



The Law Society

Gathering views on the Legal Education and Training Review

Engagement Document

May 2012



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The Legal Education and Training Review

The SRA, BSB and ILEX Professional Services are undertaking a review of the legal education and training system. This began in June 2011 and is expected to produce final recommendations in late 2012 to early 2013. These recommendations will then be considered by the individual regulators. The review will take account of the future demands on legal services and the changes that will influence the shape of the legal services market in the future, and aims to ensure that the education and training system is fit for purpose and appropriately flexible and responsive to the changing market. The review will consider all stages of legal education and training, including the academic and vocational stages, the period of work-based learning and post-qualification requirements.

The review is being conducted by an independent Research Team that has been appointed to undertake extensive research and make evidence based recommendations. The recommendations will be underpinned by that work and confirmed through consultation and stakeholder engagement. Once the Review has made its recommendations it will then be a matter for the frontline regulators to decide which of these they will adopt.

The Law Society's role

The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others. In this role the Society welcomes the Review and believes there are some important questions that should be asked, as set out below. The Society is keen to ensure that it is able to engage fully with the Review, particularly from the point of view of what the solicitors profession will need in the coming years. We are, therefore, conducting a major consultation exercise with the profession and other key stakeholders in order to inform our policies around legal education and training and our submissions to the Review team. As part of this process the President of the Law Society has appointed Helen Davies, one of our senior Council members and a former chair of the Society's Regulatory Affairs Board and of its Education and Training Committee, to lead a series of engagement events and meetings with key stakeholders.

This document outlines the main policy positions that we are testing through this engagement, those being considered by the Review, and the corresponding Law Society policy positions. We would value your input on the questions contained within this document, to enable us to best represent the profession in our final response to the Review.

How to participate

Please send responses to the questions set out in the document below to educationandtraining@lawsociety.org.uk or alternatively send them to:

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The Law Society
113 Chancery Lane
London, WC2A 1PL

If you have any queries, wish to make other comments or to send in examples of personal experiences and views on legal education and training, we would welcome them at the addresses above.

Responses will be treated as confidential but it will enable us to have a better understanding of the views we are receiving if you can identify yourself or your organisation and / or your area of practice and seniority.

This consultation will close on **8 June 2012**.

Introduction

The Legal Education and Training Review was initiated for a number of reasons. First and foremost there was a feeling that there has been no holistic review of legal education and training for a long time and that although there are a number of pieces of work ongoing into individual areas, there was nothing to pull all of these together into a single model, which could make best use of them. For instance, the work on ethics that has been undertaken by different groups, including the Law Society, had brought up many good ideas, but these were failing to gain traction in the face of the existing legal education and training system.

The Review was also felt to be timely in response to the unprecedented degree of change that the legal services sector is undergoing, with the implementation of the Legal Service Act 2007 leading to the creation of alternate business structures (ABSs) and to new ways of thinking about the way in which reserved activities are authorised. This has led to questions arising about whether the current legal education and training system is the best preparation for a legal career and whether professional titles are still the most appropriate way to define authorisation. Part of the work that the Review is undertaking is to look at what the future of the legal services sector will look like and how to ensure that future legal service providers are best prepared to meet the needs of consumers.

A question that arises from the changes to the legal services sector is what, in this post-Legal Services Act world, does a solicitor look like? What skills, knowledge and experience do they need to be considered competent? Further to this, is competence all that membership of the profession implies, or is it rather a gold standard, set above levels of basic competence? Most solicitors would agree that being a solicitor is more than the authorisation to undertake reserved activities. The title implies an extra level of professional conduct, a breadth of knowledge, an ethical approach that is client centric first and foremost. However, there is a live question over whether these attributes are necessary for the provision of legal services in the emerging market place, or whether competence alone is enough and can be assured in different ways to the current system of regulation based on professional title.

There are a number of key issues that have arisen over the past years that the Review may attempt to address. One of the foremost of these is the training contract, its role in preparing students to become solicitors and how this is best achieved, and conversely, its impact as a barrier to the profession for those LPC graduates unable to secure it who are unable thereby to qualify into their chosen profession. Tied up with the training contract, but also standing as an overarching theme, is the issue of social mobility. The profession, if it does not want to be seen as the preserve of those from privileged backgrounds, must address the way in which the current legal education and training system for the professions, exacerbates existing inequalities. Thinking on this issue, and innovations already underway by education providers, have led to the exploration of alternate routes to a professional qualification, spurred on by the increase in fees for higher education and perceptions that this may deter those from less wealthy backgrounds from undertaking a degree.

The Review must also give consideration to how standards are maintained post-qualification. There are not many within the legal sector who would support the current system of CPD, with set hours and activities, but no requirement for those activities to be relevant to a solicitor's scope of practice. Whilst, of course, the majority of solicitors take their professional responsibilities seriously and so remain up to date, competent and engaged, the current system of regulation does not require or particularly encourage this. Many feel that regulation should assure competence through continuing education and training in the form of CPD, but there is also an argument to be made that it should perhaps go further than that and encourage excellence. Would any solicitor wish to be part of a

profession where it is deemed acceptable to assure the bare minimum, competence, rather than actively encouraging excellence? It may act as a protection for consumers, but is this all that being a solicitor should entail?

Academic stage - Qualifying Law Degree (Graduate Diploma in Law / Common Professional Examination)

LETR

The LETR's most recent discussion paper (01/2012) looked at a number of areas but does not give particular consideration to the qualifying law degree (QLD), other than at the most radical end of the ideas being discussed - the idea that the QLD could be abolished.

The Law Society

The Law Society strongly believes that the purpose of the academic stage is to provide students with the essential knowledge of the law that will be required in future practice. As such, the academic stage must provide comprehensive coverage of foundation subjects to a set of common standards. This is essential to the production of a rounded solicitor, who may specialise throughout their career but with the support of a wider base knowledge of the law. Taught alongside this knowledge, should be skills, such as clarity of expression and a high standard of English language, particularly written skills, and also analytical skills such as fact management, critical thinking, problem solving and case analysis.

The Joint Academic Stage Board (JASB) is a joint committee of the Bar Standards Board and the Solicitors Regulation Authority. It is responsible for the setting and implementation of policies in respect of the Academic Stage of Training for qualification as a Solicitor or Barrister. In particular, it is responsible for the validation and review of QLDs and Graduate Diploma in Law (GDL) courses for the purpose of completion of the Academic Stage. Management of the JASB alternates between the Bar Standards Board and the Solicitors Regulation Authority, on a three year cycle. JASB issue these policies in a statement which sets out the conditions which must be satisfied in respect of the provision of undergraduate degree courses that are regarded as satisfying the academic stage of training. The Law Society believes that this statement should, in addition, include a prescribed and structured syllabus to ensure commonality in the educational content, while allowing flexibility in the teaching approach. The prescribed subjects should be the current seven core areas, with the addition of legal ethics and some element of business or financial awareness, such as the law of organisations.

The abolition of the QLD would almost certainly lead to the situation where employers would require those applying for training contracts to have knowledge of certain topics, and students would be unwilling to undertake courses that did not provide these. This would lead to quasi-QLDs, without any of the checks and balances that should be provided by the current system, albeit, that the Society would support a more stringent approach to ensuring that standards across institutions are maintained at high levels.

The alternative would be to push the qualification into a post-graduate course, such as the GDL, which everyone would have to do. This would increase the cost and certainly act as a further barrier into the profession for many who may not be able to afford the expense and those who would wish to enter the workforce more quickly.

1. Do you agree with the Law Society on the retention of the QLD?
2. Are there changes that should be made to the QLD? If so, on what basis?
3. Would you support the inclusion of ethics and the law of organisations as additional core subjects?

Vocational courses - Legal Practice Course

LETR

The LETR is looking at whether the Legal Practice Course (LPC) is now so broken up into specific courses serving different parts of the solicitors profession, for example large city firms that have their own tailored LPC programmes, that the idea of a common core is gone and whether the LPC or BPTC are necessary or desirable elements of the qualification pathway.

The Law Society

Vocational training is necessary to teach students the skills they will require for the following period of work-place training and to add value to the profession. Vocational outcomes will be most readily achieved by those who undertake rigorous training that it is integrated with practice.

The primary focus of vocational training in terms of outcomes, should be to produce reflective learners who can manage their own professional development over the remainder of their careers. The common core skills are key to this, but the proliferation of specific courses points to the fact that the marketplace demands tailored vocational training for the graduates that firms wish to employ.

The LPC should be modularised so that people can buy the module that they want, when they want it or can afford it. This would create a more vibrant and responsive market place and would support the recognition of prior learning. The regulator should ensure that it enables modularisation so that all students are able to access the type of course they wish to undertake, within the scope of the overall LPC. Greater flexibility in methods of learning would enable people to do the type of LPC that they want, wherever they are located.

Focus should be placed on appropriate skills, particularly research, problem solving, writing and drafting, advising and negotiating and persuading (mediation), with an option for advocacy training, possibly as an advanced elective for those wishing to pursue this path. These elements should be the subject of rigorous assessment. Consideration should also be given to learning about client care, finances, equality and diversity, stress at work (work / life balance), management and ethics. Some of these topics are already covered in the LPC, and all of them should build on the foundations of the QLD/GDL or equivalent.

The Law Society would support the further exploration of a greater degree of common vocational education, at the LPC/BPTC stage. This may give entrants more time to explore where their strengths lie and to undertake modules to more specifically tailor their education and training to these. A modularised approach would also enable students to study on a part-time basis to suit them, to spread the costs and may have a positive effect on social mobility.

4. Should there be a greater degree of shared training eg. Combined LPC / BPTC?
5. If so, would this be best achieved through a modular approach with, eg. Advocacy/ mediation/ out of court settlements as electives for either course?
6. What are the core skills that should be part of the vocational stage?

Work-based learning - the training contract

LETR

The LETR is concerned with the 'bottleneck' that exists between the LPC and training contracts, with many LPC graduates unable to secure a training contract and so being unable to continue to qualification. It has also voiced concerns over whether training contracts are sufficiently regulated to assure the quality of training and whether they provide the best possible training for those who will be our legal professionals of the future. It explores the possibility of a greater degree of shared training between the professions.

The Law Society

The Society strongly believes that some form of work-based learning is invaluable in training future entrants to uphold the standards of the solicitors' profession. It should involve a spread of experience over a period of time, with reference to the Day One Outcomes and proper assessment at the end of the period. Any removal of the current bottleneck at the end of LPC/ beginning of the training contract, will most likely shift the issue onto the employment stage.

There must be adequate systems and standards in place, with firms spending adequate amounts of time and resources on trainees. Regulators should play a stronger role in regulating workplace learning to ensure that these elements are in place and appropriately used to further the learning and experience of trainees. Solicitors who are supervising trainees must have a proper understanding of the role they are expected to fulfil and the importance of good supervision. They also need to know something about learning and teaching and it would be appropriate for them to undertake activities related to their role as supervisor as part of their CPD, in order to remain up to date.

The current two year, four seat, model works particularly well in giving entrants to the profession experience of a number of areas of law, learning processes and skills and how to adapt them to different areas of practice, which enables them to make better career decisions when it comes to choosing a career path. It is also a valuable period of time when practical problem solving and client counselling skills can be applied in real life. It also puts the newly qualified solicitor in the position of being able to identify what they do not know and are not qualified to advise on, where to seek advice and how to approach gaps in their knowledge, which is essential in practice and is aided in large part by the breadth of their training experience.

A shared fundamental programme of education at the QLD/ GDL stage is useful for providing a base of knowledge, but as a student progresses towards their chosen professional qualification they need to undertake more specific vocational training. The College of Law is looking at fusing the LPC and BPTC with, for example, electives for advocacy. It may be that, as the professions move closer together in the work that they undertake, this is an appropriate move, to give students longer to decide upon the profession that they wish to pursue before taking on a specific training contract or pupillage.

7. Do you agree with the Law Society's view that some form of socialised work-based learning is essential prior to qualification?
8. What changes, if any, do you think could be made to improve the current model?

Selection Systems

LETR

Admissions testing is seen in the discussion paper as a way to ensure that admission to the profession and to academic programmes is fair and it suggests that more research should be conducted into this issue. It talks of the work currently being undertaken by the Bar in implementing admissions tests for entry onto their vocational course, the Bar Professional Training Course, and the formation of the Qualified Lawyer Transfer Scheme (QLTS), which is the way in which non-England and Wales qualified lawyers can qualify into the profession here, as being instructive. It notes that entry tests, to either courses or the professions are controversial, but urges the independent regulators to take the lead in undertaking evidence-based research, identifying good practice and setting appropriate guidelines.

Any attempts to implement such entry systems may be undermined by the current practice of large, often City firms, who have told the Review that they mainly recruit from top universities, beginning with second or third year undergraduates, based on their A level results. An approach which serves to bring the inequalities of the school system to bear on the labour market. Whilst the profession expressed a desire to build a diverse profession and promote social mobility they felt this latter part was particularly difficult to achieve, although the reasons for this were not further explored.

The Law Society

The Law Society would not support admissions testing for entry to the profession. Even if there is no requirement to undertake a formalised training programme prior to sitting an assessment, the courses which would inevitably fill the gap would put those who take them at an advantage and so become seen as a requirement, with the costs that go with them. The costs of the testing itself may represent an additional hurdle for applicants from less advantaged backgrounds. The current Qualified Lawyer Transfer Scheme (QLTS) exams, which the LETR uses as a good example of the sort of assessment that may be used, currently cost £305, £825 and £2100 (+VAT) respectively.

One idea that has been discussed more widely around the LETR is that admissions testing to the profession would mean that no matter what route has been taken to gain the requisite knowledge, skills and experience, anyone would be able to sit, and pass the tests, which would represent a level playing field. The idea behind this thinking is that this would mean that a person would not need to follow a structured education and training programme. This may aid social mobility, as entrants would not need to have undertaken expensive university courses, but could instead gain the necessary work-based learning in a way that best suited their circumstances. It may also remove the need to undertake a training contract, which the less socially mobile are less likely to be able to access. The Society supports a wider range of entry routes, to reflect the different ways in which knowledge is accrued. However, whilst classroom learning does not suit all who may be otherwise suited to a career in law, it is essential that the knowledge, skills and ability of the entrant are rigorously assessed through whichever route is taken and that standards are maintained at a high level across the different routes. It would also be best to avoid the situation whereby a potential entrant were to complete all the necessary education and training, but at the end, fail, for example, the academic learning assessment. The current route assesses students on their suitability at different stages, before they commit to the next.

The Society would, instead, support a common standard of attainment in knowledge and skills for all routes into the profession, which could be set by the regulator and maintained through quality assurance measures. A common standard should include all existing routes;

FILEX and LPC and training contract and should cover some allowances for the accreditation of prior learning, where a potential entrant has an academic qualification, or potentially assessed work experience, that may exempt them from a given part of the mandated education or training regime. However, it is the totality of the knowledge, skills and experience that contribute to the make up of a rounded professional and exemptions should not be allowed where an individual cannot demonstrate a full understanding of the knowledge and skills taught in any of the traditionally preceding stages.

Any future routes that may be developed should only be accredited if they meet the common standard and, as specifications for the different routes change over time, the standard must be maintained. It may be that there should be more rigorous checks and balances on the learning received via these routes and an acceptance that for the maintenance of high standards, there may be some potential entrants who will not pass.

9. Do you agree with TLS' stance on a common standard for all routes into the profession to be set and maintained by the regulator and maintained through QA processes?
10. Do you support the development of alternate routes into the profession? If so, which routes would you wish to see developed and why?

Activity based authorisation and regulation

LETR

Currently, solicitors and barristers are authorised to undertake reserved activities through qualifying and holding a professional title and must have all the mandatory knowledge, skills and experience to hold that title. Activity based authorisation means, in essence, that instead of basing authorisation on title, regulators would instead look at what knowledge, skills and experience an individual would need in order to be authorised to undertake a particular activity (e.g. conveyancing, will-writing, advocacy etc). This would not necessarily require the person to have a professional title, they would only be authorised for this activity and would need to be authorised for each subsequent activity that they used to undertake. Regulation would then be based on a national standard for each reserved activity.

The LETR are investigating whether this approach to authorisation would reduce the significance of the professional titles in setting competence boundaries and if this would provide greater consistency of standards across the sector, possibly facilitating career mobility, though they do not expand on how this would work.

The Law Society

There is a distinction between "title based regulation" where individuals are regulated because they have obtained a professional title, such as solicitor, which entitles them to do a range of work and "activity based regulation" which simply entitles an individual to undertake particular work but does not imply a professional title. The advantages of the former are that it provides the individual with a wide basis of knowledge and is likely to make it easier for him or her to move to other activities within the profession. The advantage of the latter is that it becomes easier to qualify to do discrete activities and, arguably, reflects the fact that lawyers increasingly specialise and that a substantial amount of work undertaken in training may not prove relevant to their careers.

The Law Society feels strongly that there are no discrete activities within the role of a solicitor. The current legal system was not developed in this way and to attempt to separate

legal activity into discrete areas of work, which could be individually authorised, would add fragmentation and confusion to the delivery of legal services in England and Wales. The Society feels that the authorisation of individual activities should not replace titles as the preferred method of qualifying to perform a given area of legal work. The greater breadth of knowledge and experience that is currently gained in the process of qualifying as solicitor or barrister is invaluable.

The depth and especially breadth of education and training that a solicitor receives allows them to provide a rounded service that is unique in the market place. It is important for a solicitor to be able to identify where there are gaps in their knowledge as well as being able to identify the correct knowledge required to solve any legal issue. In order to be able to provide a comprehensive legal service, an individual must be able to do both, and know when and where to seek the opinions of experts in other areas, as few areas of law exist in isolation.

As activities, such as advocacy, increasingly cut across the boundaries of the traditional titles, it may be appropriate to look at ways in which a greater degree of shared training could enable solicitors (or barristers) to undertake activities traditionally associated with a different title. There needs to be a flexibility of approach as to what knowledge and skills are necessary for a solicitor in the current market place.

The Society would support the accreditation of individual activities, such as advocacy and mediation skills for example, as an addition to the base of knowledge, skills and experience currently inherent in solicitors due to their route to qualification. This would require solicitors to undertake focussed training on each individual activity and would demand that solicitors, who wished to pursue this area of work, did so through properly tailored courses, delivered to high standards. This is not always possible on the current vocational courses, which must cover all areas and would otherwise become overly lengthy, which would have implications of cost and therefore access.

The Society is also exploring whether a qualification, at a lower level than solicitor, might be achieved for particular activities. For example, a qualification that might enable someone to undertake lower level activities in particular areas on their own account or, perhaps preferably, under the supervision of a solicitor. Supervision would ensure that any difficulties that may arise in initially simple cases could be addressed by someone with the breadth of knowledge that solicitors have. A suite of such qualifications could, over a career, enable someone to qualify as a solicitor, so long as they could demonstrate having the rounded knowledge and skills required.

11. Do you feel the current education and training system is unduly complicated? If so, how could it be simplified?
12. Do you agree with increasing flexibility and transitioning within and across the professions by having common standards across titles, based on activities?
13. Do you support the Law Society's position that individuals holding protected titles have gained a greater breadth and depth of knowledge of the law and therefore provide a more rounded service than those authorised purely for individual activities?
14. Are there ways in which activity based qualification or regulation might assist people to qualify as solicitors?
15. If there were to be an element of activity based regulation, what are the main activities that should be regulated?

Mobility within the sector

LETR

The LETR seeks to identify the key restrictions on mobility within the legal sector and explores where the pathways within and between occupational groups within the sector could be more transparent and where it would be beneficial to have a more flexible system of legal education and training to support greater mobility.

The Law Society

The key restriction on career mobility within the legal marketplace currently is the lack of transferrable education and training from one branch to another. Even if an individual is already a legal professional with demonstrable experience, it is often necessary for them to re-train from the vocational (LPC/BPTC) stage, then complete the relevant training period, in order to re-qualify. The necessity of re-qualifying is lessened by the increase in rights across the professions, for instance, solicitors are increasingly attaining higher rights of audience, which allow them to undertake to represent clients in the higher courts as solicitor advocates, instead of retraining as a barrister.

The legal workforce is made up of many different categories of people; paralegals, CILEX fellows and trainees, in addition to solicitors and barristers. Clear pathways for transition between these categories should be developed, including an assessment structure and mentoring programme, which could be built into CPD. Comparable standards must be set across different routes into the professions and any exemptions for educational stages should only be offered where this standard is met. In addition, adequate work-based learning should underpin any qualification.

16. Would you support the development of clearer pathways between professions, with exemptions for prior learning or experience, so long as high standards are met?
17. Are there other areas where lawyers find it difficult to move from one area of work to another? If so, how could these be addressed?

Continued Professional Development (CPD)

LETR

The LETR suggests that this one area where there is a broad consensus for reform and explores the idea that there is a need to move away from input-driven approach (hours completed), towards a more outcomes focussed one (learning accomplished from activities undertaken).

The Law Society

The Law Society agrees that CPD is one area where reform is required, as the current system encourages tick-box practices where ineffective activities can be undertaken so long as the correct number of hours and/ or points have been accrued. There must instead be a tailored and focussed CPD system, which gives solicitors the flexibility to drive their own learning and development, but the structure to ensure that they get as much out of the system as possible. Solicitors need to match their CPD to the needs of their work and their career and CPD could be used to support retraining if required.

The Society believes that the key to effective CPD is to undertake an effective cycle of planning and objective setting in discussion with an employer or peers and reporting back on these to see what has been learnt, whilst reflecting on how this impacts the plan for the next cycle. In situations where this is not possible, the regulator must take direct responsibility for ensuring that a plan has been completed and may take a further interest in ensuring that adequate reporting and reflection has been undertaken. CPD will only have value if the regulator makes sure that it has value.

Firms also have a role to play in ensuring that they set the right cultural tone with regard to CPD, encouraging employees to undertake activities relevant to their practice, which will enhance their knowledge and skills, thus making them better employees in return. Proper monitoring and regulatory intervention is required in order to ensure that this happens with consequences for those found to be non-compliant. It may be that some thought could be given to the role of the COLP in providing assurances that monitoring and compliance checks were being undertaken within their firm.

As increasingly the professions are having to become more commercially aware, with the introduction of ABSs and greater competition for market share, greater business focus should be introduced for solicitors at senior and partner levels as and when their roles become more focussed on practice management. Alongside this should sit a focus on professional ethics and equality and diversity training, both of which could be refreshed from time to time, in order to keep up to date with societal and professional changes.

18. Would you agree that the current CPD scheme is not fit for purpose?
19. Would you support a system of CPD with plans, objective setting and reporting back, as described above?
20. Are there other ways of ensuring that lawyers remain up to date? If so, what are these?

In general:

21. Do you broadly agree with TLS policies set out in this document?
22. Is there anything else TLS should address in its response?
23. What two things to you feel are key to LET?

Summary of Questions

Academic stage

1. Do you agree with the Law Society on the retention of the QLD?
2. Are there changes that should be made to the QLD? If so, on what basis?
3. Would you support the inclusion of ethics and the law of organisations as additional core subjects?

Vocational Course

4. Should there be a greater degree of shared training eg. Combined LPC / BPTC?
5. If so, would this be best achieved through a modular approach with, eg. Advocacy/ mediation/ out of court settlements as electives for either course?
6. What are the core skills that should be part of the vocational stage?

Work-based learning

7. Do you agree with the Law Society's view that some form of socialised work-based learning is essential prior to qualification?
8. What changes, if any, do you think could be made to improve the current model?

Selection systems

9. Do you agree with TLS' stance on a common standard for all routes into the profession to be set and maintained by the regulator and maintained through QA processes?
10. Do you support the development of alternate routes into the profession? If so, which routes would you wish to see developed and why?

Activity based authorisation and regulation

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14. Are there ways in which activity based qualification or regulation might assist people to qualify as solicitors?
15. If there were to be an element of activity based regulation, what are the main activities that should be regulated?

Mobility within the sector

16. Would you support the development of clearer pathways between professions, with exemptions for prior learning or experience, so long as high standards are met?
17. Are there other areas where lawyers find it difficult to move from one area of work to another? If so, how could these be addressed?

CPD

18. Would you agree that the current CPD scheme is not fit for purpose?
19. Would you support a system of CPD with plans, objective setting and reporting back, as described above?
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General:

21. Do you broadly agree with TLS policies set out in this document?
22. Is there anything else TLS should address in its response?
23. What two things do you feel are key to LET?