

# **ARRANGEMENTS FOR QUALIFIED LAWYERS TRANSFERRING TO BECOME SOLICITORS IN ENGLAND AND WALES**

## **CONSULTATION PAPER**

### **RESPONSE OF SOCIETY OF ASIAN LAWYERS**

#### **Introduction**

The Society of Asian Lawyers is a social, campaigning, educational and networking organisation devoted to promoting the role of solicitors originating from the Indian sub continent working within the English legal system and the communities they represent.

Its membership is drawn from solicitors, barristers, self employed, the employed and those in government service.

This paper has been drafted on behalf of the Society by Sundeep Bhatia, the current Chairman of the Society of Asian Lawyers.

This is not the Society's first involvement in matters pertaining to the SRA.

The Society of Asian Lawyers was part of the working party supporting Lord Herman Ouseley in his inquiry as to why it appeared that BME solicitors were disproportionately represented in those firms attracting the attention of the Solicitors Regulation Authority.

The Society also sits on the implementation group regarding Lord Ouseley's report.

The SRA's review of the qualified lawyer's transfer test is timely in circumstances where the European community is ever expanding and in circumstances where it seems that many major legal markets, including that of India, will soon be open to British lawyers.

It is therefore in the interests of trade reciprocity that as fluid an exchange of lawyers as possible exists between jurisdictions without lowering the current high professional standards enjoyed within the English and Welsh legal system.

The Society fully understands that if qualification standards are too lax then this will result in a drop in standards.

However if the bar is set too high then this might result in English and Welsh firms losing the ability to practice in new foreign jurisdictions.

It is appreciated that this is a very fine line to tread.

However the SRA must ensure that the system is not perceived as being racist or discriminatory.

Perception is everything as Lord Herman Ouseley found when he prepared his aforementioned paper.

He stated that the SRA was not an institutionally racist organisation but that it would find it hard to dispel the perception that it was.

The SRA must ensure that the same mistakes are not repeated in relation to the reviews of the QLTT.

The danger is that a three rung system of English firms, EEC firms and the rest of the world gives the impression that those lawyers practicing in “the rest of the world, are third class citizens when compared to their European and English brethren”.

The system seems to create a situation whereby those practicing in an English based and derived legal system such as India (where English is commonly spoken) will have more difficulty in qualifying than those from jurisdiction such as France and Germany.

The author of this report travelled to India late last year and spoke to some of the leading law firms in Delhi.

In doing so he was made aware, by senior Indian lawyers of the resentment felt by the strictness of the qualified lawyers transfer tests.

Senior solicitors practicing in India are very unlikely to come and practice in this country in circumstances whereby they currently have to undergo a two year traineeship.

### **ANSWERS TO QUESTIONS POSED IN PAPER**

**Question one.** It is very reasonable, in relation to the day one outcomes for the SRA to ensure that solicitors have the essential knowledge, skills and ability under the six headings at page eight of the consultation papers.

However asking those practicing in foreign jurisdictions to have knowledge of property and probate, litigation, business law and practice, contract and tort seems a case of overkill in circumstances where, it is anticipated that those

practicing areas of law in foreign jurisdictions would mostly seek to practice those same areas of law within the United Kingdom.

Perhaps a fairer way would be to restrict the areas they can practice in dependant on their experience.

That being said it is obviously essential that those overseas lawyers practicing in this country do have knowledge about solicitors accounts, professional conduct, financial regulation and the English legal system.

It is fair to ensure that they have transactional dispute resolution skills, legal profession and client relation skills and professional values behaviours attitudes and ethics.

**Question Two.** Please see answer to question one which incorporates the answer to this question.

**Question Three.** The approach to assessing character and suitability of transfer applicants seems fair except where it is said that “we will vary the nature of the evidence we will require according to where the applicant lives and works, and the availability of independent evidence of their character and suitability”.

This must be done very carefully if the SRA is not to be perceived as being prejudiced against certain jurisdictions.

**Question Four.** It seems fair to require those wishing to practice in the United Kingdom to have qualified fully in their country of origin including any period of pupillage or training.

This is a sensible means of ensuring that high professional standards are maintained in the profession in this country as there would be less chance of devaluing professional standards here.

**Question five.** It is desirable that the English legal system should be opened up to as wide a range of jurisdictions as is possible without lowering professional standards.

This is because otherwise there is a very real danger that other jurisdictions will reciprocate any restrictions resulting in English trained solicitors being barred from working in some foreign jurisdictions.

If the range of countries is opened up then there is every possibility of other legal markets opening up to British law firms.

**Question six.** If one is legally trained than one has the ability to adapt ones thinking to different jurisdictions provided that sufficient thought is given by the lawyer concerned to the rules and regulations of the legal system.

Similarity to the English legal system is used as a yard stick and this would necessarily, possibly exclude jurisdictions that have a very different way of thinking from that in the United Kingdom.

Therefore for example English and Germany are not adversarial legal systems but they cannot be excluded because they are part of the EEC.

There will obviously be some regimes where corruption and lack of regulation may well mean that lawyers from those countries cannot reasonably be considered competent to practice in this jurisdiction.

However it is submitted that a fairer course of action would be to start from the premise that all countries in all jurisdictions are eligible then to introduce exclusions and justify those exclusions.

**Question seven.** Please see the answer to question six.

The idea of setting up a list of jurisdictions gradually is undesirable in that it will make the system over complex and open to allegations of prejudice and narrow mindedness.

The course of action contemplated in question six is therefore fairer.

It is essential that consultation in this area extends further than the Law Society International division and a broad spectrum of views and evidence is obtained.

**Question eight.** If the international lawyers assessment applied to all foreign lawyers then the tests are broadly attractive and would ensure high professional standards with the exception of the fact that, as stated previously, it might be better for lawyers to be restricted to certain areas of law if they do not wish to practice in all areas of law.

Whatever the obligations on the SRA in relation to the EEC lawyers it cannot be right to use a far more rigid expansive and restricted system to assess those international lawyers outside of the EEC.

This immediately creates a perception of unfairness, prejudice and barrier creation.

It would, under these circumstances, be better to apply EEC tests to all foreign lawyers from outside the United Kingdom.

This would have the effect of ensuring perceived consistency and fairness.

The three pronged system creates a situation whereby someone from say a Turkish law firm would be dealt with individually as per the EEU regulations whereas solicitors operating in simpler systems to the English legal system such

as India or Australia would have to go through a more rigorous assessment procedure. This cannot be correct.

**Question nine.** The test situations should not be overly rigorous because qualified lawyers are capable of learning whilst on the job. The basic level of competence in this area can be worked upon by means of practice within the jurisdiction.

**Question ten.** The problem with this suggestion is that it could be perceived by those in foreign jurisdictions as being patronising and also unrealistic in circumstances where lawyers who have qualified in their home jurisdictions and who potentially have practiced for many years are suddenly asked to carry out something akin to trainee/pupilage.

**Question eleven.** This seems fair but again the exercise of the rights to audience is something which is learnt from practical experience and once again there may be many senior lawyers from foreign jurisdictions who have not practiced in English courts but who are capable of learning whilst on the job in the same way that newly qualified solicitors and barristers do in this country. ( i.e. those who have taken the domestic route).

**Question twelve.** The different tests for International and EEC lawyers appear prejudicial and discriminatory. Whilst the Society of Asian Lawyers understands the obligations the SRA has towards European lawyers it is surely better to treat all lawyers by the same yardstick and to use the same yardstick in relation to international lawyers to avoid such perceptions

**Question thirteen.** It would seem fair for all lawyers qualified in the UK to have jurisdiction in courts throughout the United Kingdom without going through any transfer process.

**Question fourteen.** It would perhaps be a good idea for the SRA and representatives of the Scottish legal system to consult on what differences there are between the two systems to ensure that solicitors can take advantage of a specific tailored training course.

Due to the, cultural and educational similarities there is surely no need to go through the majority of the QLTS.

**Question fifteen.** It would be undesirable for the SRA to work with only one possible organisation. This is because there should be competition and if the assessments are going to be opened up to countries around the world then this would be a mammoth task it is difficult to anticipate an organisation that would be of sufficient size to cope with the possible demands.

Moreover competition, with regulation would be the best and fairest way forward.

**Question sixteen.** All providers, big and small should have the right to the work and to tender for the work providing they can show that they can provide the necessary logistics.

**Question seventeen** This is only right and proper. It would help to ensure higher standards because lawyers could study in their country of origin and devote more time to the professional requirements of the United Kingdom. However the logistics must be in place to ensure that the necessary quality standards are maintained.

**Question eighteen.** Special provision should not be made because that would leave the SRA open to allegations of discrimination as to circumstances when it was exercised and circumstances when it was not so exercised.

Moreover its maintenance would lead to a perception that the new test was unfair.

**Question nineteen.** Please see answer to question eighteen for the same reasons.

**Question twenty.** The Society of Asian Lawyers is extremely concerned about the equality and diversity implications. This is because of the inbuilt perception of discrimination or seeming discrimination between the test for international lawyers and lawyers of EEC origin. These views have been fully stated elsewhere in this consultation paper response.

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