⁷ This is a financial incentive for many law firms and will probably increase the number of trainee solicitors who decide to opt in to the apprenticeship model pathway which underpins the SRA's proposals. However, the SRA need to put these finer detail in their consultation document and start working with HEIs in order to put in place the necessary educational provision which will support the apprentice solicitor.

Conclusion

Changing or introducing a new pathway to qualify as a solicitor needs careful consideration. The introduction of the apprenticeship model is primarily designed for people in work and combining academic study with extensive, practical, work-based learning. This could be a successful model if the SRA

²⁷ City & Guilds - Funding Reforms (England) 2016, available at: <http://www.cityandguilds.com/apprenticeships/trailblazer-apprenticeships/apprenticeship-funding#01> (accessed 28 May 2016).

would provide the additional information that is needed to develop their existing framework. The current structure has not explained how learning will take place and how the assessment process will be designed. These are key factors which need to be explored with HEIs who will be able to support the SRA and BIS. The driver behind this change appears to be a Government initiative which has been held out as the SRA's initiative. The SRA need to be transparent in their consultation document and explain the involvement of BIS. They also need to engage with HEIs and develop the degree apprenticeship solicitor route. This will allow for the necessary educational provision and resources to be put in place in readiness for the changes that are going to take place. This will provide apprentices with an entry route into a related (pathway) discipline in higher education. This will have to be carried out in partnership with HEIs who will be able to ensure the transfer of knowledge and the engagement related activities is available and will prepare them for the SQE. Learning a skill and promoting the development of the mind are central to the creation of today's lawyer. This is only achievable if the experience of the apprentice is put first. The transition for the apprentice needs to be considered first and foremost when developing and implementing government policies. Vygotsky recognised the sequence of events that should take place in order for the mind to develop. Therefore, in this instance to deprive an individual of the opportunity to develop at the appropriate pace without the appropriate knowledge and skills is preparing the apprentice for failure and not success. Unless the SRA recognise these weaknesses and provide resources to support these apprentices then government policy will continue to support the needs of a market and not the apprentices' transitional needs.