

Liberty and the Legal Services Act: the new qualifying regime for solicitors in England

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Abstract

Seeking to assure consistent standards, and to promote diversity, the solicitors profession in England has adopted two different approaches to qualification, terminating in a capstone examination. One is by a funded government apprenticeship of 5-6 years, and the other is almost entirely open. Candidates in the latter may in principle choose how to prepare for the examinations and compile the necessary work experience in up to four different organisations. This article shows how the two routes are characterised by different concepts of “liberty”. Further, it uses Fraser’s axis of recognition and retribution and Youngs’ concept of oppression to interrogate the extent to which each is capable of contributing to a statutory obligation to promote diversity in the profession. Whilst there are overlaps, it concludes that, in principle, an apprentice achieves qualification because of their job, but a candidate in the open route may need to do so despite their job.

Keywords: apprentice, qualification, regulation, solicitor.

Introduction

The legal services market in England and Wales is both highly deregulated and highly fragmented. Multiple legal professions each have separate regulators under the statutory Legal Services Board (LSB) and different qualification frameworks. The Legal Services Act 2007 (LSA 2007) demands that the professions compete, but also that their membership should be ‘diverse’ and ‘effective’. In parallel with this is a longstanding government commitment to workplace apprenticeships as an alternative to university study (albeit now under review). This article examines the attempts by the solicitors’ profession

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to balance these dictats when licensing domestic applicants.¹ Since 1993, the route to qualification has been essentially threefold: an academic stage (degree or conversion course); a vocational course delivered and assessed by independent providers to a curriculum set by the Solicitors Regulation Authority (SRA) and two years of mandatory work experience in a pre-authorised organisation. The focus of this article is on two significant changes instituted in 2021. The first replaces the vocational course with a centrally-administered Solicitors Qualification Examination (SQE). The intention is to assure consistent standards aligned to a Statement of Solicitor Competence,² whilst widening choice in how applicants prepare for those examinations.

The second is a loosening of the regulation of the two-year prequalification work experience requirement (training contract).³ The solicitors' profession remains strongly attached to the workplace as a venue for authentic learning and socialisation.⁴ That is, as an apprenticeship both culturally and in the Carnegie report sense of an integration of knowledge and reasoning, practice skills and the 'identity and purpose' of the profession.⁵ The regulatory intention of what is now known as 'qualifying work experience' (QWE)⁶ is to release a bottleneck as, in principle, it gives applicants some control over how they satisfy this condition. The apprenticeship is now absorbed, as we shall see, into the new system. Although these changes are wrapped up in widespread desires to widen the diversity of the profession, the extent to which they can do so is not, however, without question. To this one might now add concerns about differential attainment amongst different social groups in the examination

¹ Transfer of qualified lawyers is outside the scope of this article.

² Solicitors Regulation Authority, 'Statement of Solicitor Competence' (*Solicitors Regulation Authority*, 9 August 2022) <<https://www.sra.org.uk/solicitors/resources/continuing-competence/competence-statement/>> accessed 25 March 2025.

³ The other requirements, of a character and fitness assessment and a degree level qualification in any subject are outside the scope of this article.

⁴ Anon, 'Ditching Training Contract Could "Undermine UK Law"' [2015] *Law Society Gazette* <<http://www.lawgazette.co.uk/news/ditching-training-contract-could-undermine-uk-law/5050076.article>> accessed 25 March 2025.

⁵ William M Sullivan and others, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007), 28.

⁶ Solicitors Regulation Authority, 'Qualifying Work Experience for Candidates' (*Solicitors Regulation Authority*, 26 January 2024) <<https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/>> accessed 25 March 2024.

itself⁷ as well as the extent to which the assessment model prejudices the neurodiverse and others.⁸

Aside from the moral imperative to increase the diversity of the profession, the overarching LSA 2007, s 1(1)(f) explicitly requires regulators to ‘encourage[e] an independent, strong, *diverse* and effective legal profession’ [my italics]. This obligation is wider than that of the Equality Act 2010⁹ which covers only a list of protected characteristics although in ss 158 and 159 it permits certain kinds of affirmative action. Law Society statistics suggest there are improvements in respect of some of the protected characteristics in the profession as a whole.¹⁰ However, except in Scotland¹¹ and Wales,¹² the Equality Act as implemented omits socio-economic factors.¹³ In the context of

⁷ Research commissioned by the SRA after differential attainment related to ethnicity in the SQE was shown to exist has already identified a number of ways in which this is endemic to professional qualification: Greta Bosch and others, ‘The Ethnicity Attainment Gap in Legal Professional Assessments: A Systematic Literature Review and next Steps’ (University of Exeter 2023)

<<https://www.sra.org.uk/globalassets/documents/sra/research/ethnicity-attainment-gap-legal-professional-assessments-literature-review.pdf?version=49c157>> accessed 25 March 2025; Greta Bosch and others, ‘Final Report for Solicitors Regulation Authority on the Potential Causes of Differential Outcomes in Legal Professional Assessments’ (University of Exeter 2024) <<https://ore.exeter.ac.uk/repository/handle/10871/136180>> accessed 25 March 2025.

⁸ Joanna Goodman, ‘Exam Graded’ [2022] *Law Gazette*

<<https://www.lawgazette.co.uk/features/exam-graded/5113643.article>> accessed 25 March 2025; Joanna Goodman, ‘One Size Fits All’ [2023] *Law Gazette*

<<https://www.lawgazette.co.uk/features/one-size-fits-all/5117328.article>> accessed 25 March 2025; John Hyde, ‘News Focus: Multiple Questions on the SQE’ [2023] *Law Gazette* <<https://www.lawgazette.co.uk/news-focus/news-focus-multiple-questions-on-the-sqe/5115648.article>> accessed 25 March 2025.

⁹ This act largely impacts on ‘public authorities’. By Schedule 19, the Law Society of England and Wales, of which the SRA is the regulatory arm, is a public authority ‘in respect of its public functions’.

¹⁰ Women are 47% of those practising. Those practising who declared a minority ethnic background are 13% of the profession (28% did not declare an ethnicity): Law Society of England and Wales, ‘Annual Statistics Report 2023’ (Law Society of England and Wales 2025) <<https://www.lawsociety.org.uk/topics/research/annual-statistics-report-2023>> accessed 25 March 2025, tables 2 and 3. See also Solicitors Regulation Authority, ‘Diversity in law firms’ workforce’ (*Solicitors Regulation Authority*, 3 January 2025) <<https://www.sra.org.uk/sra/equality-diversity/diversity-profession/diverse-legal-profession/>> accessed 25 March 2025.

¹¹ S1 of the act is in force in Scotland as the ‘Fairer Scotland Duty’.

¹² S1 is also in force in Wales, supplemented by the Socio-Economic Duty Equality Act 2010. Only limited sections of the act apply to Northern Ireland: s 217.

¹³ Some English local authorities have in their own strategies, however, treated s1 as if it were in force. For data on those characteristics, and some social mobility factors, as reported by the legal professions, see Legal Services Board, ‘Diversity Dashboard’ (*The Legal*

a profession marked by perceptions of eliteness,¹⁴ socio-economic issues must, I suggest, be part of the mischief at which the wider language of the LSA 2007 is directed.

Those socio-economic factors, particularly as to university tuition fees, also underpin the government-sponsored apprenticeships, providing a paid, employer-led route to qualification, often from entry immediately on leaving school. In England,¹⁵ the Trailblazer solicitor apprenticeship¹⁶ embeds the SQE and QWE in a 5-6 year programme for school-leavers (a shorter apprenticeship is available for graduates). The sequence of these components, and how the support, learning and assessment of apprentices is organised, is, however, rather different from that of other candidates. There were 4,952 new two-year training contracts in 2021-2022.¹⁷ In comparison, by 2024, there were 1,653

Services Board, 2023) <<https://legalservicesboard.org.uk/research/diversity-dashboard-0>> accessed 25 March 2025. It should not be assumed that law firms themselves are inactive in pursuing increased diversity: Jill Treanor, 'Slaughter & May Seeks More Working-Class Lawyers' (*The Times*, 24 July 2023) <<https://www.thetimes.co.uk/article/magic-circle-firm-hires-lawyers-from-working-class-gr3hb852w>> accessed 25 March 2025.

¹⁴ See for example, repeated reports on this topic by the Sutton Trust: Sutton Trust, 'Sutton Trust Briefing Note: The Educational Backgrounds of the UK's Top Solicitors, Barristers and Judges' (Sutton Trust 2005) <<https://www.suttontrust.com/our-research/educational-backgrounds-uks-top-solicitors-barristers-judges/>> accessed 25 March 2025; Sutton Trust, 'The Educational Backgrounds of Leading Lawyers, Journalists, Vice Chancellors, Politicians, Medics and Chief Executives' (Sutton Trust 2009) <<https://www.suttontrust.com/our-research/educational-backgrounds-leading-lawyers-journalists-vice-chancellors-politicians-medics-chief-executives/>> accessed 25 March 2025; Philip Kirby, 'Leading People 2016 The Educational Backgrounds of the UK Professional Elite' (Sutton Trust 2016) <<https://www.suttontrust.com/our-research/leading-people-2016-education-background/>> accessed 25 March 2025; Sutton Trust and Social Mobility Commission, 'Elitist Britain 2019 The Educational Backgrounds of Britain's Leading People: Summary Report' (Sutton Trust, Social Mobility Commission 2020) <<https://www.suttontrust.com/wp-content/uploads/2020/01/Elitist-Britain-2019-Summary-Report.pdf>> accessed 25 March 2025.

¹⁵ Education is devolved to the Senedd Cymru/Welsh Parliament and so arrangements for Welsh apprenticeships differ. While there are Welsh apprenticeships in the legal sector, at the time of writing a solicitor apprenticeship was not amongst them. The non-apprenticeship route is, however, identical, albeit with increasing opportunities to take the SQE in the Welsh language: Solicitors Regulation Authority, 'SQE in Welsh' (*Solicitors Regulation Authority*, No date) <<https://sqa.sra.org.uk/exam-arrangements/assessment-information/taking-the-sqe-in-welsh>> accessed 25 March 2025.

¹⁶ Solicitors Regulation Authority, 'Solicitor Apprenticeships' (*Solicitors Regulation Authority*, 18 October 2024) <<https://www.sra.org.uk/become-solicitor/sqe/solicitor-apprenticeships/>> accessed 25 March 2025.

¹⁷ Law Society of England and Wales, 'Annual Statistics Report 2023' (Law Society of England and Wales 2025) <<https://www.lawsociety.org.uk/topics/research/annual-statistics-report-2023>> accessed 25 March 2025, 8.

solicitor-apprentices in total.¹⁸ By April 2024, approximately 5,000 people had applied to log QWE under the new system.¹⁹

Isaiah Berlin's concepts of 'negative liberty' and 'positive liberty'²⁰ provide a useful way of characterising the structures of the apprentice- and open, non-apprentice routes. Broadly, the former emphasises the removal of external constraint on the individual's actions and the latter the removal of internal constraint preventing action. Borrowing from Flood, I will refer to the open route(s) as 'polycentric' and the more structured apprenticeship as essentially 'monocentric'.²¹ Both nevertheless involve choices and distribution of opportunities, but of different kinds, and intersect differently with the individual's openness to self-determination on the one hand and capitulation to authority on the other.

I also draw on two scholars in the wider field of social justice whose work has not yet been used in this context in considering how the two routes address the diversity objective (to the extent that they do). Nancy Fraser's dialectic of recognition and redistribution,²² and affirmative and transformative responses to these and Iris Marion Young's treatment of 'oppression'²³ provide powerful means by which to understand some of the potential effects of these liberties on underrepresented and disadvantaged groups in the light of the statutory diversity obligation. Taken together, the regulatory objectives of the LSA 2007 contrive not only to emphasise homogeneity and normativity (public interest, constitution, professional principles) but also heterogeneity (competition

¹⁸ Monidipa Fouzder, 'Solicitor-Apprenticeship Numbers Promising', Says Education Minister' [2024] *Law Gazette* <<https://www.lawgazette.co.uk/news/solicitor-apprenticeship-numbers-promising-says-education-minister/5118781.article>> accessed 25 March 2025.

¹⁹ Solicitors Regulation Authority, 'Experiences of Qualifying Work Experience: Survey Findings' (*Solicitors Regulation Authority*, 10 April 2024) <<https://www.sra.org.uk/sra/research-publications/qualifying-work-experience-survey-findings/>> accessed 25 March 2024. This figure probably includes apprentices.

²⁰ Isaiah Berlin, *Liberty* (Henry Hardy ed, Oxford University Press 2013). I do not make any distinction in meaning between 'liberty' and 'freedom' in this article.

²¹ John Flood, 'Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation' (Legal Services Board 2011) <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lbs_legal_education_report_flood.pdf> accessed 25 March 2025.

²² Nancy Fraser, *Justice Interruptus: Rethinking Key Concepts of a Post-Socialist Age* (Routledge 1997).

²³ Iris Marion Young and Danielle S Allen, *Justice and the Politics of Difference* (Princeton University Press 2011).

between providers of regulated services, a ‘diverse’ profession). The qualification routes also contrive to emphasise both homogeneity (through the SQE and competence statement) and heterogeneity (polycentrism in achieving the competences and preparing for the examinations). It is assumed, but not yet demonstrated, that that heterogeneity of input by way of redistribution of opportunities also improves the diversity of the profession (on entry at least) without compromising or changing the homogeneity of the outcome.²⁴

Consequently, this article begins with a brief overview of the regulatory and professional context. The second part outlines the parallel routes for non-apprentices (polycentric) and apprentices (monocentric), characterising each by reference to the key conceptual framings of negative and positive liberty and the extent to which, for the disadvantaged, they offer redistribution of opportunity; recognition of difference between societal groups and greater or lesser risks of oppression. I conclude that whilst both routes ostensibly offer ‘liberty’, they are liberties of two diametrically opposed kinds. Both, in principle, offer Fraser’s redistribution of opportunity to a wider group in accordance with the statutory objective, but the extent to which they offer recognition of difference between groups, and avoid Young’s ‘oppression’ is less clear. The avoidance of oppression may, for the individual, come to be the most significant difference between them.

The regulatory and professional context

An emphasis on competition (that is, heterogeneity), is embedded in the regulatory framework. The LSA 2007 was the culmination of a sequence of reports questioning lawyers’ monopolies.²⁵ Divisions between legal professions and between rights to conduct different legal activities are blurred.

²⁴ In a survey after the first year of SQE, respondents’ views were “mixed” as to whether the new regime promoted diversity: Solicitors Regulation Authority, ‘SQE Year One: Initial Perceptions and Experiences’ (*Solicitors Regulation Authority*, 16 March 2023) <<https://www.sra.org.uk/sra/research-publications/sqe-year-one/>> accessed 25 March 2025.

²⁵ For example: Department for Constitutional Affairs, ‘Competition and Regulation in the Legal Services Market A Report Following the Consultation “In the Public Interest?”’ (Department for Constitutional Affairs 2003) <<http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/consult/general/oftrptconc.htm>> accessed 25 March 2025; David Clementi, ‘Report of the Review of the Regulatory Framework for Legal Services in England and Wales’ (Ministry of Justice 2004) <<http://webarchive.nationalarchives.gov.uk/+/http://www.legal-services-review.org.uk/>> accessed 25 March 2025.

This competitive landscape poses unique problems for the solicitors' profession. It is the largest regulated profession.²⁶ It is also the most disparate, in terms of the work that its members do, and are authorised to do. Whilst *individual* solicitors or organisations are highly specialist, the profession as a whole has to maintain a broad identity and assurance of competence across a vast range of activity to maintain its differential and to justify the SRA's claim to regulate all its members.²⁷

In the recent past this breadth was facilitated for most entrants first through the 'qualifying law degree' required to contain seven 'foundation' subjects (or a conversion course covering the same ground). The vocational Legal Practice Course (LPC) was designed to equip graduates for the first day of their work experience. Its core curriculum mixed business law, property law, civil litigation, ethics and accounts with practice skills.²⁸ It also contained specialist elective modules and, for larger firms, an opportunity to create bespoke content.²⁹ The subsequent training contract used a benchmark (the Practice Skills Standards³⁰) to assure consistency and protect trainees from exploitation. Trainees were required to keep records, to have appraisals, and the SRA made monitoring visits. Regulations under Solicitors Act 1974, s 2 dictated its length, its content, in which organisations it could be served and eligibility of supervisors.

The LSB, required to approve the proposed new regime, was cautious about its effect on diversity:

on the basis of the SRA's commitments to monitor, publish and respond to identified issues with differential attainment [between candidates from different groups], we do not

²⁶ Legal Services Board, 'How Many Lawyers Are There?' (*The Legal Services Board* 2022) <<https://legalservicesboard.org.uk/about-us/who-we-are>> accessed 25 March 2025.

²⁷ Discussions at the time of writing about whether the SRA should regulate the legal executive profession are outside the remit of this article.

²⁸ Drafting/writing, research, advocacy, client interviewing. Negotiation appeared in its earlier iterations but was then removed.

²⁹ James Faulconbridge, 'Alliance Capitalism and Legal Education: An English Perspective' (2011) 80 *Fordham Law Review* 2651. The need to teach to the centralised SQE test removes this option.

³⁰ Solicitors Regulation Authority, 'Practice Skills Standards' (*Solicitors Regulation Authority*, September 2021) <<https://www.sra.org.uk/trainees/period-recognised-training/managing-trainees/practice-skills-standards/>> accessed 25 March 2025.

consider that this issue sufficiently engaged the refusal criteria so as to merit refusing the application.³¹

The burden of increasing diversity (heterogeneity) whilst maintaining or enhancing standards (homogeneity) is, therefore, firmly in the SRA's court. That homogeneity is articulated in the Statement of Solicitor Competence, an 'external'³² model of competence statement setting out the tasks, skills or behaviours that go to make up 'the ability to perform the tasks and roles required'³³ 'to the expected standard'³⁴ at the point of initial qualification. It was developed by a combination of expert input and consensus; initially employed for post-qualification 'continuing competence',³⁵ and is now embedded into the ethical code for both solicitors and SRA-regulated organisations.³⁶ Its significance for our purposes is that it is the basis of the SQE. That said, its 18 competences each have subsidiaries, not all of which are explicitly assessed³⁷ or, indeed, capable of being demonstrated in such an assessment. This is, as we shall see, a practical point of divergence for apprentice and non-apprentice candidates. There is nothing in the competence statement dictating scope of activity across legal fields. There is, however, a threshold statement of level and a 'foundations of legal knowledge' component

³¹ Legal Services Board, 'Decision Notice: The Solicitors Regulation Authority Rule Change Application for Approval of Alterations to Its Regulatory Arrangements Relating to the Solicitors Qualifying Examination' (*Legal Services Board* 2020) <<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/10/20201027-Decision-Notice-SQE.pdf>> accessed 25 March 2025, para 118.

³² Stan Lester and Jolanta Religa, '"Competence" and Occupational Standards: Observations from Six European Countries' (2017) 59 *Education and Training* 201.

³³ Anne McKee and Michael Eraut, *Learning Trajectories, Innovation and Identity for Professional Development* (Springer 2013), 3.

³⁴ *Ibid.*

³⁵ Its scope, therefore, involves tasks that senior solicitors may no longer carry out, and omits tasks that junior solicitors do not carry out. See Julian Webb and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (SRA, BSB, CILEx Regulation 2013) <<https://letr.org.uk/the-report/index.html>> accessed 25 March 2025, recommendation 9.

³⁶ Solicitors Regulation Authority, 'SRA Code of Conduct for Firms' (*Solicitors Regulation Authority*, last amended 6 April 2023) <<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>> accessed 25 March 2025; Solicitors Regulation Authority, 'SRA Code of Conduct for Solicitors, RELs and RFLs' (*Solicitors Regulation Authority*, 6 June 2023) <<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>> accessed 25 March 2025.

³⁷ See the discussion of one omission in Jane Ching, 'Solicitors' Rights Of Audience, Competence And Regulation: A Responsibility Rights Approach' (2021) 41 *Legal Studies* 1.

to SQE1 which replicates some of the contents of the law degree and LPC. SQE2 then assesses, in simulation, legal skills across a similar range of practice areas to that of the LPC,³⁸ but, critically, at the level to be expected of a newly qualified solicitor.

QWE must be served in ‘legal services’ as defined in the LSA 2007,³⁹ but it can take place in up to four different organisations (including as a student or unpaid volunteer), inside or outside the jurisdiction. It must provide opportunities to develop ‘the minimum number [of] two’ of the 18 competences⁴⁰ under the supervision of a solicitor of England and Wales.⁴¹ The retention of the work experience component represents a recognition of its cultural importance to the profession.⁴² Perhaps as a result, its quality assurance rests in the hands of the employer who certifies its completion. There is no regulatory requirement that anything is demonstrably learned during the period. For the SRA, learning is established entirely by the SQE.⁴³ As we shall see, however, superimposing the apprenticeship on QWE creates a rather different learning environment. This brings us to the theoretical perspective.

Liberty, redistribution, recognition and oppression

The two routes treat candidates very differently in terms of choice and structure (liberty). Berlin suggests negative freedom answers the question ‘How much am I governed?’ It is ‘... a function of what doors, and how many, are open to [the individual], upon what prospects they open; and how open they are’.⁴⁴ It

³⁸ Criminal Litigation (including police station advice); [Civil] Dispute Resolution; Property; Wills and Intestacy, Probate Administration; Business Organisations.; Solicitors Regulation Authority, ‘SQE2 Assessment Specification’ (*Solicitors Regulation Authority*, April 2024) <<https://sqa.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification>> accessed 25 March 2025.

³⁹ The advice is in fact less definitive than it first seems. The statutory definition ‘can help candidates decide whether their role involves delivering legal services’ but work within that definition ‘is likely to be’ QWE: Solicitors Regulation Authority, n 6.

⁴⁰ *Ibid.*

⁴¹ An organisation’s compliance officer for legal practice is also able to certify completion.

⁴² Law Society of England and Wales, ‘Global Competitiveness of the England and Wales Solicitor Qualification’ (Law Society of England and Wales 2015).

⁴³ Even if the SQE was passed months or years before qualification.

⁴⁴ Isaiah Berlin, *Isaiah Berlin Liberty* (Henry Hardy ed, Oxford University Press 2013), 41.

is about choice (and consumerism and neoliberalism⁴⁵) and, hence, seems an appropriate way to characterise the polycentric route.

Positive freedom, by contrast, answers the question ‘By whom am I governed?’. For Berlin, the choice was between the individual and the collectivity. Given the significance of the employer, and the training organisation, as well as the requirements for their active support towards achieving the competences, this seems appropriate to describe the monocentric apprenticeship. Once the choice to pursue an apprenticeship has been converted into acquisition of the relevant job, the route to qualification is determined, and determined largely by others.

The social justice theories of Fraser and Young help us to understand the effect of those choices and differing structures, especially in this context, on candidates and on the diversity of the profession. The assumption underlying the polycentric route is that barriers such as lack of economic capital to spend on courses, or the social capital facilitating employment in high-status organisations, or outright discrimination by employers,⁴⁶ would be reduced. Opportunities to qualify would be increased, and more equally distributed in a more socially just system. This assumes, of course, that the standards expressed in the competence statement and terminal assessment are themselves diversity-neutral. Young perceives standards as problematic in this respect unless they are ‘defined in terms of technical skills and competence, independently of, and neutral with respect to, values and culture’.⁴⁷ The latter seems to be what the SRA sought to achieve in its drafting. However, assessment can be more challenging: ‘most criteria of evaluation in our society, including educational credentials and standardised testing have normative and cultural context’.⁴⁸ An attainment gap has already been identified in the SQE, and is under investigation.⁴⁹

⁴⁵ Russell G Pearce and Sinna Nasser, ‘The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values’ (2012) 19 *International Journal of the Legal Profession* 357.

⁴⁶ See, for example, application portals whose drop-down menus exclude less prestigious universities, referred to in Solutions Research, ‘The lived experiences of legal professionals: Barriers to getting in, being in and getting on’ (*Legal Services Board*, 2023) <<https://legalservicesboard.org.uk/wp-content/uploads/2023/05/The-lived-experiences-of-legal-professionals.pdf>> accessed 25 March 2025, 8.

⁴⁷ Iris Marion Young and Danielle S Allen, n 23, 201.

⁴⁸ *Ibid*, 193.

⁴⁹ See sources cited in nn 7 and 8.

It also remains to be seen whether cheaper courses are as effective as more expensive courses in equipping candidates to pass the SQE or, in absolute terms, a false economy. Candidates are expected to exercise their negative liberty to ‘make their own enquiries to satisfy themselves as to the quality and suitability of training, and the products and services that organisations on the list offer’.⁵⁰ A league table is proposed, but this is of little comfort to those simply unable to purchase in a market where strong success rates can translate into premium fees.⁵¹ The final assumption is, of course, that if more solicitors are created, then there will also be more jobs for solicitors, perhaps in a wider range of working contexts. That, especially with growing use of technology, remains to be seen.

Fraser’s work has been criticised, especially by Young, but what is relevant here is her contrast between redistribution and recognition as ‘analytical perspectives’⁵² in her treatment of economic and cultural injustice. Her seminal work, *Justice Interruptus*, suggests that a potential remedy for economic injustice is ‘redistributing income, reorganising the division of labor’.⁵³ the remedy for social class injustice is distributive (affirmative).⁵⁴ Benefiting from opportunities may, however, require assimilation to (e.g.) androcentric, Eurocentric or heteronormative norms,⁵⁵ and the blanking of difference (i.e. failures in recognition of different societal groups), which might also be characterised as cultural injustice (or oppression). Fraser argues that transformative remedies are required to fundamentally change the ‘underlying generative framework’⁵⁶ so as to preserve the integrity of the differentiated

⁵⁰ Solicitors Regulation Authority, ‘SQE Training Providers List’ (*Solicitors Regulation Authority*, 10 May 2023) <<https://www.sra.org.uk/become-solicitor/sqe/training-provider-list/>> accessed 25 March 2025.

⁵¹ And the reverse: SRA advice to candidates includes the risk of providers going out of business: ‘Choosing an SQE Training Provider’ (*Solicitors Regulation Authority*, 25 October 2023) <<https://www.sra.org.uk/become-solicitor/sqe/training-provider-list/choosing-sqe-training-provider/>> accessed 25 March 2025.

⁵² Nancy Fraser, *Adding Insult to Injury: Nancy Fraser Debates Her Critics* (Kevin Olson ed, Verso Books 2008) 109.

⁵³ Nancy Fraser, n 22, 15.

⁵⁴ *Ibid*, 17.

⁵⁵ In a survey of ‘over 10,000’ Black British respondents, 98% responded always, often or sometimes to the question ‘Do you believe that Black employees have to compromise who they are and how they express themselves to fit in at work?’, Kenny Monrose, ‘Black British Voices’ (I-Cubed; The Voice, University of Cambridge 2023) <https://www.cam.ac.uk/sites/www.cam.ac.uk/files/bbvp_report_pdf_final.pdf> accessed 25 March 2025, 52

⁵⁶ Nancy Fraser, n 22, 24.

group. This recognition is not, as Young identifies, a task that can be achieved by isolating commonalities: ‘the nub of the injustice is failure to recognise and accommodate differences ... it cannot be remedied by “stressing what everyone shares”’.⁵⁷

If redistribution prevails, the competence statement is a *sine qua non*. It either defines the only appropriate way of practising as a solicitor or is sufficiently generous to encompass different acceptable theories of practice. If recognition prevails, then we must interrogate not only assessments but also any biases in the competence statement itself, as well as the extent to which it is accepting of variation in theory of practice, cultural difference and of capability as well as competence. As Young puts it, in a context relevant to the articulation of the competence statement at a macro level and criteria for recruitment and progression by employers at the micro level:

Criteria of merit assume that there are objective measures and predictors of technical work performance independent of culture and normative attributes. But I argue that no such measures exist; job allocation is inevitably political in the sense that it involves specific values and norms which cannot be separated from issues of technical competence.⁵⁸

Fraser’s poles of redistribution and recognition represent extremes and she acknowledged that there was a middle ground.⁵⁹ What is significant for this article, and the statutory objective, is the extent to which the two routes lean towards one axis or the other.

Young’s contrasting approach to social justice, envisaged as a response to Rawls’ and others’ perspective that social justice can be achieved by distribution (alone),⁶⁰ is to consider criteria of ‘oppression’: exploitation,

⁵⁷ Nancy Fraser, n 52, 86.

⁵⁸ Iris Marion Young and Danielle S Allen, n 23, 12.

⁵⁹ Nancy Fraser, n 52, 107. Sen’s capability approach, indeed, does so: Elaine Unterhalter and Melanie Walker, ‘Conclusion: Capabilities, Social Justice and Education’ in Melanie Walker and Elaine Unterhalter (eds), *Amartya Sen’s Capability Approach and Social Justice in Education* (Palgrave Macmillan 2007), 251. Ingrid Robeyns makes the same point in ‘Is Nancy Fraser’s Critique of Theories of Distributive Justice Justified?’ in Nancy Fraser, n 52, 176 albeit arguing that Sen pays more attention to diversity than Fraser (ibid, 191).

⁶⁰ Iris Marion Young and Danielle S Allen, n 23, chapter 1.

marginalisation, powerlessness, cultural imperialism and violence.⁶¹ That is, questions of power. Exploitation, marginalisation and powerlessness, she says, are functions of the division of labour. Cultural imperialism relates to the culture and mores of a dominant group, and violence to intimidation and harassment as an accepted social practice.⁶² Violence, here, is analogous to Sommerlad's adoption of Bourdieu's concept of 'symbolic violence' for the ways in which the hierarchies of the legal professions impact on women and minorities.⁶³ Oppression, Young says, 'consists in systematic institutional processes which prevent some people from learning and using satisfying and expansive skills in socially recognised settings'.⁶⁴ Oppression can therefore impact on our context in three ways: i) preventing the take up of (redistributed) opportunity in the first place; ii) taking up opportunities but being damaged in the process, or iii) being handicapped in the labour market, or confined to mundane work as a result of earlier decisions (e.g. to undertake QWE through volunteering rather than in a law firm).

Whilst, as we shall see, both the apprentice route and the non-apprentice route both offer 'freedom' of different kinds, in the pursuit of diversity, it is also instructive to consider whether one route is inherently more oppressive to the individual, or some groups of individuals, than the other. Although it might be argued that all qualification models that involve a period of humble service as a novice are open to an element of oppression ii)⁶⁵ a route that ostensibly offers greater freedom, but at greater risk of subjection to oppression is, I suggest, inherently compromised. This is certainly the case in oppression iii), where the ostensible promise of a 'freer' system is dashed, not on qualification, but immediately thereafter. The norm, at present, however, is the polycentric route, to which we now turn.

⁶¹ Fraser, it should be said, treats exploitation, marginality and powerlessness as related to political/economic injustice and the remainder as cultural injustice: *ibid* 198; Nancy Fraser, n 52, 14-15.

⁶² For some manifestations of such violence in the context of ethics, see Jane Ching, Graham Ferris and Jane Jarman, "'To Act Is to Be Committed, and to Be Committed Is to Be in Danger": The Vulnerability of the Young Lawyer in Ethical Crisis' (2022) 25 *Legal Ethics* 44.

⁶³ Hilary Sommerlad, 'Minorities, Merit, and Misrecognition in the Globalized Profession' (2011) 80 *Fordham Law Review* 2481, 2495.

⁶⁴ Iris Marion Young and Danielle S Allen, n 23, 38.

⁶⁵ See Jane Ching, 'Making A Virtue Of Necessity? An Opportunity To Harness Solicitors' Attachment To The Workplace As A Place For Learning.' (2015) 24 *Nottingham Law Journal* 36.

Negative liberty: the non-apprentice (polycentric) route

Like the LSB, the SRA's consultants were cautious about the diversity effects of the new regime.

Wider range of choice is both an important opportunity to support diversity, since it will enable students to chart more flexible pathways, and a risk. It will make the routes to qualification harder to navigate, especially for those students without access to good advice, and a tiered system may become quickly apparent, because some legal employers will give continued (or possibly increased) currency to traditional pathways, through which high performing candidates have been recruited for many years.⁶⁶

I have described this route as a negative liberty, because it is characterised by choice for the candidate (what Taylor describes as an 'opportunity concept').⁶⁷ An optimistic view treats negative liberty as the removal of restrictions imposed by others, in this context resulting in redistribution of, and an assumed increase in, opportunities to qualify.⁶⁸ These include being able to choose between alternatives⁶⁹ (as preparation for the SQE and in satisfying the QWE requirement). It has been said, indeed, that this new model 'shifts power from

⁶⁶ Bridge Group, 'Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity' (Solicitors Regulation Authority 2017) <<https://www.sra.org.uk/sra/research-publications/introduction-sqe-monitoring-maximising-diversity/>> accessed 25 March 2025, 4.

Following implementation, the concern continues: Monidipa Fouzder, 'Doubts Remain over SQE's Social Mobility Objectives' [2023] *Law Gazette* <<https://www.lawgazette.co.uk/news/doubts-remain-over-sqes-social-mobility-objectives/5116680.article>> accessed 25 March 2025; Mary Horobin 'Access to the Legal Profession: The SQE and Its Discontents' (*Greater Manchester Law Centre*, 12 July 2023) <<https://www.gmlaw.org.uk/2023/07/12/access-to-the-legal-profession-the-sqe-and-its-discontents/>> accessed 25 March 2025.

⁶⁷ Charles Taylor, *Philosophical Papers: Volume 2: Philosophy and the Human Sciences*, (Cambridge University Press 1985), 213.

⁶⁸ See, for example, Russell G Pearce and Sinna Nasseri, 'The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values' (2012) 19 *International Journal of the Legal Profession* 35 treating low barriers as concomitant with democracy.

⁶⁹ See SI Benn and WL Weinstein, 'Being Free to Act, and Being a Free Man' (1971) 80 *Mind* 194, 197; John N Gray, 'On Negative and Positive Liberty' (1980) 28 *Political Studies* 507, 519.

employers to students'.⁷⁰ Non-apprentices may take the SQE exams before, during or after their QWE and many use their QWE experience as preparation for SQE 2.⁷¹ Candidates, their sponsors or employers, can choose which preparatory course to follow, for which cost⁷² or, indeed, no course at all.⁷³ Such courses are only externally quality-assured (other than by market forces) if they are embedded into a university degree.

My reference to employers and sponsors is both deliberate. Having – and knowing about – an opportunity is different from being able to take it up (an 'exercise-concept' in Taylor's terms⁷⁴). This is why I have not used MacCallum's algorithm of ' x is (is not) free from y to do (not do, become, not become) z ' as a template.⁷⁵ It has the advantage over Berlin of emphasising x , who aspires to become a solicitor (z); but fails to identify *who is responsible for y*.⁷⁶ The initial architect of negative liberty is the SRA in removing a number of regulatory constraints, but despite asseverations of a change in the power dynamic, the question of potential domination - of coercion and the exercise of oppression - by employers remains.

Critics have, indeed, used the analogy of the worker's ostensible freedom to contract with employers as an example of the iniquity of a purely negative liberty approach.⁷⁷ Power has not entirely been shifted away from employers.

⁷⁰ Crispin Passmore, "Get on with It - Uncertainty Costs", SQE Co-Creator Tells Regulators at LegalEdCon North' (*Legal Cheek*, 6 February 2020)

<<https://www.legalcheek.com/2020/02/get-on-with-it-uncertainty-costs-sqe-co-creator-tells-regulators-at-legalcon-north/>> accessed 25 March 2025.

⁷¹ A majority of respondents in the first year planned to do so. Some employers, however, require SQE1 and sometimes SQE2 to have been completed before QWE is started:

Solicitors Regulation Authority, n 19. See also John Hyde, 'Firms Urged Not to Drop Aspiring Solicitors Who Fail SQE1' [2024] *Law Gazette*

<<https://www.lawgazette.co.uk/news/firms-urged-not-to-drop-aspiring-solicitors-who-fail-sqe1/5119154.article>> accessed 25 March 2025.

⁷² The Lawyer Portal, 'Your Guide to SQE Funding' (*The Lawyer Portal*, 2024)

<<https://www.thelawyerportal.com/solicitor/sqe/your-guide-to-sqe-funding/>> accessed 25 March 2025. Comments on funding also appear in Solicitors Regulation Authority, nn 19, 24.

⁷³ The regulator does, however, provide information to 'help your decision-making': Solicitors Regulation Authority, n 51.

⁷⁴ Charles Taylor, n 67, 213.

⁷⁵ Gerald C MacCallum Jr, 'Negative and Positive Freedom' (1967) 76 *The Philosophical Review* 312, 314.

⁷⁶ Except by glossing the concept of y , which MacCallum refrains from doing.

⁷⁷ See, for example, 'The peasant farmer is scarcely more free to contract with his landlord than is a starving labourer to bargain for good wages with a master who offers him work'; Thomas Hill Green, *Works of Thomas Hill Green Volume 3: Miscellanies and Memoirs*

Nor will it be. Apprentices still have to compete for apprenticeships; non-apprentices have to obtain places in suitable QWE work (context i)). Personal and internal constraints that could hinder someone obtaining an apprenticeship, QWE or post-qualification employment, could include state school education;⁷⁸ weak careers guidance; disability; lack of confidence or finance; the ‘wrong’ accent⁷⁹ or university;⁸⁰ and lack of social capital (aspects of cultural imperialism).⁸¹ These would not always have been regarded as rendering someone *unfree* by negative liberty theorists, even if they render them practically *incapable* of, for example, qualifying (or succeeding⁸²), or make it much more difficult for them to do so.

Some writers, however, include in their framing of negative liberty the concept of guaranteed freedom from coercion⁸³ a concept that seems aligned with Young’s concepts of exploitation and powerlessness. In the model known as ‘republican liberty’, which seeks to reconcile negative liberty with conceptions of the state as a public good otherwise attached to the positive liberty I discuss below,⁸⁴ dependence (e.g. on an employer),⁸⁵ or the exercise of arbitrary

(Cambridge University Press 2015) 382. Although not in the language of liberties *per se*, Freire uses the same example in the context of the ways in which subjugation of the oppressed is achieved: ‘the myth that all men [sic] are free to work where they wish, that if they don’t like their boss they can leave him and look for another job’, Paulo Freire, *Pedagogy of the Oppressed* (Myra Bergman Ramos tr, Penguin Books 1972), 109.

⁷⁸ See sources cited at n 14.

⁷⁹ James Dean, ‘Firms Reject Candidates on the Basis of Their Accents, Research Suggests’ [2010] *Law Gazette* <<https://www.lawgazette.co.uk/news/firms-reject-candidates-on-the-basis-of-their-accents-research-suggests/58563.article>> accessed 25 March 2025, referring to: Louise Ashley, ‘Making a Difference? The Use (and Abuse) of Diversity Management at the UK’s Elite Law Firms’ (2010) 24 *Work, Employment & Society* 711.

⁸⁰ See Anna Mountford-Zimdars and John Flood, ‘The Relative Weight of Subject Knowledge and Type of University Attended: A Comparison of Law Higher Education in England and Germany’ (Social Science Research Network 2016) SSRN Scholarly Paper ID 2865074 <<https://papers.ssrn.com/abstract=2865074>> accessed 25 March 2025.

⁸¹ See Louise Ashley, n 80 and the factors listed as hindrances to obtaining QWE in Solicitors Regulation Authority, nn 19, 24.

⁸² Bridge Group, ‘Socio-Economic Background and Progression to Partner in the Law’ (Bridge Group 2020) <https://static1.squarespace.com/static/5c18e090b40b9d6b43b093d8/t/5f6c69ea4d0d1b29037581f3/1600940523386/BG_SEB_Partner_Law_Sep2020_SUMMARY_FINAL.pdf> accessed 25 March 2025.

⁸³ FA Hayek, *The Constitution of Liberty* (University of Chicago Press 1960).

⁸⁴ Quentin Skinner, ‘A Third Concept of Liberty’ (2002) 117 *Proceedings of the British Academy* 237.

⁸⁵ Although ultimately a proponent of republican liberty, Skinner relates constraints to ‘personal dependence and servitude’, Quentin Skinner, ‘The Paradoxes of Political Liberty’ (The Tanner Lectures on Human Values, Harvard University, 24 October 1984)

power⁸⁶ (by, for example, an employer refusing to ‘sign off’ a period of QWE) are included in the category of constraints that are inimical to negative liberty.

Some employers, perhaps unhappy to manage the risk of employees failing the examinations,⁸⁷ or the disruption caused by releasing candidates to study for the examinations, require both examinations to be passed (possibly at the candidate’s expense) before the QWE begins.⁸⁸ At least one firm has adopted the approach of sandwiching a SQE study year between the two years of QWE.⁸⁹ There is nothing to prevent an employer asking apprentice and non-apprentice candidates to serve the whole two years in the same department or practice area, and in a specialist practice area that is not covered in the SQE. There is nothing to prevent QWE being unpaid⁹⁰ and therefore subsidised by entrants (exploitation).

However, provided the basic thresholds are met for the kind of experience obtained, it is in fact very difficult for a supervising solicitor to refuse to certify completion of QWE. Even if SQE 2 is to be taken towards the end of QWE there is no formal obligation on the employer to provide any support other than an opportunity to develop two of the competences, to support candidates,⁹¹ or to confirm their readiness to attempt the examinations if they have not already taken them.⁹² The reverse is true, as we shall see, for apprentices.

<tannerlectures.org/lectures/the-paradoxes-of-political-liberty/> accessed 25 March 2025, 240.

⁸⁶ Quentin Skinner, ‘Freedom as the Absence of Arbitrary Power’ in Cécile Laborde and John Maynor (eds), *Republicanism and Political Theory* (John Wiley & Sons 2009).

⁸⁷ John Hyde, n 8.

⁸⁸ Solicitors Regulation Authority, nn 19, 24.

⁸⁹ Joanna Goodman, n 8. This approach bears some similarity with that used in Northern Ireland and the Republic of Ireland.

⁹⁰ A minority of respondents expect to be unpaid: Solicitors Regulation Authority, nn 19, 24.

⁹¹ That said, many respondents do offer structured support: Solicitors Regulation Authority, nn 19, 24.

⁹² Much resource has been expended in reassuring supervising solicitors that they are not certifying what has been learned, but only that the period has been served. It is ironic therefore, that it is recommended that if a supervising solicitor is refusing to certify, the candidate’s strategy to persuade them to do so should include demonstrating what has been learned: Solicitors Regulation Authority, ‘Dealing with a Refusal to Confirm Qualifying Work Experience’ (*Solicitors Regulation Authority*, 19 February 2025)

<<https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/refusal-confirm-qualifying-work-experience/>> accessed 25 March 2025. Some employers do, however, refuse to certify because of concerns about competence: Solicitors Regulation Authority, n 19.

Still more troublesome is the question of progression after qualification (context iii above).⁹³ If all applicants have passed the SQE, and there remain more applicants than posts, what will be the attitude of employers to, for example, a candidate whose QWE was in an unpopular field, across a variety of organisations and in a context exposing them to a small number of the competences, by contrast with a candidate whose QWE is more coherent, and represented a greater number of the competences? QWE may not be explicitly assessed by the regulator, but its quality will undoubtedly continue to be assessed by the recruiting profession.⁹⁴ This may well not be apparent to candidates, anxious to record QWE quantitatively in order to speed qualification, when exercising their liberty to decide how to qualify. As employment as a solicitor has regulatory and cost implications (the annual practising certificate), the pre-qualification bottleneck will simply shift to be a post-qualification bottleneck, in which an increasing number of solicitors are obliged to deregister to take on paralegal employment (marginalisation). Apprentices, hired from the outset to fulfil a role in the organisation, or already in place in a paralegal position, and embedded in its mores and practices, may, possibly, be in a more secure position.

Positive liberty: the (monocentric) solicitor apprenticeship⁹⁵

As Miller explains,⁹⁶ Berlin characterises positive freedom, before ultimately rejecting it, in a number of (possibly conflicting) ways: a) ‘the power or capacity to act’ by contrast with the absence of interference, b) ‘rational self-direction’; and c) collective, rather than individual, self-determination.

Positive liberty approaches therefore include active steps to convert opportunity concepts into exercise concepts.⁹⁷ Consequently, some negative libertarians see them as unwarranted incursions on individual integrity and self-

⁹³ Katharine Freeland, ‘A Step Too Far?’ [2023] *Law Gazette* <<https://www.lawgazette.co.uk/features/a-step-too-far/5117477.article>> accessed 25 March 2025; Solutions Research, n 48.

⁹⁴ Respondents who would not employ those who had completed QWE in another organisation cited, *inter alia*, a desire to establish competence: Solicitors Regulation Authority, nn 19, 24.

⁹⁵ Amyas Morse, ‘Adult Apprenticeships’ (National Audit Office 2012) HC 1787 Session 2010-2012 <<https://www.nao.org.uk/report/adult-apprenticeships/>> accessed 25 March 2025, 18. Some adult apprentices will, however, be career-changers rather than those wishing to progress in an existing employment.

⁹⁶ David Miller, *Liberty* (Oxford University Press 1991), 10.

⁹⁷ Typical examples include education, health and welfare support.

determination.⁹⁸ Indeed, Blau adds a fourth, ‘doing what one should want, as opposed to doing what one does want’⁹⁹ which has resonance for either socialisation (positive) or coercive institutionalisation (negative) depending on one’s perspective.

I treat the apprenticeship as an example of positive liberty, because of the contribution of the collectivity that is designed into it. Apprenticeships are offered competitively, in the labour market, so the supply is limited but increasing,¹⁰⁰ but once secured, the apprentice is in principle absorbed into the community of practice of the employing organisation and its collaborators for a planned period of several years. In Law, nevertheless, there is evidence that the familiarity and acceptability of the university route acted as a disincentive to the most disadvantaged in undertaking a Trailblazer apprenticeship.¹⁰¹

There is – at present – a clear financial incentive on larger law firms, councils, departments and organisations such as the Crown Prosecution Service to offer apprenticeships. Part 7A of the Income Tax (Pay As You Earn) Regulations 2003¹⁰² implements an apprenticeship levy created by Part 6 of the Finance Act 2016. The levy is charged on employers (or groups of employers) at a rate of 0.5% of their annual pay bill that exceeds £3m. This tax is refunded, with an additional 10% contributed by the government, if it is used to provide apprenticeships within the organisation. Research suggests that the impact of the levy has been an increased focus on offering higher level apprenticeships,¹⁰³ such as the solicitor apprenticeship. This is often embedded

⁹⁸ For example Quentin Skinner, nn 85-87.

⁹⁹ Adrian Blau, ‘Against Positive and Negative Freedom Critical Exchange’ (2004) 32 *Political Theory* 547, 548.

¹⁰⁰ Monidipa Fouzder, ‘City Firms Unite to Boost Solicitor-Apprenticeship Numbers’ [2023] *Law Gazette* <<https://www.lawgazette.co.uk/news/city-firms-unite-to-boost-solicitor-apprenticeship-numbers/5116325.article>> accessed 25 March 2025; Sutton Trust and UCAS, ‘Where next: What Influences the Choices of Would-Be Apprentices?’ (Sutton Trust 2023) <<https://www.suttontrust.com/our-research/where-next-what-influences-the-choices-of-would-be-apprentices/>> accessed 25 March 2025.

¹⁰¹ Caroline Casey and Paul Wakeling, ‘University or Degree Apprenticeship? Stratification and Uncertainty in Routes to the Solicitors’ Profession’ (2022) 36 *Work, Employment and Society* 40.

¹⁰² SI 2003 No 2682.

¹⁰³ Pietro Patrignani and others, ‘The Impact of the Apprenticeship Levy on Apprenticeships and Other Training Outcomes’ (Centre for Vocational Education Research 2021) Discussion Paper 034 <<https://cver.lse.ac.uk/textonly/cver/pubs/cverdp034.pdf>> accessed 25 March 2025.

into a degree provided in partnership between a law firm and a university.¹⁰⁴ An alternative is a ‘graduate apprenticeship’ where the entrant joins the employer after completing (and in principle incurring the cost of) a degree and the overall apprenticeship period is curtailed.¹⁰⁵ Some organisations recruit both.¹⁰⁶ There is specific external quality assurance of apprenticeships, beyond the remit of the SRA.¹⁰⁷ Following a change of government in July 2024, however, changes to the levy and the organisation of apprenticeships are proposed, on a broader basis, to, amongst other things ‘address the rigidity of the current apprenticeships levy’.¹⁰⁸

The solicitor apprenticeship articulates with the SRA licensing process as apprentices must pass both SQE 1 and 2, and their period of work experience is treated as QWE. Apprentices are entitled to a minimum of 20% off the job training in order to prepare for the examinations.

The apprenticeship model, however, demands that SQE 2, as the end point assessment, be taken *only* at the end of the work experience. That is, at, or close to, the point of qualification to which its level is pegged. Unlike their peers, apprentices are also required to provide evidence of having acquired the

¹⁰⁴ A&O Shearman, ‘Solicitor Apprenticeships’ (*A&O Shearman UK graduate and student careers*, 2024) <<https://earlycareersuk.aoshearman.com/solicitor-apprenticeships>> accessed 25 March 2025; Law Society of England and Wales, ‘Legal Sector Apprenticeships’ (*Law Society of England and Wales*, 12 February 2025) <<https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/qualifying-without-a-degree/apprenticeships>> accessed 25 March 2025.

¹⁰⁵ Aidan Lambert, ‘My Experience as a Graduate Solicitor Apprentice’ (*GovWire News*, 6 February 2024) <<http://www.govwire.co.uk/news/government-legal-department/my-experience-as-a-graduate-solicitor-apprentice-78799>> accessed 25 March 2025; Weightmans, ‘Graduate Solicitor Apprenticeship’ (*Weightmans*, 2024) <<https://www.weightmans.com/careers/early-careers/apprenticeships/graduate-solicitor-apprenticeship/>> accessed 25 March 2025.

¹⁰⁶ Minster Law, ‘Solicitor Apprenticeships’ (*Minster Law*, 2024) <<https://www.minsterlaw.co.uk/careers/solicitor-apprenticeships/>> accessed 25 March 2025.

¹⁰⁷ Office for Students, ‘Checking the Quality of Apprenticeships’ (*Office for Students*, 22 September 2023) <<https://www.officeforstudents.org.uk/advice-and-guidance/skills-and-employment/degree-apprenticeships/degree-apprenticeships-for-providers/checking-the-quality-of-apprenticeships/>> accessed 25 March 2025.

¹⁰⁸ Department for Education, ‘Skills England Report: Driving Growth and Widening Opportunities’ (*GOV.UK*, 24 September 2024) <> accessed 25 March 2025, 19; Department for Education and others, ‘Prime Minister Overhauls Apprenticeships to Support Opportunity’ (*GOV.UK*, 24 September 2024) <<https://www.gov.uk/government/news/prime-minister-overhauls-apprenticeships-to-support-opportunity>> accessed 25 March 2025.

relevant competences in a ‘gateway review’ before they are eligible to take the SQE 2 as their end point assessment.¹⁰⁹ This may help to militate against the exploitation risked by their polycentric peers entitled merely to an opportunity to develop a pair of competences. Apprentices need not, however, demonstrate competence in all the practice areas covered in SQE2 and, as many apprenticeships are in highly specialist organisations, doing so, whilst educationally valuable in terms of preparation for the examinations, would erect a very distinct and problematic difference between the two routes. It would also represent something close to the three areas of law and both contentious and non-contentious work requirement that were required for the training contract, that prevented some organisations taking on trainees altogether.

It is, however, at the intersection between this gateway – in principle demonstrating all the competences in the workplace (over time), and the examination, demonstrating most of the competences (again) in simulation (on one occasion) – that the difference between the two routes is at its starkest. All course and examination fees are covered by the employer and the apprentice is paid.¹¹⁰ Although they are fewer than 10% of those attempting the SQE examinations so far, apprentices perform better than non-apprentices:¹¹¹

¹⁰⁹ Completing SQE 1 is also part of the gateway to the end point assessment. The required confirmation is that the apprentice ‘has achieved the minimum requirements of the apprenticeship set out in the apprenticeship standard’, Solicitors Regulation Authority, ‘Apprentices’ (*Solicitors Regulation Authority*, No date) <<https://sqa.sra.org.uk/about-sqa/who-is-the-sqa-for/apprentices>> accessed 25 March 2025. This is cross-referenced to, but is framed more loosely in relation to the subsidiary competences, than, the SRA competence statement assessed in the SQE: Institute for Apprenticeships and Technical Education, ‘Solicitor’ (*Institute for Apprenticeships and Technical Education*, 11 January 2024) <<https://www.instituteforapprenticeships.org/apprenticeship-standards/st0246-v1-1>> accessed 25 March 2025; Solicitors Regulation Authority, n 2.

¹¹⁰ Many in the polycentric route are also paid, and payment of SQE fees is a factor for applicants in choice of QWE venue.

¹¹¹ Solicitors Regulation Authority, ‘Solicitors Qualifying Examination Annual Report 2021/22’ (Solicitors Regulation Authority 2023) <https://sqa.sra.org.uk/docs/default-source/pdfs/reports/sqa-annual-report-2022.pdf?sfvrsn=ce29cd5c_2> accessed 25 March 2025, table 16; Solicitors Regulation Authority, ‘Solicitor Qualifying Examination Annual Report 2022/23’ (*Solicitors Regulation Authority*, 2024) <<https://sqa.sra.org.uk/exam-arrangements/sqa-reports/sqa-annual-report-2023>> accessed 25 March 2025, table 17; Solicitors Regulation Authority, ‘Solicitors Qualifying Examination Annual Report 2023/24’ (Solicitors regulation Authority 2025) <https://sqa.sra.org.uk/docs/default-source/pdfs/reports/sqa-annual-report-2024.pdf?sfvrsn=2ce59e1a_2> accessed 25 March 2025, tables 18, 19.

converting the initial opportunity concept into an exercise concept in a marked and measurable way. Given the gateway, this is perhaps not surprising.

The polycentric candidate is, then, given choice and may be given support (and pay for it). The apprentice might be said to sacrifice choice (powerlessness) in exchange for support and exemption from fees. Nevertheless, prolonged immersion in a single employer's milieu, culture and ethics – for up to three times as long as their non-apprentice peers – provides opportunities for exploitation and cultural imperialism, given the intensity and duration of the relationship. There are draining, unproductive and unethical communities of practice as well as positive ones.¹¹² Empirical material is only just beginning to emerge about the experiences, and identities of solicitor apprentices, notably in two recent doctorate theses.¹¹³ This work indicates that, as a comparatively new initiative, and framed in concepts that are associated with crafts and trades rather than professions, there is a lack of understanding amongst aspirants and colleagues, and a 'stigma' such that 'apprentices and paralegals are right at the bottom' (marginalisation).¹¹⁴ There is, however, at least anecdotal evidence that apprentices are not necessarily passively institutionalised.¹¹⁵

The scope for oppression, then, is not moot, but may be of a different character and emphasis. This brings us back, then, to the extent to which the apprenticeship can offer not merely redistribution of opportunity but also recognition of difference.

Ostensibly, as a form of affirmative action, it is capable of both, by way of what Fraser describes as 'affirmative' remedies.¹¹⁶ An employer may decide to frame its apprenticeship offering explicitly in terms of increasing diversity. So, for example, a CPS apprenticeship was available only to those satisfying at least one of a number of criteria for socio-economic disadvantage.¹¹⁷ An

¹¹² Jane Ching, Graham Ferris and Jane Jarman, n 62; Jane Ching, n 65.

¹¹³ Caroline Casey, 'The Degree Apprenticeship Pathway into the Legal Profession: A Game Changer?' (PhD, University of York 2020) <<https://etheses.whiterose.ac.uk/28273/>> accessed 25 March 2025; Gail Cunningham, 'Solicitor Apprenticeships- a New and Improved Education and Training Route to Qualification as a Solicitor? A Study of the Perceptions of Solicitor Apprentices and Trainee Solicitors' (EdD, University of Sheffield 2021) <<https://etheses.whiterose.ac.uk/29863/>> accessed 25 March 2025.

¹¹⁴ Gail Cunningham, *ibid*, 146.

¹¹⁵ John Hyde, 'All the Young Guns' [2023] *Law Gazette* <<https://tinyurl.com/3mvt5pvxp>> accessed 9 October 2024, 7.

¹¹⁶ Nancy Fraser, n 22, 27.

¹¹⁷ Kevin Donnelly, 'Solicitor Apprenticeship with the CPS' (*AEBP*, 28 September 2021) <<https://theaebp.co.uk/solicitor-apprenticeship-with-the-cps/>> accessed 25 March 2025.

initiative of the City of London Law Society to offer an increased number of apprenticeships¹¹⁸ refers not only to the economic benefit to individuals but also to ‘empowering students from diverse backgrounds to pursue a career they may have never thought possible’. What is less often surfaced is the question of recognition, or whether apprentices from such groups are supported more extensively, or in a different way. Nevertheless, foundation courses and other interventions have been developed to support English, or address other educational needs of individual apprentices.¹¹⁹

That said, anecdotal evidence has suggested that some employers at least welcome the different perspectives brought to the organisation by apprentices from societal groups traditionally recruited into the profession.¹²⁰ This is laudable, but is not quite the ‘recognition’ that Fraser envisaged, connected not to individuals but to societal groups. Fraser contrasts affirmative remedies with those that are ‘transformative’: in the redistributive sphere fundamental restructuring of the ‘relations of production’ and in recognition, a ‘deep restructuring’ that ‘destabilises group differentiation’.¹²¹ This is not without difficulty: affirmative action can lead to backlash; recognition of some groups can lead to their elimination. The reallocation of power between polycentric aspirant and employer in the new form of QWE lauded as a restructuring of power may be a mirage.

The question then is whether in fact the positive liberty afforded by the apprenticeship is more likely to produce effective redistribution and recognition. The profession has certainly welcomed it as a key, and possibly the principal means, of increasing diversity in the profession.¹²² That said, in

¹¹⁸ City of London Law Society, ‘City Century’ (*City Century*, 2023)

<<https://citycentury.co.uk/>> accessed 25 March 2025.

¹¹⁹ Joanna Goodman, n 8.

¹²⁰ Diana Bentley, ‘The Long View’ (*Communities - The Law Society*, 14 January 2020)

<<https://communities.lawsociety.org.uk/january-2020/the-long-view/6000683.article>> accessed 25 March 2025.

¹²¹ Nancy Fraser, n 22, 27.

¹²² See, for some early examples: Tabby Kinder, ‘Eversheds Launches Apprenticeship Route to Solicitor Status’ (*The Lawyer Jobs*, 16 March 2016) <<http://jobs.thelawyer.com/article/eversheds-launches-apprenticeship-route-to-solicitor-status/>> accessed 25 March 2025; Katie King, ‘ITV Launches New Training Scheme That Allows Students to Qualify as Solicitors’ (*Legal Cheek*, 8 December 2015) <<http://www.legalcheek.com/2015/12/itv-launches-new-training-scheme-that-allows-students-to-qualify-as-solicitors/>> accessed 25 March 2025; Neil Rose, ‘Actually We Don’t Mind Non-Graduates Becoming Solicitors, Says Law Society’ (*Legal Futures*, 17 February

the apprenticeship sector as a whole, at least in Trailblazer apprenticeships, those from wealthier areas are more likely to be able to find information about apprenticeships,¹²³ obtain support in application,¹²⁴ have parents sufficiently knowledgeable to advise,¹²⁵ and are disproportionately represented in apprenticeships themselves.¹²⁶ Approximately a third of apprenticeships are, in fact, offered to existing employees¹²⁷ in our context, possibly existing paralegals whom the employer wishes to retain. Apprenticeships may also be offered to career changers whose underpinning knowledge is of value to the employer.¹²⁸ Those two factors change the power relationship between employer and apprentice, and may, perhaps, ameliorate the problem of oppression. As may the required link with an external training body, the external quality assurance and, as we have seen, the gateway.

It seems possible that, given the extent of investment, both financial and in time and support, apprentice graduates may be more attractive as employees, at least to their initial employer, than a peripatetic polycentric candidate is to any of the organisations in which they have had brief service. Nevertheless, the fear of stigma when there are different routes, is a real one. And not a new one: practitioners will be familiar with historical discrimination against solicitors

2016) <<http://www.legalfutures.co.uk/latest-news/actually-we-dont-mind-non-graduates-becoming-solicitors-says-law-society>> accessed 25 March 2025.

¹²³ Sutton Trust and UCAS, n 102, 29. In the solicitor apprenticeship: Caroline Casey and Paul Wakeling, n 103, 54.

¹²⁴ Sutton Trust and UCAS, *ibid*, 36 and figure 13.

¹²⁵ Rebecca Montacute and Carl Cullinane, 'Parent Power 2018' (Sutton Trust 2018) <<https://www.suttontrust.com/wp-content/uploads/2019/12/Parent-Power-2018.pdf>> accessed 25 March 2025.

¹²⁶ Alison Fuller and others, 'Better Apprenticeships: Access, Quality and Labour Market Outcomes in the English Apprenticeship System' (Sutton Trust 2017) <<https://discovery.ucl.ac.uk/id/eprint/10094159/1/Better-Apprenticeships-1.pdf>> accessed 25 March 2025, p 48ff; Sarah O'Connor, 'Why the Middle-Class Capture of Apprenticeship Matters' *Financial Times* (12 April 2022) <<https://www.ft.com/barrier/corporate/da9702e5-43ae-40f8-9fc7-19e564a63b75>> accessed 25 March 2025; Sutton Trust and UCAS, n 102, 6, 23.

¹²⁷ Department of Education, 'Apprenticeships Evaluation 2021 - Employers Research Report' (Department of Education 2022)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077985/Final_AEvS_Employer_Report.pdf> accessed 25 March 2025, 13.

¹²⁸ Applications from those with a medical background are, for example, especially sought by this firm: Hempsons, 'Graduate Solicitor Apprenticeships' (Hempsons, 2024) <<https://www.hempsons.co.uk/careers/graduate-solicitor-apprenticeships/>> accessed 25 March 2025.

who had qualified through the CILEx route, a work-based, non-degree route that is not dissimilar to the apprenticeship in structure.

Conclusion

Both routes, then, offer liberty, but of two diametrically opposed kinds. Both, in principle, provide redistribution of opportunity to a wider group of aspirants in accordance with the statutory objective, but the extent to which they offer recognition of difference between groups, and avoid Young's 'oppression' is less clear. What happens to graduates of either route, once they have qualified, and in the remainder of their careers, remains an unknown.

Legal professional education carries with it two immediate overlapping apparent promises over which it has, in fact no control. The first is that graduates proceed into regulated and accredited, successful and profitable professional practice. The second is that such practice is a valid, useful and satisfying endeavour for the individual lawyer. These two promises underlie a third: that even if it is lengthy, expensive, personally damaging and sometimes demeaning (oppressive), the process of professional legal education is worth undertaking.

The early promise of the new regime then, was of choice, flexibility and freedom for applicants to make decisions about how to achieve their qualification goals and for employers and the academy to decide how to support them in doing so. That will, of course, be frustrated if the *route* to qualification, rather than the *fact* of qualification, comes to be more closely interrogated by post-qualification employers of polycentric route candidates than it was when it was more overtly regulated. Ironically a move away from treating status of university as a proxy for suitability may be reversed, or evolve into a close examination by the profession, if not by the regulator, into precisely what was done during QWE. One can envisage, for example, an aspiring solicitor facing a choice between logging QWE of limited quality, knowing that it will entitle them to qualify, but may not be valued by a subsequent employer, or delaying qualification so as to use the limited quality QWE as a springboard to better quality QWE that will not only allow them to qualify but will be looked on more positively by subsequent employers. Such choices made by people often in their late teens and early twenties in exercise of a purported 'freedom' may come to backfire. It seems much more morally and economically risky for an employer, having invested many years of inducting

an apprentice into their own ways and culture, to let them go on qualification, though it is of course not impossible.

Whilst many employers and educators provide highly supportive environments, at its extreme, however, we might say that a non-apprentice might succeed in achieving qualification *despite* their job, and an apprentice *because* of their job. The polycentric route in its most fluid manifestation demands considerable self-reliance. It offers negative liberty but the risk of oppression is not absent. The more sheltered monocentric route demands commitment to the culture of a single organisation. It offers positive liberty and external quality assurance. The effect of the gateway on the work that an apprentice is asked to do may help militate against some of the worst excesses of oppression.

A middle ground, in which an employer offers a supportive, structured, path through the polycentric route, is of course available. Unless such an employer imposes it unilaterally, the critical ‘gateway’ and SQE assessment that is both chronologically and educationally at the level of a newly qualified solicitor, is not guaranteed.

In principle, both new routes offer redistribution of opportunity. However, telling someone that they are ‘free’ to take up an opportunity that they cannot afford, did not know about or would not be recruited for renders the concept of freedom nugatory.¹²⁹ In treating personal barriers as (merely) questions of capacity, the effect is to place blame for the incapacity on the individual, irrespective of its causes,¹³⁰ whether these are social, political or economic or exacerbated by the academy, the regulator or the profession. This is particularly the case when the pervading rhetoric of the authorities harnesses the language of choice and freedom to its own ends.

In some forms, particularly in the apprenticeship, nevertheless, both routes may offer transformative remedies linked both to redistribution and to recognition. This is of limited value if the terminal assessments present a barrier that impedes recognition or when the barrier shifts from getting in to getting on. Fraser’s approach to transformative recognition of different societal groups

¹²⁹ See in the context of litigation, the example in Ian Duncanson, ‘Out of the Enlightenment’s Shadow: The Rule of Law in the Politics of Knowledge’ (1994) 12 *Law in Context: A Socio-Legal Journal* 20, 43.

¹³⁰ *Ibid.*, 29.

may require revolution rather than evolution. Current investigation into attainment gaps in the SQE is a significant step forward. However, until we see how the expression of the two kinds of liberty translate into meaningful, non-oppressive, post-qualification work, the experiment will not be complete.