



The Law Society

# **Legal Education and Training Review**

Response to Discussion Paper 01/2012

May 2012



## **Legal Education and Training Review Discussion Paper 01 / 2012**

### **Response to the Paper**

#### **Introduction**

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.

The Law Society welcomes the opportunity to comment on the LETR's Discussion Paper 01 / 2012 and our response to the questions, posed in paragraph 98 of the paper, is attached at **Annex A**. We are currently engaging in a dialogue with the profession to establish the profession's own views about its education and training needs. This paper represents our initial views which may shift as our understanding of the profession's needs grows.

The Society supports a flexible approach to training to be a lawyer. We believe that the traditional route of QLD, LPC/BPTC followed by the training contract/pupillage will continue to be a popular and effective way of enabling people to qualify as lawyers within a short time. However, we strongly support the development of alternative routes which achieve the same standards and, particularly as the costs of education and training rise, enable people to gain qualification through a modularised and work-based approach. What is essential, however, is that the standards required are consistent whatever route to qualification is taken.

We also believe that a radically new approach is needed towards CPD.

#### **Routes to qualification**

The Law Society disagrees with the assertion made in the paper, that the current model of education and training is confusing. Information is widely available and it is for the individual to undertake adequate research of the available options to enable them to make the right decisions for their circumstances. However, the Society accepts that a greater degree of common vocational education, at the LPC / BPTC stage, may give entrants more time to explore where their strengths lie, and to undertake modules to enable them 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 their circumstances, to spread the costs and may have a positive effect on social mobility.

#### **Activity based authorisation**

The discussion paper looks at the idea of moving towards sector wide activity based authorisation and regulation. This is an important question and one that needs very careful consideration if there is not to be significant damage to the public interest. At present, the training for the overwhelming bulk of lawyers is based on providing a wide general knowledge of the law and practice, which is used as a basis for lawyers to specialise in individual areas. This specialisation is achieved through practical training, supervision, experience and CPD, though, admittedly, on an ad hoc rather than an organised basis.

The Law Society considers that this training provides an important basis for practice because:

- There are no entirely discrete areas of law – the intellectual framework of the law is, itself, an important concept that any professional lawyer needs to understand, while most areas of law require at least a basic knowledge of others. It is important for a solicitor to be able to identify gaps in his or her knowledge; and to advise properly. This is important for consumers. The system provides a strong element of flexibility for lawyers wishing to move from one specialism to another in their early years; and
- In the Society's view, the qualification requirements for use of the title "solicitor" or "barrister" should be sufficient to ensure that an individual is qualified, to entry level and, subject to supervision and the rules governing competency, to undertake the full range of legal work permitted by their regulator.

We would qualify this in two important ways:

- We recognise that many people who provide legal services are expert in some individual areas of the law but have not demonstrated the full range of legal expertise. We also recognise that knowledge and experience can be gained in a number of ways. There may well be strong arguments for there to be particular qualifications which recognise expertise that can be used under supervision, which could be used to count towards qualification as a solicitor. We would support there being a variety of ways of developing and demonstrating that expertise.
- There is also much to be said for further qualifications being available to demonstrate expertise. It is not clear to us that this need to go as far as QASA, in providing an additional hurdle for individuals to overcome in order to undertake particular work, but we do consider that additional accreditations may well be valuable for the public.

We consider that the Law Society could play a strong role in developing these schemes.

## **Social Mobility**

The Law Society supports moves to encourage greater social mobility in the legal professions. It is not clear to us that a central "admissions test" will assist with this. The concept seems unnecessarily burdensome in terms of the costs of the assessment and may be ineffectual, as no doubt courses would emerge that would teach prospective students how to pass the test. 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, before the assessment itself. The costs of the testing would vary according to the method of assessment, but the current Qualified Lawyer Transfer Scheme (QLTS) exams, which could be used as an example of the sort of assessment that may be used, currently cost £305, £825 and £2100 (+VAT) respectively. This may represent an additional hurdle for applicants from less advantaged backgrounds. The Society would, however, 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.

We would also favour flexible routes through which knowledge and skills could be demonstrated. We support a wider range of such routes, to reflect the different ways in which knowledge is accrued, understanding that class room learning does not suit all who may be suited to a career in law. However, it is essential that the knowledge, skills and ability of the entrant are still rigorously assessed through whichever route is taken and that standards are maintained at a high level across the different routes.

If a common standard is developed, it should include all routes; FILEX and LPC and training contract, in order to maintain standards at a high level, appropriate to the responsibilities and trust placed on those working in the legal sector. The standard 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, so they would not have to 'start again' as many feel the current system requires them to. Any future routes that may be developed should then only be accredited if they meet this standard, and as specifications for the different routes change over time the standard must be maintained. It may be that there should be stricter 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.

## **Annex A**

### **Discussion Paper 01 / 2012**

#### **Questions posed in paragraph 98**

##### **The Qualifying Law Degree**

- Are the Foundations still a sufficient knowledge base?
- Should any 'subjects' be prescribed, or should its outcomes be redefined in terms of cognitive and other skills?
- Has its mission and focus changed so much that it is no longer adequate as an initial stage of training?

The discussion paper suggests at paragraph 100 that one (radical) solution could be the abolition of the QLD. The Law Society strongly disagrees with this proposal.

The fact is that a very high proportion of people wishing to qualify as lawyers wish to do so as quickly as possible. The degree/LPC/training contract approach enables them to do so, whilst providing the basic knowledge required of rounded lawyers. In addition, it is likely that universities will continue to regard law as an important academic discipline, and it would seem very strange if individuals who had completed a law degree were unable to use that knowledge as a passport towards qualification.

The Law Society strongly believes that the purpose of the academic stage is to provide students with the background 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 lawyer, who may specialise in due course, but nevertheless possesses a wider base knowledge of the law. 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 provided by the current system. Indeed, the Society would support a more stringent approach to ensuring that standards across institutions are maintained at high levels.

Whilst it is essential to cover the key foundation topics, the QLD must also teach necessary skills. The focus should be on clarity of expression, a high standard of use of the English language, particularly written skills, and should include analytical skills such as fact management, critical thinking, problem solving and case analysis. In order to better support this foundation, the Joint Statement should 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.

A sense of professionalism and ethical behaviour, beyond a mere ability to understand and comply with regulation, should be embedded in the education and training regime, both pre- and post-qualification. In particular, students should have early exposure to the professional norms and core values which are expected of the profession during their QLD. Incorporating ethics into legal education and training will strengthen the 'brand' of solicitor, or barrister, both domestically and internationally, and will enhance the public's confidence in the professions.

Whilst it may be that there are other methods of gaining the knowledge and skills held in the scope of the QLD, it remains a solid foundation for many who wish to enter the legal professions. If law degrees no longer carried with them a qualification element, this element would simply be pushed into a post-graduate qualification, such as the GDL. This would increase the costs of legal education and training and 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.

### **The GDL or equivalent**

- Could there be a larger range of possible entry qualifications for those without law degrees?

For those with a degree in a subject other than law, the GDL provides an essential grounding in the core subjects that should form the basis of knowledge for anyone seeking to enter the legal professions. The outcomes and requirements of the GDL must be tailored to take account of the fact that it is a postgraduate course of study. Many of the skills taught on a QLD, such as critical thinking and drafting, should be able to be assumed as having been learnt in large part during the course of an individual's previous degree for those taking a GDL.

The Society would support an examination of whether this knowledge could be accrued and demonstrated through a less structured course, for instance e-learning or a modular approach, which could enable students to learn when they can in a less intensive way than a full-time, year long GDL course. However, it is essential that this knowledge is learnt in order to provide a solid basis for future training and a career as a solicitor. This knowledge could be assessed through examination, which would ensure comparable standards across different routes.

### **The LPC / BPTC**

- Is the LPC now so broken up into specific courses serving different hemispheres that the idea of a common core is gone?
- *Does the BPTC provide sufficient training for any of those actually beginning pupillage, and if not should there be another form of course or qualification which would also suit those who will not achieve pupillages?*
- Are either the LPC or BPTC necessary or desirable elements of the qualification pathway?

We consider that the LPC and BPTC can provide important elements of knowledge about practice that are not provided by the QLD/GDL and which need not be gained from practice within firms. As we have suggested above, many people will want to qualify to provide legal services as quickly as possible, and the existence of the vocational stage provides an important way of achieving that.

Having said that, these need not be only way of qualifying if there are other ways of achieving the outcomes that are required. We believe that the current outcomes of the LPC/BPTC should be:

- Reflective learners who can manage their own professional development over the remainder of their careers;

- Skills, such as research, problem solving, writing and drafting, advising and negotiating, and persuading (mediation) and advocacy;
- A greater understanding of the practical problems that are likely to arise over the course of an individual's practice.

These outcomes need not only be achieved through a specific course taking place at a particular time. There are a number of common core skills, but the current proliferation of specific courses points to the fact that the marketplace demands tailored vocational training for the graduates that firms wish to employ. We consider that many of the different areas can 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. We also consider that there should be the opportunity to learn 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.

What is essential is that the regulators should achieve common standards of achievement at the end, whichever way it has been reached.

### **The Training Contract / Pupillage**

- Are these now such bottlenecks, so totally controlled by the existing professionals, that they fall foul of any attempts to achieve fair access?
- Are they insufficiently regulated to assure the quality of training?
- Or are they the best possible training for those who will be our professionals of the future, already well-funded by those organisations benefitting from them?
- Should the professions have a greater degree of shared training? With CILEx?

The legal services market currently has a greater number of people seeking to qualify as lawyers than the existing market can sustain. This will, inevitably, lead to a bottleneck at some point in the process.

The Law Society believes that it is essential for consumer protection that those wishing to become lawyers work under supervision for a period so that they can learn about practice and procedure, see client care at first hand and have an understanding of the myriad problems that arise in practice that cannot be taught in a classroom. We believe that it is appropriate for this period of supervision to be divided into two stages – the first being the training contract/pupillage which is explicitly part of the training and where the trainee has the opportunity to experience a range of areas of the law, so that he or she is able to get a feel for what the work is like in practice. Then the second, where there is the beginning of greater specialisation but, nevertheless, with the benefits and protections of shelter from a more senior colleague.

Given that there is a requirement, quite properly, that firms are required to pay their trainees, and are required to invest substantial time and effort in ensuring that proper training is achieved, it seems right that it should be the firms who decide which individuals are most likely to meet their needs as a future member of the firm. This is no different from any other profession where a level of training is needed to ensure competent provision of important

and complex services. We believe that the arrival of ABS firms may well offer more diverse ways of providing training contracts and we would encourage this.

We query whether there are significant problems of fair access to the profession that are not explained, to a great extent, by failures in the education system to equip students to meet the standards required by firms. The profession has a good record of initiatives to improve access and avoid discrimination. The answer to achieving fair access is to ensure proper training and support for firms in making their decisions and for students to ensure that they can meet the appropriate standards: it is not to avoid the training contract.

Work-based learning is also the most appropriate way to ensure that new entrants become socialised into the profession's norms. Workplace learning 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. However, for this to be effective, there must be adequate systems and standards in place, with firms spending adequate amounts of time and resources on trainees. Regulators should play more of a role in regulating workplace learning, to ensure that these elements are in place and appropriately utilised to further the learning and experience of trainees.

The Law Society is not, however, wedded to the precise two year, four seat, model that currently applies. In many cases it works well in giving entrants to the profession experience of a number of areas of law, enabling them to make better career decisions when it comes to choosing which area of law to enter. The two year period is less about the time served or attaining a true understanding of an area of law, and more about learning processes and skills and how to adapt them to different areas of law - which is valuable experience in whichever area the entrant then decides to pursue. It is also a valuable period of time when practical problem solving and client counselling skills can be applied in real life. It 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 their practice and is aided in large part by the breadth of their training experience. There may well be other ways of achieving the same outcomes and it may well be that the CILEX, work-based learning and other routes are suitable for this. The regulators should not be prescriptive but ensure that the right standards and knowledge have been achieved.

It is essential to the positive outcome of the training period that solicitors who are supervising trainees 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 3 year rule and tenancy**

- Even if the apprenticeship bottleneck disappeared, barristers would have to be selected for tenancies and solicitors would have to practice under others for 3 years before they could put up their own brass plate. Is this still necessary?

As suggested above, the Law Society believes strongly that some form of workplace learning, in an environment with other legal practitioners, is essential in training to become qualified as a solicitor or barrister. It serves as an important socialisation process and is the stage during which the ethics of the profession are inculcated into the next generation. There is also a maturity gained under a period of supervision, which enables that professional, when qualified, to be confident and competent. The Law Society would not



support a system where an LPC graduate would be allowed to practise unsupervised, let alone to set up their own practice.

## **CPD**

- Is this one area where there is a broad consensus for reform?
- Is there particular agreement on the need to move away from input-driven approaches?
- *Is sufficient emphasis being placed on 'CPD' for the growing numbers and greater range of paralegal staff?*

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 or to support retraining if required.

The current inputs based model does not seem to promote the kind of activity that is beneficial in all cases. Whilst it is impossible to build a model that ensures that CPD will be valuable to all comers, a focus on what is being learnt from CPD, reflection on how to incorporate it into practice and planning for future activities, may all encourage a more productive culture. CPD has to be done in an effective manner; built in and reinforced over time and at a stretching level.

The Law Society believes that the key to effective CPD is to undertake an it within a 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 completed. However, 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 regards 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 sanctions for those who do not comply. It may be that some thought could be given to the role of the COLP in providing assurances that monitoring and compliance checks are being undertaken within their firm.

As, increasingly, the professions are having to become more commercially aware, with the introduction of ABS firms 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.

## **Mobility within the sector**

- Where are they key restrictions on mobility?
- Are the pathways within and between occupational groups within the sector sufficient and sufficiently transparent?

- *What more should be done to facilitate career mobility?*

The key restrictions on mobility within the sector arise in two areas: between different professions and between different practice areas

It is not difficult for a solicitor who has gained higher rights of audience to re-qualify as a barrister. Nor is particularly difficult for FILEX to convert to become a solicitor (though relatively few do). It is, however, more difficult for barristers to re-qualify as solicitors. This is because the BPTC does not include a number of key elements that solicitors need to know in order to practise successfully as a solicitor.

The ease of transfer between different practice areas will vary depending on the synergies between those areas. In practice, many solicitors who undertake predominantly legal aid or probate work will struggle to change to commercial work and vice versa. This reflects the different knowledge that is required.

The Society would support a greater degree of common training being made available for those wishing to practise as lawyers and we believe that, as the distinctions between the practising structures of the professions diminish, so there will be less justification for different training routes. We would also support greater availability of refresher and other training and support being available to those wishing to change their specialisations in the course of their career, and believe that there is a role for the Society in delivering these. It is essential though that standards are comparable across different routes into the professions, that where exemptions exist when transferring across professions they reflect consistent standards, and that adequate work-based learning should underpin any qualification.

Solicitors entering the country from abroad and wishing to re-qualify in England and Wales can do so via the Qualified Lawyer Transfer Scheme (QLTS). This involves taking three exams that test the knowledge and skills of the applicant to ensure that they are of a level to practise in this jurisdiction. It is not necessary, as in New York, to obtain an LLM prior to taking the exams and there is no formal training course. It is possible, through previous practice experience and textbook learning, to show the necessary skills and knowledge. In this way it is arguable that it is less expensive and more accessible to re-qualify here, than via the New York Bar, contrary to the position put forward in the paper, which also makes no mention of the QLTS.

## **Regulation**

- How should regulators drive/support innovation and ongoing reform?

We discuss the role of the regulator at each stage of legal education and training in our answers above. We believe, however, that it is crucial that regulators should have regard to:

- The need for a wide base of legal knowledge;
- The importance of flexible routes to qualification;
- The need for consistent standards of knowledge;
- The importance of practical, on the job training; and
- The role that professional bodies can play in providing training, accreditation and CPD schemes.