***Non-law graduates: an uncommon route to qualification?***

***Abstract***

This article considers the future of the conversion course (CPE/GDL) taken by non-law graduates (NLG) seeking to qualify as solicitors and barristers in England and Wales. The SRA and BSB are changing the paths to qualification, which for NLG, commences currently with this course. University law schools are particularly unsettled by (i) the impact of the SRA’s move to a centralised exam (ii) the de-regulation of courses including the conversion course and (iii) the divergence in professional requirements. This article analyses the changes and the likely responses to them taking account of the factors which have influenced the development of the conversion course as it is today­. These have been, and, it is argued, will increasingly be, market-influenced decisions to ensure a supply of ‘good’ graduates. The analysis is juxtaposed with the agenda for diversity, this being a key driver of regulatory changes. It is argued that a free market of course providers points to new and varied courses, but there is no logic or factors on which it can be confidently suggested that the reforms will lead to greater diversity in the profession.

**Introduction**

Currently, non-law graduates (NLG) in England and Wales who wish to become solicitors and barristers can take a fast-track one-year conversion course, ‘CPE’, instead of a three-year degree in the study of law. In December 2017 the Solicitors Regulation Authority (SRA) announced the demise of this course:

If you start a non-law undergraduate degree in or after academic year 2017-18, and then decide to qualify as a solicitor, you will need to take the [solicitors qualifying examination (SQE)], assuming it is introduced in 2020.[[1]](#footnote-1) This is because the Common Professional Assessment (CPE), also known as the Graduate Diploma in Law (GDL), will no longer count towards qualification in the new system once the SQE has been introduced.[[2]](#footnote-2)

The Bar Standards Board (BSB) is also introducing, from 2019/20, its own changes to qualification. The Legal Services Board (LSB) must approve both sets of changes.[[3]](#footnote-3) Behind these changes is the Legal Services Act 2007. It imposes on the regulators a duty to ensure an effective and diverse legal profession.[[4]](#footnote-4) On the meaning of a diverse legal profession, the LSB states that this is ‘one that reflects and is representative of the full spectrum of the population it serves’.[[5]](#footnote-5)

The SRA and the BSB, along with ILEX Professional Standards, sponsored a review (2011-13) of legal education and training - the Legal Education and Training Review (LETR). The aim of the review was to assess the provision of legal education and training against the aims of the 2007 Act. LETR was the most significant review of legal education and training since the 1971 Ormrod review.[[6]](#footnote-6)  LETR concluded that the current routes to qualification fundamentally work though imperfectly.[[7]](#footnote-7) However, it identified two significant problems, one around consistency of standards on some courses,[[8]](#footnote-8) and another around the cost of qualifying which raises issues of financial risk[[9]](#footnote-9) and diversity in the profession.[[10]](#footnote-10) While these were not necessarily surprising conclusions for observers of the profession or the profession itself, given the importance of the review, they invited, and were bound to lead to, reforms.[[11]](#footnote-11)

In analysing the impact of these reforms on the conversion course, this article reviews the key driver – a balance between market forces and educative considerations - which have defined the course as it is today, and it remains pertinent to an analysis of the likely responses. This article highlights the evidence which shows that despite its critics, the conversion route has become an important one to qualification, especially for city firms and the Bar. It considers the proposition that NLG are attractive because of their value in terms of maturity and experience. It is argued that this postulation, while seemingly plausible, is glib, as it masks the profession’s dominant criteria for their selection pool, which is completion of undergraduate studies at a reputable university. The data which are included in this article show that this negatively impacts upon BME diversity in parts of the profession.[[12]](#footnote-12) Other data which are included here show another problem for diversity in the profession as the conversion course itself represents a significant barrier as high percentages of BME students under-achieve despite being successful graduates. Thus the NLG who qualify typify the diversity gap in the profession.

This article considers the reforms of the routes to qualification, notably the controversial SQE, and the opportunity they present for re-designing courses. It concludes that while new courses will emerge in an era of deregulation, it is unlikely given the nature of the reforms and the market imperatives, that they will, without more, increase diversity in the profession. The reforms are just as likely to re-situate problems notably through harder and riskier choices for students, a tough assessment regime with the SQE, which, in the absence of financial interest or regulatory pressure, will do nothing to encourage providers to address, with purpose, the diversity gap.

**The conversion course**

The framework for the current system of qualification dates from the recommendation of the epochal 1971 Ormrod committee for a graduate profession.[[13]](#footnote-13) The conversion course was conceived as an alternative to the ‘normal’ route, the ‘qualifying law degree’ (QLD). At the time of Ormrod 22 universities and 6 polytechnics - later to become the post 1992 universities - offered law degrees.[[14]](#footnote-14) With the huge expansion of higher education 120 institutions are now accredited to award the QLD.[[15]](#footnote-15) The rules are set out in the BSB and SRA joint statement on the QLD.[[16]](#footnote-16)

The argument for a NLG route was that the wide and diverse demands on legal services would require a wide recruitment base and it was not clear (at that time) that there would be enough law graduates coming through.[[17]](#footnote-17) The rationale of ensuring a supply of talent thus supported an alternative route into the profession. Crucially, the argument was accepted that the conversion course should be shorter than the law degree, otherwise to require a NLG ‘to take a full-time three-year degree course in law would defeat its own object; it would be such a deterrent that this kind of entrant would be virtually eliminated.’[[18]](#footnote-18)

Ormrod proposed a two-year conversion teaching core law and law options. The key innovation was to be a *common* course.[[19]](#footnote-19) As a consequence the regulators would discontinue their separate conversion courses (their Part 1s) and reform their respective vocational stages (their Part 2s).

It is worth noting that there are some longstanding criticisms of principle about a shorter course for NLG, as it is considered by some to be inadequate preparation for practice and detrimental to the QLD.[[20]](#footnote-20) Ormrod deflected such criticisms by attacking the so-called crammer approach offered by the unregulated private colleges and tutors for the Part 1s (and Part 2s) and recommending that the approach on the conversion course should discourage ‘cramming’. To offer further reassurance, Ormrod projected that as the normal route was to be the QLD, the numbers coming through the conversion route were ‘likely to be small’.[[21]](#footnote-21)

Ormrod’s vision for the conversion course did not materialise. First, both the SRA and the BSB agreed to proceed on the basis of a one-year course. Their members were concerned that a two-year course would be financially ‘unrealistic’ with a scarcity of grants.[[22]](#footnote-22) Second, they were unable to agree a common course, mostly due to practicalities, but in addition, the Law Society[[23]](#footnote-23) was to some extent divided on the issue, as City firms lobbied for a radically short course of six months.[[24]](#footnote-24) As a result, each branch continued with its own course and it was not until 1989 when the regulators agreed a common course.[[25]](#footnote-25) Today 46 providers are accredited to run the conversion course.[[26]](#footnote-26) Its rules are covered by a supplement to the QLD joint statement.[[27]](#footnote-27) In short, these are that the course, full-time, must, extend over 36 weeks - one long academic year; teach core law and one other area of law, and lead to a university award, such as a Graduate Diploma in Law (GDL) – at some institutions it is now packaged and offered as a LLM to meet the rules for post-graduate loans.[[28]](#footnote-28) Until recently assessment for core subjects was mandated to be by examination being not less than 70% of the weighting.[[29]](#footnote-29) It is a point of notable contrast that since 1990 the QLD rules have contained no prescription for the form of assessment for the law degree.[[30]](#footnote-30) There is no pedagogic justification for stricter requirements for the conversion course, and the difference has to be seen as a legacy of scepticism about the course and/or association with poor learning styles and, ironically, cramming.[[31]](#footnote-31)

The conversion course was set up as a means to an end – a minimum set of examinations on the core law to justify progress to the vocational stage. But it has more value than this. Time on the course and contacts made will, for an important number of students, be a significant period of formation not just in learning their first law, but also for crucial career decisions given the different routes reflecting the split between solicitors and barristers. For students who may not pursue a career with either branch, which could be a significant number, the conversion course offers recognised awards situated within the national framework of higher education qualifications.

**Successful NLG**

Data indicates that, in global terms, NLG are reasonably successful on the conversion course. 2014 data shows a pass rate for the full-time conversion course at 83%.[[32]](#footnote-32) Other SRA data suggests that overall, full-time and part-time combined, the pass rate is around 72%.[[33]](#footnote-33) High levels of success could be expected, after all, NLG are graduates with above average attainment.[[34]](#footnote-34) On vocational courses NLG have shown relative strength by out-performing law graduates.[[35]](#footnote-35) A review of the latest available data in the Law Society Gazette shows this to be the case. Recent BSB data shows NLG superiority on the Bar course (BPTC): the failure rate in 2017 for NLG was 5.5% compared to 16% for QLD students.[[36]](#footnote-36)

Another deviation from Ormrod’s vision is that the number of NLG entering the profession has become significant for both branches. A study by Shiner in the 1990s showed at that time they represented up to 16% of admissions to the roll of solicitors;[[37]](#footnote-37) more recent data shows this at around 20%.[[38]](#footnote-38) Shiner’s research showed that NLG had proportionally higher chances of success in recruitment compared with law graduates and other research is consistent with this.[[39]](#footnote-39) The actual numbers of NLG entering the profession must be significant – around a third of all training contracts are offered by city firms which recruit large numbers of NLG,[[40]](#footnote-40) and, according to recent BSB data close to half of all pupillages are awarded to NLG despite being only 20% of the BPTC cohort.[[41]](#footnote-41)

There is a view that NLG are preferred by employers ‘by reason of maturity or the breadth of learning and experience conferred by their undergraduate degree subject’.[[42]](#footnote-42) On the face of it this seems plausible. But it does not stand up to scrutiny. The evidence shows that in general employers do not care about what subject was previously studied. A review of recruitment literature demonstrates that employers do not indicate any particular preference.[[43]](#footnote-43) What about the maturity of NLG? There is an extra year through time on the conversion course. But why limit consideration to an extra year? If greater maturity is attractive, then there should be students recruited and funded from a wide range of universities especially and including newer universities given that these graduate more mature students.

Rather, as studies show, it is neither maturity nor extra studies or a combination of them that is decisive. What is, is the right undergraduate university. The evidence to the LETR summed this up as, ‘good A levels and a 2:1 from a good university’. A ‘good’ university is typically considered to be ‘Oxbridge or a Redbrick’, (‘Russell Group).[[44]](#footnote-44) The basis of the recruitment decision for NLG is the same as the one for law graduates - having been admitted for undergraduate study to the perceived better universities, and there having obtained a good degree. This represents a safer choice and cuts down costly recruitment processes. Graduating from these university trumps consideration of maturity and wider skills and experiences. Of course, in taking this approach recruiters are ‘ignoring the possibility that [good] candidates might be found in the new universities.[[45]](#footnote-45) And, it ignores the possibility that some of these universities might run good courses. This attitude closes down opportunity to diversify the profession as it results in the exclusion of students from the sections of society who are vital to increasing diversity.

**Diverse underperformance**

Having a profession that is ‘representative of the full spectrum of the population it serves’ is a central plank of the reforms to the routes to qualification considered later in this article.[[46]](#footnote-46) For students this is about a fair deal: that there are equal and fair opportunities to compete for entry and that the profession can reflect society. Despite a history of equality legislation,[[47]](#footnote-47) there is a legacy of BME disadvantage which is proving obdurate. The data shows significant negative outcomes for BME students compared with non-BME, both into, and through, higher education,[[48]](#footnote-48) including the journey to qualification in the legal profession.

By playing it safe by only or predominately targeting/funding/accepting students from the so-called ‘good’ universities, the profession contributes to a lack of diversity given the disproportionately lower numbers of BME students who can gain admission to these universities. The latest data shows lower BME representation on conversion courses compared with the QLD, 25% compared with 36.5%.[[49]](#footnote-49) This corresponds with the fact that NLG are more representative of these universities.[[50]](#footnote-50) Simply put, recruitment of NLG corresponds with lower chances of BME recruitment and is a factor explaining the lower levels of diversity in the parts of the profession which target NLG.[[51]](#footnote-51)

The extent of the problem is not just that BME students are proportionately less likely to take or be funded through the NLG route, but for those who do take the course, their chances of success are lower. BME students do not complete the course without significantly higher levels of resits and lower levels of achievement in assessment when compared to non-BME. Given that NLG are high achieving graduates, it is perplexing that at this level there is a BME gap. Data for years 2014 – 2017 shows average resit rates for NLG students who declared ethnicity as, white 8%, BME 18%, and black (only) 25%; for attainment of the highest awards for performance, ‘distinction’ and ‘commendation’, figures show as: white 53%, BME 24% and black 12%.[[52]](#footnote-52) While course providers, like recruiters, can (rightly) point to complexity of causes,[[53]](#footnote-53) this data shows that the gap in diversity in the profession is in some measure, attributable to the course.[[54]](#footnote-54) Clearly, the current approaches to delivery of courses and assessment are not good enough to address, or perhaps, even contribute to, BME under-performance.[[55]](#footnote-55)

The sceptics were right about one thing: the conversion route has become ‘a mainline entry to the practising professions’.[[56]](#footnote-56) But as we have seen, there is a double hurdle to diversity by recruiting NLG. First, there is a recruitment policy which prioritises university reputation over maturity and experience - the former category disproportionately under-representing BME students, and second, a course on which BME students under-perform despite being successful graduates.

The next section summarises the regulatory changes, and given the focus of this article, it is followed by consideration of how they are likely to affect the conversion course and outcomes for NLG.[[57]](#footnote-57)

**Reform of the routes to qualification**

LETR concluded that the current routes for qualification are broadly, if imperfectly, fit for purpose. Yet, following the review the SRA and BSB each made a decision to fundamentally change their roles from, accreditors of processes (courses), to one of principally accrediting outcomes (assessments). This was in no small measure because of the mainstreaming of diversity under the Legal Services Act 2007: the current routes to qualification are seen at best as sustaining, if not, aggravating the problem of uneven access to the profession. While both regulators have adopted the same philosophy, they are adopting different approaches. In short, the SRA has devised a radically new process of qualification, while the BSB has revised the current rules. The result is that course providers and students will face a new era of increased divergence. The SRA’s reforms dismantle the premise for a common start point for NLG. The decision about which path to take will be made at the beginning of the process for qualification. This will serve to increase the difficult choices for NLG caused by a split profession, and for course providers, the new era will force major changes to courses.

The SRA’s new approach is presented as four non-sequential requirements for qualification:[[58]](#footnote-58)

|  |  |
| --- | --- |
| Degree orequivalent eg apprenticeship | SQEPart 1 Part 2 |
| 2 years of qualifying work experience (QWE) | Character and suitability |

The BSB’s reforms offer four alternative ‘managed’ or ‘training’ pathways to qualification:

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| --- |
| Academic component Vocational work based |
| Academic component Vocational Vocational work based Part 1 Part 2 |
| Integrated Academic and Vocational components work based |
| Apprenticeship: combing all three components |

The SRA’s requirements mean that the solicitor profession will remain essentially a graduate one, but neither academic law nor a single sequential path is mandated. Instead an applicant will choose the order in which to take the components. Though there will be constraints: SQE Part 1 must be passed before Part 2 assessments can be taken, character and suitability will normally be signed off after completion of the other three components, and for NLG, the degree will by definition precede the SQE.

The BSB reforms do not break from the current model as they keep three recognisable and distinct ‘components’ of qualification: academic, vocational and work-based learning [[59]](#footnote-59) For the NLG heading for the Bar there will be no necessity for major changes to the pathway to qualification. NLG proceeding with either of the first two pathways will follow the current route; the third pathway – integrating the academic and vocational stages is permitted and offered under the current rules, but would represent a reform if it extended to include NLG. A conversion course of some sort covering the study of core law is likely to continue as the start point. What might change, given the space for flexibility in delivery and assessment, is the length, with a shortening of courses.[[60]](#footnote-60)

On the other hand, the SRA changes are a renunciation of faith in university law schools, at least on the current model. (Not surprisingly law schools rejected the SRA’s critique of their courses and opposed the changes.[[61]](#footnote-61)) Under the SRA’s new regulations there will be no CPE/GDL and LPC, (nor, for law undergraduates, a QLD). The changes are undoubtedly a step into unchartered territory. Unlike now, the routes to qualification will not be mandated but determined by the market - choice/price/reputation/league tables/data/marketing/risks.

**What can NLG expect?**

The BSB’s approach to de-regulation through its modifications to the current path have not generated in universities anywhere near the levels of concern as the SQE. The SQE is causing considerable head scratching as universities assess the changes, the impact they will have on the current academic-vocational divide, and the possible market responses.[[62]](#footnote-62) A consideration of the assessment and requirements to pass the SQE is the place to start an analysis of the possible responses.

The 2017 draft SQE assessment specification proposes six exams for Part 1. Since the appointment of Kaplan as examiner in 2018 it has been announced that the six exams will be taken in three ‘domains’ (sittings), all to be taken in a single period. The reduction from six separate exams to three domains is not pedagogic but one can assume, financial. In this regard, it is relevant that the LSB has warned that the SQE reforms cannot result in increased costs to students.[[63]](#footnote-63)

The table which follows shows how current CPE and LPC subjects may map to SQE Part 1 domains. The SRA has refrained from validating the SQE against the Framework for Higher Education Qualifications level descriptors. For providers who want to offer awards, is it level 6, 7, higher or a mix? For example, SQE Part 2 is proposed to test candidate’s skills through role-plays, which look similar to ones currently assessed on the LPC (level 7). But it would be reasonable to expect that the standard for SQE Part 2 to be considerably more demanding than the current LPC skills assessments given that SQE will test skills against the benchmark of ‘day one’ competence which should reflect two years of practice experience, unlike the current LPC which is usually completed before gaining any practice experience.[[64]](#footnote-64) For course providers determining a level for an award it is likely to be level 7 (masters) as this would be defendable within a framework with which they are familiar.

|  |  |  |  |
| --- | --- | --- | --- |
| **SQE Part 1****Domains** **(exam groupings)** | **Exam titles as proposed in the Assessment specification 2017** | **From CPE/GDL** | **From LPC** |
| Domain 1 | Dispute Resolution in Contract and/or Tort  | Core principles of contract law | Core principles of tort | The principles, procedures and processes involved in dispute resolution and the Rules of Civil Procedure |
| Business Law and Practice  | Core principles of contract law | Business organisations, rules and procedures | Taxation of business organisations |
| Domain 2 | Property Law and Practice  | Core principles of land law  | Relevant aspects of trust and contract law | Property Law Practice  | Principles of property taxation | Tax | Solicitors Accounts |
| Wills and the Administration of Estates and Trusts  | Trusts law | Wills and intestacy  | Probate and administration practice | Trust regulation | Taxation |
| Domain 3 | Principles of Professional Conduct, Public and Administrative Law, and the Legal Systems of England and Wales  | Legal System of England and Wales and Sources of law | Constitutional law and EU law | The Human Rights Act 1998 and Equality Act 2010 | Legal services | Regulation: money laundering and financial services | Ethics, professional conduct and regulation |
| Criminal Law and Practice  | Core principles of criminal liability | The procedure and processes involved in advising clients, including vulnerable clients, at the police station | The procedures and processes involved in criminal litigation |

**The new regulatory environment – the changes**

The key impacts of the regulatory changes are: (i) no mandatory common start point for SRA and BSB requirements, (ii) the removal of separate academic and vocational stages for the SQE, (iii) an approach to learning for the SQE that is training in the law not academic law, (iv) the SQE will be an entirely external exam, and (v) in addition to course/prep fees, students will pay significant SQE fees.[[65]](#footnote-65)

All of these considerations point to a course/prep for SQE that is exclusive to its needs and one that is unlikely to serve well the requirements for the Bar route. The BSB claims that the differences are not so significant as it is likely to consider preparation for the SQE as meetings its academic requirements. In support of this the BSB and the SRA have issued a ‘joint protocol’ on the ‘academic stage’. The claim for a commonality is premised on the fact that both regulators will require students to demonstrate knowledge of the current core subjects and because, beyond stipulating these core areas of law, the new BSB rules are flexible on content, assessment and credits of learning.[[66]](#footnote-66) It would be highly desirable if courses emerge which prepares effectively for both the Bar and the SQE as it would allow NLG to make a delayed and better informed career choice after having studied some law. But, the differences of approach are significant and it is hard to be confident that a joint course will emerge, let alone be prevalent. A course in academic core law will take a student one step towards qualification for the Bar, but would not be sufficient for the SQE. A common course developed around the SQE would probably result in duplication of learning for Bar students and risks being considered by the market as too light on core law.[[67]](#footnote-67) It is debatable whether such a course would be viable where it is in competition with Bar dedicated conversion courses which are feasible given the unique attraction of the Bar to home and overseas students.

For universities currently offering a conversion course in an academic tradition, SQE Part 1 is a radical departure. Some universities may consider that a clinic approach to learning law will facilitate an approach to learning Part 2, but resources will determine this.[[68]](#footnote-68) For university law schools not currently offering vocational courses, where academic law is the domain, the debate around the purposes of a law degree and the law school, traditionally presented as liberal education against training, and costs associated with a SQE course, will favour a defence of the liberal degree. This means that universities currently offering the vocational course (LPC) and others prepared to invest in new models will be best placed to offer NLG ‘prep’ courses for the SQE.

**The new regulatory environment - the market**

The SRA’s hands-off approach will enable the market conditions for competition.[[69]](#footnote-69) There will undoubtedly continue to be a competitive market for NLG – currently worth around £40 million, and combined with the current LPC market, worth around £200 million a year.[[70]](#footnote-70) For reasons that have been explored, both providers and students have a common interest in a conversion phase or prep which is as short as possible. That said, for non-sponsored students, a course that is too short and does not offer an award, will not attract a postgraduate loan.[[71]](#footnote-71) Firms, especially city firms, with resources and clout, will have an appetite to work with course providers to ‘re-engineer’ courses to suit their needs.[[72]](#footnote-72) All providers though, whatever their approach, will need to prepare for a prescribed syllabus and external examination.

There were around 5000+ NLG in 2016/17.[[73]](#footnote-73) Based on available information and some estimating, perhaps around 3000, (25-30%), of the 11000 students on the LPC, are NLG.[[74]](#footnote-74) Thus the majority of students taking the SQE will be, at least for the foreseeable future, law degree students. Do NLG have to be separated from law degree students? May be not or not too much. All students will need to be prepared in a *method* for the SQE. If any group of students needs converting it will be law degree students to a new form of learning and assessment in law given the radical difference to learning law on an undergraduate course. Even for core law already learned on a law degree, it will have to be recovered (some of it from three years prior) and repackaged as ‘vignettes’ of law for the SQE.[[75]](#footnote-75) Given this, perhaps NLG are not at such a disadvantage. That said NLG will need to address a complete lack of legal knowledge, concepts and terminology and will need formation in legal research skills.[[76]](#footnote-76) Though research skills are likely to be taught from scratch for all students given views expressed about the poor skills of law graduates.[[77]](#footnote-77) All this makes it possible to consider that some providers may operate on the basis that NLG are not so far behind law graduates and will offer them a SQE course with a short dedicated catch-up phase (set of modules), or perhaps more radically, may offer a course which proposes to law degree students to start at the beginning with NLG students.

The approach for preparation for SQE Part 2 will be the same for all students, as it will be assumed that law graduates have no prior experience or advantage. The separation between Part 1 and Part 2 allows providers if they choose to, to offer a separate preparation course for Part 2. The logic of the design of the SQE is that Part 2 should be taken two years after completion of relevant work experience. But this is not fixed and a student will be able to take Part 2 assessment straight after passing Part 1 and before any dedicated work experience. Financial constraints may dictate that unsponsored students take Part 2 after work experience, which would address the current LPC gamble. However there is a view that city firms have a preference for both SQE 1 and SQE 2 to be completed before the start of work experience. If this is so, it points to a refiguring of some LPCs into a single SQE prep course covering both Parts.

**Addressing diversity**

Reduced fees for students or at least clear opportunities to progress without large upfront costs of LPC proportions will benefit students and is a necessary outcome for LSB approval of the SQE.[[78]](#footnote-78)

On the other hand there is the risk of new barriers appearing. One will be in the form of information confusion and replacing the (alleged) inconsistent LPC standards with inconsistent claims and outcomes. If the SRA itself concludes, as it does, that the differential pass rates on GDL and LPC are difficult to interpret – then how does it expect NLG in an unregulated market to understand differentials in pass rates and claims between SQE providers?[[79]](#footnote-79) Who will be trusted in this market?[[80]](#footnote-80) A city-endorsed course may become the de facto mark of quality, and for NLG (and other students) who seek a career in the city, be seen as a necessity, but it may also represent an expensive SQE gamble if there is no promise of work at the end of it.[[81]](#footnote-81) Others may be tempted or have no choice but to gamble on cheaper courses of unknown quality.[[82]](#footnote-82) All of this suggests difficult decisions especially for the many students who will be unfunded, unsure and lacking access to quality, dependable and independent advice.[[83]](#footnote-83) Compounding this will be regulatory divergence between the SRA and the BSB meaning that the NLG will make a decisive choice before the study of any law, which is likely to be a decision with risk for many students. An appreciation of the realities of the split in the profession is far from clear to those starting from the outside.

The SRA has been at pains to emphasise, perhaps with some justification, the validity of the SQE as the solution to inconsistent pass rates between institutions, as well as seeking to justify the validity of its format - multiple-choice - as an appropriate test format.[[84]](#footnote-84) The SRA also appears confident that increased choice of prep courses will increase the numbers able to afford to take the examination. But it has been conspicuously unassertive that the SQE will help address BME under-achievement.[[85]](#footnote-85)

If the SRA’s qualified lawyer transfer assessment is a valid comparator – it is very similar to SQE both in terms of proposing preparation through non-accredited courses and its assessment format[[86]](#footnote-86) - SQE Part 1 will be tough to pass.[[87]](#footnote-87)

The unseen closed book law examination is suspect as an old-fashioned and dated form of assessment which is over-reliant on the power of memory. Ormrod criticised it on this basis, as have others.[[88]](#footnote-88) The weakness of any examination extends further to its methodical value where it fails to enable learning and achievement.[[89]](#footnote-89) A centralised examination, even a modernised one, does not address these problems. Data on US Bar examinations, which are freely available on the internet, show that there is a significant BME gap even with their well-established centralised examinations.

For all its modernised form and claims of validity, SQE Part 1 will, as an unseen closed-book exam, be approached fundamentally as a test of memory and tactics.[[90]](#footnote-90) What the US state Bar exams indicate, if they are a fair comparison, is that Part 1 of the SQE will become a barrier to diversity in the profession.[[91]](#footnote-91)

**Conclusion**

The purpose of this article is to consider the future for the conversion course. The NLG route via the conversion course has become a normal route for entry into the legal profession particularly into city firms and the Bar. But after 30 years, the course will have to change as, subject to LSB approval, the regulatory landscape for qualification will be changing, fundamentally.

In the market for recruits, a NLG is a good choice if, like a law degree student, s/he studied as an undergraduate at a ‘good’, i.e., pre-1992 university. Extra maturity and wider experiences count for little with this approach. This impacts negatively on BME students aspiring to enter the legal professions who remain under-represented at these universities. While there are commercial reasons for this approach, there is something wrong with a profession, which, if it sincerely believes in equal opportunity, persists in failing to significantly invest in and diversify the approach for consideration of recruits. It is hard to see how these regulatory reforms will change attitudes and approaches.

This article has argued that there is something wrong too with the current conversion course given that BME students, and notably black students, have a high resit rate and low achievement rate. Black students resit exams at three times the rate of white students. Not one of the 109 full-time black NLG was awarded a distinction on any course in 2015. There is something wrong - these students were all successful graduates.

The reforms of the routes to qualification will force providers to re-think courses. The form of the SQE, the divergence from the requirements for the Bar, and a sizeable market, point to an environment defined firstly, by no or little choice for NLG but to choose from the outset between the Bar route or SQE, then, once the decision is made, a second decision about which is the best prep course. While competition may lead to some lower-priced courses, there is nothing in the reforms to give confidence that the market or students ability to negotiate through it, will lead to fairer and equal opportunities. The future for the NLG would seem to be more variety but also more uncertainty and risk, which is likely to lead to re-situation, but not a removal, of blockers to diversity in the profession. It seems to this author that to achieve an increased rate of diversity across the profession, the regulators cannot simply rely on the market. There may be a desire to achieve increased diversity with these reforms but there is simply no reason or evidence to expect an empathetic market or favourable forces within in it to deliver it.

1. The date for the implementation of the SQE has been put back to Autumn 2021 and as a consequence the last moment to start conversion course under current regulations is before autumn 2021. [↑](#footnote-ref-1)
2. SRA Information Note (December 2017) sent to providers of accredited law courses. [↑](#footnote-ref-2)
3. It is expected that the SRA will seek approval in 2019, see Legal Services Board, ‘Summary of Decision’ (LSB final decision notice 26 March 2018) para 15; 30; the BSB changes were approved in February 2019; information on the LSB website, <www.legalservicesboard.org.uk/what\_we\_do/regulation/pdf/2018/FINAL\_decision\_notice.pdf> accessed 30 April 2019. [↑](#footnote-ref-3)
4. SRA, ‘How Diverse are Law Firms?’ (2017), <www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page> accessed 5 February 2019; LETR (n 6) para 3.32. [↑](#footnote-ref-4)
5. Legal Services Board, ‘The Regulatory Objectives – The Legal Service Act’ para 43 <[www.legalservicesboard.org.uk/news\_publications/publications/pdf/regulatory\_objectives.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf)> accessed 24 April 2019. [↑](#footnote-ref-5)
6. J. Webb, J. Ching, P Maharg and A. Sherr, Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (2013) (LETR) para 1.1;

for Ormrod see (n 13). [↑](#footnote-ref-6)
7. LETR (n 6) para 2.106, 2.172 - 2.175. [↑](#footnote-ref-7)
8. ibid para 2.118; though no concerns were identified with the conversion course. [↑](#footnote-ref-8)
9. Ibid para 6.11 - ‘LPC gamble’ tag – the upfront fees for a whole vocational course without a promise of a training contract; or equivalent for the Bar route with a BPTC gamble. [↑](#footnote-ref-9)
10. ibid para 2.169 and 2.176; cf para 7.39. [↑](#footnote-ref-10)
11. Legal Services Board ‘Guidance on regulatory arrangementsfor education and trainingissued under section 162 of the Legal Services Act 2007’ <www.legalservicesboard.org.uk/what\_we\_do/regulation/pdf/20140304\_LSB\_Education\_And\_Training\_Guidance.pdf> accessed 10 May 2019. [↑](#footnote-ref-11)
12. Black and minority ethnic = non-white; refer Advance HE on ‘BME’ acronym, <www.ecu.ac.uk/guidance-resources/using-data-and-evidence/use-language-race-ethnicity> accessed 24 April 2019. [↑](#footnote-ref-12)
13. *Report of the Committee on Legal Education* (Cmnd 4595 March 1971) (Ormrod). [↑](#footnote-ref-13)
14. ibid para 35. [↑](#footnote-ref-14)
15. SRA website, ‘Qualifying Law Degree Providers’ <[www.sra.org.uk/students/courses/Qualifying-law-degree-providers.page](http://www.sra.org.uk/students/courses/Qualifying-law-degree-providers.page)> accessed 24 April 2019. [↑](#footnote-ref-15)
16. SRA and BSB, ‘Joint Statement on the Academic Stage of Training’ (1999), <www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page> accessed 24 April 2019. [↑](#footnote-ref-16)
17. Ormrod (n 13) para 98. [↑](#footnote-ref-17)
18. ibid 103; para 112-113. [↑](#footnote-ref-18)
19. ibid para 113. [↑](#footnote-ref-19)
20. ###  Peter Birks, ‘**One Year Lawyers’** (14 August 1992) 142 NLJ 1152; see also Lord Chancellor’s Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training* (April 1996) 69.

 [↑](#footnote-ref-20)
21. Ormrod (n 13) para 113. [↑](#footnote-ref-21)
22. Advisory Committee on Legal Education, ‘Second Report’ (9 November 1973). [↑](#footnote-ref-22)
23. The Law Society’s regulatory role has since been separated off to the SRA. [↑](#footnote-ref-23)
24. Referred to in a letter from Mr Justice Bingham to the Senate of the Inns of Court and the Bar (16 January 1985). [↑](#footnote-ref-24)
25. Society of Public Teachers of Law (now SLS) 1990 paper for the Lord Chancellor’s Advisory Committee on Legal Education (19 September 1990) para 3 states 1989-90 as first year of the common course.

 The Law Society reformed its Part 1 in 1978 to be come the ‘common profession exam’ (CPE) as a course primarily for students intending to qualify as solicitors and separate from the Bar’s conversion course, the Diploma in Law, run at City University and the Polytechnic of Central London. Given that the courses were similar it was possible to transfer after completing the conversion course from one branch to the other for the vocational stage but it was not necessarily easy. (Ref. Law Society Training Committee Fourth Report June 1994 point 6.) [↑](#footnote-ref-25)
26. SRA website, ‘CPE/GDL Course Providers’ <[www.sra.org.uk/students/courses/CPE-GDL-course-providers.page](http://www.sra.org.uk/students/courses/CPE-GDL-course-providers.page)> accessed 24 April 2019.

SRA monitoring data indicates not all courses run, 29 ran courses ran in 2016-17; presumably insufficient numbers of applications meant some courses did not run. [↑](#footnote-ref-26)
27. Joint Statement 1999 (n 16). [↑](#footnote-ref-27)
28. Some GDLs were initially ‘Pg DL’ to indicate postgraduate-ness. For courses validated at level 6 (graduate level), this was changed to ‘GDL’ to avoid confusion and to fit better with the framework of higher education qualifications. [↑](#footnote-ref-28)
29. SRA and BSB, ‘Joint Academic Stage Handbook’ (November 2012) Appendix L.

This requirement is not stated in the latest guidance in the 2014 Joint Academic Stage Handbook (July 2014). [↑](#footnote-ref-29)
30. The preamble accompanying the 1995 Joint Statement recognised ‘the value of employing a variety of methods of assessment … rather than relying on one method such as written unseen examinations.’ [↑](#footnote-ref-30)
31. Society of Public Teachers of Law (1990) (n 25) - suspicion that teachers on CPE courses can’t resist to ‘connive in cramming’, para 12.2; similar criticism reported in (1994) 28 The Law Teacher (Government and Education news) 177; Graham Ferris, ‘The Solicitors Qualification Examination: something for all? Some challenges facing law schools in England and Wales’ (2018) 52(4) The Law Teacher 519, 520. [↑](#footnote-ref-31)
32. SRA, ‘Baseline attainment data: legal education, training and post-qualification - Supporting paper’ (October 2015) [www.sra.org.uk/sra/policy/sqe/research-reports.page#base](http://www.sra.org.uk/sra/policy/sqe/research-reports.page#base) - author’s data extrapolated from this report. Elsewhere the SRA has stated that that ‘fewer than 1% of full time students on the Graduate Diploma in Law (GDL) fail’ - see SRA webpages for 2015 at <[www.sra.org.uk/sra/consultations/t4t-assessing-competence.page](http://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page)>. The difference suggests either errors or a different way of interpreting data; without doubt, as explored in this article, both figures hide significant differences between performance based upon race/ethnicity. Both webpages accessed 5 May 2019. [↑](#footnote-ref-32)
33. SRA, ‘Monitoring and authorization activity’ (2015-2017) gives ‘completion rate’ for years 2014 and 2015 for full-time and part-time combined; the latest data for 2016-17 does not provide any overall completion rate,

<www.sra.org.uk/sra/how-we-work/reports/authorisation-monitoring-activity-2016-17.page> accessed 26 April 2019. [↑](#footnote-ref-33)
34. LETR (n 6) para 6.9; Vera Bermingham and John Hodgson, ‘Desiderata: What lawyers want from their recruits’ (2001) 35(1) The Law Teacher 1, 18. [↑](#footnote-ref-34)
35. Bermingham and Hodgson (n 34) 19. [↑](#footnote-ref-35)
36. Extrapolation of data provided to the author by BSB; Bermingham and Hodgson (n 34) 19. [↑](#footnote-ref-36)
37. Referred to in Nicholas Saunders, ‘From Cramming to Skills- The Development of Solicitors Education and Training since Ormrod’ (1996) 30 The Law Teacher 168, 172. [↑](#footnote-ref-37)
38. Law Society Gazette published data about NLG until 2015 and this shows that since the beginning of the century NLG admission has on average been nearer to 20%; cf LETR (n 6) 2.14. [↑](#footnote-ref-38)
39. Heather Rolfe & Tracy Anderson, ‘A firm choice: law firms' preferences in the recruitment of trainee solicitors’ (2003)10(3)International Journal of the Legal Profession 315, 324. [↑](#footnote-ref-39)
40. SRA Baseline attainment data (October 2015) (n 32) para 22; LETR (n 6) para 214. [↑](#footnote-ref-40)
41. Data provided to author by BSB shows that in years 2011-2015 NLG students obtained 48% of all pupillages; data on percentage of NLG (GDL) on BPTC available on BSB website, <www.barstandardsboard.org.uk/media/1932232/bptc\_key\_statistics\_report\_2018.pdf> accessed 6 May 2019. [↑](#footnote-ref-41)
42. LETR (n 6) para 2.14; similar reasons given in Lord Chancellor’s Advisory Committee on Legal Education’s First Consultative Conference (9 July 1993); see also Bermingham and Hodgson (n 34) 12-13, 15. [↑](#footnote-ref-42)
43. ibid 12. [↑](#footnote-ref-43)
44. Bermingham and Hodgson (n 34) 33; Anderson and Rolfe (n 39) 323; LETR (n 6) 2.142-2.143; Bridge Group, ‘Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity’ (March 2017) 10 <[www.sra.org.uk/sra/policy/sqe/research-reports.page#base%3E](http://www.sra.org.uk/sra/policy/sqe/research-reports.page#base%3E)> accessed 25 April 2019. [↑](#footnote-ref-44)
45. Rolfe and Anderson (n 39) 325. [↑](#footnote-ref-45)
46. Legal Services Board - Application to LSB for the approval of amendments to the SRA’s authorisation of individuals regulatory arrangements related to the proposed introduction of a Solicitors Qualifying Examination (January 2018) para 131 <<https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/SQE_LSB_application_January_2018__v_1.0_FINAL.pdf>> accessed 29 April 2019. [↑](#footnote-ref-46)
47. House of Commons, ‘Briefing Paper: An Early History of British Race Relations Legislation’ (No. 8360, 9 July 2018). [↑](#footnote-ref-47)
48. Susan Smith, ‘Exploring the Black and Minority Ethnic (BME) Student Attainment Gap: What Did It Tell Us? Actions to Address Home BME Undergraduate Students’ Degree Attainment’ (2017) 5(1) Journal of Perspectives in Applied Academic Practice 48, 49-50; Advance HE, ‘Degree Attainment Gaps’ <www.ecu.ac.uk/guidance-resources/student-recruitment-retention-attainment/student-attainment/degree-attainment-gaps/> accessed 25 April 2019. [↑](#footnote-ref-48)
49. The Law Society, ‘Entry Trends’ (2017-18) <[www.lawsociety.org.uk/law-careers/becoming-a-solicitor/entry-trends/](http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/entry-trends/)> accessed 26 April 2019. [↑](#footnote-ref-49)
50. LETR (n 6) 4.102, 2.118, 6.9 [↑](#footnote-ref-50)
51. ibid 6.34. [↑](#footnote-ref-51)
52. SRA Baseline attainment data (October 2015) (n 32) 10; SRA, ‘Monitoring and authorization activity’ (2015-2017) (n 33). [↑](#footnote-ref-52)
53. Bridge Group (n 44); Susan Smith (n 48) 49-50. [↑](#footnote-ref-53)
54. Office for Students, ‘Topic Briefing: Black and minority ethnic (BME) students’ 5 <[www.officeforstudents.org.uk/media/145556db-8183-40b8-b7af-741bf2b55d79/topic-briefing\_bme-students.pdf](https://www.officeforstudents.org.uk/media/145556db-8183-40b8-b7af-741bf2b55d79/topic-briefing_bme-students.pdf)> accessed 26 April 2019. [↑](#footnote-ref-54)
55. Elaine Hall, ‘Glass Houses: how might we decide on a “good enough” assessment to become a solicitor?’ (2018) 52(4) The Law Teacher 453, 457. [↑](#footnote-ref-55)
56. Society of Public Teachers of Law (now SLS) 1990 paper for the Lord Chancellor’s Advisory Committee on Legal Education (19 September 1990) para 5. [↑](#footnote-ref-56)
57. Susan Smith (n 48) 49. [↑](#footnote-ref-57)
58. Legal Services Board (26 March 2018) (n 3) para 6. [↑](#footnote-ref-58)
59. BSB, ‘BSB Policy Statement on Bar Training’ (March 2017) para 8 available <www.barstandardsboard.org.uk/media/1825162/032317\_fbt\_-\_policy\_statement\_version\_for\_publication.pdf> accessed 5 February 2019. [↑](#footnote-ref-59)
60. BSB website, ‘Bar Qualification Manual’ (1 April 2019) <www.barstandardsboard.org.uk/media/1983635/bqm\_part\_2a\_-\_a3\_completing\_the\_academic\_component\_-\_conversion\_courses.pdf > accessed 10 May 2019. [↑](#footnote-ref-60)
61. SRA Consultation Responses: A new route to qualification: the Solicitors qualifying examination. Consultation on a proposal to introduce the Solicitors Qualifying Examination: Consultation responses (April 2017); reference the joint response from four law subject associations: the Socio-Legal Studies Association, the Committee of Heads of University Law Schools, the Association of Law Teachers and the Society of Legal Scholars;

LSB has dismissed concerns about a loss of an academic stage learning law for qualification (n 3) para 50; Elaine Hall (n 55) 458. [↑](#footnote-ref-61)
62. Cf Anthony Bradney, ‘The success of university law schools in England and Wales: or how to fail’ (2018) 52(4) 490, 498. [↑](#footnote-ref-62)
63. LSB (n 3) para 35. [↑](#footnote-ref-63)
64. SRA website for a report on this, ‘AlphaPlus Report: Reviewing levels and the proposed content demands in the Solicitors Qualifying Exam’ <www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page> accessed 1 July 2019. [↑](#footnote-ref-64)
65. SRA website, ‘I want to be a solicitor’ <www.sra.org.uk/sra/policy/sqe/solicitor-persona.page> accessed 26 April 2019. [↑](#footnote-ref-65)
66. SRA, ‘Common Protocol on the Academic Stage of Training’ (November 2018) available at <www.sra.org.uk/students/academic-stage/common-protocol.page> accessed 5 February 2019. [↑](#footnote-ref-66)
67. Deveral Capps *et al*, ‘Training for the Bar: education (r)evolution’ (2018) 52(4) The Law Teacher 499, 506-7. [↑](#footnote-ref-67)
68. LSB (n 3) SRA application annex 7 - mapping of learning outcomes against statement of solicitor competences. [↑](#footnote-ref-68)
69. To see the embryonic market refer to the SRA webpages, ‘List of Providers’ <https://www.sra.org.uk/sra/policy/sqe/training-provider-list.page> accessed 26 April 2019. [↑](#footnote-ref-69)
70. Figures by author based up fees quoted in LETR and latest known enrolment figures taking account of inflation. [↑](#footnote-ref-70)
71. UK Government webpages, ‘Master’s Loan’ <https://www.gov.uk/masters-loan/eligibility> accessed 26 April 2019. [↑](#footnote-ref-71)
72. LETR (n 6) 2.60. [↑](#footnote-ref-72)
73. SRA, ‘Monitoring and authorization activity’ (2016-17 data) (n 33) - this data covers all NLG and would seem to include students repeating. So the number newly enrolling each year is down on this. [↑](#footnote-ref-73)
74. It is not possible to easily identify year on year the numbers of NLG on the LPC; recent BPTC data has been supplied to author by BSB. Extrapolating from available data, pass rate (72% in 2015) and with some estimation, one can suggest that around 2500-3000 of the approx. 11000 LPC places (2017) are taken up by NLG = approx. 25%-30% of LPC places; LETR (n 6) para 2.8. [↑](#footnote-ref-74)
75. Elaine Hall (n 55) 460. [↑](#footnote-ref-75)
76. Bermingham and Hodgson (n 34) 23; 26; LETR (n 6) 4.74. [↑](#footnote-ref-76)
77. LETR (n 6) para 2.99. [↑](#footnote-ref-77)
78. Bridge Group (n 44) paras 32-33; LSB (n 3) para 35. [↑](#footnote-ref-78)
79. SRA 2016-17 data (n 33) para 20, 35. [↑](#footnote-ref-79)
80. Anthony Bradney (n 62) 495; Deveral Capps (n 67) 502. [↑](#footnote-ref-80)
81. As the SRA has noted, ‘In a market where there is little or no independent information about the quality of courses, price is seen by students as a proxy for quality.’ ‘Solicitors Qualifying Examination (SQE) Equality, Diversity and Inclusion Risk Assessment’ (April 2017). [↑](#footnote-ref-81)
82. LSB decision (n 3) para 22. [↑](#footnote-ref-82)
83. ibid 37, 86. [↑](#footnote-ref-83)
84. Cf LETR (n 6) 4.129. [↑](#footnote-ref-84)
85. SRA (October 2015) (n 32) 6, ‘We can attempt to address the disparity at the point of qualification by introducing a centralised assessment, but there remains the legacy of prior disadvantage in the education system, which may limit the impact that these changes can have.’ [↑](#footnote-ref-85)
86. LETR (n 6) para 5.32. [↑](#footnote-ref-86)
87. Kaplan QLTS website, ‘Results’ <https://qlts.kaplan.co.uk/results> accesses 26 April 2019; cf view of one person who expresses a sentiment that the exam may be too easy having been a guinea pig for the pilot of SQE Part 1 in Legal Check <<https://www.legalcheek.com/2019/04/i-was-among-the-first-to-sit-the-sqe-pilot-heres-what-i-thought/>> accessed 2 May 2019 [↑](#footnote-ref-87)
88. Ormrod (n 13) para 84; Brian Abel-Smith and Robert Stevens, *Lawyers and the Courts:* a sociological study of the English legal system, 1750-1965 (Harvard University Press 1967) 367, 372. [↑](#footnote-ref-88)
89. Michael Schneider and Franzis Preckel, ‘Variables Associated With Achievement in Higher Education: A Systematic Review of Meta-Analyses’ (2017) 143 (6) Psychological Bulletin 565, 588-589; Elaine Hall (n 55) 463. [↑](#footnote-ref-89)
90. Elaine Hall (n 55) 461-2. [↑](#footnote-ref-90)
91. ibid 462 – it is too narrow and risks becoming a bottleneck for Part 2. [↑](#footnote-ref-91)