

A new framework for work based learning

Consultation paper

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Introduction

Following the third consultation on a new qualification framework for solicitors in 2005 and the decision to explore a new approach to assessing trainees' performance in practice, the Law Society Regulation Board (LSRB) is seeking to modernise the training contract arrangements and pilot a new framework for the assessment of pre-qualification work based learning. The new framework will introduce a more objective assessment of an individual's readiness for admission as a solicitor and provide a route to qualification for Legal Practice Course (LPC) graduates who have not secured a training contract.

This initial consultation paper outlines the proposed new framework. The aim of this consultation is to inform a bid for funding which has to be submitted by October and a further, formal consultation on the proposals which will take place later in the year and will feed into a pilot project planned for September 2007. The consultation period for this initial consultation is, therefore, less than the normal three months but there will be a further opportunity to comment on the proposals during the formal three month consultation period later in the year.

The case for modernisation

The current qualification framework has many strengths but the environment in which it operates is changing. For example:

- In line with the recommendations of the Clementi Review of Legal Services, the Law Society has revised its governance arrangements and separated its regulatory and non-regulatory functions. Since January 2006, the LSRB has been responsible for setting standards and regulating access to the solicitors' profession. The LSRB is committed to ensuring that those joining the profession:
 - come from a wide range of backgrounds and experience;
 - meet appropriate standards of character, intellect, knowledge and skills;
 - are able to sustain client confidence;
 - understand and are able to sustain commitment to the rule of law;
 - can demonstrably uphold the principles governing those providing legal services: independence; integrity; a duty to act in the best interests of clients and client confidentiality.
- The profession is now attracting individuals with a much broader range of backgrounds and experiences. They are also learning in different ways as new types of qualification are developed e.g. foundation degrees that integrate study with work based learning.
- The costs of studying continue to increase, not only as a result of changes in fee structures for degree courses but also as a result of increased fees for the LPC. As a result of these increases, individuals are looking for more flexible ways to learn and study in order to be able to meet their family and financial responsibilities.
- As the global and European marketplace opens up, individuals are more likely to have studied or worked in different jurisdictions. The number of individuals seeking to qualify from other jurisdictions has also increased. Developments in Europe and requirements on the LSRB to recognise the learning and

experience of EU nationals, mean that non-UK EU nationals seeking to qualify in England and Wales are afforded more flexibility than home grown trainees.

Despite the strengths of some aspects of the current qualification process, the LSRB is aware of concerns about the current training contract requirements.

- There continues to be a mis-match between the number of LPC graduates and the number of training contract places available, resulting in concern that the current requirement for trainees to enter into a formal training agreement acts as a barrier to qualification for some individuals.
- The current time-based approach to the training contract does not recognise the variety of different ways in which individuals now study, learn and work and provides little flexibility. There is also a concern that it could potentially breach equality legislation and guidelines.
- The current guidelines on 'time to count' which recognise individual experience gained outside of a formal training contract are prescriptive and inflexible. For example, they only allow individuals to count up to six months experience towards their qualification regardless of the length of experience they have. They do not allow individuals to claim full credit for experience outside of a training contract, only half credit i.e. if they have six months experience, they can claim only three months towards their training contract. The current training contract requirements also penalise individuals in part-time study training contracts, as the time spent in a part-time study training contract only counts as half time (i.e. two years in a contract only counts as one year towards the training contract) even if the individual is working full time while studying.
- At the end of the current training contract period, individuals can be signed off by their training principal regardless of the standard of their performance in practice. As the gatekeeper to the profession, the LSRB has a responsibility to ensure that those entering the profession are competent to do so. With no formal assessment of trainees' performance in practice, the LSRB cannot currently be confident that trainees completing the current two year training contract have reached an appropriate standard.
- Although firms employing trainees are currently subject to an authorisation and monitoring process, there are concerns about the robustness of the initial authorisation process and the patchiness of the monitoring regime. Only a small percentage of organisations are subjected to monitoring visits each year and some organisations may be monitored only infrequently. Whilst clearly there are areas of excellence among firms taking trainees, the LSRB must introduce a framework which aims to identify these areas of excellence and ensure that those training and assessing solicitors are meeting appropriate standards.

Proposals

The LSRB will pilot a new framework for work based learning which will include:

- the development of a standard portfolio template to act as an assessment tool for the period of work based learning;

- a move away from the current two year training contract to a period of assessed work based learning involving an initial planning session and four review sessions which will take place at not less than four month intervals;
- a route to qualification for individuals not working in an accredited organisation or under a formal training agreement;
- the development of an enhanced validation and monitoring process for organisations seeking accreditation as training organisations and a lighter touch, in-house assessment regime for individuals employed by these organisations;
- the identification of partners within the profession and higher education to support the pilot project.

The framework

Prospective entrants to the profession

- Under the proposed new framework (detailed at [Annex 1](#)), a distinction would be made, not between individuals with formal training positions and those without but between those working in accredited firms/organisations and those not. The LSRB would accredit those organisations which met its standards for training but would cease to prescribe the detailed structure and content of any training agreements between trainees and their firms; trainees would rely instead on employment legislation to protect their position. (It is not considered necessary to intervene in the employment relationship between the trainee and employee as it is questionable whether the requirements imposed by the standard training contract, such as the requirement to provide a certain amount of holiday to trainees, actually address any real risk which is not already addressed by enhanced employment rights for employees).
- The focus of the proposed framework will be on a robust assessment of performance in practice against the relevant day one outcomes (which were identified in the Training Framework Review and are attached at [Annex 2](#)).
- Anyone wishing to qualify as a solicitor would be able to present themselves for assessment regardless of where or how, they had gained their experience and whether it had been gained under a structured training agreement, in a structured training environment or by working in a legal environment at an appropriate level. The intention would be for the standard of competence for all entrants to fully match that achieved by newly qualified solicitors now. This approach would recognise the increasing diversity of backgrounds and experiences of potential entrants to the profession and the variety of different ways and environments in which individuals learn. It would also bring the LSRB requirements more in line with developments in Europe whereby the LSRB must recognise the prior experience of EU nationals seeking to qualify in England and Wales regardless of the environment in which the experience was gained and without the need for a formal training contract.

Questions

1. *To what extent, if any, should the LSRB prescribe the form and content of training agreements between organisations and trainees provided the LSRB validates and monitors organisations to ensure that an appropriate level of*

training and support is provided to trainees and a robust assessment mechanism is employed?

2. *Should individuals with relevant work experience who can demonstrate their competence against the relevant day one outcomes through a portfolio and regular reviews with approved assessors be able to qualify as a solicitor even if they have not been employed in an accredited training organisation or undertaken their work experience under a formal training agreement?*
3. *How might the day one outcomes be converted into assessable levels of competence appropriate to newly qualified solicitors?*
4. *Do you think that there is a risk that solicitors who have qualified via the non-traditional route will be perceived as less competent than those who qualify via the traditional route? If so, how can this risk be mitigated?*

Accredited training organisations

- A distinction would be made between those individuals employed in an accredited organisation (e.g. firms and other organisations employing trainee solicitors and meeting the LSRB accreditation standards) and those not. Organisations wishing to be accredited as training organisations would be subject to strict validation and monitoring to assess whether they meet the standards laid down by the LSRB. The standard for accredited organisations would be set at the level of current “best practice” and by achieving this standard, organisations would be able to review and assess their own employees against the day one outcomes rather than submitting them for external LSRB assessment. This will enable the LSRB to focus its regulatory resources on assessing individuals who have not trained in an accredited organisation and who, it might be argued, could pose more risk.
- It is possible that the introduction of a more robust approach to validation and monitoring of organisations taking trainees will lead to a reduction in the number of organisations willing to take trainees. However, it is intended that the title of “accredited training organisation” (or similar, to be agreed) should be a badge of excellence to which some but not all, organisations will aspire. Implications for access to the profession due to the reduction in the number of accredited training organisations will be mitigated by the additional route to qualification, available for individuals not working in an accredited organisation. These standards would be developed in consultation with stakeholders, including the profession.
- Firms seeking to become accredited training organisations will need to identify individuals to act as portfolio supervisors and portfolio assessors. These individuals will be required to participate in training specified by the LSRB.
- There will also be a need for transitional arrangements to allow time for organisations to move towards the new standards and for the LSRB to conduct validation exercises for all those seeking accreditation under the new scheme.

Questions

5. *Do you agree that the standard for accredited training organisations should be set at the level of current best practice? If so, how should this be determined and set as the standard?*

6. *If the standard for accredited training organisations is to be set at best practice level, do you agree that the LSRB should introduce a more robust validation and monitoring regime for organisations seeking accreditation than is currently in place?*
7. *The costs of the validation and monitoring process are likely to be higher than the current cost for authorisation as a training establishment although the internal costs for organisations already following best practice should be minimal. Do you think that organisations would be deterred from seeking accreditation because of:*
 - (a) *an increased validation and monitoring fee? and/or*
 - (b) *a more robust validation and monitoring regime?*
8. *Do you think the proposed approach to accreditation of training organisations risks deterring firms from taking trainees altogether? If so, how should this risk be mitigated?*

Registration

- Anyone seeking to qualify as a solicitor will be required to register with the LSRB their intention to begin recording their work based learning. It is intended that the portfolio should act as a learning tool, as well as an assessment tool and any learning should be recorded and reflected on at the time that it takes place. The registration would prevent individuals from seeking to complete their portfolio retrospectively. It might also be appropriate to undertake character and suitability checks on individuals at this stage so that any issues can be highlighted and addressed at an early stage.
- This registration and the subsequent recording of work based learning could take place at any point during an individual's career. The focus would be, not on the point at which they are in the qualification process but on the point at which learning is taking place at an appropriate level to contribute to fulfilment of a relevant day one outcome. This learning might take place:
 - in a legal environment prior to formal academic study;
 - whilst participating in clinical legal education;
 - whilst working in a legal environment at the same time as studying for a degree or LPC; and/or
 - whilst in a formal training position.

Learning evidenced in the portfolio would only count towards the qualification if it was at a level appropriate to that required by a solicitor as detailed in the day one outcomes. In addition, individuals would not be permitted to submit for assessment until they had successfully completed their LPC.

Questions

9. *What, if any, guidance should be provided on what constitutes work at an appropriate level to meet the day one outcomes for a newly qualified solicitor?*
10. (a) *Do you agree that, as well as an assessment tool, the portfolio should act as a development tool and that individuals should be encouraged to record and*

reflect on their work based learning at the point at which it happens or as soon as possible afterwards? or

(b) For a period when the scheme is first introduced, should individuals who already have many years relevant experience, e.g. as a paralegal, be able to complete a portfolio retrospectively and submit it for assessment even though they will not meet the requirement for regular, documented review sessions?

11. *Do you agree with the proposition that qualifying work based learning could take place at any point in an individual's career i.e. prior to formal academic study, during the LPC, during the formal period of work based learning provided that it is at an appropriate level and that the individual could begin completion of the portfolio at whatever point they are undertaking relevant work experience?*

The period of work based learning

- All individuals registering with the LSRB will be required to participate in an initial planning session before they begin completion of their portfolio. For individuals in accredited organisations, the planning session will be conducted with an accredited in-house portfolio supervisor. To become an in-house portfolio supervisor, individuals will have to undergo training specified by the LSRB. Individuals not in accredited organisations will be allocated an external portfolio supervisor to conduct the planning session. These portfolio supervisors would be employed or contracted to the LSRB and trained for this task.
- After the initial planning session, the individual will participate in regular review meetings. Individuals in accredited organisations would participate in review meetings with an in-house accredited portfolio supervisor and individuals not in accredited organisations would be allocated an external portfolio supervisor.
- One of the issues with the current training contract has been the time based nature of the requirement and the concern that this could potentially breach equality legislation. It also fails to recognise the different speeds at which individuals learn and the diversity of ways in which individuals can gain practical experience. The question of the need for a minimum period of work based learning has been debated at length during discussions about the qualification framework. The final proposal was that there would be no minimum requirement but that individuals would be required to participate in at least four 'appraisals' and that these appraisals would not normally occur more frequently than every four months. It is proposed, therefore, that individuals should not be able to submit for assessment until they have participated in and documented at least four sessions with an accredited portfolio supervisor. It is anticipated that the number of review sessions will be higher for individuals working part-time or that the time between review sessions would be longer.

Questions

12. *Should the LSRB set the minimum number of review sessions (e.g. four) and the minimum period of time between each review session (e.g. four months) or simply allow individuals to present themselves for assessment when they have completed their portfolio and feel they can demonstrate their competence against the relevant day one outcomes? If the former, how many sessions and how long a period between them should be the minimum.*

13. *How wide a variety of different areas of law should a newly qualified solicitor have experienced? Should experience of both non-contentious and contentious areas continue to be required?*
14. *If the LSRB specifies a minimum number of review sessions and elapsed time between sessions, will firms take advantage of the flexibility or simply design their training programmes so that all trainees qualify within the minimum 16 month period?*
15. *Do you think it is important that individuals not employed in an accredited training organisation should be able to access LSRB appointed portfolio supervisors to help them determine whether their work is at a sufficiently high level to demonstrate competence against the day one outcomes and to enable them to regularly review and reflect on their progress?*
16. *If the cost of the external review sessions and the final external assessment for individuals who are not in accredited organisations is to be met by the individuals seeking to qualify, do you think that this would act as a new barrier to qualification?*
17. *Do you think the new requirements for in-house review and assessment will deter organisations from taking trainees altogether? If so, how should this risk be mitigated, if at all?*

Supervisors and assessors

- Individuals not in an accredited training organisation but are completing a portfolio and seeking to qualify as a solicitor should not be disadvantaged by a lack of regular review of their progress by an in-house portfolio supervisor. Any disadvantage will be mitigated by making available LSRB trained portfolio supervisors to conduct the review sessions. The costs of the review would be covered by the prospective entrant unless the employer undertook to pay. Similarly, individuals not working in accredited training organisations will be able to submit their portfolio for assessment by a LSRB trained assessor. This approach will enable individuals to seek admission to the profession without the support of their employer, if they should wish to and would also provide a route to qualification for individuals in organisations which decide that it is more cost-effective for their trainees to follow the LSRB assessment route than to seek validation as an accredited training establishment. This approach will also enable individuals to complete some of their portfolio in an accredited organisation and some in a non-accredited organisation, if they wished.
- The roles of the portfolio supervisors and assessors would be distinct and defined. The portfolio supervisor involved with the review sessions would not be able to act as the assessor.

Questions

18. *Should organisations be able to train portfolio supervisors in-house provided the training meets LSRB standards?*
19. *Do you agree that individuals in accredited organisations responsible for the final assessment of portfolios should be required to be trained in assessment by the LSRB to ensure consistency of approach and externality in the assessment process?*

20. (a) *Should the roles of portfolio supervisor and assessor be distinct and separate in order to ensure neutrality and objectivity in the assessment process; or*
- (b) *Is there value in the assessor consulting with the portfolio supervisor as part of the assessment process; and/or*
- (c) *Could portfolio supervisors also assess individuals they have supervised?*
21. (a) *Do you think the cost of training in-house portfolio supervisors and assessors will deter organisations from taking trainees altogether? If so, how should this risk be mitigated? or*
- (b) *Do you think that some firms would continue to take trainees but would submit them for external LSRB review and assessment rather than seek accredited status?*
22. *What might be the implications for small training firms? How should any problems be mitigated?*

Assessment

When an individual has participated in at least four review sessions, feels that they meet all of the relevant day one outcomes and has evidenced them in their portfolio, they would be able to submit for assessment either by an in-house accredited assessor or a LSRB assessor. Although the assessment methodology is yet to be determined, in consultation with all stakeholders, including the profession, it is intended that the portfolio will provide the basis for the assessment for all individuals but that individuals who are not employed in an accredited firm might be required to undertake further skills assessments against the day one outcomes. Individuals would not be able to submit for assessment until they had successfully completed the LPC.

Questions

23. *Do you agree that accredited organisations should be able to conduct their own assessment of trainees or other employees, to LSRB standards, provided the LSRB validates and monitors the training and assessment provided by the organisation?*
24. *Should individuals who have not gained their work experience in an accredited organisation be subject to further assessments of their skills in addition to the assessment of the portfolio? E.g. face to face skills assessments, formal interviews or more broadly based (and more expensive) assessment centres.*
25. *If this general approach is adopted, how do you think it should affect the present arrangements for overseas lawyers seeking admission to the roll in England and Wales who are expected to demonstrate their experience in practice before being admitted as a solicitor in England and Wales?*

Partners/pilot group

- In order to progress with a pilot of the work based learning project, we will need to identify individuals from five main groups:

- (i) individuals in HE whose studies involve an element of clinical legal education;
 - (ii) individuals in training contracts;
 - (iii) LPC graduates without training contracts working in legal environments;
 - (iv) individuals in training establishments prepared to train as reviewers and assessors; and
 - (v) individuals prepared to train as external supervisors and assessors.
- In the short term, a number of key partners will be identified to assist the LSRB in developing the pilot project and working up a suitable framework to support a bid for funding from the DfES to assist with the pilot project. Key partners will be identified from a range of environments including:
 - (i) large commercial firms;
 - (ii) legal aid practices;
 - (iii) LPC providers;
 - (iv) small and medium sized firms;
 - (v) provincial firms.

Key partners will be identified who:

- are prepared, in principle, to support the proposals for the new framework and to act as ambassadors for the exploratory process embodied in the pilot scheme;
 - are committed to innovation and flexibility in the training and development of trainee solicitors;
 - are willing to act as a key reference group for the LSRB in the development of the pilot scheme; and
 - are willing to support (but not financially) the bid for funding to the DfES.
- In the longer term we propose to advertise for additional partners to take part in the pilot project. The role of the partners would be to:
 - (i) provide support for the new approach to work based learning;
 - (ii) act as a consultation/reference group during the development stages of the project;
 - (iii) identify individuals in firms and HE to take part in the pilot project; and
 - (iv) identify individuals in training establishments prepared to train as in-house supervisors and assessors.

A sample of the firms expressing an interest will be selected based on:

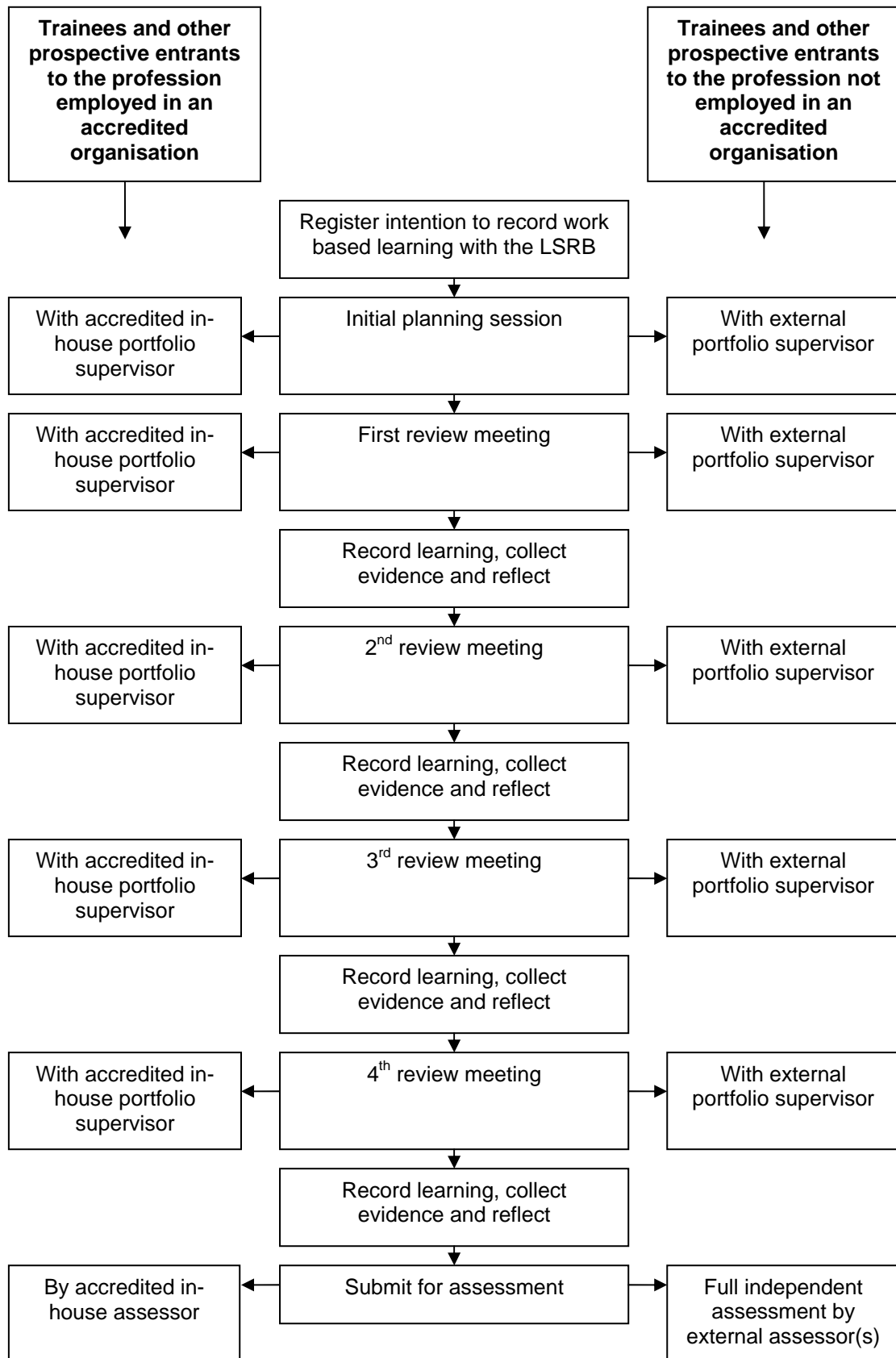
- (i) size of firm;
 - (ii) location of firm;
 - (iii) areas of law covered; and
 - (iv) number of trainees.
- We are also currently carrying out research with students who have passed the LPC but not yet secured a training contract. In particular, we are seeking to find out whether they retain an ambition to qualify as solicitors and if so, where they are now employed. Based on that research, likely to be completed towards the end of September, we will aim to identify students working outside of a training contract and their employers willing to take part in this pilot.

- It is envisaged that any individuals participating in the pilot project should be able to qualify if they successfully complete the assessments at the end of the project whether or not they meet the existing requirements for a two year training contract.

Annexes

- Annex 1 Detail of pilot of new framework for work based learning
- Annex 2 Day one outcomes to be demonstrated by the period of work based learning

Framework for work based learning



Definition of roles

External portfolio supervisor

An individual employed or contracted and trained by the LSRB to conduct independent review sessions with trainees or other prospective entrants to the profession not employed in accredited organisations.

External assessor

An individual employed or contracted by the LSRB to conduct independent assessments against the relevant day one outcomes on trainees or other prospective entrants to the profession not employed in an accredited organisation at the end of the period of work based learning.

Accredited in-house portfolio supervisor

An individual in an accredited organisation who has been specifically trained to conduct review sessions within the organisation with trainees or other prospective entrants to the profession.

Accredited in-house assessor

An individual in an accredited organisation who has been specifically trained to conduct assessments against the day one outcomes on trainees or other prospective entrants to the profession within the organisation.

Annex 2

Day one outcomes to be demonstrated by the period of work based learning

Outcomes marked with an * should be demonstrated in both contentious and non-contentious areas of work.

- Demonstrate appropriate behaviour and integrity in a range of situations*.
- Demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds, identify and respond positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.
- Apply techniques to communicate effectively with clients, colleagues and members of other professions*.
- Recognise clients' financial, commercial and personal constraints and priorities*.
- Effectively approach problem solving*.
- Effectively use current technologies and strategies to store, retrieve and analyse information and to undertake factual and legal research.
- Demonstrate an appreciation of the commercial environment of legal practice, including the market for legal services.
- Recognise and resolve ethical dilemmas*.
- Use risk management skills*.
- Recognise personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skills and develop strategies that will enhance their personal performance.
- Manage their personal workload and manage efficiently and concurrently a number of client matters.
- Work as part of a team.