

Analysis of responses to the initial consultation on a new framework for work based learning – December 2006

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Summary

Introduction

The initial consultation on a new framework for work based learning was published on 11 August 2006. Views were sought on proposals relating to:

- the requirements for trainees' period in practice
- an alternative route to qualification for individuals without a formal training agreement
- the validation and monitoring of training organisations

71 responses had been received by 11 October 2006.

Training agreements

The majority of respondents felt that the LSRB should continue to prescribe the form and content of training agreements (Question 1, page 8). Over half the people who answered the question felt that there should be either full or a small amount of prescription – most of these respondents were representative bodies. Reasons given were that prescription would help to define expected standards and outcomes, and ensure consistency between accredited and non-accredited routes.

Alternative route to qualification

There was support for qualification for individuals demonstrating competence and ultimately qualifying outside a formal agreement (Q2, p10), mostly from representative bodies and individual respondents. However, a significant proportion saw a risk of a two-tier profession developing as a result (Q4, p14).

A majority felt that there should be LSRB-appointed assessors for people outside accredited organisations.

The results were split on further assessments for non-accredited firm route trainees. 24 people thought that they should not. 23 thought that they should, or that it might be necessary depending on circumstances – most of these were solicitor's firms (Q24, p49).

Training organisations

The majority of respondents, mainly solicitors' firms, felt that the standard for accredited training organisations should be set at current best practice level (Q5, p16), although most did not give an opinion on how it should be determined and set. There was support for more a more robust validation and monitoring regime (Q6, p18) if this enhanced standard was introduced.

Nearly 70% of those respondents who expressed an opinion saw increased validation and monitoring fees as a possible deterrent to organisations seeking accreditation (Q7a, p19). A similar proportion saw an increased validation and monitoring burden as a deterrent (Q7b, p20).

Under half of all respondents thought that, to a greater or lesser extent, the number of firms offering training places would be reduced by the implementation of the proposed system (Q8, p21). It was felt that small firms would be particularly affected.

When asked about the implications for small training firms, the majority (mainly solicitors' firms) saw a risk that they would either take fewer trainees or cease training altogether. The next largest group (mainly representative bodies) felt that they would instead refer 'trainees' to the LSRB reviewers/assessors (Q22, p47).

38 respondents indicated that accredited organisations should be allowed to conduct their own portfolio assessments (Q23, p48), although a proportion did either voice an element of concern or suggested certain conditions.

The portfolio

Over 70% of people who expressed a view felt that the portfolio should act as a development as well as an assessment tool, to a greater or lesser degree (Q10a, p23). However, over 20% of respondents to this question felt that it should not; some also cast doubt on the validity of the portfolio concept.

Although a large number of people thought that the portfolio should act as a developmental as well as an assessment tool, a similar number also indicated that individuals should be allowed to complete their portfolios using experience gained prior to registration (Q10b, p24). Almost 20% of all respondents said that this should not be allowed, however.

Opinions were divided on the point at which completion of the portfolio could begin. A small majority felt that work based learning could, in principle, begin at earlier stages than the current structure allows, but with conditions or limits; i.e. completion of a law degree or conversion course (Q11, p26). These respondents felt that academic study informs the practical experience, and that in most cases individuals would find it difficult to gain work at the appropriate level prior to their LPC

A slightly smaller proportion felt that portfolio completion should not begin until after the academic and LPC stages, arguing that the knowledge and skills gained on the LPC are a fundamental basis for work based training, and that it could be a distraction from students' studies.

Nearly a quarter of respondents believed that it could begin at any point, saying it could be a contemporary version of the old "5-year" route. The clinical legal education available at Northumbria University was also given as an example of work at an appropriate level that does not count under the current system due to the timing.

In terms of the respondent groups, individuals were largely for this proposal, whereas just over half the responses saying portfolio completion should not take place at any time were from solicitor firms.

Review sessions

Only four people agreed totally with the proposal that trainees should participate in four review sessions, with at least four months between each session (Q12, p28). However, 29 people agreed to the principle of review sessions over regular intervals, but with changes to the number of, and period between, reviews. A fair proportion said that portfolios should be submitted whenever the individual felt they were ready.

Two thirds of all respondents thought that putting the cost burden of review sessions and final assessment on the individual would create a barrier to qualification.

Over 80% of people who expressed a view felt that organisations could be put-off from taking trainees by the requirements for in-house review and assessments (Q17, p38). The new paralegal route was mentioned several times as a mitigating factor for this risk.

Experience requirements

23 people thought that the current requirement for trainees to gain experience in three areas of law should continue. Another 14 felt that prescription should continue, but suggested different numbers of areas, namely two and four. Nine people thought that the LSRB should not prescribe at all.

A majority felt that trainees should be required to gain experience in contentious and non-contentious areas of law (Q13, p30). The fact that a specialist profession might mean that the training stage is the only time in which solicitors would be exposed to both areas was often put forward as a reason for retention.

Length of the training

Almost two thirds of people who answered Question 14 (p33) felt that firms would take the minimum time possible allowed by the new regime – 16 months – to train their trainees. The remainder felt that some degree of flexibility would be exercised.

Supervisors and assessors

36 people who answered Question 18 felt that firms should be able to train their own portfolio supervisors. Eight of these people saw some problems with this proposal, involving possible variation in training standards and interference with normal business. However, 35 people thought that the cost of in-house training would deter firms from taking trainees altogether (Q21a, p45)

46 people answered the question on whether portfolio assessors should be centrally trained by the LSRB – over 82% felt that they should (Q19, p41).

Almost two thirds of the 47 people who answered the question on separation of the roles of portfolio supervisors and assessors agreed that they should be separate (Q20a, p42). A significant proportion believed that they should not necessarily be distinct roles. 31 people thought that some scope should be allowed for consultation between supervisors and assessors (Q20b, p43).

But three-quarters of respondents (25 people) thought that supervisors should not be able to assess the portfolios of those they have supervised, stating that this could lead to a lack of perceived vigour, that it could make the relationship between assessors and students “too cosy”, and that any conflict of interest must be avoided (Q20c, p44).

No-one disagreed with the proposition that some firms would send their trainees for external LSRB review and assessment rather than seek accreditation themselves (Q21b, p46).

Overseas lawyers

25 people – over half the respondents to the final question - felt that overseas lawyers seeking qualification here should go through the same, or an equivalent, system and demonstrate their competence. The remainder saw the need to balance

this with EU legislation, felt there should be no change in the current arrangements, or recognised the need to review the QLTR system.

Profile of respondents

71 responses were received as at 11 October 2006. This analysis includes all responses. Responses from people who asked us to keep their views confidential have been anonymised.

50 (70.4%) were on behalf of organisations, 21 (29.6%) from individuals.

Solicitors' firms made up 32.4% of all respondents. Two of the responses were made by sole practitioners – as they indicated their responses were on an individual basis, they were categorised as individual respondents for later analyses.

Representative bodies included seven local law societies, as well as the Group for Solicitors with Disabilities, the Black Solicitors Network (BSN), the Association of Women Solicitors, the Institute of Legal Executives (ILEX), the Trainee Solicitors Group (TSG), the Young Solicitors Group (YSG), the Berkshire Buckinghamshire & Oxfordshire YSG and the Law Society.

fig 1 breakdown of respondents

	no.	% of all responses
solicitors' firms	21	29.6%
individuals	21	29.6%
representative bodies	17	23.9%
Law Degree/LPC providers	9	12.7%
academic standards agency	1	1.4%
local government	1	1.4%
in-house	1	1.4%
total	71	

In terms of size, responses came mainly from larger firms – 'large' in this sense meaning with a structure of 81 or more partners. The two sole practitioners mentioned above were included in *figure 2* for information.

fig 2 breakdown of solicitors' firm respondents

	no.	% of all responses
sole practitioner	2	2.8%
2-4 partners	1	1.4%
5-10 partners	0	0%
11-25 partners	1	1.4%
26-80 partners	5	7%
81+ partners	13	18.3%
inter-firm training partnership	1	1.4%
total	23	32.4%

Individual responses mainly came from solicitors.

fig 3 *breakdown of individual respondents*

	no.	% of all responses
solicitor	8	11.3%
paralegal	5	7%
enrolled student	3	4.2%
legal academic	3	4.2%
LPC graduate	2	2.8%
total	30	42.3%

Detailed analysis

Q1 prescription of training agreements

“To what extent, if any, should the Law Society Regulation Board (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?”

53 respondents (just under 75%) answered this question. The majority felt that the LSRB should continue to prescribe the form and content of training agreements. Over half felt that there should be either full or some prescription.

fig 4 Q1 - should the LSRB prescribe training agreements?

response	no.	% of answers to this question	% of all responses
yes, we should	22	41.5%	31%
no, we should not	18	34%	25.4%
some, or a little prescription	6	11.3%	8.5%
undecided/unclear	4	7.5%	5.6%
depends	2	3.8%	2.8%
prescribe form only, not content	1	1.9%	1.4%
no response	18		25.4%

The majority of the respondents who felt that there should be full or some prescription were representative bodies. Only three solicitor firm respondents felt this way.

Only 17 of the 31 respondents who felt that there should be either full or some amount of prescription gave reasons why. 16 felt that prescription would help to define expected standards and outcomes, and ensure consistency between accredited and non-accredited routes. Others thought that prescription would help to ensure public confidence, and that trainees would be better protected from exploitation.

Supporting comments

Comments supporting the retention of prescription included:

- *“This is essential to ensure continued public confidence in the training of solicitors and to provide for broad comparability to ensure that “favoured” and “disfavoured” types of training do not develop.”* – a local law society
- *“...involvement in the contractual arrangements between firms and trainees may be necessary in areas such as minimum wages for the protection of the trainee.”* – solicitor interest group
- *“It is naïve to suggest that mere reliance upon employment legislation provides a framework in and through which the training can be undertaken, as well as protection against exploitation.”* – legal academic

A solicitor interest group submitted that the LSRB should not do so under the proposed system:

- *“...It would be difficult for the LSRB to assess the content of the agreement between organisations and trainees. It would be further difficult to assess the full implementation of the agreement. [We submit] that the LSRB should focus on the quality of the final assessment, and setting down of minimum standards to be achieved. “*

Other comments recommending de-regulation reflected the opinion that there is no need for LRSB prescription given current legislative protections, and that it would aid removal of barriers:

- *“Terms and conditions of employment should continue to be largely influenced by market forces, best practice and applicable employment law.” – PSC provider*
- *“Bearing in mind the aim of widening the opportunities to undertake work based learning it would not be appropriate for the LSRB to prescribe terms and conditions of employment.” - solicitor interest group*
- *“It seems that if prospective solicitors are not required to undergo training under a formal training agreement then there is no need...” – in-house training establishment*

A law degree/LPC provider raised interesting issues around organisations performing the dual functions of assessing and employing trainees – *“Whilst employment legislation would seem in the main to provide protection for trainees, the Law Society may wish to consider whether there are any issues around the interrelationship between failing or passing the portfolio submission and the employment contract. Whether multiple submissions following a fail are to be permitted, whether there is a maximum period of time within which the portfolio may be submitted. Whether it is appropriate to prescribe a minimum period of study time and the possibility of a successful appeal from a decision of an in-house assessor may also be issues.”*

Q2 should people qualify without having a formal training agreement?

“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?”

55 responses were provided. 18 did not support the proposal, and two thought that it would depend on the type of experience, and where it was obtained. The remainder supported the proposal, although some identified risks and conditions.

fig 5 Q2 - should people qualify without being in a formal agreement?

response	no.	% of answers to this question	% of all responses
yes	18	32.7%	25.4%
no	18	32.7%	25.4%
yes in principle, but there may be risks/problems	9	16.4%	12.7%
yes, with conditions	8	14.5%	11.3%
depends	2	3.6%	2.8%
no response	16		22.5%

78% of the LPC/law degree providers felt that qualification without a formal agreement should be allowed, as did 65% of representative organisations.

Overall, the majority of affirmative responses came from representative organisations.

Supporting comments

Some respondents recognised the flexibility of the proposals:

- *“There are many ways to gain necessary relevant experience without working in an accredited organisation and these should be recognised”* – firm of solicitors
- *“This is essential to allow more diverse entrants to the profession.”* - LPC/law degree provider

Others saw the concept that people could qualify without being in a formal training arrangement as being undesirable:

- *“... there are significant potential dangers with this approach. Requiring individuals to enter a training contract means that not everyone can qualify, but the selection process that precedes the offer of a contract helps to ensure that high standards in the profession are maintained”* - PSC provider
- *“Such a proposal could lead to the undermining of public confidence in the comparability and quality of the training experience”* – solicitor

The 17 respondents who indicated agreement in principle but with conditions, or could foresee potential problems, expanded on their views:

- *“they need to have been employed in an environment where they can clearly demonstrate experience of legal practice in sufficient breadth and depth”* – representative body
- *“it could cause confusion for prospective trainees when deciding to take a job as to whether the work will ... qualify for their portfolio”* – representative body
- *“given the innate conservatism of both employers and would-be entrants to the legal profession, we see it as inevitable that the ‘accredited training organisation’ route would be expected to be the better route to follow”* – firm of solicitors

Q3 how can day one outcomes be converted into assessable standards?

“How might the day one outcomes be converted into assessable levels of competence appropriate to newly qualified solicitors?”

50 responses were given here.

fig 6 Q3 - how might day one outcomes be converted into assessable competencies?

response	no.	% of answers to this question	% of all responses
misunderstood question, gave assessment methods with difficulty	16	32%	22.5%
not enough detail in day one outcomes	10	20%	14.1%
practical suggestions	9	18%	12.7%
by academics	2	4%	2.8%
unclear	1	2%	1.4%
by practitioners and academics	1	2%	1.4%
by practitioners	1	2%	1.4%
no response	21		29.6%

Some respondents appeared to misunderstand the question and gave examples of how we should assess the standards rather than how we might develop them.

Supporting comments

Only nine respondents gave suggestions for developing assessable standards. Perhaps unsurprisingly, five of these came from educational providers or academics. These included...

- *“Each outcome needs to be analysed for competences and values with indicative examples. Diaries, record of training, peer observation reports, examples of work (and level of supervision therefore) and a reflective journal could form the basis of a portfolio.”* - legal academic
- *“because most outcomes are skills based, appropriate assessment criteria could be identified and a matrix of skills created. This would weight the various elements of each skill and identify incremental stages to allow for development. This would also link to the portfolio”* - LPC provider
- *“Once the outcomes have been clearly identified each outcome needs to be particularised by using explicators (i.e. each outcome must be broken down into a list of its component essential attributes). The present list includes both outcomes and explicators without differentiation. The level at which each attribute is to be demonstrated must be carefully considered (for example whether description or analysis is expected) and expressed using standard descriptors... A grading system can be applied to each attribute (say 0-5) so that the degree to which each attribute and thus each outcome has been achieved can be expressed.... This approach provides both a performance*

indicator and an explanation for the trainee of what is being asked of him/her.”
LPC/law degree provider

Q4 is there a risk of new route solicitors being seen as less competent?

“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?”

59 people answered this question. The majority (53 responses, nearly 90%) saw a risk of a two-tier system.

fig 7 Q4 - is there a risk of non-traditional route solicitors being seen as less competent?

response	no.	% of answers to this question	% of all responses
yes, with mitigation suggestions	29	49.2%	40.8%
yes	24	40.7%	33.8%
no	4	6.8%	5.6%
perhaps	1	1.7%	1.4%
mitigation suggestion	1	1.7%	1.4%
no response	12		16.9%

30 respondents suggested ways to mitigate this risk. The suggestions were summarised for analysis:

fig 8 Q4 - suggestions for mitigation

response	no.	% of answers to this question	% of all responses
rigorous/external assessments	9	30%	12.7%
will reduce naturally over time	6	20%	8.5%
equivalence of experience	6	20%	8.5%
strong messages from LSRB	5	16.7%	7%
minimal amendments to current system with input in system development from key stakeholders	2	6.7%	2.8%
enhanced quality assurance mechanisms	1	3.3%	1.4%
	1	3.3%	1.4%

Supporting comments

Rigorous and/or external assessments were the most frequently suggested ways of mitigating the perception of a two-tier system.

- *“... the formal assessment at the end of the period of work based training should ideally be carried out in all cases by an external, independent, assessor...”* – solicitor
- *“...the results of a written examination would assist.”* - firm of solicitors
- *“... a transparent and robust assessment process that is demonstrably equal for all candidates. This involves thorough training, assessment of and monitoring of supervisors and assessors.”* - LPC/law degree provider

‘Equivalence of experience’ comments referred to levelling-out the two routes. Comments centred around the value of practical office experience for the non-traditional route, especially in terms of client contact:

- *“ensuring that portfolios must demonstrate experience and achievement in a practice environment.”* – representative body
- *“The individual's attractiveness as a recruit is most likely to be dependent on the type of experience they have.”* - representative body
- *“The concern would be that a solicitor who qualifies via the non-traditional route will not have had contact with clients, exposure to an office environment, nor had to time record etc. This can only really be dealt with by exposing individuals to a recognised office/legal environment.”* - firm of solicitors

Q5 should the standard for accredited training organisations be set at best practice level? If so, how should it be determined?

“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?”

47 people answered this question. The majority felt that the standard should be set at current best practice level. However, a significant proportion felt that it should not, or that it would be difficult to establish what the level of best practice actually is.

fig 9 Q5 - should standard for accredited training organisations be at best practice level?

response	no.	% of answers to this question	% of all responses
yes	28	59.6%	39.4%
no	11	23.4%	15.5%
uncertain - difficult to define 'best practice'	8	17%	11.3%
no answer	24		33.8%

The majority of responses who indicated that the standard should be set at best practice level came from solicitor firms and LPC/law degree providers.

The majority of negative responses came from representative bodies – 37% of negative answers came from these organisations. However, the same number of representative bodies answered either “yes” to this question or “no/uncertain.”

Of those who said yes, most didn't give an opinion on how best practice should be determined and set. Nine people suggested research involving either trainees, firms & the profession, or everyone involved in training.

fig 10 if 'yes', how?

response	no.	% of affirmative answers	% of all responses
no detail given	10	35.7%	14.1%
determined through consultation with firms/practitioners	7	25%	9.9%
use existing validation and monitoring information	4	14.3%	5.6%
existing standards are adequate	3	10.7%	4.2%
use Lexcel	2	7.1%	2.8%
research involving students	1	3.6%	1.4%
research involving all involved in training	1	3.6%	1.4%

Supporting comments

Some respondents raised the difficulty of establishing a definition and level for 'best practice':

- *"I advise against you spending considerable hours trying to define imprecise details of what "best practice" means because this will only create a more bureaucratic system and standards will have moved on by the time your work is completed"* - solicitor
- *"What is 'current best practice'? We think it will be very difficult to determine what this is."* - LPC/law degree provider

Q6 should the LSRB introduce more rigorous validation & monitoring of training firms?

“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?”

There were 50 responses to this question, most of which were in favour of enhanced monitoring.

fig 11 Q6 - should LSRB introduce more rigorous validation & monitoring?

response	no.	% of answers to this question	% of all responses
yes	29	58%	40.8%
no	12	24%	16.9%
depends	3	6%	4.2%
unclear/undecided	6	12%	8.5%
no answer	21		29.6%

Supporting comments

A large LPC provider stated that *“From my own discussions with some former LPC students who have secured training contracts, it is evident that their progress is not being monitored effectively and certainly not to a very high standard... A few have informed me that upon qualification they feel inexperienced and lack confidence in performing certain tasks due to their lack of practical experience through their training contract”*

Others who thought that more, rigorous monitoring should be introduced said that:

- *“There is no current effective validation and monitoring is ... too infrequent (in our experience)”* – in-house training establishment
- *“... care should be taken to ensure that the new monitoring regime does not become so difficult or costly to comply with that smaller firms are discouraged from offering training contracts.”* - LPC/law degree provider
- *“The current monitoring and authorisation regime is inadequate and needs overhauling”* - firm of solicitors

The ‘depends’ category contained varying opinions as to what would affect the validating and monitoring levels. One thought that if the validation system is robust, the level of monitoring would be reduced. Another saw it depending on whether in-house accreditation would be seen as a desirable badge of excellence, or if it carried additional powers. The third saw enhancement as being potentially counterproductive and reducing numbers of training firms.

Q7 would organisations be deterred from authorisation because of...

“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?

Several respondents answered these questions together. Most people saw increased fees as a deterrent to organisations seeking accreditation.

45 responded to the first sub-question.

fig 12 Q7 a) - would organisations be deterred from accreditation by increased fees?

response	no.	% of answers to this question	% of all responses
yes	31	68.9%	43.7%
depends on the fee levels	7	15.6%	9.9%
no	5	11.1%	7%
perhaps, but has other concerns	1	2.2%	1.4%
unclear	1	2.2%	1.4%
no response	26		36.6%

Supporting comments

One comment was ambivalent on the whether or not firms would be deterred but said “we would also be concerned if we found ourselves effectively paying for increased rigour in the validation and monitoring of other firms who do not have the same track record as us.”

Indirect costs, such as loss of fee-earning time, were also suggested as possible deterrents.

b) a more robust validation and monitoring regime?

40 respondents gave views on the second sub-question. The majority of respondents saw an increased validation and monitoring burden as something that would deter organisations from becoming accredited.

fig 13 Q7 b) - would organisations be deterred from accreditation by more robust validation/monitoring?

response	no.	% of answers to this question	% of all responses
yes	28	70%	39.4%
no	7	17.5%	9.9%
depends	4	10%	5.6%
has other concerns	1	2.5%	1.4%
no response	31		43.7%

Supporting comments

One respondent noted that “... those who may be deterred ... will be no loss to the profession's training process”.

This was echoed by another respondent – “... A possible consequence of the new framework is that those firms/organisations not already enforcing appropriate standards could choose not to take trainees or take less. I submit that this is not so much a criticism of the proposed new framework but rather further evidence that the current system of monitoring and assessment in place is fundamentally flawed and needs to be changed”.

Q8 do firm accreditation proposals risk deterring firms from taking trainees?

“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?”

fig 14 Q8 - do accreditation proposals risk deterring firms from taking trainees?

response	no.	% of answers to this question	% of all responses
yes	17	37%	23.9%
yes, with mitigation suggestions	14	30.4%	19.7%
no	10	21.7%	14.1%
mitigation suggestion	2	4.3%	2.8%
not enough detail to form a response	1	2.2%	1.4%
possibly	1	2.2%	1.4%
possibly, with mitigation suggestions	1	2.2%	1.4%
no response	25		35.2%

46 people responded to this question. 31 thought that, to a greater or lesser extent, the number of firms offering training places would be reduced by the implementation of the proposed system.

Supporting comments

It was felt that small firms would be particularly deterred:

- *“Larger commercial firms will have no difficulty adapting to the new regime” - LPC/law degree provider*
- *“a similar process has already occurred within the accountancy profession where most training is now undertaken by a small number of larger firms and this does not seem to have been detrimental in its effects” - local law society*
- *“Yes particularly smaller firms” – representative body*

Mitigation suggestions included:

- *“by leaving the system as it is” - solicitor*
- *“the alternative route to qualification provided by external supervisors” – in-house training establishment*
- *“Might a sliding scale validation and monitoring fee, reflecting the number of trainees taken, be a way of mitigating some of these effects for smaller firms?” – academic standards agency*

Q9 what guidance on appropriate work should be given?

“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?”

50 people answered this question, but some respondents misunderstood the thrust of the question.

fig 15 Q9 - what guidance on appropriate work for wbl should be given?

response	no.	% of answers to this question	% of all responses
there should be guidance - no substantive suggestions given	18	36%	25.4%
there should be guidance - practical, substantive suggestions	12	24%	16.9%
who should set the guidance, not what it should be	9	18%	12.7%
too difficult to say	3	6%	4.2%
existing guidance is adequate	3	6%	4.2%
guidance will follow from assessment standards/criteria	3	6%	4.2%
no guidance should be given	2	4%	2.8%
no response	21		29.6%

Supporting comments

The majority felt that there should be guidance on what constitutes work at an appropriate level – only five people felt that either existing guidance was adequate, or that none whatsoever should be given.

Over half of the substantive suggestions were given by academic respondents. They included:

- “each [outcome] is also supported by a list of practical examples: e.g. ‘Use risk management skills’; ‘Awareness of money laundering regulations and application in practice, i.e. dealing with client account money’; ‘able to adhere to procedures for opening a new client file’.” - firm of solicitors
- “perhaps a list of competencies, linked to a time line” - LPC/law degree provider
- “work in a legal environment, providing ongoing advice to real clients under the day-to-day supervision of a qualified solicitor would be essential” - firm of solicitors
- “a practically usable system would use exemplars and generic level descriptors to indicate/give guidance on what is appropriate ... Such level descriptors can be found from a variety of sources, e.g. FHEQ from the QAA and various UK credit consortia.” - LPC/law degree provider

Q10 a) should the portfolio also be developmental tool?

“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?”

48 people answered this question. 34 people, over 70%, felt that it should to a greater or lesser degree.

fig 16 Q10 a) - should the portfolio also be developmental tool?

response	no.	% of answers to this question	% of all responses
yes	31	64.6%	43.7%
no	11	22.9%	15.5%
uncertain	3	6.3%	4.2%
possibly	3	6.3%	4.2%
no response	23		32.4%

Supporting comments

Support for this element of the proposals included:

- *“It can only enhance the learning experience if individuals are encouraged to ‘record and reflect’”* – representative body
- *“If used properly the portfolio will automatically be a development tool”* - solicitor
- *“As well as an assessment tool the portfolio should be regarded as the early stages of lifelong learning and fostering the reflective practitioner approach”* - LPC/law degree provider

The people who did not think it should be an assessment and development tool also cast doubt on the overall validity of the portfolio:

- *“[we] do not consider that the portfolio is an effective tool. The diary record which is in place under the current system is not adequately monitored, and in some cases believed not to be done”* - representative body
- *“If the portfolio is to be used as an assessment, and therefore submitted in totality to an assessment body, we think that individuals are unlikely to reflect upon areas in their approach which in hindsight they consider to have been wrong.”* - representative body
- *“We believe that development and assessment methods are, and should be kept, separate”* - firm of solicitors

b) should portfolios be retrospective?

“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?”

52 people answered this question. Over 61% indicated that individuals should be allowed to complete their portfolios using experience prior to registration.

fig 17 Q10 b) - should portfolios be completed retrospectively?

response	no.	% of answers to this question	% of all responses
yes	32	61.5%	45.1%
no	14	26.9%	19.7%
yes, with conditions	3	5.8%	4.2%
uncertain	2	3.8%	2.8%
possibly	1	1.9%	1.4%
no response	19		26.8%

Supporting comments

Comments supporting the proposal included:

- *“I can see no reason why an individual should not be permitted to rely on previous relevant experience providing that the work can be evidenced. For example, copies of client's instructions, any notes made commenting on the merits of a case, briefs to counsel, applications for funding, correspondence to clients” - LPC graduate with no training contract*
- *“With provisos on currency, why limit this to the transition period? If the focus is on whether or not [day one outcomes] have been met, and they have not been met too long ago, can they not be met both before and after registration?” – LPC/law degree provider*
- *“It seems unfair, when the scheme is first introduced, not to let individuals who have prior relevant experience complete a portfolio retrospectively.” – training firm*

Cautionary notes included:

- *“individuals who had already undertaken suitable worked based learning should be given some credit and prepare a portfolio retrospectively. However, they should also undergo a period of supervision with documented review sessions.” - local law society*
- *“Perhaps a compromise could be reached where the first year of work experience could be taken into account and a subsequent year undertaken with review sessions in place.” - representative body*

People who were against the idea put forward the following reasons:

- *“this may create an influx of NQ's and not enough positions to offer them. At the same time this may result in a shortage of paralegals and this will impact*

on smaller firms who utilise paralegals. There would also be the risk of historic submissions being inaccurate or embellished.” - firm of solicitors

- *“We would be surprised if experience as a paralegal would be likely always to constitute “relevant experience” for these purposes. As a firm that uses paralegals extensively, we see a clear demarcation between the experience of a trainee and that of a paralegal.” - firm of solicitors*
- *“Our concern ... is that those qualifying through 'time to count' will be seen as qualifying without sufficient rigour in the process applying to them” - firm of solicitors*

Q11 should work based learning take place at any time?

“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?”

54 people responded to this question, and views were split.

fig 18 Q11 - should work based learning take place at any time?

response	no.	% of answers to this question	% of all responses
depends	21	38.9%	29.6%
no	17	31.5%	23.9%
yes	15	27.8%	21.1%
unclear	1	1.9%	1.4%
no response	17		23.9%

The majority of people who thought work based learning should take place at any time were individuals, closely followed by LPC/degree providers. Just over half the responses saying it should not take place at any time were from solicitors' firms.

Only one firm of solicitors thought that it should take place at any time.

Supporting comments

The 'depends' category contains many responses that agreed in principle to work based learning being able to commence at earlier stages than the current structure allows, but with conditions or limits. These limits were on the whole felt to be completion of a law degree or conversion course:

- *“I do not think any period prior to formal academic study should be counted, since the study informs the practical experience”* - firm of solicitors
- *“a person should have completed their academic study before moving on to their work-based learning period. We do, however, agree that it would, in some circumstances, be appropriate for a person to start their work-based learning period before completing their LPC”* - firm of solicitors
- *“As long as the work is at an appropriate level it should not be relevant when that work has been carried out. However, in most cases individuals will find it difficult to gain work at the appropriate level prior to their LPC”* - firm of solicitors

Comments that supported definite positives included:

- *“It would then serve as a contemporary version of the old “5-year” route, through which many highly competent and successful practitioners were able to qualify”* – LPC provider
- *“This is an essential part of the desire for diversification ... Clinical legal education at Northumbria University is a good example of work which is at an*

appropriate level but which cannot currently count as qualifying work based learning.” - LPC/law degree provider

Even some of the negative comments indicated a measure of controlled flexibility should be exercised:

- *“Work based learning under a training contract whilst a person is studying the LPC is satisfactory but should not allow a part-time LPC student to obtain qualification earlier than a full-time LPC student” - local law society*
- *“It is ... desirable, bearing in mind the diversity that the profession seeks, that there should be a little leniency in terms of the timescale expected for completion of the work based experience” - representative body*

Whereas some were clearer in their rejection of this proposal:

- *“it would distract [students] too much from their studies to have to try to secure appropriate standard of work based learning to fit the competencies” - firm of solicitors*
- *“The knowledge and skills which are gained on the LPC should be regarded as being a fundamental basis for the work based training” - solicitor*

Q12 should the LSRB set the number of and period between review sessions?

“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?”

56 people answered this question.

fig 19 Q12 - should the LSRB set the number of and period between review sessions?

response	no.	% of answers to this question	% of all responses
yes to reviews, but over traditional 2 years	15	26.8%	21.1%
yes, but different timings/number of reviews	14	25%	19.7%
fully flexible/present when ready	13	23.2%	18.3%
no	8	14.3%	11.3%
yes, 4 sessions at least 4 months apart	4	7.1%	5.6%
unclear/can't say without more detail	2	3.6%	2.8%
no response	15		21.1%

Only four people agreed totally with the proposal for four review sessions with a minimum period of four months between sessions. However, 29 people agreed to the principle of review sessions over regular intervals, but with changes to the number of, and period between, reviews.

Supportive comments

Alternative suggestions to the proposed review sessions ‘schedule’ included:

- *“there should be a session every 3 months, over a 2 year period, making 8 in all, as otherwise, particularly if a person is not in an accredited organisation, there will not be enough supervision”* - firm of solicitors
- *“... we believe strongly that a two year period before qualification should continue to be the norm. However, it would be sensible to allow for some flexibility in the intervals between review sessions so that differing work patterns can be taken into account and sessions timed so that the trainee gains maximum benefit from them”* – representative body
- *“... a two year period to include four review sessions typically at four month intervals, and a final pre-summative assessment review.”* - legal academic

One respondent suggested *“four sessions, with one month between sessions”*.

Thirteen people agreed with the suggestion that individuals could present their portfolio for assessment when completed:

- *“It may be more sensible for individual and supervisor to address the issue of number of reviews/time between reviews at the initial planning stage of the process”* - LPC/law degree provider
- *“if the Law Society wishes to move away from requiring a minimum amount of ‘time spent’ ... there should be no minimum period set and no minimum number of review sessions”* - LPC/law degree provider

Eight people disagreed with these proposals outright, stating that:

- *“There is sufficient regulation in the new Code of Conduct [‘you must operate appropriate supervision management arrangements to meet your duties to clients’], and over-regulation should be avoided”* - LPC/law degree provider
- *“Stick with the training contract”* - firm of solicitors

Q13 how many areas of law? Contentious & non contentious?

“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?”

Areas of law

There were 51 responses covering the areas of law a trainee must experience.

fig 20 Q13 - how wide a variety of law?

response	no.	% of answers to this question	% of all responses
same as now - 3 at least	23	45.1%	32.4%
there should be no prescription	9	17.6%	12.7%
LSRB should prescribe - no suggestions	8	15.7%	11.3%
at least 4	5	9.8%	7%
depends/unsure	5	9.8%	7%
at least 2	1	2%	1.4%
no response	20		28.2%

Supporting comments

23 people – almost half – indicated that the current requirement of three areas of law should continue:

- *“there should be a minimum of 3 practice areas covered during the training period. If, as is being proposed, the system is more flexible, then it would be hoped that candidates would find it easier to move from one organisation to another to gain the necessary experience”* - solicitor
- *“We have found that not only does it help trainees identify for which area of practice they are particularly suited, it also gives them a broad foundation of knowledge on which to build their subsequent careers”* – local law society

Another 14 indicated that the LSRB should prescribe a minimum number of areas, but gave differing numbers.

- *“given the highly specialised nature of legal practice nowadays, requiring 2, as opposed to 3, distinct areas might be more realistic”* - LPC graduate
- *“... there should be at least four areas of law ... We favour qualification with a broad range of knowledge and experience, rather than early specialisation. Specialisation during the WBL stage reduces the opportunity both to experiment with areas of law to find areas that suit and the opportunity to understand areas of law which may be useful even though a practitioner specialises at a later stage.”* - local law society

Only nine thought that the LSRB should not prescribe the variety of areas:

- *“the Law Society should be circumspect about imposing requirements in relation to the areas of law that a trainee experiences ... Firms should be*

given the flexibility to structure their own training contracts in relation to the type of legal work offered.” - local law society

- *“it should not be for the Board to specify. It should be for the trainee to choose” – local law society*

Contentious or non-contentious

Respondents were largely for or against prescription of contentious and non-contentious experience, with only three people undecided. The growing trend toward specialisation was given as both reasons for and against retention of this requirement.

fig 21 Q13 - contentious & non contentious?

response	no.	% of answers to this question	% of all responses
yes	35	71.4%	49.3%
no	11	22.4%	15.5%
unsure	3	6.1%	4.2%
no response	22		31%

Supporting comments

For contentious and non-contentious:

- *“[A newly qualified solicitor] should also be required to have experience of contentious and non-contentious work because these two areas do require different skills.” – local law society*
- *“The wbl period may now be the only time where other experiences of legal practice can contribute to a wider understanding of where a chosen specialism fits into legal practice in general.” – representative body*
- *“In order for individuals to demonstrate their competence successfully against an appropriately challenging set of [outcomes] we believe that it is important for a wide range of legal experience within different practice areas to be obtained, including both contentious and non-contentious experience.” – firm of solicitors*

Against:

- *“The new test should ... focus on core competencies such as advocacy, client care, drafting and business skills not on specific academic areas of law. Nor should it focus on the kind of law practised, contentious or non contentious, as long as the core competencies are examined.” - LPC graduate*
- *“mandatory inclusion of both contentious and non contentious areas can not now be justified; but I suggest that students MUST be able to demonstrate sufficient awareness of the relevant corresponding area, e.g. a student in the area of non-contentious commercial contracts should demonstrate an awareness of the contentious procedure for dispute resolution.” - LPC/law degree provider*
- *“Assuming that the electives continue to be part of the LPC, there should be a minimum of one area of law and no requirement to have experience in both*

contentious and non-contentious... this would be consistent with what is now a largely specialist profession” – LPC provider

Undecided:

- *“This will depend on the future role of the solicitor within the legal sector. It could be argued that the day one outcomes are skills based and therefore there is no need for experience of both non contentious and contentious areas of work” – regulatory/representative body*

Q14 will firms adjust training programmes to the minimum period?

“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?”

47 people gave a view on this subject. Almost two thirds thought that firms would amend their training period to the shortest possible time allowed by the proposed system.

fig 22 Q14 - will firms be flexible or just take the minimum 16 months?

response	no.	% of answers to this question	% of all responses
the minimum 16 months will become the norm	31	66%	43.7%
firms will be flexible	7	14.9%	9.9%
some will be flexible, some will take the minimum	7	14.9%	9.9%
unsure	1	2.1%	1.4%
outcome is most important issue	1	2.1%	1.4%
no response	24		33.8%

Supporting comments

Those who felt the minimum possible period would be adopted supported their reasoning:

- *“Firms will be pressurised by the individuals to design their training programmes so that the individuals qualify within a minimum of 16 months. This would be unacceptable.”* – local law society
- *“I would think the latter but that is not a bad thing... It is quite likely that in my firm we would stick to a sixteen month period just as much as we have to the two year period before because we have to plan resource, plan training and cannot work with a hotchpotch of unpredictable arrangements.”* - firm of solicitors
- *“The LSRB should therefore be very careful about the minimum time they wish to set for review sessions, as whatever minimum is set will automatically become the default period for a training contract equivalent”* - firm of solicitors

They also noted the repercussions:

- *“This could be damaging to trainees and they may not get enough experience”* - current LPC student
- *“clearly trainees will be eager to enhance their earning power as soon as possible , and will therefore favour firms which will enable them to qualify in as short a time as possible”* - firm of solicitors
- *“Unless the numbers of areas of practice is to be reduced, sixteen months is simply not enough time for trainees to develop their legal and practical skills adequately”* - local law society

Two respondents appeared to pick up the idea of an outcomes-based approach:

- *“This is a danger however as long as the assessment is sufficiently tightly prescribed and monitored this should not matter. It is the quality of outcome that is important.”* - local law society
- *“Whilst the normative model should still assume a two year period, there seems no objection to demonstrating those competences, and thereby qualifying, earlier”* - legal academic

Q15 should people have access to LSRB portfolio supervisors?

“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?”

50 people responded. The majority (nearly 90%) felt that there should be LSRB appointed assessors for people outside accredited organisations.

fig 23 Q15 - should people have access to LSRB portfolio supervisors?

response	no.	% of answers to this question	% of all responses
yes	38	76%	53.5%
yes, however...	6	12%	8.5%
other concerns with the proposal	5	10%	7%
no	1	2%	1.4%
no response	21		29.6%

Supporting comments

Six respondents stated that such individuals should have access to LSRB supervisors, but indicated caution:

- *“only if the issues of client confidence and privilege are addressed”* - firm of solicitors
- *“we think there won't be many firms willing to offer their "supervisors" or "assessors" for this unless they are allowed to charge for the service... demand will be fairly high if accredited status is too onerous or expensive.”* - firm of solicitors

Of the 78% who agreed with the proposal:

- *“definitely, in fact mandatory otherwise no signing off”* - paralegal
- *“it is important also that there is a confidential complaints procedure in place in the event that the individual is not satisfied with the work based experience and wishes to make the point to the LSRB without any repercussions from the firm”* – solicitor interest group

In the ‘other concerns’ category, one respondent disagreed with the concept of the non-accredited route but supported *“methods of supervision and assessment which will strengthen the quality of training received during the training contract”* - (representative body).

Another questions the level of day-to-day supervision – *“If this person is the only one supervising the trainee, meeting only four times in 16 months ... is grossly inadequate. How will the Supervisor gain an objective understanding of the work the trainee is doing?”* - (local law society

Q16 would the cost to the individual be a new barrier?

“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?”

54 people responded to this question. Over three quarters thought that putting the cost burden on the individual would create a barrier to qualification.

fig 24 Q16 - would cost to the individual be a new barrier?

response	no.	% of answers to this question	% of all responses
yes	33	61.1%	46.5%
yes, with mitigation suggestions	8	14.8%	11.3%
maybe	7	13%	9.9%
no	6	11.1%	8.5%
no response	17		23.9%

Supporting comments

Most respondents gave reasons for this view:

- *“It creates ‘haves’ and ‘have nots’. It would be a barrier to wider qualification and undermine what we understand to be one of the major objectives of the proposals.”* – LPC/law degree provider
- *“we believe it would be a barrier but are split as to whether it is a minor or major barrier”* – local law society

Some also gave suggestions on how to alleviate or address such a barrier:

- *“... a system of scholarship and sponsorship from outside organisations (Charitable or Governmental) should be encouraged as should internal law society scholarships”* –LPC graduate
- *“with a more flexible route to qualification student debt is already reduced and that those who are liable to pay fees will be employed”* – in-house training establishment
- *“We envisage a law degree programme with significant elements of clinical legal education where the Law School itself would be an accredited organisation for its own students and would be able to provide external assessment for other individuals.”* – LPC/law degree provider

Others, who answered in the negative to the question, also expanded on their thinking:

- *“we doubt whether these additional costs would be significant given existing arrangements”* - firm of solicitors
- *“it may be helpful for the LSRB to negotiate loan arrangements in line with student loans.”* - solicitor interest group

And the view that students, having got so far in the process, would be willing to continue in spite of extra fees was stated by, amongst others, a LPC provider: *“in view of the amounts they will already have spent completing the academic and*

vocational stages... they will probably regard it as a price worth paying for the opportunity to compete their qualification”.

Q17 will in-house review & assessment deter firms from taking trainees altogether?

“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?”

47 people responded to this question. Over 80% felt that organisations would be put-off from taking trainees by the proposed in-house requirements.

fig 25 Q17 - will in-house review & assessment deter firms from taking trainees altogether?

response	no.	% of answers to this question	% of all responses
yes, some firms would be deterred	21	44.7%	29.6%
yes, with mitigation suggestions	17	36.2%	23.9%
possibly	4	8.5%	5.6%
no	3	6.4%	4.2%
unclear	2	4.3%	2.8%
no response	24		33.8%

Supporting comments

Some of the 21 who felt that in-house review and assessment would deter organisations from taking trainees (and didn't give mitigation suggestions) gave reasons why:

- *“mainly smaller firms without well established and developed training and human resource functions. The larger particularly City firms will have an advantage.”* – regulatory/representative body
- *“I do not believe the LS should follow this route at all”* - firm of solicitors
- *“There is a commercial balance between the benefits of bringing on good trainees and the cost of training. You are in serious danger of tilting that balance towards the latter.”* - firm of solicitors

The new paralegal route was mentioned several times as a mitigating factor for this risk. Some felt that it would not be a terrible consequence, as it would mainly be firms not suited to training that would be deterred. A LPC/law degree provider pointed out that eventually the training contract would disappear, and in its place *“will be a more flexible framework that recognises a variety of experience as counting towards the development of the day one outcomes.”*

Other mitigation suggestions included:

- *“... the formation of “training consortia” between smaller firms. This has been popular in the accountancy profession for a number of years.”* – representative body
- *“if the initial training expense was borne by the practising certificate as an investment in the future of the profession”* – representative body

- *“the benefit should be a greater commitment amongst the firms/ organisations that do go through the accreditation process, leading to better quality training”*
- in-house training establishment

Q18 should firms train supervisors in-house?

“Should organisations be able to train portfolio supervisors in-house provided the training meets LSRB standards?”

49 people answered this question. Nearly three-quarters felt that firms should be able to train their own portfolio supervisors, although some of these people saw some issues in this proposal.

fig 26 Q18 - should firms train supervisors in-house?

response	no.	% of answers to this question	% of all responses
yes	28	57.1%	39.4%
yes, but with reservations	8	16.3%	11.3%
no	8	16.3%	11.3%
further information needed	2	4.1%	2.8%
unclear	2	4.1%	2.8%
possibly	1	2%	1.4%
no response	22		31%

Supporting comments

Some of the largest City firms were in the group that responded positively to this question, saying:

- *“[accredited firms] must be able to select supervisors and assessors from their own lawyers, and, if they have the resources to do so, train them internally”*
- *“While no doubt the commercial training providers will offer this training, it must be open to an accredited training organisation to run these programmes in-house”*

The ‘yes with reservations’ category viewed the core proposal as sound, as long as the system was properly monitored by the LSRB, or that central training and even assessment was also available.

The number of people who disagreed with this proposal was small, but they raised a range of issues – as can be seen from these samples, many involved issues of ensuring standards:

“...in-house training begs issues of experience, equality and moderation within the process... we take our training very seriously but at the same it must not become an obstacle to the proper conduct of the business in overall terms ... Organisations do not have the skills to be able to train portfolio supervisors themselves if this system commences ... To train portfolio supervisors in-house could lead to an unacceptable variation in standards... usually leads to a progressive dilution of standards... open to too much variation.”

Q19 should portfolio assessors be LSRB-trained?

“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?”

46 people responded to this question. Over 82% felt that portfolio assessors should be trained by the LSRB.

fig 27 Q19 - should portfolio assessors be LSRB-trained?

response	no.	% of answers to this question	% of all responses
yes	34	73.9%	47.9%
no	6	13%	8.5%
yes, but with reservations	4	8.7%	5.6%
unsure	1	2.2%	1.4%
further information needed	1	2.2%	1.4%
no response	25		35.2%

Supporting comments

The positive responses featured strong support for this proposal:

- *“no exceptions”* - firm of solicitors
- *“to provide objectivity and consistency”* - firm of solicitors
- *“without doubt”* - in-house training establishment
- *“to ensure fairness and transparency”* - representative body
- *“to maintain standards and ensure consistency in assessment”* – regulatory/representative body

Of the four respondents who agreed but noted a level of concern, two thought that all assessment should be carried out externally. The other two focussed on the training of the assessor – a firm of solicitors believed that some scope for internal training should be considered, and a representative association thought that the LSRB should consider assessor’s previous experience when stating how much training they should undergo.

A representative body thought that external training and LSRB accreditation should be the approach - *“... whilst it may be appropriate for LSRB to accredit the assessors, their training should be provided by other bodies”*.

A firm of solicitors believed that as long as the firm’s systems were seen as sufficient, individuals should not have any further requirements. A solicitor respondent felt that individuals within firms should not be assessing at all.

Q20 a) should supervisor and assessor roles be distinct & separate?

“Should the roles of portfolio supervisor and assessor be distinct and separate in order to ensure neutrality and objectivity in the assessment process”

Over 60% of the 47 people who answered this question thought that the roles of portfolio supervisors and assessors should be separate.

fig 28 Q20 a) - should supervisor and assessor roles be distinct & separate?

response	no.	% of answers to this question	% of all responses
yes	29	61.7%	40.8%
no	11	23.4%	15.5%
possibly	4	8.5%	5.6%
unclear	3	6.4%	4.2%
no response	24		33.8%

Supporting comments

Of the 29 people who agreed with this proposal, reasons given included:
“to avoid potential internal conflicts of interest... to ensure neutrality and objectivity... common educational practice would prefer to separate such functions... The role of the portfolio supervisor should be to ensure that the trainee gains the required experience during their training, and the assessor should ensure that this has happened... It would be a serious flaw to combine the roles”.

The responses that advocated combining the roles included reasons such as:

- *“anything which increases the number of people necessary to get involved in training and supervision is likely to reduce the number of trainees...”* - firm of solicitors
- *“... assessment which includes legal capability in the legal area would need to be carried out by a suitably qualified expert; in some cases, the supervisor may be the only suitably qualified expert...”* - firm of solicitors

A potential lack of necessary people to fill each role separately and the advantages in one person having experience of both roles were also put forward as reasons for combination. Proper training on the roles of supervisor and assessors was thought by some to be a means for avoidance of conflict.

Three people inadvertently gave an answer to Question 20 c) here, saying that one individual should be able to combine both roles, but not in terms of the same student:

- *“an individual should not both supervise and assess the same Trainee”* - LPC/law degree provider
- *“persons within accredited organisations could supervise individuals within that organisation but should not be allowed to assess those individuals”* - LPC/law degree provider

- “...there's no reason why one person could not carry out both roles in an organisation as long as they did not assess their own ‘supervisees’.” - firm of solicitors

or

b) should they consult with each other?

“Is there value in the assessor consulting with the portfolio supervisor as part of the assessment process”

A large number of people – 29 – thought that some scope should be allowed for consultation between supervisors and assessors, of varying degrees.

fig 29 Q20 b) - should they consult with each other?

response	no.	% of answers to this question	% of all responses
yes	27	73%	38%
no	5	13.5%	7%
yes, but on a limited basis	4	10.8%	5.6%
possibly	1	2.7%	1.4%
no response	34		47.9%

Supporting comments

Reasons for the ability to consult were also given:

- “Objectivity is not necessarily undermined by contact for specific purposes, for example, to clarify events or problems arising where the fairness of individual assessment decisions might otherwise be compromised.” – academic standards agency
- “... The decision as to whether a person is fit to be a solicitor cannot be taken in isolation. The Training Principal is such an important person in the current system as he oversees (or should oversee) the trainee’s experience throughout his training contract, in conjunction and in consultation with the trainee’s supervisors.” – firm of solicitors
- “I can see no reason why the portfolio supervisor and assessor should not be able to consult with each other as part of the assessment process thus ensuring an element of continuity. In-house supervisors and assessors will undoubtedly consult with each other and it will be impossible to ensure they don’t.” - paralegal

Four respondents suggested that the consultation be of a limited nature, such as a final review report submitted by the supervisor to the assessor. Less structured consultation, such as requests from assessors for clarification or verification of evidence of achievement, was also put forward.

and/or

c) could supervisors assess those they supervise?

“Could portfolio supervisors also assess individuals they have supervised?”

Three quarters of respondents answered negatively to this question, stating that this could lead to a lack of perceived vigour, that it could make the relationship between assessors and students “too cosy”, and that any conflict of interest must be avoided.

fig 30 Q20 c) - could supervisors assess those they supervise?

response	no.	% of answers to this question	% of all responses
no	25	75.8%	35.2%
yes	7	21.2%	9.9%
unclear	1	3%	1.4%
no response	38		53.5%

Supporting comments

A LPC/law degree provider was one of the few to elaborate on their view that this should be allowed: *“this is, we believe, the best way for such assessment to work in practice; both parties (i.e. student and supervisor like student and teacher) need to be part of learning process. Experience in the field of such assessment suggests it is highly difficult to separate supervision and assessment successfully, whilst contact between supervisors and assessors enhances efficiency and validity, provided the process is moderated. “*

Q21 a) will cost of training in-house assessors & supervisors deter firms from taking trainees altogether?

“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?”

fig 31 Q21 a) - will cost of training in-house assessors & supervisors deter firms from taking trainees?

response	no.	% of answers to this question	% of all responses
yes	21	46.7%	29.6%
yes, with mitigation suggestions	14	31.1%	19.7%
possibly	7	15.6%	9.9%
no	2	4.4%	2.8%
unclear	1	2.2%	1.4%
no response	26		36.6%

35 of the 45 people who responded thought that the cost would deter firms from taking trainees. 14 of these people gave mitigation suggestions.

Supporting comments

Two pointed out that smaller firms could form local training consortia. Other ways to mitigate this risk included:

- minimising the administrative cost and burden,
- making the process as flexible as possible,
- sending trainees for supervision and assessment externally and passing the cost onto the trainee,
- recruiting external supervisors and assessors,
- LSRB-subsidised or free training,
- the award of CPD points
- relaxing the training requirement for those who can demonstrate that they have experience of supervising or assessing.

An in-house training establishment also felt that some firms being deterred would result in “... a greater commitment amongst the firms/organisations that do go through the accreditation process, leading to better quality training”.

b) would firms take trainees but refer them to LSRB assessors?

“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?”

No respondents disagreed with this proposition. Five of those who agreed pointed out that small to medium sized firms would be more likely to take advantage of this aspect of the new system.

fig 32 Q21 b) - would firms take trainees but refer them to LSRB assessors?

response	no.	% of answers to this question	% of all responses
yes	30	90.9%	42.3%
possibly	2	6.1%	2.8%
yes, but with concerns	1	3%	1.4%
no response	38		53.5%

Supporting comments

A firm of solicitors pointed out that *“There has to be enough attraction to the ‘accredited’ status for firms to apply in the first place or there is simply no point in offering it. It seems to us however, it may be completely unworkable for the Law Society to undertake all assessments.”*

Q22 what are the implications for small training firms?

“What might be the implications for small training firms? How should any problems be mitigated?”

The majority of respondents saw a risk that smaller firms would either take fewer trainees or cease training altogether – most of these respondents were solicitor firms.

The next largest group felt that they would not attempt to gain accredited in-house status and would instead refer ‘trainees’ to the LSRB reviewers/assessors. Over half of these responses came from representative bodies.

fig 33 Q22 - what are the implications for small training firms?

response	no.	% of answers to this question	% of all responses
they will take fewer trainees, or none at all	17	41.5%	23.9%
they will not seek accredited status & will use paralegal route instead	11	26.8%	15.5%
time and cost burdens will increase	9	22%	12.7%
unclear	4	9.8%	5.6%
no response	30		42.3%

Supporting comments

Not all of those who felt that firms would reduce trainee numbers or withdraw from training gave ways to mitigate this risk. Those that did suggested that the LSRB:

- introduce a training levy
- offer a reduction or exemption in fees for trainee's assessments for smaller firms
- offers funding for smaller firms who agree to take on a minimum number of trainees over a specific period of time, similar to the Legal Services Commission's legal aid sponsorship
- minimise the administrative cost and burden and make the process as flexible as possible.

They also suggested that small firms could or would recruit more paralegals, legal assistants and other junior fee earners instead of trainees.

Q23 should accredited firms conduct their own assessments?

“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?”

Nearly 80% of respondents to this question indicated that accredited organisations should be allowed to conduct their own assessments. A proportion voiced an element of concern or suggested certain conditions.

fig 34 Q23 - should accredited firms conduct their own assessments?

response	no.	% of answers to this question	% of all responses
yes	27	56.3%	38%
yes, with conditions	11	22.9%	15.5%
no	8	16.7%	11.3%
possibly	1	2.1%	1.4%
unclear	1	2.1%	1.4%
no response	23		32.4%

Supporting comments

Four respondents indicated that internal assessment should only be allowed if there was some level of external verification or moderation built-in. Another three indicated that for the proposal to work, training, validation, monitoring and assessment of assessors must be rigorous.

A representative body felt that assessment should be carried out in-house, *“but the assessor who attends the firm must be independent”*. A PSC provider suggested that internal assessment should include only *“the portfolio aspects of the training. Skills and other assessments should continue to be assessed externally.”*

Q24 should people doing work based learning outside an accredited organisation face further assessments?

“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”

The majority of respondents thought that further assessments should not be required for trainees in non-accredited organisations. However, a significant proportion also agreed with this suggestion.

fig 35 Q24 - should people doing wbl outside an accredited organisation face further assessments?

response	no.	% of answers to this question	% of all responses
no	24	46.2%	33.8%
yes	16	30.8%	22.5%
unclear	5	9.6%	7%
possibly	4	7.7%	5.6%
depends	3	5.8%	4.2%
no response	19		26.8%

The majority of respondents who said ‘no’ to this question were split evenly between LPC/degree providers, solicitors’ firms and individuals. Over two thirds of all the LPC/degree providers who responded to the consultation were not in favour of additional assessments.

The majority group within those who replied “yes/possibly/depends” was the solicitors’ firms.

Supporting comments

All but one of the respondents who thought they should not face additional assessment gave supporting comments:

- *“This should not be required if the assessment methods are appropriate, robust and properly applied.”* - LPC provider
- *“would it be unfair (and arguably discriminatory) to require such individuals to be subject to further assessments, given that they have completed the same process as those individuals who will have completed their training with an accredited organisation?”* - firm of solicitors
- *“... it could, in practice, prove extremely difficult to use both [portfolio and additional final assessment], especially if, as is quite possible, there are a significant number of candidates who “pass” on one; and “fail” on the other.”* - LPC provider

Those who argued for additional assessments also, in the main, gave supporting comments. A solicitor interest group believed it to be “crucial” – “The LSRB has a

duty to maintain standards and will not itself be able to determine whether an individual has met the day one outcome without seeing how that individual operates in practice on a daily basis.”

Others included:

- *“behavioural skills can only really be assessed by observation rather than by examination of written material.” - local law society*
- *“to ensure continual public confidence in the comparability of training experience.” - local law society*
- *“either face to face or formal interviews should be used, even conducted by the portfolio assessors. Assessment centres could be used but their cost may deter individuals from entering the system at all” - LPC student*

The seven people who suggested that additional assessments might be possible in certain circumstances described what they could be. Two respondents stated that it would be suitable only if recommended by an assessor, or where doubt existed as to whether a particular requirement had been satisfied. Another indicated it would be dependent on the nature and quality of their day to day work experience.

Cost and timing implications and increasing the public and profession’s confidence were also put forward. One respondent thought it wouldn’t make any real difference to competence or employability but that it *“may be sensible”*.

Q25 how should the new scheme affect overseas lawyers seeking admission here?

“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?”

48 people responded to this question.

fig 36 Q25 - how should the new scheme affect overseas lawyers seeking admission here?

response	no.	% of answers to this question	% of all responses
they must be assessed in the same way as domestic students	25	52.1%	35.2%
there should be no change - current arrangements should still apply	5	10.4%	7%
unclear	5	10.4%	7%
LSRB must ensure consistency with domestic students AND compliance with EU law	4	8.3%	5.6%
don't know/no opinion	3	6.3%	4.2%
the proposals would generate difficulties with overseas lawyers	3	6.3%	4.2%
QLTT arrangements need to be reviewed anyway	3	6.3%	4.2%
no response	23		32.4%

Supporting comments

Over half felt that overseas lawyers should be treated in the same way as domestic students, i.e. they should go through the same, or an equivalent, system and demonstrate their competence:

- *“overseas lawyers ... should demonstrate their experience in practice by submitting a portfolio to the LSRB in the same format as that required for domestic students.”* – solicitor interest group
- *“Their overseas experience should count towards their portfolio but they must pass the assessment”* - local law society
- *“We are aware the QLTT route is under review. Whatever the outcome of that, that route should be broadly equivalent to the framework applicable to ‘home grown’ trainees”* – local law society

One respondent believed that if this were to happen, *“the LSRB would cause the UK to be in considerable difficulty under applicable international requirements if those arrangements were made materially more stringent”* - firm of solicitors.

Some respondents mentioned the LSRB's obligation to comply with EU law:

- *"We are not certain how if this system were adopted whether it would be possible to apply it to overseas lawyers - does it comply with relevant EC legislation on free movements?"* - local law society
- *"The Law Society should ensure consistency and ensure it does not contravene EU law"* - firm of solicitors
- *"Our objective must be to ensure that anyone practising as a solicitor in England and Wales reaches the requisite standard. It will be necessary to find a route through which this can be achieved while at the same time meeting our international obligations".* - representative body