Briefing paper 04/2012

The Legal Education and Training Review Symposium:

Summary of Parallel Sessions

Executive Summary

1 The Legal Education and Training Review Symposium (the Symposium), entitled 'Assuring competence in a changing legal services market' took place on the 10th-11th July 2012. The Symposium was motivated by two key objectives: *to inform attendees about the work of the Legal Education and Training Review* and *to inform debate within the Review research team.*

2 The programme of speakers brought together leaders in the field of legal and professional education, training and regulation and sought to combine both national and international perspectives on the issues raised by the Legal Education and Training Review. Delegates were invited to join in a mix of plenary and small group discussions over the course of the two days, offering the opportunity to network and exchange ideas.

3 The plenary papers are available to download in full from the LETR website (http://letr.org.uk). An extended version of Professor Richard Susskind's paper as "LETR Briefing Paper 3/2012: Provocations and Perspectives" is accessible from the website.

4 The primary purpose of this document is to summarise the key themes arising from the debates that took place in the panel sessions, and to demonstrate the way in which the feedback obtained from these sessions links with the wider programme of research carried out by the LETR research team.

5 In addition, this document presents a summary of the responses given by delegates when discussing three alternative scenarios for the future regulation of legal education and training in England and Wales. These responses informed the research presented in the second discussion paper produced by the research team: Discussion Paper 02/2012: Key Issues II- Developing the Detail, which is available from the website. The alternative scenarios that form the basis of this discussion are available at Appendix A of this report.

6 The Introduction to this report sets out the context of the report, and details the structure of the following chapters.

7 Chapter 2 outlines the discussion which took place as part of the panel session entitled "Identifying and Developing the Legal Workforce", with presentations provided by Alex Roy, Legal Services Board and Professor Rob Wilson, Institute for Employment Research, University of Warwick. In this session it was reported that, assuming a gradual recovery of the economy, overall employment levels are set to rise, especially in the broad category of "legal activities". This represents a challenge that the system of legal education and training must respond to. The group discussion highlighted the need for regulation that enables the fulfillment of regulatory objectives, rather than prescribing the manner in which these objectives are reached.

8 Chapter 3 details the issues discussed by delegates in a panel session entitled "New business structures- new training needs?" led by James Atkin and Kate Edwards, Co-operative Legal Services and Karl Chapman, Riverview Law. This session focused initially on describing the impact of Alternative Business Structures ("ABSs") on the delivery of legal services, and the challenges and opportunities these new models present for the system of legal education and training. In particular, the need for modular, outcomes focused and specialist education and training was highlighted. In the latter part of the session, emphasis moved to the importance of client driven change within the legal services sector, and in particular, a renewed emphasis on delivery platforms that provide legal advice both in context and in a straightforward manner. Group discussion focused largely on exploring the rationale for developing the model of legal service provision adopted by Cooperative Legal Services (CLS) and discussing the experiences of CLS since entering the market.

9 Chapter 4 reports the proceedings of a session entitled "Making CPD fit for purpose" led by Pamela Henderson, Nottingham Law School and Emily Windsor, Bar Standards Board. This session began with a joint presentation on the reviews of Continuing Professional Development (CPD) undertaken by the Bar Standards Board (BSB) and the Solicitors Regulation Authority (SRA). The speakers' presentations were followed by a group discussion which focused on outlining and discussing the problems with the current systems of CPD, and the merits of moving to a model of CPD that measures outcomes, rather than inputs.

10 Chapter 5 outlines the discussion which took place in a panel session designed to explore the issues raised by the LETR from the perspective of consumers. The session

entitled “Meeting Consumer Needs” was jointly led by Neil Wightman, Legal Services Consumer Panel (LSCP) and Tarnya Wilkins, Office of Fair Trading (OFT). This chapter sets out the views of the LSCP on the issues raised by the LETR and summarizes the panel’s suggestions for reform. In addition, the chapter lists the key points arising from the group discussion, which focused on the issues of competition, regulation, access to justice and consumer welfare.

11 Chapter 6 details the proceedings of a session entitled: “Transforming Workplace Learning” which aimed to explore the potential for embracing work based learning models of education and training in the context of legal education. The session began with two presentations; the first, delivered by Julie Brannan, Oxford Brookes University provided delegates with information about the SRA’s work based learning pilot, and discussed the benefits and risks involved in moving towards this form of education and assessment. The second presentation, led by Mark Protherough, Institute of Chartered Accountants of England and Wales, discussed developments in education and training within the accountancy profession, with a particular focus on moves towards apprenticeships and other qualification pathways that did not require candidates to obtain a university degree.

12 Chapter 7 describes the proceedings of a session aimed at contextualizing the work of the LETR with reference to different systems of legal regulation internationally and different but comparable professional regulatory systems in the UK. The session, entitled “Regulating and training lawyers and doctors: a view from europe” began with two presentations; the first, delivered by Dr Julian Lonbay, Birmingham Law School, explored the regulation of legal education and training from a comparative perspective, identifying and evaluating practice from across Europe. The second presentation, led by Professor Trudie Roberts, Leeds Institute of Medical Education contrasted the experience of and approaches to regulation adopted by the GMC, and the challenges and opportunities facing regulators of the medical profession.

13 Chapter 8 provides an overview of a session that was designed to explore contrasting approaches to the role of regulation in enabling or impeding innovation at the academic stage of legal education. The session, entitled “Regulation and innovation at the academic stage” began with two presentations; the first, delivered by Professor Stuart Bell, York Law School argued that regulation is not an impediment to innovation, and

that the onus should be placed on universities to deliver courses that are innovative in the teaching methods employed. The second presentation, led by Dr Rachael Field, Queensland University of Technology, described how the regulatory framework recently introduced in Australia had prompted a new discourse which aimed to study and ameliorate the negative, stress-induced psychological consequences that affect many who study and practice law. As such, regulation may be considered to be a positive tool, providing opportunities for providing a better and more holistic educational experience for students.

14 Chapter 9 reports on the discussion which took place in the session entitled: "Valuing diversity, creating opportunity". This session was designed to explore the barriers to diversity that currently exist within the legal profession, and to encourage delegates to explore and evaluate different alternatives for improving access to the profession. The session began with two presentations; although only one abstract was provided. The first presentation, delivered by Rosy Emodi, The Society of Black Lawyers, responded to the issues raised in the LETR Discussion paper on diversity (Discussion Paper 02/2011:Equality, diversity and social mobility) and discussed strategies and opportunities for strengthening equality and diversity within the legal profession, including the merits of affirmative action. The second presentation, led by Jane Masey Allen and Overy, provided information about PRIME, a scheme that aims to address concerns about access to the profession through changing the way in which work experience is provided by firms.

15 Chapter 10 reports on a session entitled: "New professions, para-professions and apprentices: challenges and opportunities". This session was designed to enable delegates to learn more about different routes into the profession, and to explore the challenges and opportunities these routes present for employers, students and the profession as a whole. The session began with two presentations; the first, delivered by Diane Burleigh of the Chartered Institute of Legal Executives ("CILEx") provided delegates with some key facts about the CILEx route to qualification. The second presentation, led by Charles Welsh, Skills for Justice was aimed at informing delegates about the work of Skills for Justice is undertaking in creating new standards, qualifications and careers in the legal sector. In addition, the presentation sought to explore the concept of "competence" in relation to those individuals performing a paralegal function. Whilst abstracts for these presentations were not provided, slides

from Charles Welsh's presentation can be accessed from the LETR website.

16 Chapter 11, which concludes this report, provides an overview of the responses given by delegates as part of an exercise prepared by the research team to encourage consideration of the system and framework for the regulation of legal education and training. These sessions provided an opportunity for all delegates to react to three different scenarios for the future of legal education and training and/or create their own. Delegates were divided into groups of between 16 and 18 people and invited to discuss the substantive content of the scenarios and explore the benefits and risks of each model. Key points made by delegates are summarized in table form and a copy of the scenarios that delegates were asked to consider are presented at Appendix A of this report.

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1. Introduction

1.1 The Legal Education and Training Review Symposium took place on the 10th-11th July 2012 at the Lowry Hotel in Manchester. Entitled 'Assuring competence in a changing legal services market', the symposium had two main purposes: *to inform attendees about the work of the Legal Education and Training Review* and *to inform debate within the Review*.

1.2 The themes and speakers for each panel were identified and agreed between the research team, the LETR Review Executive and the Consultation Steering Panel Co-Chairs, on the basis of their relevance to the Review. This paper summarises the discussions that took place in eight panel sessions on the following themes:

- Identifying and developing the future workforce
- New business structures – new training needs?
- Making CPD fit for purpose
- Regulating and training lawyers and doctors: a view from Europe
- Transforming workplace learning
- Regulation and innovation at the academic stage
- Valuing diversity: creating opportunity
- 'New' professions, para-professions and apprentices: challenges and opportunities

1.3 This paper also provides an overview of the responses arising from participation in an exercise designed to encourage delegates to discuss the merits and demerits of alternative models for the future regulation of legal education and training in England and Wales. A brief summary of this exercise is provided in Discussion Paper 02/2012[1].

1.4 The report is structured as follows. Each chapter opens with a short introduction to the session. This is followed by the abstract or abstract of the presentation delivered in the plenary, as provided by the speaker or speakers. The rest of the chapter is devoted to reporting the key issues that emerged from the group discussion in the session. The final chapter summarises the responses to the scenarios for the future regulation of legal education and training (see 1.3 above).

[1] See para 120 of discussion paper, accessible via www.letr.org.uk

2. Identifying and developing the future workforce

Presented by Alex Roy, Legal Services Board and Rob Wilson, Warwick Institute of Employment Research

Outline of session

2.1 This session began with two presentations. The first, delivered by Alex Roy explored emerging trends in regulation and applied these in the context of the legal services market. The second, delivered by Rob Wilson, presented the findings of research commissioned for LETR developing employment projections for the *Legal Services* sector in England and Wales. Attendees were then asked to consider and discuss the following questions:

- *Are regulations barriers or enablers to delivery of the regulatory objectives?*
- *Should the regulation of education and training be prescribing or enabling*?

Abstract 1: Emerging Trends in Regulation

"*The Legal Education and Training Review is examining the requirements of legal education and training in the delivery of the regulatory objectives to ensure that the requirements are fit for the future of legal services. But, if we look carefully, at the dominance of large, international legal firms (in corporate legal services); the entrance of supermarkets; or online legal advice, it is clear that the future is already here.*

The Legal Services Act 2007 recognised that the public interest, in its broadest form, required a change in the way that legal services are regulated to ensure that regulation kept up with developments in the market and expectations of consumers. With reform came Regulatory Objectives and a greater focus on consumer needs. Particular challenges remain; access to justice and quality of legal services are intrinsically linked. Regulators must assure standards of competence that are fit for purpose, but how can regulators prescribe and ensure these competence standards are met?

Regulators' toolkits have been extended and improved through the integration of outcomes focused and entity based regulation. Emerging trends suggest an increased reliance on activity-based regulation alongside the traditional reliance on title. As regulation becomes more granulated by activity, regulators will need to consider the appropriate skills both for authorization and continued practice in particular areas. Regulators will be looking to develop an approach that matches risks with standards,

ensuring competence while avoiding imposing unnecessary and counterproductive regulatory burdens."

Abstract 2: Employment projections for the Legal Services sector and their implications

"*The market for legal services is undergoing substantial change in the wake of the Legal Services Act 2007, and in the context of the most uncertain prospects for the UK economy for many years. This presentation reports on research commissioned for LETR developing employment projections for the Legal Services sector in England and Wales, based primarily on official statistics. It extends and updates previous projections produced for Skills for Justice, (SfJ) the Sector Skills Council responsible for justice and community safety in the UK.*

The research attempts to peer into the future and assess in quantitative terms what the prospects for the demand for employment in the sector might look like over the coming decade. It uses a well-established methodology to work out the likely developments in patterns of employment in the sector, given a range of different assumptions about the development of the economy in general and the continuation of existing trends in the sector.

The results are not a prediction of what will necessarily happen, but draw out the implications of these assumptions. They suggest a substantial increase in the overall workforce demand as the economy gradually recovers, with even more substantial demands arising because of replacement needs (replacing those leaving the workforce for reason of retirement, etc). Even without the radical structural changes taking place within the sector, they suggest that there will be significant education and training requirements to equip the workforce with the skills needed to meet the challenges ahead.

The legal services market has faced significant challenges for a number of years to ensure that the quality of legal services is maintained. Little evidence has been collected on its success, but that which has been collected has led to significant questions about the success of regulation in this respect. Going forward, continuing changes in the market and consumer expectations have led to a change in regulatory approach with the desire to ensure an acceptable baseline quality in the provision of all legal services going forward.

Legal services regulation has shifted to an outcomes focus, to better meet the principles of better regulation while ensuring that standards of acceptable competence can be maintained. Regulation will in future be much more concerned about the entity providing the legal services and the skills, systems and processes they employ to deliver the legal services. Regulators, in future are likely to employ a combination of entry standards, for specific activities, alongside on-going assessment to assure that the quality of services offered are maintained."

Key themes from group discussion

2.2 The first part of the discussion was dedicated to gaining a better understanding of the rationale for undertaking workforce projection research as part of the LETR. The objectives for undertaking research of this nature were listed as follows:

- To provide "intelligence" to stakeholders, including individuals, employers, education and training providers
- To assist key actors in making informed decisions regarding education and training, to provide an independent, objective and long-term view of the sector.
- To stimulate policy makers to consider the long-term implications of their decisions.

2.3 Delegates were also interested to learn more about the methodological approach adopted by Wilson's team in developing their projections. It was stated that these projections were reached through mixed methods research applying quantitative econometric models moderated by qualitative evidence.

2.4 Wilson provided a summary of the key findings from his report (the full report, "Briefing Paper 02/2012: Future workforce demand in the Legal Services Sector" is available to download from the LETR website). He stated the following:

- Assuming a gradual recovery of the economy, overall employment levels are set to rise, especially in the broad category of "Legal activities"
- Replacement demands are even more significant, with important implications for education and training
- Implications for detailed occupations are more difficult to judge but data suggest substantial numbers of job openings for Solicitors and some other legal professionals

- There is likely to be some growth for associate professionals, such as paralegals, but that this will be offset by a declining demand for legal secretaries.

2.5 In responding to the questions "*Are regulations barriers or enablers to delivery of the regulatory objectives?"* and "*Should the regulation of education and training be prescribing or enabling?"* group discussion focused on the latter question.

2.6 All participants were keen to stress that regulation of legal education and training provided the "scaffolding" upon which the legal system in England and Wales is based. Concerns were expressed however, that regulation of education should not take place at the expense of the student, and that regulators should be mindful of the impact of any regulations on educational outcomes. It was also noted that the market for recruiting students to study at universities is increasingly complex, with universities concerned to attract the widest range of students possible.

2.7 Regulating through entry requirements and standards were offered as two enabling tools; however, it was noted that since the focus of regulation was increasingly shifting to entity-based models, the responsibility was on entities to ensure that regulations were complied with.

3. New business structures - new training needs?

Presented by James Atkin and Kate Edwards, The Co-operative Legal Services and Karl Chapman, Riverview Law

Outline of session

3.1 This session began with two presentations. The first, delivered by James Atkin and Kate Edwards described the impact of Alternative Business Structures (ABSs) on the delivery of legal services, and the challenges and opportunities these new models present for the system of legal education and training. In particular, the need for modular, outcomes focused and specialist education and training was highlighted. The second, delivered by Karl Chapman, argued for the importance of client driven change within the legal services sector, and in particular, a renewed emphasis on delivery platforms that provide legal advice both in context and in a straightforward manner. Group discussion focused largely on exploring the rationale for developing the model of legal service provision adopted by Cooperative Legal Services (CLS) and discussing the experiences of CLS since entering the market.

Abstract 1: ABSs and the future of Legal Education and Training

"*The well-rehearsed "barriers to entry" to the legal profession remain daunting. Young people, particularly from less privileged backgrounds, face significant challenges to a career in law. The changes to legal services triggered by the Legal Services Act can be a catalyst for enhancing the range of career options and how they are pursued. Advances in education and training are at the heart of this. ABSs will have a profound effect on legal services. Consumers will be empowered by transparency, value, service focus and informed choice. Providers will need to go beyond rhetoric to achieve the customer advocacy necessary to maintain and grow market share. Well-organised and efficient businesses will continue to deliver high quality legal services; practices delivering high quality legal services without following organisational efficiency norms and without niche specialisms will not survive.*

There will be more opportunities for elements of legal services to be provided by people without a 'traditional' education and training. Education and training opportunities should recognise this. Appropriate training and qualifications should be available for a wider variety of customer facing roles. ABSs will present opportunities for internal moves and wider skills development. Modular, outcomes focused, tailored training, which

values quality not quantity, should be developed to support the changes to the sector. This training should be accessible and encourage a broader spectrum of applicants, making a career in the law a realistic and sustainable prospect."

Abstract 2: Customer focused service provision

"*The UK legal profession is going through a period of significant change. The most dramatic change will come not from regulatory change but from customer-driven change. For too long law firms have built their structures from the partners down, it is the wrong way – it has to be from the customer up. It is no longer about providing technical legal advice in isolation. Customers are looking for their problems to be solved. And that means getting the right end-to-end platform which includes combining appropriate technology, strong customer relationships and service, the right levels of management information with straightforward legal advice*"

Key themes from group discussion

3.2 As stated above, the group discussion was framed around questions from delegates curious about the CLS model for legal services. The group was informed that the CLS is an alternative business structure that employs a number of practising solicitors and barristers. It is run like a law firm, and is regulated by the SRA so has the same professional standards as other law firms. The structure varies from that of a high street law firm in that it aims to inspire customer loyalty and generate repeat custom, serving individual's legal needs from the cradle to the grave.

3.3 In answering questions regarding the operational structure of the CLS, delegates were told that a free legal service addresses the lack of current consumer understanding about legal frameworks. CLS does not usually undertake advocacy, except in the case of personal injury. The group was informed of plans to take on legal aid work. At the moment the range of services offered includes; personal injury, probate and wills, but it was stated that CLS employs qualified staff across a range of legal areas. It was reiterated that CLS activities are regulated by the SRA and CILEx and further that CLS is happy to be regulated and will respond to any suggestions provided with the aim of improving standards. There is training for each department, and calls are monitored to ensure quality.

3.4 In response to questions regarding the qualification level of CLS employees, delegates were told that all employees will have a legal background, and solicitors will oversee the work, with paralegals rather than qualified solicitors taking responsibility for routine casework. Personal injury cases will pass through the system and ultimately be handled by one individual. However, if a case reaches court, advocacy will be conducted by a qualified solicitor or barrister. It was stressed that whilst there are sufficient experienced solicitors to cover every area of work, potential conflicts may mean that the CLS will move toward referring work to other firms in the private sector.

3.5 In addressing the rationale for developing an approach that has been described as resembling a "supermarket model", Atkin and Edwards stated the model has been driven by demand from the public. They added that it is envisaged that this structure will impact on both the cost of legal services and but also the pricing structure for clients. Atkin and Edwards argued that one key difference between CLS and high street legal practice is that CLS is likely to be able to undercut the cost of high street services, and may be able to offer some services for free as a loss leader. In response to questions regarding the manner in which fees have been set, it was reported that the pricing structure has been market driven, responding to public demand.

3.6 In responding to concerns about the threat posed by CLS to other firms working in private practice, Atkin stated that the CLS model is not anticipated to be a threat to the existing high street solicitor practice, so long as they are able to compete. It was also stressed that the CLS model is about getting easier access to justice – being able to pick up a telephone and speak to someone who can understand your requirements. Atkin observed that, as they have been able to design the model from scratch, CLS feels that it is able to build the culture of the organisation to reflect the values they wish to convey. There **is** considered to be room for other 'big' commercial players to enter the market, such as Sainsbury's or Marks and Spencer.

3.7 Further questions focused on the level of remuneration received by CLS staff. It was reported that staff are paid a market rate according to their skills, and furthermore that the CLS is competitive and can compete with traditional firms in terms of salaries.

3.8 The discussion closed with questions regarding the experience of CLS since it began to offer legal services (100 days as of 21 July 2012). The business has attracted a broad

range of business and personal clients. It was also stated that clients have been attracted not only by the service, but also the technology that supports it, which CLS has the resources and funding to invest in.

4. Making CPD fit for purpose

Presented by Pamela Henderson, Nottingham Law School and Emily Windsor, Bar Standards Board

Outline of session

4.1 This session began with a joint presentation on the CPD reviews conducted the Bar Standards Board (BSB) and the Solicitors Regulation Authority (SRA). The first part of the session was devoted to disseminating the results of the research, before proceeding to a group discussion which focused on the following two questions:

- To what extent should CPD reflect a balance between individuals and organisational needs?
- Should lawyers be expected to identify their collective needs and then match their CPD to that?

Abstract: Overview of CPD reviews conducted by the BSB and the SRA

The Bar Standards Board and the Solicitors Regulation Authority have both commissioned reviews of their respective Continuing Professional Development frameworks.

In this session we shall:

- *Offer an overview of the key components of the current CPD frameworks for barristers and solicitors and outline the work conducted on the reviews;*
- *Discuss how the current frameworks are functioning 'on the ground', including:*
    - *What motivates individuals to engage in CPD activity;*
    - *What influences their specific choices of CPD activity;*
    - *How far CPD activity is planned, including individual needs and according to career stage;*
    - *How far the effectiveness of CPD activity is assessed.*
- *Explain the main challenges experienced by practitioners under the current CPD frameworks, and the levels at which they occur;*
- *Discuss common and category-focused themes emerging or resulting from the reviews;*
- *Explore models of good practice currently operating within the professions;*
- *Consider how a new CPD framework might function for each profession so as to*

manage risk, protect the public interest and consumers, assure quality and develop standards in the profession; and

- *Identify the potential characteristics of a new CPD framework for each profession.*

Key themes from group discussion

Update on research

4.2 It was reported that there had been a significant response to the BSB's consultation with the barristers' profession on CPD proposals (which took place in summer 2011). It was found that there was support for the key proposals with one exception, the proposal to increase the number of CPD hours to 24 hours per annum. Windsor stated that the BSB is now reviewing the CPD review against the LSB regulatory framework, which proposes that legal regulation should be outcomes driven, that the regulated community should be supervised according to risk and that regulation should ensure compliance and enforcement.

SRA research- overview of current scheme and emergent findings

4.3 Henderson reported on research into the perceived shortcomings of the SRA's current CPD scheme. These had been found to include: that the system was too general in its approach and did not differentiate between organisations of different sizes, that it was overly bureaucratic, too focussed on inputs, expensive, time consuming and lacked sufficient mechanisms for assuring quality.

4.4 Henderson stated that the review would focus on the following areas or themes: understanding the current framework, planning progress, exploring what made for effective CPD, looking at the motivations and influences that drive compliance, and examining the barriers to effective CPD within the current system.

4.5 In conclusion, it was stated that the research would continue to explore areas of reform that had previously not been considered. These included; different systems for different people, a review of the 16 hour rule and the function of accreditation, options for quality assurance, monitoring and enforcement.

BSB research- overview of current scheme and emergent findings

4.6 Windsor started by outlining criticisms of the current scheme, these included; that the focus was on form rather than substance and compliance rather than personal

development, that current CPD activities were inflexible, and that the monitoring systems currently in place for ensuring compliance were overly bureaucratic.

4.7 The BSB review recommended a revised definition of CPD, which included the following key elements: an increase in range of activities that count towards CPD, an increase in the number of required hours of CPD per year to 24, an improvement in record keeping to include planning and reflection combined with simplification of the both the system for enforcement and channels for reporting to the BSB.

4.8 In conclusion, it was stated that the BSB are now rethinking their recommendations in light of both the LETR and the LSB published regulatory framework. Windsor stated that the BSB are now considering whether CPD requirements should be based on inputs or outcomes, altering the manner in which CPD activities are recorded and reflecting on whether the emphasis should be placed on monitoring rather than enforcement.

Group discussion

4.9 The discussion that followed was framed around two key questions: firstly, to what extent should CPD reflect a balance between individual and organisational needs? Secondly, should lawyers be expected to identify their collective needs and then match their CPD to these?

4.10 Henderson revealed that solicitors in smaller firms tend to take a more individual approach and focus their CPD on substantive areas of law; whilst solicitors in larger firms probably take a wider view and will use some of their CPD to develop their soft skills and leadership and management skills in line with the needs of the firm.

4.11 The question was raised whether, as per the BSB's new definition, it was useful for any definition of the requirements of CPD to include reference to the word "relevant".

4.12 It was argued that perhaps a system that incorporated elements of both the SRA's and the BSB's approach would work well. Personal experience at a large regional firm had shown that solicitors were not necessarily very good at complying with their CPD requirements, and that the SRA was not effective at enforcing them. The group queried whether the SRA had ever taken action against anyone who had failed to comply with their CPD requirements. One delegate proposed a flexible system that allowed for

compliance over a two to three year period.

4.13 With regard to the question of whether outcomes-focussed models of CPD were preferable to input models, a representative from Alberta informed the group that his was the only province in Canada that had decided to introduce a pure outcomes-focussed approach to CPD. In making that decision Alberta Law Society had undertaken research across the education sector and could find no evidence or empirical data to support the proposition that *requiring inputs leads to an improvement* [not defined]. Alberta is using a *reflective planning approach* that can be monitored and surveyed. It was advised that the first survey and review would be taking place in late 2012. The outcome-focussed approach was challenged by a number of people, who queried whether trust could really replace a requirement for time and if so on what basis?

4.14 The group discussed the common perception that many lawyers attend any CPD in/around October simply in order to ensure that they 'have their points'. They considered whether private study should be allowed for CPD, and whether certain types of CPD (e.g. teaching) should carry additional weighting so that, for example, four hours teaching could be counted as six hours CPD. The group also reflected on whether there should be any form of mandatory CPD for management skills or diversity. One delegate from New South Wales (NSW) in Australia said that the NSW approach of requiring three hours of mandatory CPD per annum was not successful and tended to encourage a compliance mentality.

Key points from group discussion

4.15 It was considered that CPD has to have practical application to be of benefit and to be effective. The current systems were viewed as reactive, not proactive, and this needs to be changed.

4.16 It was felt that there is a notable lack of trust in the profession on the part of regulators. The accountancy profession has stopped requiring evidence of hours completed and has moved to an outcomes model. Furthermore, the Alberta Model is based on empirical evidence that shows that input systems do not add any benefit. Therefore, they have moved to a 'trust' system rather than an enforced system. The UK should make the leap to an outcomes focused model, which looks at entity, rather than individual compliance.

4.17 There was a question as to whether there are clashes between the aims of educationalists and the perspective of the requirements of the regulator.

4.18 The Law Society of Scotland's new scheme requires all solicitors to keep a plan of their CPD. They provide a planning tool as part of an online system (http://www.lawscot.org.uk/members/membership-and-registrar/cpd), and it was suggested that a similar system should be introduced in England and Wales.

5. Meeting consumer needs?

Presented by Neil Wightman, Legal Services Consumer Panel and Tarnya Wilkins, The Office of Fair Trading

Outline of session

5.1 This session began with two presentations designed to encourage delegates to think about the issues raised by the LETR from a consumer perspective. The first, delivered by Neil Wightman, set out the views of the Legal Services Consumer Panel (LSCP) on the issues raised by the LETR and summarised the panel's suggestions for reform. The second, delivered by Tarnya Wilkins of the Office of Fair Trading (OFT), focused on the issues of competition, regulation, access to justice and consumer welfare.

Abstract 1: Consumer perspectives on the regulation of Legal Education and Training

This presentation discusses the regulation of Legal Education and Training from a consumer perspective. Regulation of the education and training system is vital to protect consumers from quality risks and to ensure they can access services from a diverse profession. Research has demonstrated that individuals, small businesses and some other consumers have a limited ability to judge the technical competence of legal work, and furthermore, that the consequences of poor standards in legal advice can be very serious. Creating and maintaining effective mechanisms for ensuring quality in the provision of legal services is therefore a key challenge facing providers and regulators of legal education and training. This presentation highlights the mandate for change, and proposes some solutions for protecting consumers from the risks posed by poor quality legal advice.

Abstract 2: Competition, regulation and consumer welfare

This presentation will outline emerging thinking on current competition issues and regulation in the legal sector. The presentation will explore issues that affect consumers' access to legal services, including barriers to entry to the profession and effects of ABSs. It will also explore the extent to which these and other factors may contribute to levels of unmet demand for legal services and explores options for change to improve consumer welfare.

Key themes from group discussion

Findings from the LSCP's impact report

5.2 The first part of the discussion explored what it means to be a "consumer of legal services". Wightman proposed the following features of a typical consumer (see Figure 1 below)

Figure 1: Profile of a consumer of legal services

5.3 Wightman then detailed the findings of the Legal Services Consumer Panel's impact report, which demonstrated that consumers:

- Lack power in their dealings with lawyers
- Generally do not shop around (only 22% reported shopping around)
- Approach lawyers with trepidation and lack the confidence to complain
- Cannot find information about the quality of different providers

5.4 In addition the report's key findings highlighted that: only 43% of consumers trust lawyers (as opposed to doctors 80% and teachers 68%), and only 58% of consumers felt that their lawyer offered value for money. Additionally,, 42% of dissatisfied consumers take no action and further, and it had been found that that 1 in 5 wills by solicitors and will-writers are substandard.

The LSCP's views on legal education and training

5.5 It was reported that the panel considered the regulation of the education and training system to be vital to protect consumers from quality risks and to ensure they can access services from a diverse profession

5.6 Wightman stated that the panel is very concerned about the current CPD system, which they believe to be widely discredited. In particular the panel were troubled that:

- Current legal education and training models in England and Wales rely in part on loose competence frameworks
- CPD currently measures input rather than output
- Existing sanctions for failing to carry out continuing professional development are not effective

- The current system of CPD tries to train the typical lawyer, when in reality there is no such thing. The LSCP feel that the legal services market is simply too diverse to sustain the general practitioner training model any longer.

5.7 In concluding, Wightman stated that the panel endorsed the introduction of reaccreditation or revalidation as part of the regulation of CPD. It was reported that the panel felt that this measure would:

- Support career-long learning
- Promote professional development
- Enhance consumer confidence and bring the profession into line with consumer perceptions of the requirements expected of lawyers
- Allow practitioners licensed in high-risk areas to adopt modular or tiered approaches to CPD.

Competition Issues in legal services

5.8 Wilkins highlighted the competition issues currently affecting consumer access to legal services. These included, the emergence of ABSs and barriers to entering the profession, including education and training.

5.9 Wilkins stated that the primary goal of the OFT is to make markets work well for consumers. Markets work well when consumers are well informed and confident, this leads to increased competition which confers reciprocal benefits on firms as they are incentivised to meet consumer demand in efficient and innovative ways. As well as empowering consumers, appropriate deregulation and liberalisation of markets is, in the OFT's view, critical to enhancing competition.

5.10 Wilkins praised ABS's as innovative business models that are responding to and driven by consumer demand. She predicted that, in ten years time, legal services would be made available through more multi-disciplinary business models 'one-stop' shops.

5.11 Wilkins argued that increased competition was in the interests of consumers of legal services. She stated that whilst it was important to mandate a level of education and training necessary to ensure adequate protection of consumers, prescribing excessive entry qualifications and professional development requirements operate to restrict the numbers of individuals entering the profession, to the detriment of the sector and the consumer.

6. Transforming workplace learning

Presented by Julie Brannan, Oxford Brookes University and Mark Protherough, Institute of Chartered Accountants of England and Wales

Outline of session

6.1 This session was aimed at exploring the potential for embracing work based learning models of education and training in the context of legal education.

6.2 The session began with two presentations; the first, delivered by Julie Brannan provided delegates with information about the SRA's work based learning pilot, and discussed the benefits and risks involved in moving to this form of education and assessment. The second presentation, led by Mark Protherough, discussed developments in education and training within the Accountancy profession, with a particular focus on moves towards apprenticeships and other qualification pathways that do not require candidates to have obtained a university degree.

Abstract 1: SRA and work based learning

In 2008, the SRA established a work based learning pilot to develop a method for assuring the competence of qualifying solicitors and test whether it could be quality assured and was consistent and reliable; and test a route to qualification which did not depend on a training contract. The pilot was designed to address concerns over the consistency of the training contract and whether the training contract was itself a barrier to access. The pilot required its participants (both paralegals and trainee solicitors) to complete a period of assessed legal experience prior to qualification.

This presentation will consider (a) whether the chosen model was effective at assuring the competence of qualifying solicitors; (b) its impact on the training contract as a period of learning; and (c) whether changing the regulation of the period of work based learning could have a part to play in enhancing fair access to the profession. I will argue that an incremental competency framework needs to be developed which captures the skills, knowledge and attributes for professional legal practice and that the use of an e-portfolio as a reflective learning log coupled with learning conversations with a trained supervisor or reviewer could provide a rigorous mechanism for assuring professional competence and increase the quality of the period of work based learning.

Abstract 2:

The Institute of Chartered Accountants in England and Wales is a leading professional accounting body, recognised under the UK Companies Act. Its students train in accountancy practices (e.g. PwC, Deloitte), major corporates (e.g. Barclays), and the public sector (e.g. National Audit Office).

For the past 20 years the vast majority of ICAEW's trainees have been graduates. Now the standard route to becoming a Chartered Accountant is that they will join an employer on graduation. Their employer will support them through the professional qualification, and they will study part-time while working full-time.

The presentation will examine the current training processes and requirements to become a member of the ICAEW, including work-place skills and experience, and ethical requirements. It will focus on the recent significant changes we have seen in the recruitment and training of students for Chartered Accountancy and look at the key drivers for these changes. The specific changes considered will be:

- *the development of employer led bespoke degrees, integrating technician and professional qualifications, delivered outside the traditional 3 or 4 year full-time degree programmes;*
- *the development of "open" part-time degrees, integrating technician and professional qualifications;*
- *the development of school-leaver programmes;*
- *the development of Higher Apprenticeships in Professional Services.*

Key themes from group discussion

The work based learning pilot- development, outcomes and evaluating success

6.3 Brannan informed the group that the work based learning pilot was developed to address perceived issues with the current system of education and training, these included: that only trainees/CILEX can qualify as solicitors, that paralegals and others doing legal work of an equivalent standard cannot qualify and that this led to unfairness in the treatment of legal employees.

6.4 Brannan then provided an overview of the findings of the pilot. These included: the portfolio was an effective mechanism for recording progress and identifying trainees

who were underperforming, that it was a rigorous and reliable method of assessing progress, and that it enabled employers to assess the competence of trainees more accurately and effectively. In addition, Brannan informed delegates that one of the benefits, (although not an objective of the pilot) was that candidates emerged as more reflective practitioners and that they took more responsibility for their own development

6.5 Brannan also detailed the potential problems with work based learning that the pilot identified. Brannan argued that the learning outcomes needed to be streamlined and that some were hard to demonstrate. This was exacerbated by a lack of level descriptors for the outcomes. In addition, Brannan reported that this method of training led to an increased workload and administrative burden. In terms of substantive skills deficiencies identified by the pilot, Brannan stated that skills in advocacy and client interviewing were problematic for some candidates.

Background of ICAEW and the qualification process for chartered accountants

6.6 Protherough provided delegates with an overview of the typical pattern of qualification for chartered accountants.. There are computer-based assessments for first stage of professional exams, and the student must do technical work experience in 1 of 6 key technical areas. Overall, the focus is on professional skills.

6.7 Protherough stated that the system of education and training has undergone significant changes in recent years, resulting in the development of additional routes to qualification. Candidates are now able to take professional exams without a training agreement. Protherough reported that employers want previous qualifications and experience to be recognised. There are more integrated degree programmes that are employer led, e.g. six years combined degree, ACA qualification and work experience. Protherough argued that the collection of exit and progression data will be important for these new routes, particularly in respect of diversity.

6.8 Protherough also discussed the development of Accountancy Higher Apprenticeships at Levels 4 and 5. These have been funded by the government in conjunction with Price Waterhouse Coopers. After eighteen months individuals are awarded a higher apprenticeship and can use this to go on to an accountancy qualification. Funding for these apprenticeships is subsided by the government, and this change has resulted in a

move away from a “graduate only” profession. Protherough reported that to date there has been limited resistance from the employers to a move away from a graduate only profession, and that employers’ support is key to the success of apprenticeship programmes.

6.9 Delegates suggested that due to concerns about the level of business risk involved, the solicitors’ profession would not embrace a move to a non-graduate qualification system. In addition, it was noted that large law firms may consider such a model as questionable because they often want trainees to be fee earning and therefore would not endorse their need to attend university or college for extended periods as part of their training. The group was more positive about the prospect of combining professional training with the work-based learning phase of the qualification route.

7. Regulating and training lawyers and doctors: a view from Europe

Presented by Dr Julian Lonbay, Birmingham Law School and Professor Trudie Roberts, Leeds Institute of Medical Education

Outline of session

7.1 This session was aimed at contextualising the work of the LETR with reference to different systems of legal regulation internationally, and a different but comparable professional regulatory system in the UK.

7.2 The session began with two presentations; the first, delivered by Dr Julian Lonbay explored the regulation of legal education and training from a comparative perspective, identifying and evaluating practice from across Europe. The second presentation, led by Professor Trudie Roberts, contrasted the experience of and approaches to regulation adopted by the GMC, and the challenges and opportunities facing regulators of the medical profession.

Abstract 1: European perspectives on the regulation of lawyers

The modes of authorisation, and delivery of, legal education and training, and the regulation of legal services providers, varies considerably amongst the thirty one Member States of the European Economic Area. On top of this cacophony of national (and sub-national) authorisation schemes and attendant regulatory regimes are sets of European Union regulatory norms that bind all the national professions and the Member States. There is also a European non-law dimension that impacts, softly, on the delivery of education and training for lawyers (and others).

The presentation will outline key features of a small selection of the existing national structures (out of the 31 countries) that regulate the education and training of legal service providers and the delivery of legal services themselves. It will look at the liberalisation of the delivery of legal services according to EU law and will examine how several national regimes have sought to assure competence whilst facilitating the cross border delivery of legal service providers. Finally it will look at the issue of activity based regulation in the context of EU rules on access to partial professional training and partial access to professional activities.

Key Questions:

- *How might the European Single Market impact on the re-structuring of the*

regulation and training of legal service providers in England and Wales?

- *Are there European limits to reform?*
- *Is there scope for developing common rules relating to training for legal service providers?*

Abstract 2: Regulating medical education- a comparative perspective

This presentation provides an overview of the regulation of medical education and training within the UK and how this matches, or does not match, the regulation of students and doctors internationally. It will also examine the issues around the migration of professionals across international and regulatory boundaries and the problems this poses in assuring professional competence to ensure patient safety.

Key themes from group discussion

Ease of mobility between legal jurisdictions in Europe

7.3 Lonbay opened with the observation that legal systems and regulation vary across the 31 member states of the EU. Lonbay reported that whilst the European Directive means that lawyers can move freely throughout the EU, lawyers are 'complicated beasts', who when moving to 'a new pasture' encounter very different jurisdictions and practices. In essence, Lonbay stated, their skills are transferable but their knowledge is not.

7.4 Lonbay detailed the differing levels of regulation that currently operate across the EU. He stated that France, Germany and Greece are amongst the European countries with the most strict regulatory systems, whilst Norway and Sweden are much more liberal in their approach to regulation. The UK and Ireland are somewhere in between these two extremes, with some protected titles for professionals delivering reserved activities.

7.5 Lonbay then outlined the legislation and EU processes that impact on the movement of lawyers across EU states. These included the Sorbonne, Bologna and Lisbon processes (defined as “soft law”) and Internal (hard law) EU legislation including:

- Directive 2005/36/EC which deals with the free movement of persons and services
- The Establishment and Services Directives

- Case law from the European Court of Justice

- Competition Law

7.6 The 'Morgenbesser Route' to cross-border legal practice was described and identified as a 'big disrupter'. According to Lonbay, some individuals have sought to circumvent the more 'exacting' qualification routes required by some EU States by gaining qualifications and accreditation elsewhere and then applying for admission through the 'Morgenbesser Route'. For example, Lonbay stated, an Austrian National went to Spain and homologated his qualifications there before returning to Austria and progressing from there to practice in Germany.

7.7 The regulation of Registered Foreign Lawyers was discussed by the group. It was reported that Registered Foreign Lawyers are regulated in England and Wales when they have not undertaken QLTS and are, in essence 'only' practising their own state's law. This can lead to conflicts of ethics.

7.8 Delegates debated the question: Who looks after consumer interests when European lawyers operate in another jurisdiction? Lonbay stated that this remains a grey area, but that consumer risk was mitigated by the fact that these lawyers are generally operating at high levels of specialism within large commercial organisations, and as such it might be said that the 'consumer' in these cases is buying a known level of expertise with minimal risk. However, it was also acknowledged that there may be an unknown number of European lawyers delivering services where consumers are unaware of their regulatory responsibilities.

The regulation of foreign doctors

7.9 This presentation examined the regulation of foreign doctors, but also encompassed issues around fitness to practise and revalidation of doctors both in the UK and Europe.

7.10 Roberts informed the group that all doctors wanting to practice in the UK must be licensed with the General Medical Council (GMC), and furthermore, that there are currently 218,000 licensed doctors in the UK. Within this group:

- 63% are from the UK

- 28% are from international areas outside of the EEA

- 9% from the European Economic Area (this is anticipated to increase due to the economic downturn especially since Italy and Spain have an excess of doctors).

7.11 Roberts then presented figures that demonstrated the number of 'fitness to practise' complaints that were received by the GMC in 2009 and the outcomes from these complaints. In 2009 there were 5773 complaints, and 10% of these related to EEA holders of a Primary Medical Qualification (PMQ).

7.12 Roberts highlighted that doctors were more likely to be referred to the GMC if they were:

- Male

- Held a Primary Medical Qualification from overseas

- Worked as a General Practitioner

- Had been in practice for a long time.

7.13 Roberts reported that further research in this area was needed to understand why individuals with these characteristics were overrepresented within the fitness to practise procedure.

Comparing regulation across Europe

7.14 Roberts stated that the quality assurance of doctors differs across Europe with some states adopting centralised structures similar to the GMC whilst others utilised localised and decentralised approaches.

7.15 Roberts outlined the current debates regarding the introduction of a 'national exam' in the UK, and there is some discussion of this in the GMC's publication 'Tomorrow's Doctors'. It was reported that UK universities do not want a national exam, as they fear that this will result in a culture of 'teaching to the assessment'. However, the government is looking at this as a potential way to standardise regulation.

7.16 The group raised a question whether 'fitness to practise' hearings look back at the doctors' original medical school to see if there are emerging patterns. Roberts advised that this would be difficult to trace, especially as doctors have generally been practising for a long time when they are subject to the fitness to practise panel. Within this time, Roberts argued, much will have changed about their original teaching school. However medical schools can be held to account and Roberts gave examples of situations where the GMC has not registered recently qualified medical graduates who had been passed by their medical schools but who the GMC deemed not fit for practice.

7.17 The English language competence of EEA entrants was discussed at length. Roberts stated that the GMC is not allowed to test for this and not allowed to use IELTS. However, a potential employer can use English language tests if all candidates are subject to these and the tests are psychometrically rigorous. IELTS is applied to entrants from outside the EEA.

7.18 The session concluded with a discussion of the revalidation of doctors as a significant area of development and debate both nationally and internationally. Roberts provided examples of the way in which revalidation is applied across Europe:

- Portugal - no requirements
- Belgium - voluntary revalidation with some peer review and financial incentives
- Germany - compulsory revalidation and financial penalties for not complying
- Netherlands – compulsory
- Spain - introducing voluntary procedures

7.19 The group suggested that if revalidation is introduced in the UK, the impact of this measure will need to be evaluated.

8. Regulation and innovation at the academic stage

Presented by Professor Stuart Bell, York Law School and Dr Rachael Field, Queensland University of Technology

Outline of session

8.1 This session was designed to explore contrasting approaches to the role of regulation in enabling or impeding innovation at the academic stage of legal education.

8.2 The session began with two presentations; the first, delivered by Professor Stuart Bell argued that regulation is not an impediment to innovation, and that the onus should be placed on Universities to deliver courses that are innovative in the teaching methods employed. The second presentation, led by Dr Rachael Field, described how the regulatory framework recently introduced in Australia had prompted a new discourse which aimed to study and ameliorate the negative, stress-induced psychological consequences that affect many who study and practice law. As such, regulation may be considered to be a positive tool, providing opportunities for providing a better and more holistic educational experience for students.

Abstract 1: Regulation and innovation in curriculum design

The context for the paper was the development of a new curriculum within a newly established Law School at the University of York. York Law School was set up in 2007 with an aim of being distinctive and innovative in curriculum design and delivery. A key element of this is a fully integrated 'core' curriculum using Problem Based Learning as the main mode of delivery. Legal and generic transferable skills and a clear understanding of law in socio-legal and normative contexts are also part of that integrated curriculum. We anticipate moving to a 'spiral' curriculum where all the core subjects and integrated skills are covered across all three years in a scaffolded-design.

It is claimed:

- *Professional regulation was and is not a major impediment to designing and delivering a different type of undergraduate curriculum (with a few caveats).*
- *Innovation in curriculum design and delivery is resource intensive - and this is not fully recognised by those in HE (typically within management) who view Law as a low cost/unit activity.*

- *Innovation and creativity in design and delivery requires preconceptions of subject boundaries to be reconsidered and much greater collaboration with the professional/vocational sector and other disciplines. This requires time and greater investment to realise a shift away from traditional modes of design and delivery.*
- *Experience suggests that the professions would welcome innovation and creativity within the academic context. The challenges are much more internal and within the HE sector – scale, path dependency and bulk delivery modes do not make it easy to design flexible, innovative and creative programmes.*

Abstract 2: Assuring graduate competence, the Australian experience

This paper discusses recent developments in Australian legal education that have responded to the introduction of a Higher Education Quality and Regulatory Framework, including the establishment of a Tertiary Education Quality and Standards Agency. The paper focuses on two particular developments relevant to the role of legal education in assuring graduate competence in a changing legal services market. First, the paper discusses a recent project led by Professors Sally Kift and Mark Israel, Law Discipline Scholars of the Australian Learning and Teaching Council, which produced a set of six Threshold Learning Outcomes for Law intended to represent what a contemporary law graduate is expected to know, understand and be able to do.

Whilst legal knowledge is presented as the first TLO, the remaining five TLOs emphasise the importance of law graduate competence in ethics and professional responsibility, thinking skills, research skills, communication and collaboration skills, and self-management skills. These TLOs are likely to be used by the Tertiary Education Quality and Standards Agency in future auditing processes of the standards of Australian legal education curricula. Second, building on the importance of the sixth TLO – self-management skills - the paper discusses a recent movement in Australian legal education to address the high levels of psychological distress being experienced by law students and members of the legal profession. The paper considers some of the recent efforts in Australian law schools to better prepare competent, adaptable, independent and resilient graduates for entry both into the legal profession and into the wider world of work. An important contextual issue for the discussion in this paper is

that in Australia, fewer than 50% of law graduates are employed in the legal profession 4 months after leaving university.

Key themes from group discussion

Constraining curriculum innovation in the UK- who is responsible?

8.3 Stuart Bell described the York programme as 'non-traditional' rather than innovative. He asserted that constraints that appear in developing the curriculum are often placed there by higher education itself rather than any external agency, such as a regulator. It was asserted that universities in general are not prepared to invest or innovate – prefering to stick with the status quo.

8.4 Bell argued that it should be the universities and law schools that should take responsibility for innovation. They need to take more of a lead in debates around the role and function of legal education vis-a-vis the profession. Experience shows that the legal profession has 'gone its merry way' regardless of what is happening in law schools. Bell contended that the reality is that regulation actually plays no part in constraining what happens within the academic stage of legal education.

8.5 Bell stated that through its problem-based learning model, York Law School emphasises the importance of collaboration, open source learning and sharing of resources. Bell also argued that it was necessary to take risks sometimes – things won't always work first time but are worth pursuing. He emphasised that universities have settled for the idea that law is cheap to deliver – this needs to be challenged to ensure proper investment in development of law programmes. In responding to questions about whether he would modify any elements of the course at York, Bell stated that the only change he would make in designing the course would be to scrap the exam, a mode of assessment that actually does not fit with the Problem Based Learning model.

The Australian perspective: differences in systems of legal education and training

8.6 Rachael Field noted the comparative lack of plurality in routes to qualification in Australia: in Australia the undergraduate degree is the only pathway to becoming a lawyer. Field stated that once an individual has a degree, they undertake a legal practice course of between 6-9 months. They are then admitted and go into practice. There is little workplace training. Field reported that there is a problem of oversupply of law graduates in Australia, too. Greater emphasis is placed upon doing law with another

subject (double degree). Field reported that the development of the postgraduate law degree – the 'JD' in Australia is a response to the market.

Threshold learning outcomes, psychological well-being and the development of competence

8.7 Field listed the Threshold Learning Outcomes (TLOs) mandated by the Higher Education Quality and Regulatory Framework as: legal knowledge, ethics/professional responsibility, thinking skills, research skills, communication/collaboration, self-management.

8.8 It was reported that Australian law schools are already implementing these TLOs. Universities are also developing graduate capability statements. The Brain and Mind Institute (2009) found a third of law students had elevated levels of stress, similar to findings once they have entered the profession. Field advanced the argument that there is a need to address the issue of stress through the curriculum – particularly in the first year when stress is particularly high. She also reported that research had suggested that 'thinking like a lawyer' is both dehumanising and exacerbates feelings of stress.

The role of law in the academy

8.9 The group debated whether they accepted the argument advanced by Bell that there is very little constraint on developing the law curriculum where there is a will to do so. Many expressed the opinion that there were significant restraints in relation to assessment through examination. Several individuals commented that the regulator helps to 'protect' the law degree from budget constraints imposed by university administration for example, through setting guidelines on the provision of library resources. In relation to the core subjects Stuart Bell argued that there is space for innovation in the way in which these subjects are taught, even if the content is prescribed.

8.10 Representatives from law firms expressed enthusiasm for an educational model that provided a breadth of knowledge in combination with teaching skills in legal research and critical thinking. Practitioners stated that those who had taken the GDL route lagged behind their contemporaries who had taken a law degree in relation to legal knowledge. It was also observed that the knowledge and skill requirements of large firms were likely to be different to the knowledge/skills valued in smaller practices.

8.11 The group debated the merits of strategies to encourage law students to adapt their communication style and write effectively. Rachael Field explained that in Australia they teach different writing styles in the first year in the context of real world or authentic scenarios – memos etc. - to begin to introduce students to the 'legal world'. She felt this was appropriate in an academic context although these skills would need to be developed and enhanced at the vocational stage. Stuart Bell commented that because law is not viewed as a vocational degree here such skills would have to be carefully packaged to make them appropriate to a 'liberal arts' degree. Representatives from law firms agreed that the undergraduate curriculum should not focus on skills such as letter writing where to do so would distract from the accumulation of substantive knowledge. Other delegates provided examples of undergraduate law programmes where 'vocational' skills are integrated into 'knowledge led' courses e.g. at Central Lancashire.

8.12 The emphasis that should be accorded to ethics was then discussed. Field informed the group that ethics is taught in the first year in Australia, but is broader than just professional rules. One participant argued that Outcomes Focused Regulation militates against the development and maintenance of ethical standards because of the focus on ends justifying means. It was agreed that students often need help understanding the 'grey' areas of ethics and the indeterminate zone, and delegates agreed that students and teachers should acknowledge there is not always a clear answer. The group felt that there was a need to consider with students what it means to be professional, and to acknowledge that people cannot in essence be made ethical, only aware of ethical standards.

8.13 The discussion concluded with participants debating the merits of the Graduate Diploma in Law (GDL). It was stated that the GDL is heavily regulated because it is overseen by the profession and does not have university or QAA structures in place to safeguard standards. It was felt that this may lead to a reduction in recruitment if students are not of good quality, and that many may need additional support to catch-up, which is not really an option for small and medium size firms. Participants cautioned against the risk of a two-tier profession emerging – those firms who can afford to train their workforce and those who cannot.

9. Valuing diversity: creating opportunity

Presented by Rosy Emodi, Society of Black Lawyers and Jane Masey, Allen and Ovary

Outline of session

9.1 This session was designed to explore the barriers to diversity that currently exist within the legal profession, and to encourage delegates to explore and evaluate different alternatives for creating opportunity within and improving access to the profession.

9.2 The session began with two presentations; although only one abstract was provided. The first presentation, delivered by Rosy Emodi of the Society of Black Lawyers, responded to the issues raised in the LETR Discussion paper on diversity (Discussion Paper 02/2011:Equality, diversity and social mobility) and discussed strategies and opportunities for strengthening equality and diversity within the legal profession, including the merits of affirmative action. The second presentation, led by Jane Masey of Allen and Ovary (see abstract 1 below) , provided information about a scheme that aims to address concerns about access to the profession through changing the way in which work experience is provided by firms.

Abstract 1: PRIME and diversity and social mobility within the legal profession

The presentation by Jane Masey will explore PRIME, the work experience commitment from the legal profession, which was launched by 23 leading law firms in September 2011.

Young people's ability to gain fair access to the same opportunities in life – irrespective of their background – has deteriorated in the UK in recent decades, particularly in the world of work. In the legal profession, some evidence suggests it is now harder for young people from non-privileged backgrounds to become a lawyer than it was 30 years ago. Research suggests that other professions, such as medicine and the media, are also dominated by those from more privileged backgrounds.

It is believed that one reason for this fall in social mobility is that less privileged young people do not have the same access to quality work experience as their more privileged peers, who can often call on family contacts when taking their first steps in working life. This makes it difficult for them to test what professional career paths are open to them, or to begin honing their workplace skills. A likely consequence of this is that young talented people simply think certain career choices are not open to them.

Over 80 of the UK's leading law firms are now committed to provide fair access to quality work experience for less privileged students through PRIME, which ensures that work experience programmes meet minimum standards in relation to who they reach and what they consist of.

In this part of the session delegates will explore what PRIME is and discuss what impact it could have on improving the diversity of the legal profession.

Key themes from group discussion

9.3 The session began with a presentation from Rosy Emodi which sought to provide some background information on diversity within the legal profession. Emodi highlighted that:

- BME students accounted for 31.2% of students studying for a law degree in 2009/10 – they are significantly over-represented at law school as compared to their white counterparts.
- A Bar Council report comparing the backgrounds of Pupillage Portal applicants in 2009 and registered pupils in 2011 found that whilst 675 (26%) of pupillage applications came from BME applicants in 2009 compared to 1,918 (74%) of white applicants, , only 58 (14.3%) registered pupils in 2010/11 were BME and 349 (85.7%) were white.
- Law Society statistics about BME City lawyers shows a relative over-representation of lawyers from Asian and Chinese backgrounds (who represent 4.4% and 1.2% respectively of all City lawyers) and an under-representation of black (African and/or Caribbean) lawyers (constitute 1.2% of all City lawyers).

The political economy of legal education and training

9.4 Emodi argued that legal education and training is 'big business' and that attention should be given to exploring the true value of legal education and training to the institutions that offer a myriad of courses. She questioned whether, in light of the sale of the College of Law to private equity firm Montagu Private Equity for £200 million (2012), for many providers, legal education was about profit rather than students welfare. Emodi also expressed concerns that the fragmentation of the market for legal education, an example of which includes moves by firms to set their own training requirements such as "legal MBA's", would impact negatively on diversity within and access to the profession.

9.5 Emodi also highlighted that, whilst diversity initiatives had typically concentrated on law firms and the independent bar – and there were also newer players (CILEx) and of course, old ones, including:

- Local authorities
- Trade unions
- In-house counsel / companies
- Barristers' clerks
- Costs lawyers
- Patent attorneys
- Academia
- Government Legal Service
- Crown Prosecution Service
- Magistrates' clerks
- Law centres & CABx

The impact of existing diversity initiatives

9.6 Emodi argued that diversity initiatives such as PRIME and the Pegasus Access Scheme, have a contribution to make in offering quality work experience opportunities, but that the impact of most diversity initiatives will be limited in terms of achieving the large-scale and systemic change that is required.

In discussing the Law Society Diversity and Inclusion Charter, Emodi stated that the SRA has 15 firms on its prosecuting panel of which 5 firms are signatories to the Charter. In total, these 5 firms employ approximately 1009 solicitors – 46 (5%) Asian and 6 (1%) were black African or Caribbean. Emodi argued that signing up to a 'diversity charter' means nothing if the workforce does not reflect the stated commitment to diversity and inclusion.

Plans for the future

9.7 Emodi argued that transparency is key to the effectiveness of future diversity initiatives, mandatory monitoring and impact assessments of new developments is essential. To ensure progress, there must be better and tighter regulation of legal education and training.

9.8 Emodi also advocated the development of a Law School Diversity & Employability Index (LS-DEX). In addition, Emodi argued that the legal 'industry' is wider than just the legal 'profession'. A more holistic and inclusive perspective needs to be taken, in particular in

relation to the creation of additional training opportunities, Emodi asserted that law firms and chambers are not the only places to train our future lawyers. Emodi closed by stressing that more attention needed to be given to proving the business case for diversity within the profession.

PRIME: Achieving fair access to quality work experience in the legal profession

9.9 Jane Masey began by explaining the factors that had led to the development of PRIME. Masey stated that the programme had been developed in response to research that shows that the professions are harder to access than 30 years ago, in particular, the challenges to accessing legal work experience that may face individuals without contacts within the legal profession. In addition, the focus of successive governments on social mobility had drawn attention to the general lack of careers advice, aspiration and opportunities to develop key skills afforded to individuals from disadvantaged backgrounds.

What is PRIME?

9.10 Masey then presented an overview of the PRIME programme. She reported that PRIME offers a way to ensure fair and equal access to quality work experience in the legal profession. In addition, PRIME provides support for talented school-age students from less privileged backgrounds who might not otherwise have the opportunity to gain work experience. The programme sets minimum standards that participating firms must adhere to. These standards relate to the type of students that are selected, and the number of places that are offered. Masey reported that PRIME has received support from the Law Societies of England and Wales, Northern Ireland and Scotland, and that from 23 founder firms the scheme has now expanded to include over 80 signatories.

9.11 Masey then provided the group with further information regarding the commitment required of firms who participate in the scheme. Firms who wish to join the scheme must offer work experience that provides: 30-35 hours of contact time per individual, insight, inspiration and information about careers in the legal profession and the wider business world, and the opportunity to develop key employability skills. Finally, firms are required to offer a number of placements that is not less than 50% of the number of training contracts offered each year.

Affirmative Action?

9.12 The group discussed the merits of introducing affirmative action as a means of addressing the problem of diversity within the legal profession. Emodi stated that statistics show that black and minority ethnic (BME) are over represented in legal education and attaining in qualifications, which indicates the problem is not one of academic merit. She argued that the problem appears to be the rate of attrition in terms of the proportion of individuals from BME backgrounds recruited for the top jobs. In order to address diversity a suggestion was made that the UK should consider looking at the USA and the ways they addressed issues post-segregation, including perhaps, adopting affirmative action.

Strategies for the future

9.13 Delegates agreed that research is necessary to evaluate the recruitment and progress of black female lawyers in the legal education system and within firms. Law firms require robust data to provide the evidence base from which to make informed decisions about recruitment. Research data is required to support law firms in making business decisions.

9.14 Emodi argued that, whilst it is acknowledged there is a clear problem with diversity within law firms, it is not clear why this is happening. It is complex, and driven by a whole range of different factors. The issue of race is probably one of the most uncomfortable dialogues that law firms can have. Further to this, Emodi stated that whilst firms have become accustomed to examining gender issues, they are not yet comfortable talking about race. There is data to support the argument for gender equality and this needs to be replicated in the context of racial equality.

Why is a scheme like PRIME needed?

9.15 Masey informed the group that the current method of arranging work experience for school students in law firms is through schools approaching law firms. The extent to which schools are successful in doing this varies, and is mediated by the background of the pupils within those schools. An alternative route, Masey stated, is where parents, friends and family help to get the student a placement because they either work for a law firm themselves or know someone that does. This, Masey argues limits the profile

of those students accessing work experience to young people who already have a network of people working in the legal profession.

Are there any disadvantages to participating in PRIME?

9.16 Delegates enquired as to whether there were any disadvantages for students associated with participating in PRIME. In particular, concerns were raised as to whether an association with PRIME might stigmatise students. Masey argued that PRIME is not necessarily viewed as being a disadvantage to students if it is put on their CV. Masey further contended that law firms must challenge any preconceptions they may have if they want to help disadvantaged people and find the most talented potential lawyers.

10. New professions, para-professions and apprentices: challenges and opportunities

Presented by Diane Burleigh, CILEx and Charles Welsh, Skills for Justice

Outline of session

10.1 This session was designed for delegates to learn more about different routes into the sector, and to explore the challenges and opportunities these routes present for employers, students and the profession as a whole.

10.2 The session began with two presentations; the first, delivered by Diane Burleigh, provided delegates with some key facts about the CILEx route to qualification. The second presentation, led by Charles Welsh, was aimed at informing delegates about the work of Skills for Justice in creating new standards, qualifications and careers in the legal sector. In addition, the presentation sought to explore the concept of "competence" in relation to those individuals performing a paralegal function. Whilst abstracts for these presentations were not provided, slides from Charles Welsh's presentation can be accessed from the LETR website

Summary of Presentation 1: The CILEx route to qualification

The CILEx route produces lawyers through a work based education and training route, with 75,000 individuals currently participating in this route. Qualifications offered through CILEX are regulated through Ofqual. The pathway to qualification that CILEx offers to its members is responsive to change; CILEx keeps a close eye on the SRA to see how regulations are developing to see where there are possible exemptions from the training contract for CILEx members. CILEx has a highly diverse membership with 80% of members not having a parent who went to university and over 15% black, minority and ethnic members. 80% of CILEx members are female. The majority of CILEx members are employed in small and medium sized firms with very few in the 'top 100' by turnover.

Summary of Presentation 2: Legal Apprenticeships

This presentation discussed the role and activities of Skills for Justice (SfJ) in relation to the development of a paralegal apprenticeship route. The presentation began with an overview of Sector Skills Councils (SSCs) in the UK: fifteen SSCs are currently in operation in the UK. SfJ's occupational areas and responsibilities include every part of the justice system.

SfJ develops and implements the National Occupational Standards (NOS) for the legal sector; it is the only body able to do this. This is the statutory function of the SSC along with undertaking quality assurance of Apprenticeships and gathering labour market intelligence about sector needs. The UK Commission for Employment and Skills (UKCES) asked Skills for Justice to take on the legal services occupational 'footprint' in 2012.

SfJ recognised that legal services are changing with firms recruiting at different skills levels. For example, labour market intelligence revealed that law firms in the North West of England and Yorkshire were saying that they were recruiting apprentices. Skills for Justice was required to explore this in further detail as the legal services sector did not have an Apprenticeship framework on the NOS for legal services. Skills for Justice deduced that the firms were undertaking different ways of doing business using paralegals.

Since December 2011, Skills for Justice has developed a framework of standards for legal services in conjunction with CILEx and the Law Society. Legal Practice Course learning outcomes have been used as part of this. There are three overarching aspects of this framework:

- professional ethics
- supporting clients
- business skills

A consultation on this framework closed on 6th August 2012. SfJ aims to codify legal services practice into the NOS to access funding for apprenticeships. In doing this, they are looking at models of best practice that relate to the existing practice of employers.

Key themes from group discussion

The CILEx route to qualification and 'paralegals'

10.3 The term 'paralegal' was discussed in relation to a reference in an LETR discussion paper which stated that there are 200,000 paralegals working in England and Wales. In general it was felt that the title infers 'a not finished lawyer'. Burley stated that members of CILEx dislike the term 'paralegal', preferring 'legal assistant'.

10.4 The question was raised as to why not all CILEx members progress to solicitor level. Whilst it was noted that this was an area requiring further research, it was noted that anecdotal evidence suggested that those who do not progress are happy with the firm that they work with and do not want to undertake further qualifications or shift roles.

10.5 In response to questions about the future demand for paralegals, Burley predicted that there will be an increase in the number of paralegal roles as tasks are broken down and aligned with separate occupations. Burley stated that this is a new era of redefinition of professional roles, and previously established boundaries between roles are shifting. However, Burley added, it should be recognised that there is nothing new about paralegals; many law firms 'hid' both the fact that they hired paralegals and that certain roles and tasks were routinely undertaken by 'unqualified' staff.

Apprenticeships, qualifications and the new framework

10.6 In response to questions from delegates, Welsh stated that a Nationally-Funded Apprenticeship should include the following components:

- A vocational qualification
- A knowledge based/technical certificate
- The opportunity to develop personal learning and thinking skills
- All of the above learning needs to be undertaken in the context of a paid job

10.7 Delegates discussed the levels or remuneration offered for apprentices and the way in which this may impact on the existing internship culture. Welsh advised that Kennedys is seeking to employ Level 2 Apprentices (candidates with good A levels, i.e. already possessing L2 & L3 qualifications) at a starting salary of £18,000. Further to this, Welsh stated that he anticipated that the apprenticeship scheme would attract high calibre employers and candidates where pay significantly above the apprenticeship minimum wage would be the norm.

10.8 Some delegates raised concerns regarding the impact of this scheme on existing LPC candidates without training contracts. It was suggested that these candidates may be displaced from the paralegal roles that had previously provided a route into a training contract by the new scheme. The need for more high quality careers advice for young people to enable them to examine and decide between the different routes into a career in legal services was felt to be important.

Apprenticeships as a route to qualification?

10.9 Welsh stated that there were on-going discussions with the Law Society and other steering group members about whether the SRA could build regulatory bridges across

new qualifications that would allow entry of apprentices into the solicitor profession. The question of whether this route can be used to become a lawyer is a matter for the regulators. It as noted that QLTS at Level 7 is a possible passport into the system. Also, Welsh stated that if a firm has Investors in People (IiP) accreditation, this can often be a good indicator of their willingness and ability to employ and support an apprentice (although there was no evidence given to show why this is the case). It was discussed that this route may be a good way to develop and accredit the workforce in the legal advice sector, but it should be stressed that the *apprentice has to be employed and paid accordingly.*

11. Summary of discussion of potential hypothetical scenarios for the future regulation of education and training

Outline of session

11.1 Delegates were provided with a paper prepared by the LETR Research Team which set out three draft scenarios, describing possible futures for the structure and regulation of legal education and training in England and Wales. This paper was designed to respond to the difficulties entailed in asking delegates to articulate their expectations of how regulation of the sector will develop, accordingly, the purpose of these scenarios was to sketch out some possibilities and provoke discussion. The scenarios varied in the extent to which they diverged from the status quo:

Scenario 1, which concentrated on regulating the institutional competence of professions, represented a gentle evolution of the present system;

Scenario 2, which concentrated on the training, skills and knowledge of individual practitioners, was a more radical departure; and

Scenario 3, which concentrated on the activities of legal service providers, and was designed to represent a paradigm shift from traditional expectations of how legal education and training should be implemented and controlled.

11.2 The scenarios helped to crystallise some ideas and arguments about regulatory reform in a format designed to make them easier to debate. They reflected a range of ideas expressed by regulators in the legal services sector, and/or other regulated markets.

11.3 The scenarios were deliberately described in terms that accentuated their differences and were developed in response to feedback from the LETR Consultation Steering Panel. The scenarios were not exhaustive; for example, for the purpose of ensuring some clarity and relative simplicity, no mention was made of the role of entity regulation in respect of any of the scenarios.

11.4 The aim in sharing these scenarios was to encourage initial consideration of the system and framework for regulation, and provide an opportunity for all delegates to react to the different scenarios and/or create their own. Delegates were divided into groups of between 16 and 18 people and invited to discuss the substantive content of the scenarios, express opinions on what *they* think these scenarios do not address, and explore the benefits and risks of each model.

11.5 Overall, delegates professed support for combining elements of Scenario's 1 and 3, but there was considerable variation amongst participants in this exercise relating to the extent to which they endorsed the different elements of the model proposed in Scenario 3. There was a consensus that models akin to that presented in Scenario 2 should be avoided at all costs, as the complexity introduced by this type of scheme could lead to unacceptable levels of confusion.

11.6 Delegates also expressed concerns about the over-regulation of the system of legal education and training, and argued forcefully that any changes made must be implemented in an incremental manner. Many felt that the exercise was too limited, as it did not consider the skills and competencies required for practice and how these might be assessed.

11.7 The following tables summarise comments arising from the group discussion of the scenarios:

Scenario 1

Pros	**Cons**
• **Familiar to consumer** • **Not too radical** • **Superficially attractive** • **Next step in an iterative process** • **Clarity and confidence inspiring with international consumers (practitioner view)** • **Title- indicative of more than technical skills, connotes ethics, professionalism etc.** • **Broader categories- title = overarching, flexible, innovation. Must have a professional title** • **General title vs. specialisation.** • **Reputation and professional brand maintained** • **Recognition of title** • **Respects English legal system** • **More recognisable stages/guarantee of quality and professionalism/experience.** • **Path of least resistance** • **International recognition** • **Consistency of standards** • **Familiarity/simplicity** • **Good for recruiting** • **Bar- established institutions with track record/long knowledge of education .** • **Title acts as a signifier for the consumer- public understand what these mean, changing them would involve massive re-education.** • **Value of bar- body of lawyers who have been**	• Skills teaching is expensive • Unhappy graduates who cannot find training contracts/pupillage • How do you assess skills? • Lack of clarity • Problems with quality assurance • Inflexible? • Clearing house unpopular with employers • Current titles can be unclear internationally • It is not about title but what sits behind it (confidence, quality) • Closer to individual regulation not entity • Sophistication of client mitigates risk • Consumer related practice • Single or low number of regulators • Associated with existing ills • Change of name only? If no more work around for pre-solicitor titles will there be a change? Unless linked to pay scales • Too exclusive • No help to consumers • Does not do away with the problems of specialists/specialisation. Add-ons still needed. • Occupational closure • Does everyone know what 'titles' such as 'barrister' mean?

specifically trained to advocate in court. Centuries old title, well understood. • **Does any existing confusion matter? Surely it is a minor risk both in the context of consumers and students.** • **Titles act as signals for consumers** • **If appropriately regulated, should provide guarantee of minimum levels of quality.** • **Familiarity and tidying up exercise. Current interests continue to be served.** • **Opportunity to work with others** • **Commonality of core subjects e.g. advocacy** • **Clarity** • **Benefit to those who are already qualified.** • **Preferred option as costs less and difficulties entailed in qualifying act to preserve quality.** • **CILEX could expand role to post qualification.**	• Confusion- solicitors are now doing advocacy. • Careers decision (risk) students spending a lot of money on qualification/training without having a realistic idea of career chances. • It is important that people know what people are qualified to do • Obsession with title equates to an obsession with status at the expense of the consumer. • Cost and access to professions • Coming at it too late? • Are students in the current system ready to be the "thinkers outside the box" the profession wants? • Narrow access to the profession • Losing element of innovation • Can't adapt to evolving marketplace • Can't capture new roles arising in new structures. • Unregulated areas emerge. • Fragmentation • Retains a large unregulated sector • Plethora of titles becomes confusing. • Devaluation of titles and roles. • Ceding of powers to other bodies. • Slowly getting left behind. • Risk to those not able to access/achieve qualification. • Loss of talent.

Scenario 2

Pros	**Cons**
• **Flexible** • **Good for commercial training organisations** • **Accessibility** • **Flexibility for student** • **Balance between broad base and specialisation- solicitor and specialist reserved** • **Retaining recognised titles** • **Tube map- flexibility to extend roles, add specialism, allows growth as a professional** • **Solves bottleneck** • **Lower demand for QLD** • **Better mix of entrant and practitioner** • **May make cost of qualification/training more manageable** • **Socially mobile, more meritocratic (snakes and ladders)** • **More capable of quality, evidence based.** • **Loading too much onto law degree if ethics is taught there.** • **Parents and carers have the opportunity to take time away from work and then return- current 6 year limit is a problem.** • **Eradicates snobbery and baggage around title- anyone who isn't a "barrister" or "solicitor" is presumed not to be one as a result of lacking intelligence- this is not the case especially when**	• Difficult choice to make at age 18 • Complexity of administration • Beware of complicating matters e.g. consumer understanding • Specialisms still needed • How to ensure consistent "teaching"? • Wide range of competencies delivered by different methods. • Not a clear progress to qualification • Title based option of 'lawyer' is confusing (titles needed to say something about capability/competence? • Professions lose elite status (professionalism lost) • Weakened international recognition. • Doesn't change economics/cost of practice qualifications. • Client confusion • Silos education at the expense of embedding skills • Lose ethics and professional ethos. • Devoid of content • Lack of common intellectual foundation • Anti-intellectual/ lose jurisprudence, corresponding trust issues- law graduates are more trustworthy in terms of ethics and ethical behaviour than non-graduates. • Doesn't deal with the real issue for part time

we are talking about parents/carers/part time workers. • **Aligns with markets** • **Flexible- lots of entry and exit points** • **Model of delivering competencies is clear.** • **Marketability** • **Money** • **Innovation** • **Talent retained because of qualification records.** • **Easier to change specialism.** • **Likely to increase diversity.** • **Varying capacity of students accommodated.**	students which is access to work experience NOT access to education and training. • Returning parents issue can be dealt with under current system/doesn't require an entire restructuring of current system. • Bureaucratic nightmare • Cost of assessment • Complexity of assessment. • Consumer recognition of activity modular route. • Understanding of routes/complicated/confusing • Needs a lot of support for students, consumer, employers. • Increased demands due to differences in routes • Who regulates what? • How are ethics dealt with? • Professional indemnity insurance etc. • Complicated. • Falls uncomfortably between 1&3 • Model of delivering competencies could be applied in either of scenarios 1 or 3 • Consumers may be more confused. • More expensive for student • Confusion of roles • Workability • Conflict between regulators • Integration of learning • Too many regulators • Dilution of students • Lack of coherence. • Difficult to administer. • Confusing, especially for international students. • Those from non-legal backgrounds disadvantaged. • Lack of transparency. • Cost for employees not employer.

Scenario 3

Pros	**Cons**
• **Profitable** • **Easier to teach specialist skills** • **Open access** • **Regulated specialisms** • **Regulation targeted at risk** • **Shorter route to qualification** • **Can start earning sooner** • **Consumer clarity with regard to competence** • **More focussed regulation and support of standards** • **Insurance costs could reduce if regulation is made more reactive.** • **More diverse access to the profession** • **Lower cost to consumer** • **More practical approach** • **Assures competence on an ongoing basis** • **Flexible for the individual** • **Menu approach- promotes specialisation** • **Cost effective model for consumers/providers/students**	• Expensive for students • Lose broad base for teaching ethics, general knowledge • Loss of the "general practitioner" • Becoming too specialised • Could lead to heavy/complex regulation • Possible confusion for consumer with multiple brands • Too much decision making for new entrants. • Threat to quality and control • Focus on assessment of quality drives up cost of services • Creates a multiple tier system with perceived variance in standards. • No less vulnerable to changing market place • No less confusing for the consumer • Greater variation of standard • Too narrow/not so black and white • Missing context • Input blind (qualitative)

• **Well suited to specialist sector regulators** • **More training opportunities.**	• Cumbersome to administer • Jury still out on SRA • Time frame? • Speaks to the current climate (WBL, increasing number of paralegals/CILEX • Losing trust that comes from ethical code instilled within degree. • All issues dealt with under this system can be resolved with small amendments to Scenario 1. • Too focussed on outcomes, not enough intellectual content • A rehash of the failed Training Framework Review • How would you know who to trust anymore? Title is a good signifier of trustworthiness • Lose people who privilege ethics above other concerns- more confident that graduates can do this than CILEX • Benefits regulators not educators • Lawyers are leaders of society- need intellectual basis and University education to achieve this. • Two-tier approach where big firms can do it and other firms cannot. • Outcomes are difficult and expensive to measure. • Specialisation occurring too early. • Super regulator • Different regulators for each activity- difficult to meet demands of each regulator. • Challenge, getting competencies right. • Employer input and time needed. • No buy-in from professionals. • Ignoring social justice for example, as part of training • Don't get competency in range of practice. • Illogical to have more than one regulator over regulator. Over regulation or getting away. • Reduce pool for professional institutions/third level providers. • Less emphasis on ethics. • Employability- whose common standards would prevail? • Reduction of courses. • Loss of business if WBL comes in- learner pulled in two directions 1.) work pressure, 2.) learning load. • Falling through the cracks. • The dishonest can "play the system" by resigning and joining new profession.

Appendix A: Draft Scenarios for discussion

Themes	Scenario 1 'What am I qualified *as*?' **Title-Based Qualification** **Regulated by current regulators**	Scenario 2 'Which paths are open to me?' **A modular approach between Title-based-qualification and Activity-based authorisation** **Regulated by current regulators plus**	Scenario 3 'What am I qualified *for*?' **Activity-based regulation** **All regulated by multiple regulators or one overarching regulator**
Regulation	Regulation under this scenario would probably be carried out by the current regulators (or later versions of them). It would be largely title or status based as now, but there could be additional activities added to certain "titles" (in the way that higher court advocacy has developed for solicitors) and new regulated titles (e.g. if IPS took on regulating some paralegals, or the SRA took on regulating will writers) which would bring some more competition into the market place. There may well be better coordination between regulators, and agreements, so far as possible, to combine elements of training under a common training organisation or approach or content base. For some areas of training, such as a portion of the BPTC and LPC,	In this scenario, student or trainee legal services providers may take different modules at different times in order to achieve different levels of either title-based or activity-based qualifications. A multiplicity of regulators could be involved in setting regulation for education and training at different steps with many different modules on the way towards multiple possible qualifications. The overall progress map of different entry points and different exit, status or activity qualifications might look a little like the London Underground map with different regulators having different coloured lines, with multiple "stations" or change points on the map serving a	This scenario may suit the Legal Services Act's intentions to bring greater competition into the legal services market. It would make authorisation to practise "activity based". Though this would not preclude the continuation of existing or creation of new titles out of an appropriate bundle of activities, the focus of regulatory attention would be on competence to deliver the activity, not on the title. This could move regulation away from the current emphasis on assumed fitness to practise (FtP) based on entry qualifications. It is not clear how the front line regulators (three of whom are the funders of this research) will react to this approach, and it may depend, longer term,

Themes	Scenario 1 'What am I qualified *as*?'	Scenario 2 'Which paths are open to me?'	Scenario 3 'What am I qualified *for*?'
	there could be a conscious effort to bring different trainee groups together in order to learn more about each other's work or simply to combine common areas (if there is scope to do so).	number of regulators. Students or trainees would be on a journey which could start at almost any point and end up, perhaps with a number of changes of regulator, at any other point.	on which regulators end up regulating which activities. – i.e. the regulators themselves become activity-based regulators, enabling greater focus and specialisation on the regulatory risks and demands of particular activities. This might make particular sense in an area like advocacy where the public interest in assuring quality and consistency of standards is high. Alternatively, competition between regulators is a clear possibility as part of the Legal Services Act environment, so more than one regulator might be involved in regulating the same activity, as now with conveyancing (the SRA and CLC) and advocacy (the BSB SRA, IPS, IPReg etc). As yet another alternative scenario, one regulator could regulate all. If the model is of one main regulator, their activities would be based on a set of competences, and regulating the process of movement between different activities.
Educator's Standpoint	This scenario is aimed at "curing" perceived deficiencies	This scenario focuses on a redesign of the routes	This scenario works on the basis of decisions yet to

Themes	Scenario 1 'What am I qualified *as*?'	Scenario 2 'Which paths are open to me?'	Scenario 3 'What am I qualified *for*?'
	in the existing system, whilst retaining its familiar structure. Titles are retained and may be extended (though not necessarily as protected titles) to include, for example: • Additional professions currently represented in the amorphous "paralegal" sector; • Extension of the concept of progressive regulated titles for post-qualification phases (e.g. "student"; "member"; "associate"; "fellow"; "senior fellow", etc.); • Creating titles for stages currently perceived as being "in limbo" (e.g. "solicitor-paralegal" for the LPC graduate, by analogy with the status awarded to the BPTC graduate who does not subsequently complete a pupillage). Time-serving concepts are replaced by outcomes contexts. Suitability for a role is determined not by time serving (a 2 year training contract, eligibility for a role at 5 years' PQE) but by achievement of relevant (minimum) outcomes involving knowledge, skills, ethics and behaviours. Central clearing houses are established to manage transparently and fairly applications for vacation schemes, mini-pupillages; training contracts and	by which competence to practise in the legal services sector, or any part of it, is achieved. The pre-eminence of titles is replaced by modular qualifications or licentiates to practise in particular areas. Some regulators may choose to attach a specialist title - which may incorporate a number of levels e.g. senior paralegal, associate solicitor, senior solicitor, QC) - to achievement of a particular type, level or combination of qualifications/licentiate(s). Such an approach is not excluded, except insofar as it is necessary to meet external demands (for example, that a particular title be awarded, normally, only to graduates, in order to meet pan European expectations). The regulated title for possessors of licentiates is "lawyer". Practitioners who have yet to achieve, or do not wish to achieve, any level of licentiate, are called "paralegals". Educational and training systems are replaced by a sequence of modules including	be made about the nature of competence to practise in the legal services sector, or any part of it. Forms of legal education and training will then be designed to achieve such competence. All assessment will be by outcome, such outcomes (i.e. standards) to be defined by the regulator or regulators with responsibility for the area of the competence. No prescription is provided by the regulators as to the nature or content of any means of education and training which the market, including employers and HEIs, demands to achieve those outcomes. Existing HEIs may continue to offer (with a wider variety of workplace, vocational and classroom activity) undergraduate and postgraduate degrees. These may well be aimed at individuals practising or intending to practise, and such degrees might confer junior licentiate status in some areas of practice. Outcomes will be set at a number of levels, including levels representing what is

Themes	Scenario 1 'What am I qualified *as*?'	Scenario 2 'Which paths are open to me?'	Scenario 3 'What am I qualified *for*?'
	pupillages. Transparency of statistical data is required by educational institutions and workplaces. Routes to qualification and to post-qualification titles/roles are reviewed by the relevant regulators (or, where they are, as with advocacy, cross-sector, by a group of regulators) with the aim of creating/supporting multiple but consciously equal-status routes blending workplace and classroom; distance learning and attendance modes, in different ways and proportions to maximise opportunities for achievement. This may include, for example: • extending existing assessments (such as the QLTS or BTT) to a wider audience to create a definitive default means of access to titles based entirely on competence and not at all on route followed; • reinforcing CPD and creating appropriate risk-based revalidation mechanisms.	combinations of knowledge, skills, ethics and behaviours. The topics in which modules are demanded (i.e. the standards) will, in the first instance, be determined by a risk evaluation by the regulators of those legal services activities in which demonstrated competence is necessary (i.e. a redetermination of the extent of "reserved business"). Modules may be delivered in the classroom, in the workplace, grouped together to form degrees at various levels (including masters and doctorates designed for more senior practitioners). They may be achieved at varying levels and/or in various topic areas and additional modules representing extended competence along either axis may be added at any stage, including by way of CPD/refresher/contribution to revalidation.	currently the "post-qualification" stage of practice. Assessment would be linked in part to core national assessments, as per the QLTS/BTT model, but regulators are to give creative freedom on assessment into the hands of providers who, in turn, are to devolve a significant portion of curricular design, as negotiated learning, into the hands of WBL partnerships or groups of learners. A variegated model, one that is closely monitored in its structure and outcomes, is best. A form of shared space in every respect: between providers; between providers and students and workplaces; between workplaces; with the regulators providing both checks on and impulses for movement.

Student's Approach	I obtain a "title" which represents a particular (narrow or broad) range of activities. Those titles may incorporate a number of levels (e.g. senior paralegal, associate solicitor, senior solicitor, Q.C.). I am assessed by outcomes including knowledge, skills, ethics and behaviours. The necessary mix of classroom/work experience/form of assessment will be determined by the regulator of that title. Revalidation/CPD is tied to the particular title. I may follow a variety of combinations of study and training for each title, as determined by its regulator, which allow me to obtain the title but each route has equal professional status. These may operate sequentially or in parallel (e.g. "earn while you learn"). There is a clear and consistent framework agreed by all the regulators for progression from narrow or junior titles to broad or senior	I start by completing a module at a particular level (which may be in the classroom, on paper or online, as appropriate). I am assessed by outcomes including knowledge, skills, ethics and behaviours. Individual providers, which might include academic institutions, commercial providers, professional groups (e.g. APIL) or employers, might design modules at a number of levels (e.g. for school leavers) or link them together as a foundation degree, LLB, LLM, doctorate or a vocational course. Periods of work-based learning or supervised practice may be included as modules. I may complete modules in a specific area or only to a specific level if I choose. I may complete them through a combination of classroom and workplace learning and in sequence or in parallel. I may add new modules extending my	I obtain a "ticket" at a particular level, to work in a particular area. I am assessed by outcomes including knowledge, skills, ethics and behaviours. What the mix of classroom/work experience/form of assessment would be determined by the regulator(s) of that area but if more than one regulator of the area then there may need to be a common over-arching framework, possibly overseen by a common regulatory body. Revalidation/CPD is tied to the particular area. I may obtain tickets in a single area or a number of areas (e.g. IP, personal injury). I may follow a course of study and training which allows me to obtain multiple tickets (e.g. litigation and advocacy; commercial/corporate practice). When do I need to decide which path to

	titles and for dual and cross-qualification.	scope or increasing my level at any time during my career. I may use new modules and refresher modules as CPD. If I successfully complete a diet of modules which a specific regulator considers sufficient to attach to a title, I may use that title. I may hold more than one title at any one time and may move between titles if I wish. Those titles may incorporate a number of levels (e.g. senior paralegal, associate solicitor, senior solicitor, Q.C.).	take- is there a clear career path for me?

Consumer's Story	Consumers will recognise the titles and status of existing professions. Any new professions will need to be fully explained for them. Systems for regulation and procedures for complaints will remain relatively constant enabling continuity of approach when problems	Legal services providers who are at different stages or levels of qualification may cause most difficulties for consumers who will not have an immediate "underground" map to know what each provider can and cannot do for them. It will appear to consumers to be a	Consumers will benefit from more competition in the market but may also experience a maze of providers. Even assuming existing titles continue, consumers will need additional assistance in understanding any new sets of legal services

	occur. Many consumers are corporate entities with their own in-house lawyers advising on the choice and monitoring of the lawyers they choose. The largest proportion of legal work is carried out in this way; and the largest amount of legal fees earned in this way. Such consumers may not need or use any new legal services providers.	maze of providers. Consumers may need a triage stage in order to find advice as to who they can use and for what, and what level of competence they can expect. Consumers may lose faith in the systems of access to justice if they are disappointed with a provider in one area and may not know exactly to whom they should complain. Fragmentation of expectation may be very troubling indeed.	providers, being able to compare them with each other and being able to evaluate competence/quality/expertise Sophisticated consumers may find it easy to benefit from the new approach, but equally might be able to carry out some of the work themselves with more open knowledge available on the internet.
Indicative Risks	The impact of changes in the market are addressed piecemeal, and reactively. In extremis, existing professions may become locked into unsustainable positions because of an unwillingness or functional inability to deal proactively with the changed environment. Preservation of the focus on titles may mean that too little attention is paid to the specific skills, knowledge and behaviours required of	The intersections between a plethora of paths and titles will add complexity. Consumers in particular may have little idea how competent each provider with certain qualifications will be to carry out specific matters. Consistency of content, level and treatment for students and employers may be perceived to be sacrificed to flexibility.	Does the potential reduction in the regulatory burden/increase in flexibility sufficiently outweigh other risks? Training of new activities may be too narrow for holistic advice to consumers. Major changes will take some time to settle down and there may be negative unintended consequences. Consumers may have little idea about the

	individuals in specific roles, or the activities actually carried out by legal services providers. The link between titles and regulatory institutions may inhibit the extension of regulatory reach (where necessary) into the currently unregulated sector. Co-ordination problems between regulators will persist, and possibly grow as the regulatory environment becomes more rather than less fragmented. Streamlining and consolidation of the educational sector may limit competition; increase costs (e.g. by focusing provision for a particular profession in London) and restrict access to titles. Risks of regulatory capture of the frontline regulators by 'their' representative bodies will persist, requiring continuance of another level of (oversight) regulation. Alternative parallel routes to qualification may	Providers may not be sufficiently certain at the beginning of a matter whether they are sufficiently qualified to take it on. Increased student choice does not necessarily translate into increased opportunity for employment. Students may not know which modules to choose and default to familiar models. If progression is not sufficiently flexible and economical, problems of blocks and "limbo" status may be increased. The continuing link between titles and regulatory institutions may inhibit the extension of regulatory reach (where necessary) into the currently unregulated sector – though perhaps to a lesser degree than Scenario 1. Alternative parallel routes to acquisition of a title may be perceived as second class, entrenching pejorative decisions about	most appropriate provider for different levels of matter. Increased student choice does not necessarily translate into increased opportunity for employment. Students may not know which modules to choose and default to familiar models. If progression is not sufficiently flexible and economical, problems of blocks and "limbo" status may be increased. Some of the benefits of greater flexibility and tailoring of pathways may be offset by greater regulatory costs associated with tracking practitioners through a more individualized system of qualifications and progression. We may end up with a large number of specific "activities", if we are to engender easier competition. This could lead either to a multiplicity of regulators or too much power

	be perceived as second class, entrenching pejorative decisions about "how" and "where" rather than "what" an individual studied. Preserves existing complexity of regulation and regulators; differentiation between titles; reservation of particular legal activities. This contributes to paucity of understanding about what form of education and training (and of whom) would most efficiently promote competence. Problems of progression between pathways to titles and cross-and dual qualification may be addressed piecemeal, if at all. May be difficult to establish that it is in the public or consumer interest to create additional titles. Risk that this scenario does not readily address the unregulated legal sector and possible future needs to extend regulatory reach	"how" and "where" rather than "what" an individual studied. May preserve, or at least not significantly reduce, the complexity of regulation and regulators. Some of the benefits of greater flexibility and tailoring of pathways may be offset by greater regulatory costs associated with tracking practitioners through a more individualized system of qualifications and progression.	given to a single overall regulator. Major changes to the regulation of professional groupings may also be subject to "professional capture" which could subvert the intentions of the project. There may be little certainty of quality of provider within any of the new activity based reserved categories: there will therefore need to be extensive liaison between regulators and educationalists on the design of the new infrastructures. Previous attempts (such as the Public Defender pilot) to bring the cost of legal work under control have shown the difficulty of doing so. There is therefore no certainty that competition of this nature will necessarily do so.

The Professions and the Scenarios (outline only)	This scenario preserves the idea of a core of knowledge, skills and values and as such is likely to be more acceptable to many within the professions. The building block approach detailed in scenario three could be certified over time to cater for PQ specialisation in practice. Any benefits of movement away from this system may be particularly limited for the Bar and sole practitioners/small solicitors' firms – would change impose disproportionate costs on these groups? In discussing moves to greater common training, this scenario does not sufficiently grasp the differences in training and practice between graduates of the LPC and the BPTC.	The complexity involved in this scenario is troubling, and may be off-putting to at least some of the professions as they currently exist. A number of professional groups are already activity-based in their focus. This scenario may better reflect a 'mixed economy' in regulation, and the training needs it would create present an opportunity for some. The lack of emphasis on the importance of the culture and values which are an intrinsic part of the current system may be troubling to many.	This approach may be more acceptable to existing activity-based professional groups and new entrants, eg, in respect of will writing and paralegal specialisations. The examples of advocacy and will writing presented in this scenario suggest the necessity of a core of knowledge. The modular approach outlined here may lead to over-specialisation and fragmentation of knowledge if activities are too narrowly drawn. If this model leads to a demise of titles it could lead to serious problems of loss of identity, and arguably damage the reputation and prestige of the legal system in England and Wales. Would this scenario significantly impact on the way in which legal service providers recruit- how do you replace a person with a specific skill set when there are so many tickets an individual can take?

Literature – what is the background?	The link which keeps the different areas of work, the different types of lawyer and the different levels of pay together is the vocation encapsulated in the status or title – Solicitor, Barrister, Chartered Legal Executive. This link allows the largest corporate/ commercial firm to argue before government for the altruism of the smallest legal aid practitioner. It supports the Bar in aligning itself with the public interest in maintaining a highly qualified and independent advocacy profession. It provides the small firm with the sense of the importance of the larger firm. It maintains the strength of the singular professions across all areas of work, popular and unpopular, well or poorly paid, and allows the ideology of professionalism to support many useful ethical values. Sugarman	Closer detailed studies of the nature and progress of regulation and lawyer behaviour suggest three different types of impulses affecting behaviour: the ethical rules and the way they are learned or inculcated; substantive law which affects lawyers' conduct through sanctions or negligence actions etc., and informal norms and shared values within specific communities of practice. The latter are likely to have the strongest effect, and "ethical fading" seems to occur as practical experience develops further (eg Schiltz, 1999; Chambliss, 2012). Abel's work (1988, 2003) also extensively illustrates how the collective ideology of legal professionalism provides occupational groups with an element of market control	Specialisation has become essential in an increasingly industrialised world, with legal information, regulation and process growing and changing exponentially in every area of specialisation. Heinz and Lauman's Chicago Lawyers Study of 1982 portrayed two separate "hemispheres" of corporate and personal client lawyers. They showed how the two sets of lawyers were fundamentally different: the schools and universities they had gone to, their social class, ethnic and religious backgrounds, the work they did, the financial reward they received, the incentives they were subject to and their clients. Often they mirrored their clients in background. The variation in ideologies, stimuli, work strategies etc. of different groups of lawyers had also

	talks of the "relative elasticity of the ideology of legal professionalism" and shows how this "sustains divergent conceptions while asserting a common culture" (Simple Images and Complex Realities, 1993).	and market closure, which is not necessarily in the public interest. What is necessary therefore is a mix of the strong, singular ideology of status professionalism with highly specific regulation for certain types of work, primarily those where the risks to consumers or the public interest are high and the (existing) market is a weak regulator of quality/guarantor of access.	been identified by other researchers (eg Carlin, 1962; Handler 1967). Wilkins brought this together in 1990 in a seminal Harvard Law Review article in which he argued, and repeats in 2012 (in Levin and Mather (eds), *Lawyers in Practice- Ethical decision making in context*), that there cannot be the same regulations for such different legal service providers (our term). The Chicago study has been repeated, finding greater disparities in earnings and larger proportions of lawyers working in the corporate arena. There is no reason to imagine that the position is dissimilar in England and Wales, where the proportion of sole and small practices is even less than in the USA.