letr
legal education and training review

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Discussion Paper 02/2012

Key Issues II: Developing the Detail

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Executive summary

A. This paper sets out to do four things:

- To identify short-term future trends in the delivery of legal services and consider their implications for legal education and training (LET)
- To summarise responses to Discussion Paper 01/2012, relate them to findings emerging from the research team's fieldwork and identify key issues for the Review
- To offer some initial indications of solutions under consideration, and to highlight some of the relatively high-level, structural work the research team is undertaking on the frameworks, standards and tools for regulating LET
- To seek further information, evidence and views from stakeholders on a range of specific questions raised by the research team's work to date, and on the future direction of LET.

B. Section 2 opens by looking at quantitative analysis which suggests that demand for employment (including trainees) across the sector will remain slow, with 2010 levels of employment unlikely to be restored before 2018. Given that initial indications suggest that demand to read law at university is holding up well relative to many other disciplines, these data suggest that competition to enter the 'traditional' profession is likely to continue to be strong for the remainder of the period to 2020.

C. Heightened competition and structural changes to funding for and the regulation of legal services are speeding up the rate of change in the marketplace. The emergence of new players and technologies in the legal services market, are combining with a range of process changes that are transforming the ways in which legal services are delivered. These effects will combine to influence the future size of the market, and size and composition of the workforce.

D. It is difficult to predict the effect of these changes on the currently regulated workforce. It is likely it will face continuing, significant, competition from overseas lawyers, possibly increased competition from the unregulated sector, and from a growing paralegal workforce, with which it has a strong symbiotic relationship.

E. There are signs that new business models are beginning to change the field of play, though it is still too soon to say with any great certainty how significant and widespread these changes will be. New forms of service delivery have the potential both to disrupt some of the traditionally distinctive ways of working associated with particular titles, and to open up new roles, and thereby create opportunities for individuals to develop careers both vertically and laterally. Indications already point to the need for organisations and individuals to demonstrate adaptability and the willingness to develop new skills-sets, or extend existing ones, particularly in terms of 'soft' client-facing skills, and commercial and business skills. Technical specialisation and the decline of the general practice lawyer are likely to be continuing trends. It is increasingly likely that distinctions within the legal workforce will, in the future, reflect less the individual's title to practise, and more their role in an organisation and, at least in the earlier stages of a

career, the nature and level of supervision. These changes have significant longer-term implications for education and training across the sector as a whole.

F. Turning to issues with the current system, the paper summarises responses to Discussion Paper 01/2012. It highlights:

- Broad commitment to the notion of a Qualifying Law Degree, but substantial variation in views as to its required contents and 'fitness for purpose' if it is to satisfy its role as an initial stage in professional education, and required level of regulation and oversight. Ways of reformulating the requirements of the initial stage are further considered, and suggestions in terms of appropriate principles/outcomes invited.

- Employer support for the Graduate Diploma in Law is also noted; it is seen to bring specific benefits to the workforce, though these seem to have more to do with the nature of the recruits than the GDL course itself. The extent to which the GDL acts as a 'dead hand', limiting the scope for change at the initial stage is discussed.

- Respondents are divided in their views between those who support and those who are sceptical about developing further, alternative, entry routes.

- The development of more bespoke LPCs and greater flexibility regarding design and integration with training has been welcomed by respondents. The possibility of re-defining the core, and of further structural deregulation, or 'modularising' the LPC, to reduce it to (say) an initial 20 week (or p/t equivalent) course and move the balance into the training contract are raised for discussion.

- The BPTCs strong focus on advocacy and litigation provides a good foundation for transactional learning and a good simulation of practice. A number of specific issues have been highlighted with respect to the course, and the possibility of modularisation is also raised in this context.

- Work on the other regulated professions is in progress. Broad similarities and differences in approaches to education and training are highlighted and evidence invited regarding any perceived knowledge and skills gaps in relation to qualification for those occupations. The paper also raises the question whether at least some part of the terminal ('day one competence') qualification for all the regulated professions should be set at not less than graduate-equivalence (QCF/HEQF level 6)?

- The paper goes on to explore the question of paralegal training and the development of apprenticeships. It notes the range of qualifications and frameworks in the marketplace. The paper questions the complexity, consistency and coherence of the system that is emerging, and notes the potential influence of Skills for Justice in co-ordinating National Occupational Standards for apprentices and potentially other paralegals. The paper seeks views on whether co-ordinated standards for

paralegals should be developed, and whether individual paralegal training (and hence authorisation) should be brought within the LSA framework, or whether indirect entity regulation of paralegals is sufficient.

- The paper discusses the issue of ethics and values. It argues that ethics and values are at the core of training and regulation as they are integral to the concept of a regulated legal services provider. All approved regulators must ensure that the professional principles are adequately addressed in their training. The paper turns again to the issue of the place of ethics in the QLD, and invites more detailed responses to the question of the extent to which, if at all, professional ethics should be addressed at that stage. More generally, it also asks the question whether the 'underlying values of law' should be addressed in training all authorised persons under the LSA.

- Finally, in this part, the paper looks at evidence of competence and quality gaps in the current system. It notes that there is, in fact, very little such evidence and that many of the current proxies for quality are, moreover, problematic. This creates real problems for evaluating the quality of existing training and legal services provision. The paper discusses the evidence that does exist, which at least suggests that competence cannot be assumed to have been developed across a range of activities and skills.

G. Section 4 of the paper returns to the issue of regulation. It stresses the need to consider two questions: first, what are the appropriate aims/outcomes of LET, (and therefore, in part 5, offers a broad definition of the sector-wide aims of LET), and second, whether regulation is required to ensure some or all of the minimum outcomes. It is only after these questions have been assessed that we begin to consider what the most effective and efficient regulatory approaches are. The section starts by exploring the need for a specific public interest test in assessing the aims and outcomes of LET. It considers the growing role of entities and entity regulation in assuring standards, and suggests that moves to a greater focus on risk-based and outcomes-focused regulation require what is called an 'active competence orientation' to training by both entities and individuals. The paper suggests that active competence also aligns with an emphasis on standards and assuring the outcomes of LET. It proposes that a good system of standards should also satisfy tests of transparency (is it known and comprehensible), accessibility (is it readily applicable to its intended circumstances) and congruence (it is neither under- nor over-inclusive).

H. The paper comments on the proposition, raised by the LSB and Legal Services Consumer Panel, that the LET system needs to change in support of greater activity-based authorisation. The paper reports on work undertaken so far in exploring this issue, but emphasises that it is not the function of the research team to advance a preferred regulatory approach which has implications beyond LET, and in a way that could interfere with the statutory discretion of the frontline regulators.

I. In drawing together the lessons from its work so far the research team identifies five issues which it suggests are at the heart of assuring the fitness for purpose of LET:
   - The need to close specific skills gaps with respect to client relations[1]/ relationship management, commercial skills/awareness, project management and more general team and individual management skills, and to identify more clearly where gaps in technical competence exist
   - The need to reduce systemic reliance on 'passive competence' approaches and over reliance on initial and early career training as a guarantor of competence and quality
   - The need to place greater emphasis on ethics and values in the education of legal service providers
   - Concerns as to the absence of a consistent training framework for paralegal staff
   - Indications of a relative lack of flexibility in training pathways, particularly an insufficient focus on alternative exit points from training.

J. In the context of ongoing work on CPD and equality and diversity, the research team makes no further detailed observations *at this point* regarding those areas.

K. In section 5 the paper turns its attention to a range of relatively discrete 'high-level' issues which are significant in shaping the overarching direction of travel for the remainder of this stage of LETR, and particularly for its work assessing the role of LET as a regulatory tool in the context of a sector-wide system, or systems, of training. The issues it explores are:

   - The relationship between standards and qualifications
   - The need for improved mapping of qualification routes and pathways across the sector
   - The balance between 'input', 'output' and 'process' regulation

L. At present the LET system blurs the distinction between standards and qualifications, so that standards tend to be specified uniquely for a single qualification. The paper identifies a range of functional advantages to separating standards from qualifications, including that it would assist in clarifying core competences across the sector, increase consistency in the articulation and comparison of standards, and support the integration of legal and paralegal training.

M. A separation of standards and qualifications could extend to separating regulators more clearly from qualification bodies. This would help distinguish regulatory from non-regulatory functions, and clarify the role of regulators as regards quality assurance. It would possibly enhance competition between qualifications, and separate any decision to set qualification standards at levels above the competence threshold from the regulator.

N. It is important that the range of training pathways is properly mapped out, certainly to the point of authorisation, and assessed for clarity and consistency, at least as regards levels of training,

[1] We use the term 'client relations' rather than just 'client communications' to include an understanding of the context and power relations of that relationship as well as the deployment of a range of skills and attributes (such as empathy) by the lawyer.

entry and exit points, and approaches to passporting-in or awarding credit for prior learning. This would enhance the transparency of the system for users, and help identify key decision points and gaps in qualification pathways. A map of the main pathways is included, to represent a reasonable minimum set on which regulators/qualification bodies must, in the near future, make judgements in terms of permitted or excluded pathways and exemptions (if they have not already done so).

O. In considering the relationship between input, output and process regulations, the paper considers a range of possible types of LET 'intervention' and maps them according to whether they operate as input, output or process regulation, and as to whether they fit within the team's 'active or passive competence' orientations.

P. The paper proposes that a greater focus on active/output modes, would seem consistent with the perceived need to develop a risk-based and evidence-based system able to demonstrate actual rather than assumed competence, and would fit better with consumer expectations. It also notes that some interventions, like mandatory re-accreditation, or re-training to address regulatory or disciplinary failings, appear to be relatively little utilised by the current system.

Q. The paper closes with a brief summary of the next steps in the Review.

I - Introduction

1. This is the fourth Discussion Paper published by the Legal Education and Training Review (LETR) Research Team.[2] Like its immediate predecessor (01/2012), it is drafted as an 'issues' rather than a formal 'consultation' paper; that is, it is written to inform stakeholders of progress, to encourage debate, and to support the work of the researchers in identifying both the key issues relating to the possible reform of legal education and training in England and Wales, and in mapping out a range of possible solutions.

2. It forms part of the first – research – stage of the LETR which is due to complete in December 2012. This research stage involves both an extensive review of relevant literatures and new empirical research using a variety of methodologies with a wide range of research subjects. The methods adopted are summarised briefly in Discussion Paper 01/2011 (available from the LETR website). A summary of the research so far will be published as the next LETR 'headline' paper, at the end of August 2012.

3. The research focuses on two dimensions of the legal education and training system: what might broadly be described as its current 'fitness for purpose(s)', and its suitability to meet future training needs. These are, to a large degree, independent questions. Evidence of current fitness does not imply or guarantee future fitness. On the other hand, it would seem proportionate, and consistent with a risk- and evidence-based approach, to start from the position that, in the absence of evidence to the contrary, evidence of current fitness calls for careful evaluation of the need/desirability for change.

4. Discussion Paper 01/2012 asked a number of questions, primarily about perceptions of the system as it is rather than as it needs to be. We report here on the responses we received to that paper, but also turn our attention far more to the important issue of future training needs, whilst acknowledging that our research into those needs is still continuing. Accordingly we have organised the paper into the following main sections
   - Section 2 reports on evidence so far as to the future training needs of the regulated legal services sector
   - Section 3 reports on evidence as regards current issues affecting legal education and training
   - Section 4 reflects further on the regulatory context of the Review, and the way in which that may shape the recommendations made in our final report
   - Finally, section 5 draws these strands together to identify what we see as the main issues going forward and begins to map out some of the 'high level' options.

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[2] See the LETR website at http://letr.org.uk for further information. The research team are Professor Julian Webb (Warwick University – project lead); Professor Jane Ching (Nottingham Trent University); Professor Paul Maharg (University of Northumbria); Professor Avrom Sherr (Institute of Advanced Legal Studies, London); Natalie Byrom (Warwick), and Simon Thomson (IALS).

II - Considering future training needs

Tomorrow's workforce

5. In quantitative terms the legal services sector (widely defined) is a major source of employment, currently accounting for over 700,000 jobs. This figure incorporates a very wide range of roles – from judges to janitors. Over half of these (approximately 400,000) are in 'legal activities' – the core areas of legal services delivery that are the primary concern of LETR.

6. The workforce projection undertaken for LETR by Warwick Institute for Employment Research (IER, 2012) indicates that the sector will experience a cumulative rate of growth in employment of 14% by 2020.[3] This is suggestive of a continuing slow down relative to the last five years (when, for example, the numbers of solicitors with practising certificates grew by 17%.) but it still suggests a stronger rate of growth to 2020 than is currently predicted for the US legal services market (10%). Most of this growth, not surprisingly will be in the private sector, with public sector employment contracting overall by about 9%. The data suggests that 2010 levels of employment are likely to be restored by 2018. By 2020 we could see, at the upper end of the projection, a core professional workforce of approaching 136,000 solicitors and over 18,000 barristers in practice.[4] Given that initial indications suggest that demand to read law at university is holding up well relative to many other disciplines, these data suggest that competition to enter the traditional professions is likely to be strong for the remainder of this decade.

7. It should be borne in mind that these data, though useful in identifying general employment trends, have two important limitations. First, they lack the granularity to tell us a great deal about the finer changes to patterns of employment within the sector. Secondly, because of the inevitable time lags, it may still be too soon for recent structural changes to become apparent as trends or patterns of employment. These structural changes could have some significant implications for the accuracy of those projections.

8. In the current marketplace, there are a number of significant indicators of structural change. Key market and regulatory trends are:[5]
    - Heightened intensity of competition and price sensitivity in the market for privately funded legal services[6]

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[3] In addition the proportion of the workforce retiring or leaving the workforce between 2010-2020 is approximately a third, creating an estimated replacement demand of about ¼ of a million jobs for the sector as a whole – that is, an annual replacement demand rate of 3% per annum (broadly in line with other sectors).

[4] For the avoidance of doubt, it needs to be made clear that this projection is based on past patterns of employment in the context of expected economic growth, ie, it is best understood as a *ceteris paribus* projection, which does not necessarily reflect recent or 'micro' trends affecting the shape of the legal sector workforce. As we shall explain below, it is therefore likely to overestimate the demand for employment in the solicitor and barrister segments of the workforce, and underestimate growth in associated professional roles.

[5] This list does not include more speculative long term effects which could arise from the LSA, but for which there is little or no evidence as yet, such as faster expansion of the unregulated sector, or greater competition from in-house and (local) government legal services using existing structures or ABSs to turn their functions into a revenue stream. .

[6] This is largely a client-led phenomenon and a product of increased global competition for goods and services which places a downward pressure on prices and hence requires producers to work to keep their costs down –

- Continuing reductions in state expenditure on legal aid
- Increasing segmentation and specialisation in most sectors of the market[7]
- The emergence of significant new regulated players in the consumer market for legal services, such as Co-operative Legal Services
- Scope for new (information) technologies including online legal services (eg legalzoom.com, Rocket Lawyer) and online dispute resolution (ODR) to impact the market
- Increased blurring of functional and some regulatory[8] distinctions between lawyers through the development of new business structures, such as legal disciplinary practices (LDPs), alternative business structures (ABSs), ProcureCo's, the extension of Public Access to the Bar, and, for example, moves to obtain rights or increase rights to conduct litigation and advocacy from some of the smaller regulated professions (IPReg, CLC).
- Possible extensions of reserved activities, and hence regulatory reach, to will-writing and 'general legal advice'

9. Associated with the emergence of new players and technologies are a range of process changes that are also potentially transformative, and in many cases already well-established in the market, including
    - Increased use of legal process outsourcing not just to reduce back office and some front office costs, including direct labour costs, but to increase efficiency and flexibility of response
    - Decomposing and commoditising legal transactions so that more of the work may be undertaken by non-qualified, paralegal or other professional staff
    - Bundling legal services with other complementary services in a multi-disciplinary practice or 'one-stop-shop'[9]

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see, eg, Morgan (2010, 83-88). Increasing pressure from in-house counsel on external providers to reduce cost/increase value of their offering is an obvious consequence of this trend – see, eg, Maki (2011).

[7]Merger and consolidation of practices in both the global and domestic markets is becoming a key driver of segmentation – this can both generate economies of scale and build capability and competitiveness through scale, and is likely to increase specialisation: see Tsolakis (2012), but may also support diversification. A recent survey of 111 solicitors' firms by accountancy firm BDO reported that approaching 60% of respondents expected to take part in a merger or acquisition in the next three years, including a growing interest in merger or acquistion activity with non-lawyer firms – see http://www.legalfutures.co.uk/latest-news/firms-top-25-eyeing-ma-activity-non-lawyers-says-survey. Increased specialisation emerges in our data as a phenomenon virtually across the piece, not just in the context of solicitors or barristers' practices, but (eg) for patent and trade mark attorneys and CILEx, albeit with rather different challenges.

[8] For example, the firm Artesian Law has been set up by six barristers and one solicitor as an LDP regulated by the SRA. The ABS structure also enables firms that have developed predominantly within the unregulated sector to move into regulation. For example Parchment Law Group LLP started life as an unregulated will-writing organisation, but, by bringing a solicitor into the practice it has achieved SRA authorisation as an ABS; Northwood Banks & Co has similarly been regulated as an ABS by CLC. Coincidentally each firm has three partners: a will-writer, a solicitor and an accountant.

[9] For example, the idea that you might buy your will, probate services and funeral plan in one package from the Co-op, or insurance and legal services from the AA. Similarly SMEs may access services like Smarta businessbuilder which offers businesses a cloud-based online service incorporating accounting software, smart legal document templates, website design and hosting, e-mail and a 24 hour legal helpline for a relatively small, fixed, monthly fee.

10. The emergence of new business practices and changing patterns/models of funding legal services will combine to influence the size of the market, the size of the legal services workforce, and the balance between the regulated and paralegal workforce. There is growing recognition too that these are permanent, game-changing trends. A recent survey of US law firms reports that an overwhelming majority of larger law firm leaders see trends like greater price competition, commoditisation, and non-hourly billing as permanent changes to the marketplace (Altman Weil, 2012). These effects will be felt across the sector, not just by the largest professional groups, as one 'traditional law costs draftsman' graphically observed in 2011:

> Frankly, given the likely legal aid shakeup, in a couple of years time there will be more people in the country who can say they were once a contestant on Big Brother than will be able to say they currently undertake legal aid costs work.[10]

It is likely that these factors have the potential to increase both direct and substitute competition in the legal services market, from both UK and international sources,[11] but the complexity of these factors limit our ability to predict at this stage the nature and extent of any marked, structural, shift occurring in the balance between lawyer and paralegal, and the regulated as compared with the unregulated workforce.

11. Unregulated individuals play important roles in both the regulated and unregulated sectors. Within the regulated sector they may exist in a symbiotic, but also substitutional relationship with regulated providers as, for example, firms seek to re-work leveraging ratios in respect of admitted fee-earners,[12] or move to embed value-based billing. By contrast, in delivering (currently) unregulated activities such as will writing, or employment advice and representation, unregulated providers are direct competitors to those who provide those services within a regulated environment.

12. Meaningful data on the paralegal and unregulated sector in particular is limited. Estimates suggest that at least half of the workforce undertaking legal activities comprises paralegals of some kind. Part of the difficulty of quantifying the paralegal sector is the lack of agreed definition of a 'paralegal'. The term can include LPC/BPTC graduates who have not progressed into a training contract or pupillage, law graduates working under supervision in legal roles, those with formal paralegal qualifications working within regulated entities, those without formal qualifications but actually undertaking some element of legal work under supervision, and, perhaps increasingly, those providing legal services outside of the LSA framework of regulated entities[13] – though it may be debatable whether many of the latter group are better

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[10] See 'Goodbye traditional law costs draftsmen', http://www.gwslaw.co.uk/2011/02/goodbye-traditional-law-costs-draftsmen/

[11] This is not just a reference to 'global commercial law'. UK patent attorneys in our sample were particularly concerned about competitive pressures (and risks of consumer detriment) posed by European Patent Attorneys and unregulated 'patent advisors'.

[12] Again, this is not a purely UK phenomenon, the 2012 Altman Weil survey reports that over 80% of the 792 US firms surveyed plan to increase their use of contract lawyers and paralegals, for many as a substitute for work by associates, and a growing proportion of firms (58%) see reduced associate leverage as a permanent trend.

[13] The Institute of Paralegals estimates that are in excess of 6,000 'paralegal firms'. The basis of this estimate is not entirely clear, but it includes within the notion of a paralegal firm those entities providing immigration

thought of as independent practitioners with narrowly[14] or perhaps only negatively-defined[15] practice rights rather than paralegals as such. Setting aside these definitional issues, there is, however, little doubt that paralegals comprise a large and relatively neglected sector of the legal workforce.

13. There is little specific data on how rapidly that part of the sector is growing relative to the rest, though two studies offer some indications. Data from the UK Commission on Employment and Skills (UKCES 2010:9) reports that the number of legal associate professionals in England increased from 24,509 in 2001 to 51,250 in 2009, a rise of 109%, making it the third fastest-growing set of occupations over that period. This compares with about a 30% increase in the number of solicitors and a 19% increase in the Bar between 2000 and 2010. A recent small-scale survey by Skills for Justice (Welsh and Aitchison, 2012) suggests a growth rate for paralegal employment in the law firms surveyed of 18% over the next five years. If extrapolated to the sector as a whole, that would suggest that, in comparison with our IER data, the paralegal sector is expanding faster than the sector as a whole. However, such extrapolation is extremely risky, given the self-selecting nature of the sample, and its small size (51 employers).[16] Specific issues in respect of legal apprenticeships and standards for paralegals are discussed below.

New roles and training needs

14. Though we cannot predict the scale of such changes, we can be reasonably confident that the emergence of new business structures and alternative ways of working will create issues for legal education and training. To what extent they create significant *regulatory* issues may be rather more open to question.

15. It is, and has long been, self-evident that delivering competent legal services is not simply about the ability to apply technical legal knowledge accurately to the benefit of clients, or even about the combination of technical knowledge with good communication and 'people' skills. Legal service providers may also need a wide range of other (relatively generic) skills, including networking abilities, project and workflow management, team skills, financial literacy, general commercial and more specific client/industry awareness. None of these are specific to new business models, and none are exclusive to a specific title, though the balance and range of skills will vary between roles.

16. The ways in which new business models are potentially changing the field of play is by both disrupting some of the traditionally distinctive ways of working associated with particular titles,[17] and by opening up new roles, and thereby creating opportunities to develop careers both

advice outwith LSA approved entities and claims management companies, both of which are regulated, but not under the LSA.

[14] Eg, OISC-regulated immigration advisors.

[15] That is, circumscribed by the activities that they are not allowed to undertake.

[16] The data also do not clarify who employers will be looking for to fill those roles: LPC/BPTC graduates, CILEx trainees, or others

[17] A simple example would be the growth of the employed Bar, and particularly the numbers of barristers now working in solicitors' firms.

vertically and laterally.[18] We are not suggesting here that titles become irrelevant; they are likely to remain a feature for the foreseeable future, but it is increasingly likely that distinctions within the legal workforce will, in the future, reflect less the individual's title to practise, and more their role in an organisation and, at least in the earlier stages of a career, the nature and level of supervision. This is already evident to some extent in the in-house and local/central government sectors.

17. While the rise of ABSs, external investment, and related new business models may enable firms, chambers, legal departments and other businesses to buy-in and reward additional specialist management and support functions, the assumption that new models will necessarily increase separation between technical legal and other – including managerial - roles, and therefore actually reduce the need for lawyers to have management or other complementary skills is an assumption that is not, so far, being borne out by evidence from early adopters.

18. High level technical skills will, of course, still be needed, and we can find no evidence to suggest that the trends towards (hyper-)specialisation in many sectors of the market are likely to reverse. It is likely that the decline of the general practice lawyer will continue. There are signs also that the ways in which legal skills are delivered are also changing. Specialist skills and knowledge may be bought-in for a project, rather than provided permanently in-house. This may be achieved in traditional business models by replacing permanent with contract staff, or it may be part of a more radical delivery model. Organisations like Riverview Chambers, for example, change the way in which barristers are used as an early part of an advisory team. Virtual law firms could 'employ' lawyers purely on a project-based, 'eat what you kill', footing rather than as permanent salaried staff.

19. Richard Susskind (2010) in particular has referred to the impact of new technologies and work processes in shaping the development of a range of new legal roles, many of which involve hybrid functions, and most of which extend beyond the unique or specialist competences of lawyers as we traditionally understand them, including:

    - legal knowledge engineer
    - legal technologist
    - legal process analyst
    - legal project manager
    - ODR practitioner
    - legal management consultants
    - legal risk manager

    Some of these changes are already happening in the marketplace. Knowledge management is a long-established alternative pathway to client-facing legal work; a number of law firms are using

[18] Lateral development would include, for example, fee earners moving across into client management roles which require some technical expertise, but that are primarily geared to relationship management functions: understanding the client's needs, ensuring that someone has an overview of the whole portfolio of work being conducted for the client, and managing risks/concerns that may be associated with that portfolio rather than with a specific transaction or dispute.

fee earners in client relationship management roles, and some are using lawyers to undertake legal workflow and process analysis. These trends have implications for LETR at the level of principle, and we will therefore return to them later in the Paper.

III - Issues with the current system

20. Through both our primary research and in our call for evidence (Discussion Paper 01/2012) we have sought to identify the significant issues stakeholders and others see as arising out of the current structure and regulation of legal education and training. In this section we focus on seven aspects of the research to date:

    - Changes to the Qualifying Law Degree
    - The Graduate Diploma in Law and alternatives
    - Changes to the LPC/BPTC and its relationship with work-based learning
    - Other routes into the regulated workforce
    - Standards and qualifications for paralegals
    - Requirements regarding ethics and values
    - Competence and quality 'gaps'

21. We are not proposing to address CPD or equality and diversity in any greater depth in this Paper. The general view that something needs to be done about CPD was widely endorsed by respondents to Discussion Paper 01/2012; we recognise that the critical question is, therefore, what? In addressing this question we are aware that work by the larger frontline regulators on their CPD consultations is continuing, and we are engaging with that process. We do not think it appropriate to cut across that work by discussing the issue further at this stage. The research team is addressing CPD in its focus groups and questionnaires, and will draw both on that data and on the consultations undertaken by the frontline regulators in making its recommendations.

22. Discussion Paper 02/2011 on equality, diversity and social mobility (EDSM) was published in April this year. It has received only 12 responses to date, though a number of others are pending, including from the newly established EDSM Expert Advisory Group, chaired by Professor Gus John, which functions as a sub-group of the LETR Consultation Steering Panel.

23. Given the importance of the issues, we consider this a disappointing response so far, though the involvement of a range of leading diversity organisations in the EDSM Group accounts for a number of apparent non-responses. We welcome the support and input of this group and look forward to taking our recommendations forward in the light of their advice, but, given that the Group has not yet had an opportunity to respond to the questions raised by Paper 02/2011, we consider it inappropriate to progress the outcomes from that Paper at this time. We will publish a summary analysis of responses to Discussion Paper 02/2011 in October, following input from the EDSM Group.

24. We received a total of 46 responses to Discussion Paper 01/2012. A number of these are composite responses made by representative bodies, such as the Law Society, Bar Council, or interest groups such as the Legal Aid Practitioners Group. Care needs to be taken in interpreting and relying on this data. It is not necessarily representative of the sector as a whole, as responses are skewed towards established representative and interest groups, and particularly the solicitors' side of sector, with a strong representation of larger law firms. A number of the questions identified in Discussion Paper 01/2012 have deliberately been replicated in the LETR online survey, to provide additional evidence of the range of viewpoints across respondent groups.

The Qualifying Law Degree (QLD)

25. The QLD is an extremely popular qualification, routinely generating one of the highest ratios of applicants to places within the university admissions system. The degree serves as both a liberal education in its own right, as well as providing an initial or academic stage of entry into professional legal training for most regulated titles. Such data as exist suggest it is generally well-regarded by students, and law degrees generally perform well in terms of employability. These data can be seen as limited proxies for quality/'fitness for purpose'.

26. About two-thirds of students following QLD programmes have an intention to practise (Hardee, 2012), a proportion that has remained consistent for much of the last 30 years. On current figures about 40% of graduates actually progress into the 'traditional' legal professions. Very few graduates appear to set out with an intention to pursue other professional qualifications in law, such as CILEx (Hardee, 2012), though it is notable that a number of post-1992 universities have embedded options to complete the CILEx graduate fast track qualification within their degrees,[19] or are developing specific paralegal pathways.[20] A small number of post-92s have also developed exempting law degrees which satisfy the academic and vocational stages of training for the SRA or BSB in a single programme.[21]

27. The majority of responses to Discussion Paper 01/2012 did not take the view that the QLD was unfit for its professional purposes, and felt it should not be subjected to 'abolition' or fundamental de-regulation. There is a broad consensus among stakeholders that the QLD performs an important role in developing a core of substantive knowledge and cognitive skills that can be taken forward into later stages of training, and provides some assurance that employers 'know what they are getting'. The response from the University of London International Programme (UoLIP) also notes their experience of the high international regard that exists for the 'English LLB'. Beyond these general conclusions, however, there is limited

[19] London South Bank University and the Universities of East London, Glamorgan, Hertfordshire, Huddersfield, and Portsmouth. Foundation degrees, such as that at Glamorgan may also carry exemptions from the CILEx level 3 qualification.

[20] Eg the National Association of Licensed Paralegals enables law students at Sunderland, Anglia Ruskin, East London and West London Universities to obtain its Higher Diploma in Paralegal Practice as part of their degree studies.

[21] Universities of Glamorgan (from Sept 2012), Huddersfield, Nottingham Trent, Northumbria and Westminster. Northumbria has the only BPTC exempting degree.

agreement as to what changes, if any, should be required.[22] Multiple stakeholders highlight the following as possible knowledge and skills gaps that require some action:

- Writing skills (Anon training org.1, BACFI, CLLS, LawNet, Kent Law School, Anon law firm6)
- Law of organisations or company aw (CLLS, LawNet, Anon law firm 5, Herbert Smith)
- Commercial awareness (Anon training org 2, BACFI, LawNet, Anon law firms 3 and 6)
- Interpreting/using legislation (Anon law firm 5, Statute Law Society)

Other diverse suggestions that have been made to us include comparative and international law, financial services law, fact management, drafting, immigration law, internet law, and civil procedure. We deal with the issue of professional ethics and legal values separately, below.[23]

28. The suggestion that QLDs should be defined in terms of cognitive and other skills similarly received mixed views. The City of London Law Society (CLLS Paper 2) emphasises the importance of "sophisticated cognitive skills" over and above 'some specific body of knowledge', and this is echoed in the responses of two law schools. A number of responses particularly stress the importance of developing critical thinking (Kent Law School, Society of Legal Scholars, The Law Society, UoLIP). Responses from other stakeholders have tended to focus rather more on the importance of a substantive knowledge base (BACFI, Young Barristers Committee, and, to a lesser extent, The Bar Council).

29. The extent to which foundation subjects should continue to be prescribed is also moot. Here, some divisions emerge between responses – the existing foundations are supported by some as 'essential' and by others as at least a 'good proxy' for those areas that all lawyers require some working knowledge of (BACFI, The Bar Council, LawNet), whereas others suggest possibly some scope for reducing or at least re-thinking the breadth/make up of the core. Thus, the CLLS (Paper 1) does not specify a preference for change, but "would support a rebalancing of the Foundation topics in some way" (by, for example, dropping topics or reducing the coverage of some of the existing topics to make the necessary space for its preferred additions). Tort, Contract and Crime are highlighted as those areas that are essential to the junior Bar (Anon vocational stage academic; cp. Bar Standards Board); One law school response suggests that an outline of legal methods and the legal system, the law of obligations, and basic principles of company law/business awareness are all that is essential to preparation for the LPC/BPTC. Nonetheless these respondents also recognise that knowledge of key principles of (at least some of) EU law, human rights, constitutional law, equity and trusts are important to ensure understanding of fundamental legal concepts/principles, but stop short of retaining them as substantive Foundations. A wide range of views have also been expressed in our research groups so far. There appears to be continuing support for a common core, and concerns about early specialisation, but (as noted above) limited agreement about how that common core should be defined, or indeed about whether each part of it needs to be equally weighted. A need for more

[22] We are aware, of course, that any changes to the QLD are subject to negotiation between the BSB/SRA and the university law schools.

[23] Focus groups tended to feel that students should develop a general awareness of devolution issues in relation to Wales (and, to a lesser extent, Scotland) at the initial (LLB/GDL) stage, with relevant detail left to CPD as appropriate.

commercial law/commercial awareness has tended to be the preferred change for practitioners, with ethics as a second possible additional topic.

30. Student comments focused less on the substantive subjects and more on skills and employability issues including opportunities for work experience. There are, amongst academics and students, three basic rationales for practice skills/topics/placements and work experience on the degree - a) as a taster and to manage expectations of what practice is really like, b) as legitimate preparation for practice, which could lead to c) the potential to reduce the cost or length of the vocational courses by backfilling into the degree. However the support for any such initiatives in the degree is by no means universal amongst law teachers.

The Graduate Diploma in Law (GDL) and the case for alternatives

31. The GDL generated significantly less comment than the LLB from respondents to the Discussion Paper. Responses from City law firms and the Bar highlight the extent to which the GDL continues to be a significant alternative route into practice. As noted in our earlier paper, employers, on the whole, do not see the intensive nature of the course, or the narrower range of legal subjects studied as creating any more significant risks as regards competence, or placing such trainees at a significant or long term disadvantage *vis a vis* law graduates. Perhaps not surprisingly views from academics, and some vocational law teachers, are more ambivalent. One senior vocational stage academic captured this opposing view trenchantly by observing that enabling someone to achieve equivalence to a law graduate after seven months of legal study "undermines us as a profession".

32. Some shared concerns emerge from the data and discussion responses in relation to the volume of required content and its impact on learning. Participants in our research who had completed the GDL tended, on balance, to regard it more as a necessary rite of passage than a highly positive learning experience. With some exceptions, comments tended to emphasise the risks of rote learning and 'spoon feeding' relative to more conventional academic programmes, and note the reluctance of participants to engage with primary sources. This may also underlie the comment from a small number of respondents to Discussion Paper 01/2012, (also reflected in focus groups) that GDL graduates had less developed legal research skills than their QLD counterparts.

33. We have taken the view that understanding why the GDL is so acceptable to employers would provide LETR with some useful indicators about what employers are looking for out of the initial stage of training. Our analysis to date suggests the following are valued attributes in (GDL) trainees:
    - Maturity: this appears to be used as a cipher for a number of attributes: simply being older and therefore perhaps more presentable to clients; having developed further intellectual maturity as a result of an extra year of study; having more 'life experience'.[24]
    - Intellectual breadth/variety: a number of participants echo the aphorism 'what does he of law know who only law knows?'. The LLB in this context is also compared

[24] Though, conversely, too much life experience may play against older applicants who may be seen as less malleable.

unfavourably with the North American and Australasian approaches, where students have either already completed an undergraduate degree, or undertaken 'double degrees ' of four or five years duration.

- Commitment: there is a view that GDL students have demonstrated a more positive decision to pursue a career in law. It is less likely (it is said) that they have stumbled into the profession on the back of a decision they made at 17 or 18 to read law at university.
- Greater currency in knowledge/understanding of core principles – this is most often cited in the context of contract law, which is widely taught as a first year LLB subject.

34. It is notable that these benefits have little to do with the law they have actually studied. The first two of these attributes are also, of course, not exclusive to the GDL, which begs the question as to how much the problem is that (some/many) QLD graduates with those attributes may be 'below the radar' of employers because they come from the 'wrong universities',[25] do not achieve the academic outcomes expected,[26] or lack (or are perceived to lack) other attributes of preferred candidates.

35. A number of responses also recognised the underlying problem that, if stakeholders wish to retain the possibility of a one year conversion course, like the GDL, this places pragmatic but significant constraints on extending the Foundations.

36. Broadening the analysis out beyond the GDL, the Discussion Paper elicited a range of responses on the principle of developing additional or alternative entry routes, with views virtually split between those who support and those who are sceptical about alternative entry. A small number of responses support broadening access, and question the scope of the current system of recognition and exemption, including restrictions on non- graduate entry to the CPE/GDL (JLD, Anon law firm5).[27] Others are more cautious, but would support/not object in principle to other entry routes, provided that these have 'academic rigour' and/or are of equivalent (graduate) standard. A third group questions the need or desirability of other routes, particularly given the current over-supply of entrants and the "vigour" of the CILEx route (Anon law firm3). This group also highlights the risk of diluting quality, and of admitting students to vocational courses for which they are not academically prepared.

37. Because of the significant inter-relationship, for our purposes between the QLD and GDL, some further questions are posed in this section relevant to both awards.

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[25] One view quite commonly expressed is that employers will pursue a borderline 2:1/2:2 in (say) humanities from Oxbridge with the GDL in preference to a 1st Class LLB from a less well known institution. Joint honours QLDs, which might be seen as a solution to the breadth problem, are widespread, but often have relatively small intakes and are less common within some of the leading Russell Group institutions.

[26] Entry points for applicants to joint degrees may be lower than for single honours QLDs, so this may disadvantage some applicants in relative terms.

[27] Technically it is possible for non-graduates with equivalent experience to be admitted to the course where they have obtained a Certificate of Academic Standing from the SRA, though few students appear to be admitted via this route. The BSB does not waive its requirement for applicants to be graduates, though Certificates of Academic Standing may be granted by the BSB to those without an undergraduate degree who have been awarded a postgraduate qualification that is at least equivalent to a Bachelor Honours degree awarded by a recognised UK University.

38. We recognise that the stakeholders involved will, quite reasonably, not permit the LETR to substitute for any process of negotiation between the relevant approved regulators and the universities in respect of the Joint Announcement. At this stage we therefore limit ourselves to making two further observations.

39. Firstly, continuing debate over scope of the Foundations seems sometimes to act as a substitute for more meaningful discussion about the proper scope and functions of the LLB, and distracts attention away from the strengths of the QLD. It would be unfortunate if this were to continue unabated for another forty years. The universities since Ormrod have experienced a greater loading of 'core' substantive courses. Five core subjects were originally suggest by the Ormrod Report (1971), to which the professions added a sixth, and a seventh was added in 1995, in addition to the skills requirements laid out by the subject Benchmark.

40. Secondly, there is a risk that the GDL, whatever its merits or demerits, rests like a dead hand over the debate. The GDL may be taught very well in many institutions but it does not seem to be renowned for curricular innovation (aside from any innovations in pedagogy or delivery) which limits our ability to point to direct evidence of what more could be possible within that course. It also sets a practical limit on the extent of the Foundations, and a trade-off in terms of developing knowledge and skills (such as legal writing). If the professions want a programme of one academic year, there is little to play with. The optional subject could be replaced by another Foundation, but which one (eg ethics or the law of organisations)? More than that and we are into a zero sum game of substitution. We are concerned that there may be little rational basis for selecting what goes in and what goes out, other than a perception of current relevancy, or a pragmatic acceptance that 'he who pays the piper calls the tune'.

41. As the response from one anonymous law school observes, the GDL does not simply exist to enable non-law graduates to tick-off the basic knowledge requirements for the profession, it needs to be seen as an academic programme in its own right. The Law Benchmark Statement (QAA, 2007), we submit, does usefully capture the essence of what an academic law programme should seek to achieve in terms of knowledge outcomes: namely, that students are able to

    - demonstrate knowledge of a substantial range of major concepts, values, principles and rules of that system
    - explain the main legal institutions and procedures of that system
    - demonstrate the study in depth and in context of some substantive areas of the legal system

    Does study in depth have to equate to the full range of Foundation subjects, and does this require specification by the regulator of quite detailed knowledge outcomes, as for example, contained in the SRA 'Day One Outcomes' used for QLTS? Might a focus on key principles or transactions perform the task equally well, or better?

42. Would a better starting point be to ask what should a rounded graduate level education in law leave students with knowledge of?[28] As a starting point for discussion, rather than a worked example, one might suggest a law degree/GDL should leave students with a critical appreciation and understanding of

    - the relationship between citizen and state (principles of constitutional and administrative law, criminal justice, and human rights)
    - Obligations arising between citizens and how legal disputes may be resolved (principles of contract and tort, rights over property – personality and realty, remedies and restitution, the civil courts and alternative dispute resolution)?
    - The role of law in the regulation of economic activity (formation and types of business entities, consumer protection, regulating markets and competition)?
    - The role of law in regulating international relations (key institutions of private and public international law)?
    - The relationship between law and the moral order (eg, the values of law and lawyering, justice and rights, the 'moral foundations' of criminal and civil law)?

    Question 1: in the light of limited evidence received so far we would welcome further input as regards the preferred scope of Foundation subjects, and/or views on alternative formulations of principles or outcomes for the QLD/GDL (We would be grateful if respondents who feel they have already addressed this issue in response to Discussion Paper 01/2012 simply refer us to their previous answer).

43. A more radical solution for the profession out of this potential impasse would be to follow the approach of the Institute of Chartered Accountants (ICAEW) who prescribe a set of 'knowledge modules' with centralised examinations. The ICAEW does not 'recognise' accountancy degrees as such, though it has determined for each accountancy degree the exemptions it will grant; it prescribes no courses and provides no teaching for those examinations, but allows individuals who have followed a degree course or other recognised qualification to apply for exemption from one or more of those examinations (so law graduates, for example, can apply for exemption from the law components). In the legal services context this approach might also help to open up the market to other (eg non-graduate) entrants who can demonstrate competence by passing the assessments.

    Question 2: Do you see merit in developing an approach to initial education akin to ICAEW? What would you see as the risks and benefits of such a system?

The LPC and BPTC, and the relationship with work-based learning

44. Both the current LPC and the BVC/BPTC have been subject to frequent review and revision since their introduction. Both are acknowledged to be very marked improvements on their predecessors.

[28] We have deliberately separated issues of knowledge from cognitive skills in order to clarify views on this point in terms of the debate emerging from responses to Discussion Paper 01/2012, though we acknowledge that a cognitive skills approach would be a different, and some would argue, better, starting point.

45. As regards the LPC, despite some early reservations, the development of more flexible training and 'bespoke' courses has generally been welcomed by respondents/participants. Nevertheless, concerns continue to be voiced by practitioners and trainees as regards the relevance and quality of parts of the LPC. The range of criticisms is quite extensive, relating both to the overarching design and structure of the course, its specific contents, and its supervision. The following are a representative cross-section of responses:

- The common core is seen as too large and over-prescribed.
- Drafting and advocacy training appear to be the most criticised aspects of the course
- The course struggles adequately to mirror practice – it is not sufficiently transactional; too many things have to be re-learned once in work, or, for part-timers who are working, unlearned to pass the LPC; instead of learning for practice, students seem to be practising for new kinds of assessment
- The course does not sufficiently assist trainees in developing the ability to attend to detail (this seems again particularly relate to the teaching of drafting).
- The assumption of a common pass mark for all skills and knowledge assessments overlooks the fact that in some practice areas, trainees need to be better than competent from day one of the training contract
- Gaps in developing commercial awareness, equality and diversity training, managing stress at work, working across jurisdictions/conflicts of laws, and a relative absence of electives relevant to smaller/high street firms
- Insufficient monitoring by the SRA of the quality of LPC providers

46. A number of respondents favour greater modularisation (eg Law Society, LETG) (so long as a sufficient common core is retained – CLLS Paper 2) or, more specifically, the greater integration of LPC training with the training contract. Others are more cautious of stepping away from a model of classroom-led training that provides an initial transition into the workplace (Anon law firm 4, Anon Law School2) others express the last point more definitely in terms of support for the status quo (CLT, LawNet, Anon law firms 3 and 5).

47. At this stage, therefore (assuming the LPC is retained in some form), the question remains: just how useful is the idea of a common core in the context of an increasingly segmented profession, and, if so, how should that core be defined? The reserved activities are at the heart of regulation, and yet they are not necessarily a good proxy for the range of work most trainees will actually do (or necessarily a good basis for risk-based regulation – though that is a matter beyond our remit) and are reflected only to a limited extent in the existing model.

48. The assumption that a common core is necessary to give students both a sufficient range of knowledge/skills to be employable across a range of practice areas, and the (final) opportunity to assess where their interests and aptitudes lie before committing themselves to employment, has some merit, though it does not reflect the reality of a market in which the majority of those LPC students who are most likely to succeed in the professional employment market will have already made those decisions before commencing the course. The call for a wide core may also elide with the assumption that the LPC must provide an unfettered licence to practice in any area of law, an assumption which some consumer groups appear increasingly willing to question

(see, eg, LSCP published response). But it is unlikely that any greater transactional richness and depth of understanding can be achieved without some sacrifice of breadth.

49. The development of bespoke LPCs and recent initiatives to blend the LPC more closely with practice (eg the Eversheds model) are indicative of ways in which linkages may be increased and the lack of continuum between the LPC and the training contract reduced (cp Fancourt, 2004). Integration matters if trainees are genuinely able, if not to “hit the ground running”, then at least to “walk briskly” on commencing training. But there is also a critical dividing line between training and fee earning, and there are concerns that economic pressures may encourage firms to blur that line.

Question 3: we would welcome views on whether or not the scope of the LPC core should be reduced, or, indeed, extended. What aspects of the core should be reduced/substituted/extended, and why?

50. Turning attention specifically to the training contract, respondents who commented on this were almost universally of the view that some element of supervised training must be retained. Setting aside for now debates about fair access, where it works well the training contract is ‘the jewel in the crown’ of the solicitors’ qualification, and in many instances the training contract clearly does work well. On the other hand, consistency of experience and quality of supervision are still emerging as significant issues (cp Boon, 2002; Fancourt, 2004) – indeed the JLD describes quality of training as “the key concern” with this stage of training. The Professional Skills Course also continues to come in for significant criticism, with suggestions that it either be taken back into the vocational course, or converted into a more structured form of initial CPD.

51. The question of having some final qualifying assessment also generated mixed views. There is some agreement that greater assurance is required that trainees have achieved the ‘day one outcomes’ (eg, LSCP), but there are also concerns about the cost and proportionality of imposing an assessment requirement on all firms. We are continuing to examine this issue.

52. We have so far received relatively few responses in relation to training for the Bar, beyond those from the Bar Council and the BSB. The Bar Council and BSB in their responses to Discussion Paper 01/2012, and in most of their engagements with the research team have been very clear in their views that, subject to certain adjustments currently in train, the necessary work has been done by the Wood reviews for the BSB on the Bar Vocational Course (now Bar Professional Training Course - BPTC) and pupillage, and that the current system of training for the Bar is, indeed, fit for purpose. The Wood reports have been well-received by the profession and are a significant resource for this stage of the review; they will be considered more fully in our final report in relation to the range of evidence that we are able to gather, and in making any recommendations in respect of the Bar.

53. The timing of LETR in relation to these reports also inevitably makes the work of the research team more difficult, not least insofar as care needs to be taken in fieldwork in assessing whether the reported benefits and concerns expressed by participants trained under the ‘old’, system apply to the new. We note that the online survey has received a high level of responses from the Bar, and we look forward to analysing those responses after the closing date of 16 August.

54. The BPTC benefits, relative to the LPC, from the advantage of being a less diverse and less knowledge-driven course. Its strong focus on advocacy and litigation provide a good foundation for transactional learning and teaching and a good simulation of practice. Points emerging from respondents and research participants so far include:

- Duration of the BPTC continues to be an issue for some, particularly the question whether there is scope to reduce the time spent on the knowledge elements, eg, through greater use of online delivery
- There is some support for modularisation/greater blending of the BPTC with pupillage (see eg Young Barristers Committee)
- The emphasis in the BVC/BPTC (eg in terms of ethical obligations) on the self-employed Bar to the exclusion of the employed Bar, or government legal services
- As with the LPC, there are concerns that the process of teaching certain skills is distorted by the needs of assessment, leading to some un/re-learning in practice
- Whether sufficient emphasis is placed on appearing against an unrepresented litigant in civil proceedings
- We are aware of issues arising from the setting of centralised assessments this year and will look at lessons that may be learned from this in the context of any recommendations as to the use of national assessments[29]
- Satisfaction with the quality of supervision at the pupillage stage appears high.

55. Looking to the future, there may be a question whether the current training system is sufficiently prepared for what may be a longer term shift in the Bar's centre of gravity from self-employed to employed practice. In the more immediate future, do proposals to extend rights to conduct litigation and the extension of Public Access to new practitioners require any changes to the BPTC, further education or new practitioner programmes, particularly as regards client care, and initial interviewing (conferencing) skills? We note that the BSB has expressed the view that the BPTC civil and criminal procedure components provide a sufficient training in litigation to satisfy the extension of litigation rights, but that this will be kept under review (BSB, 2012).

Question 4: should greater emphasis be placed on the role and responsibilities of the employed barrister in the BPTC or any successor course? If so, what changes would you wish to see?

Question 5: do proposals to extend rights to conduct litigation and the extension of Public Access to new practitioners require any changes to the BPTC, further education or new practitioner programmes, particularly as regards (a) criminal procedure (b) civil procedure (c) client care, and (d) initial interviewing (conferencing) skills?

56. The issue of modularisation/blending the vocational course with work-based learning has arisen in discussions of both the LPC and BPTC. Both courses as they stand have achieved a good deal in

[29] The formal examiners' report, including detailed comparative grading data for 2010/11 and 2011/12 is published on the BSB website at www.barstandardsboard.org.uk/media/1422420/central_examination_board_report_july_2012_final.pdf

raising standards of initial education and training, but we question whether we are now close to the limits of what can be achieved by this type of classroom-based course. Improvements might still be made by deepening the transactional richness, particularly of the LPC, or by linking the programmes closer to the 'real world' of work. This could bring benefits in reducing breaks between classroom and work-based learning, increasing flexibility and a more bespoke approach to some of the training, and of reducing costs, but they also carry risks in disrupting a tried and tested system of training.

57. To what extent is change viable and appropriate? The issue was explored in the first ACLEC report (1996). This favoured splitting both courses into an initial 'licentiate' of 15-18 weeks full-time (or equivalent part-time) duration based on essentially common training. This would precede a shortened LPC/BVC of another 15-18 weeks, combined with two periods of work-based learning. The ACLEC proposals were largely rejected by the profession for a wide variety of reasons, but it may be worth unpacking elements of that proposal.

58. Blending vocational training and work-based learning could be done in a wide variety of ways. Some flexibility is already available within the LPC around the split between core and electives. Could a similar design be extended to the BPTC/pupillage? Other systems adopt a more flexible 'earn and learn' approach - CILEx, for example (below). The Institute of Chartered Accountants similarly adopts a range of approaches, including some degrees in their Strategic Partnership Programme which start in the workplace. In medical education, the emphasis on clinical work and shadowing of experienced doctors has increased since 2009, with clinical placements now established quite early in the undergraduate curriculum.

59. A more radical approach might be to adopt a 'mixed economy' of training models. This could see the existing model (or something similar) retained, particularly to support smaller training organisations, but at the most radical end of the spectrum this could see the distinctions between the LPC and the training contract/work-based learning disappear so that trainees are assessed by a variety of mechanisms throughout an extended training period against 'day one' outcomes.[30] Whether there would be significant take-up of such opportunities is uncertain; inertia and cost factors may inhibit the possible innovations that such an approach might otherwise foster.

60. Another approach might be to take the ACLEC starting point of an initial professional training course for both solicitors and barristers,[31] but without necessarily moving to common training. Such an initial course could be separately assessed and would thus provide a stand- alone paralegal qualification in its own right for those who are unable to get a training contract/pupillage or progress through any alternative form of work-based learning (eg, of the

[30] Given the size of most chambers this more radical approach is less likely to be viable for the Bar, unless, perhaps, chambers were to combine as training consortia, or more of the training became co-ordinated through the Inns of Court.
[31] ACLEC suggested a mid-point split of 15-18 weeks. There is no obvious rationale for this particular breakpoint, though, intuitively, one might begin to question, if the initial course were to extend much over the equivalent of 20 weeks full-time, whether any gains are likely to justify the costs of re-design.

type piloted by the SRA). The reduction in content and duration would also have the benefit of reducing the cost of this stage of training.

61. Further periods of 'LPC2' or 'BPTC2' study could potentially be integrated into the training contract or pupillage, on a modular basis, or more of the current training outcomes for the LPC/BPTC could be moved into the training contract/pupillage, to be delivered as employers see fit by a mix of integrated internal and external courses, supervision and assessment. If one took the view that the balance of the existing course would likely equate to moving a minimum of 10 weeks x 36 hours , that is, 360 hours of notional study time per trainee/pupil into the second phase, then the question arises whether such an approach would necessitate some increase in the duration of supervised training. We suggest this need not necessarily be a pro-rata increase, since the rate and quality of learning may be enhanced, so that outcomes are achieved more rapidly than in a traditional classroom-led environment. [32]

62. There are no obvious comparators from legal training on which we could draw for such a proposal. Short professional training courses are common in a number of common law jurisdictions. They may be of between 4-15 weeks duration in their entirety, though these tend to be intensive skills-based courses, with limited knowledge-led content, in jurisdictions where the LLB plays a significantly larger part in developing substantive know-how. Many are designed to be blended flexibly with the workplace, though the actual linkages developed with workplace learning may actually be quite limited. There is a growing use of online learning combined with intensive blocks of onsite study (eg the CPLED courses in Alberta, Manitoba and Saskatchewan, the College of Law variants of the Practical Legal Training Course delivered in a number of Australian states, and the New Zealand Professional Legal Studies Course).

Question 6: we would welcome any additional view as to the viability and desirability of the kind of integration outlined here. What might the risks be, particularly in terms of the LSA regulatory objectives? What are the benefits?

Other routes into the regulated workforce

63. The other approved regulators in the sector oversee a range of persons who are, predominantly, authorised to undertake a more limited range of activities. To this extent they provide a useful example of something closer to activity-based authorisation.[33]

64. We are still conducting research in relation to the wider regulated workforce, and do not in this paper intend to focus on the features of each system in any great detail. There are nonetheless some generic issues that we have identified thus far.

[32] Learning theory suggests it would because the learning is taking place in a real-world setting, it is more likely to be 'just in time', ie, relevant to what the trainee needs to know now, and (hopefully) the learner has a relatively high level of work commitment, and hence motivation to learn.

[33] Activity-based authorisation is not a well understood concept at present. As the name suggests, it implies that authorisation to practice is based more on specific professional activities, rather than by title *(per se).* The logic of activity-based authorisation is that it is more targeted and focused on the risks inherent in different areas of work.

65. That said, we should make some specific observations regarding the largest of the group, and potentially the second largest segment of the regulated workforce, CILEx lawyers. CILEx is being widely recognised by our respondents as a success story, and thus provides an important exemplar for LETR. CILEx has grown from training individuals for a subordinate professional role into an increasingly independent organisation of professionals overseen by their own regulator. It has been suggested to us (and not by CILEx) that they seem already to be doing much of what other parts of the sector are talking about.

66. The current CILEx system comprises a suite of paralegal and legal qualifications from level 2 to level 6. It starts from a principle of open access, and enables trainees to pursue either a secretarial or paralegal pathway or start working directly towards Chartered status, *via* a flexible range of named awards with multiple exit points, which enable students to stop or progress as they wish. The paralegal dimension of CILEx's work is discussed further in the next section.

67. Chartered legal executives have been described to us as "specialist lawyers with a generalist underpinning". The qualification as a Chartered Legal Executive is built up through three levels of membership: student or affiliate, associate and graduate. These are achieved by passing the CILEx Level 3 Professional Diploma in Law and Practice[34] and the CILEx Level 6 Professional Higher Diploma in Law and Practice, or being exempted from them (or parts of them). Chartered status (Fellow) is achieved on the completion a minimum of five years' employment in legal work, including at least two consecutive years' experience following completion of the Level 6 Diploma in Law and Practice.

68. Specialisation is developed at the second (level 6) stage of training, through the linked law and legal practice units, which enable trainees to focus on one of seven main areas of practice:

- Civil Litigation
- Company and Partnership Law
- Conveyancing
- Criminal Litigation
- Employment Law
- Family Law
- Probate Practice

69. Whilst there appears in practice to be a strong synergy between the areas of work in which trainees, and the areas of law and practice studied, there is at present little formal constraint on authorisation, other than the ethical obligation not to undertake work in areas in which one is not competent. In other words, authorisation is not activity-based in the strict sense, in that it is not formally tied (eg as a limited practising certificate) to the area of specialisation originally

[34] Requiring a total of 10 law units; seven units are mandatory: Introduction to Law and Practice, Contract, Criminal Law, Land Law and Tort, together with Client care Skills and Legal Research Skills. A list of all the units available can be found at http://www.ilex-tutorial.ac.uk/Prospective_Students/Qualify_as_legal_executive/First_stage_of_training

followed at level 6.[35] The development of opportunities for certification as an independent CILEx practitioner will bring an element of activity-based authorisation to the system.

70. Law graduates can progress directly onto a 'Fast-track' Diploma at level 6. This requires them to study only two Level 6 practice units and the Client Care Skills unit. One of the practice units must link to a law unit that was studied as part of the degree. Graduates who have also completed the LPC are exempted from the CILEx Graduate Fast-track Diploma, but still need to satisfy CILEx's requirements for qualifying employment to become a Chartered Legal Executive.

71. CILEx lawyers cannot at present undertake reserved activities other than under the supervision of a solicitor. There is no formal restriction (other than the ethical obligation to act in areas where one is competent) on their ability to undertake unreserved activities. Some CILEx members are employed within the unregulated sector, though the numbers are not thought to be large. If they do not already have Chartered status, career progression for these individuals may be limited if they are not under the supervision of a solicitor, barrister or Chartered Legal Executive. CILEx itself acknowledges that there is work to be done in educating and supporting members to adapt to the cultural changes implicit in opportunities for career progression through LDPs/ABSs and 'legal executive firms'.

72. Other routes into the regulated workforce comprise a mix of graduate and non-graduate entry. Notaries and the IP professions are (effectively) graduate entry. The great majority of notaries are already qualified solicitors, and entry standards for the IP professions are high; the training for Patent Attorneys is seen as particularly demanding. Licensed conveyances and costs lawyers have relatively open access policies and so are closer to CILEx in the profile.

73. All of these professions, in contrast to training for solicitors and barristers, involve a system of education and training that is based upon on-the-job and off-the-job learning in parallel rather than in strict sequence. Blended and 'earn while you learn' approaches are generally seen by these professions as more effective at assuring 'day one' competence, though it should be noted that in most instances the knowledge components of training cover a narrower range of competences than the LPC or BPTC.

74. There is also marked variation in the training in what some refer to as 'non-core' and soft skills, and a number of the gaps identified in this paper in relation to client-facing and managements skills are prevalent in these groups.

75. In terms of the nature and regulation of qualifications among approved regulators there is considerable variation. CILEx qualifications are part of the national qualification framework and therefore subject to regulation by Ofqual as well as IPS. The specialist qualifications for notaries and trade mark attorneys are validated and delivered by universities. They are postgraduate in time, and accredited and quality assured by university processes. Work-based learning under supervision that falls outwith those qualifications tends to be non-assessed and exclusively

[35] The one exception to this is in respect of the further qualification as a CILEx Advocate, where the certificate is limited to rights to appear in civil, criminal, or family proceedings.

within the domain of the professions and their regulator. The qualifications offered by CIPA, the Association of Costs Lawyers (ACL) and the Council of Licensed Conveyancers (CLC) are not presently regulated by Ofqual or QAA and do not appear in (and therefore are not rated for level against) the national qualification framework. CLC quality assures its own qualification, while ACL's qualification is assured by the Costs Lawyers Standards Board.

76. A feature of this part of the sector (though by no means exclusive to it) is a relative lack of completeness or clarity of information as regards transfers and exemptions provided by other qualifications. The lack of mobility between the IP professions and solicitors and barristers is also one example that has been commented upon in our research.

77. There are multiple examples of dual qualification, and for notaries in particular this is virtually the norm. We have not found any instances so far of where dual qualification/double deontology has seemed to cause either significant jurisdictional problems regarding CPD or disciplinary authority, or obvious consumer detriment.

Question 7: We would welcome additional evidence as regards the quality of education and training and any significant perceived knowledge or skills gaps in relation to qualification for these other regulated professions.

78. The development of multiple qualification routes, and the potential accreditation of qualifications in respect of new reserved areas such will-writing and estate administration raises important technical (competence) questions concerning the necessary level of qualification for independent practice. At present those qualifications that are set against the QCF/HEQF tend to set the standard for authorisation at level 6 (graduate or graduate equivalent). This raises the question whether level 6 captures some notion of the necessary minimum competence to undertake independent practice without substantial supervision. The differences between levels 3 (A level equivalent) and 6 are primarily geared to increasing ability to deal with complexity and less well defined problems, to demonstrate autonomy as a learner, and to take responsibility for the work of others (see Appendix II where we include generic descriptors for qualifications at levels 3, 4 and 6). Does level 6 capture the essential competences of *any* independent practitioner, or does it set the bar too high and, in effect become an unnecessary restriction on consumer choice and competition?

Question 8: As a matter of principle, and as a means of assuring a baseline standard for the regulated sector, should the qualification point for unsupervised practice of reserved activities be set, for at least some part of the terminal ('day one competence') qualification at not less than graduate-equivalence (QCF/HEQF level 6), or does this set the bar too high? (Note: 'qualification' for these purposes could include assessment of supervised practice). What are the risks/benefits of setting the standard lower? If a lower standard is appropriate, do you have a view what that should be (eg, level 3, 4, etc)?

Standards and qualifications for paralegals

79. There has been steady growth in recent years in the range of qualifications available to paralegals. At present there are four primary routes to obtaining paralegal qualifications:

- CILEx, in conjunction with City and Guilds, offers paralegal qualifications at levels 2 and 3 of the national Qualifications and Credit Framework (QCF) (equivalent to GCSE grades A*-C, and A level respectively). Qualifications at level 2 can be studied as awards (approximately equivalent to one GCSE) or combined into larger certificate or diploma qualifications. At level 3 CILEx offers both a range of free-standing paralegal awards, and the Certificate in Law and Legal Practice, which can also serve as the first stage in qualifying as a Chartered Legal Executive.[36]

- The National Association of Licensed Paralegals (NALP) offers paralegal awards at level 4 and level 7 and is an accredited awarding organisation through OfQual. It also offers a Higher Diploma that may be studied as part of the LLB at a number of universities, and provides a postgraduate level paralegal Diploma for LLB graduates who are seeking a paralegal qualification. A level 3 qualification is planned from May 2013.

- The Institute of Paralegals (IoP) offers a suite of 'legal professional qualifications' for which it is the awarding body. These are not accredited against the QCF, and are not course-based programmes as such, but essentially awards that enable applicants with paralegal experience to accredit work-based and/or course-based learning against the IoP competency standards for an area of practice.

- A range of providers are also delivering discrete paralegal qualifications. These include Central Law Training, which offers a BTEC Advanced Diploma at level 3 and a higher 'specialist qualification' accredited by the University of the West of England. Both of these awards are also recognised as part of its route to qualification by the Institute of Paralegals. At least two institutions offer postgraduate paralegal qualifications (at level 7): London Metropolitan University thus offers an MA in Legal Advice and Paralegal Work, and the London College of Accountancy and Management offers a PgDip in Paralegal Practice.

80. There are thus significant developments in paralegal qualifications, though overall these are emerging in a relatively piecemeal fashion, within a system that some see as lacking in coherence. Not all qualifications are credit-rated against the national QCF, while those that are vary across a range from level 2 to level 7. Such a range may be valuable in supporting a diverse entry, but some of the breaks and discontinuities may also be significant in limiting progression or transfer into the regulated occupations. Looking across the piece, there are at least two key issues: what tools exist to enable both prospective trainees (as consumers of the training) and prospective employers to evaluate the options? Are there sufficient checks across the range to ensure that appropriate levels of workplace supervision are in place for those in training?

81. Moreover, the value added of such awards is not necessarily clear to those who are working as paralegals, particularly those already with LPC/BPTC qualifications, who may have taken on

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[36] It is worth noting that CILEx paralegals may also be distinctive in regulatory terms, in that, insofar as they are trainee chartered legal executives, they are individually regulated by IPS.

paralegal work initially as a temporary expedient, but now find (or at least perceive) that their opportunities for progression in that direction are severely limited. The growing involvement of Skills for Justice, the Sector Skills Council with responsibility for legal services may assist in coordination and consolidation of developments in this area.

82. Skills for Justice is also taking the lead, with CILEx, in developing national funded apprenticeships in the legal services sector. These are a potentially interesting and perhaps significant development (see Welsh and Aitchison, 2012). Apprenticeships will constitute a new, structured, pathway into paralegal careers through a mix of college- and work-based training. The timetable for developing national legal apprenticeships is moving forward rapidly. An Advanced Apprenticeship Framework for CPS paralegal staff was launched in April 2012, and commercial (ie private sector) Apprenticeship Pathways are now being developed with the intention that they should be approved by April 2013. If the work progresses to schedule, the first commercial national apprentices will be in place by July 2013, though a number of firms are already offering apprenticeships in advance of this system.

83. To attract government funding, apprenticeships must comply with the Apprenticeships, Skills, Children and Learning Act 2009 which requires, through delegated legislation, that apprenticeships must contain a qualification based on standards, called National Occupational Standards (NOS). NOS are widely available in other sectors, where they have been developed since the 1980s to achieve consistency in the outcomes of technical and vocational education. They are only now being developed for the legal services sector (see Skills for Justice, 2012). NOS could also be used longer term to support the development of higher apprenticeships for those leaving school or college with level 3 (including A level) qualifications. Higher apprenticeships have been developed in a variety of sectors since 2009.[37] Most offer qualifications at level 4 – ie, first year LLB/foundation degree equivalent), though some are set at level 5.

Question 9: Do you consider that current standards for paralegal qualifications are fragmented and complex? If so, would you favour the development of a clearer framework and more coordinated standards of paralegal education?

Question 10: If voluntary co-ordination (eg around NOS) is not achieved, would you favour bringing individual paralegal training fully within legal services regulation, or would you consider entity regulation of paralegals employed in regulated entities to be sufficient?

Ethics and values

84. In its emphasis on the 'professional principles' the LSA regulatory objectives squarely place legal ethics and values at the heart of the regulatory system. Interestingly, this view was also reflected by plenary speakers at the LETR Symposium. For Julia Black, ethics is what raises competence to professionalism (Black, 2012), whilst Steve Mark also emphasised the centrality of values and

[37] For example, a higher apprenticeship framework has recently been developed for the taxation, auditing and management consulting professions in response to employer concerns (inter alia) about the diversity of the existing workforce and skills shortages amongst new recruits, particularly in key areas such as customer handling, oral communication and team working (Financial Skills Partnership, 2012).

the ethical context of practice in shaping the approach to entity regulation in New South Wales (Mark 2012).

85. Given the LSA context, and the challenges created by multiple new roles and forms of provider, the research team considers that professional ethics and values are central to assuring quality across the regulated sector. It is critical to appreciate that ethical standards are not the preserve of any particular regulated title: the professional principles must shape the work of all who deliver services within the ambit of the Act.

86. We take the view that the public interest requires that all approved regulators ensure that the professional principles are adequately addressed in their training. That does not mean that it is the function of this phase of LETR to prescribe how or where that is achieved.

87. Debates that have been running since the 1996 ACLEC Report are nonetheless valuable in this context in that they highlight some of the difficulties in addressing this terrain. Both the ACLEC Report and the more recent Economides and Rogers Report (2009), in their recommendations to bring ethics into the initial or academic stage of training for solicitors, have raised uncertainties about what that implies. Are we talking about individual professional ethics, *per se*, are we addressing the institutional ethical roles of the professions, judges and lawyers as a collectivity, or are we primarily concerned with the 'system ethics' and values of law itself? This is reflected in Boon's (2011) definition of legal ethics as:

88. The study of the relationship between morality and Law, the values underpinning the legal system, and the regulation of the legal services market, including the institutions, professional roles and ethics of the judiciary and legal professions.

89. If we accept that definition, all of these options are possible, and, as we noted in Discussion Paper 01/2012, professional ethics is widely included in academic legal studies in other Common Law jurisdictions (though it is acknowledged that these have more professionally orientated law degrees - our intention in presenting examples of that approach in Discussion Paper 01/2012 was not to foreclose debate).

90. As regards the QLD specifically, there are suggestions in both the ACLEC and Economides and Rogers Reports that a focus on the wider ethical context of law at the undergraduate/GDL stage would suffice, though the latter is ambiguous and at points seems unequivocally to support the teaching of some professional legal ethics. Boon in his report goes further than the minimalist 'system ethics' position in stating that:

> the aim of the ethics curriculum at undergraduate level should be to establish clearly in students' minds the institutions of the legal system, the values that underpin them *and the professions' roles in relation to them.* This will provide the foundation for students' understanding of, and commitment to, their own professional responsibility." (Our emphasis).

Others, such as Cownie (2006, 2008; also Bradney 2008) recognise the importance of (and impossibility of avoiding) engaging with legal values in the law curriculum, and acknowledge that

some considerable progress has been made in terms of developing a conscious conversation about legal values in English and Welsh legal education (Cownie 2008, Rochette, 2010), but retain reservations about institutionalising or imposing this across the formal curriculum.

91. There is a strong divergence of views in responses to our Discussion Paper, and mixed views emerging in our qualitative data. Most of those who both support and reject adding ethics to the Joint Statement focus on *professional ethics.* There is far less coherent discussion of the merits of the 'softer version' of ethics: what we might call the integration of 'system ethics and values' (though it should be noted that reference to the values of law is already explicit in the Law Benchmark (QAA 2007)). We would therefore welcome further views on:

Question 11: Regarding ethics and values in the law curriculum, (assuming the Joint Announcement is retained) would stakeholders wish to see

(a) the status quo retained;

(b) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law and the values underpinning the legal system

(c) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values

(d) the addition of legal ethics as a specific Foundation of Legal Knowledge.

In terms of priority would stakeholders consider this a higher or lower prority than other additions/substitutions (eg the law of organisations or commercial law)?

Would you consider that a need to address in education and training the underlying values of law should extend to all authorised persons under the LSA?

92. We also take the view that continuing moves to outcomes-focused regulation are likely to increase the need to engage trainees in thinking reflectively about ethical standards and obligations, it is different from simply teaching 'the law on lawyering'. Moves to outcome-focused regulation are therefore likely to require some re-evaluation of the amount of time given over to professional obligations and conduct in training, and to the appropriate teaching and assessment methods.

Competence and quality gaps

93. Our last Discussion Paper made few references to the consumer view and evidence of specific competence/quality gaps. The Legal Services Consumer Panel in its evidence to LETR makes the point that "there is a massive hole in the evidence base to allow a reasoned assessment about current levels of quality in the sector". We agree. Such evidence as currently exists offers differing and sometimes contradictory indicators of quality. A lack of consistent interval studies, changes in complaints procedures and the ways in which complaints are managed and recorded have not assisted the regulators or researchers in establishing a meaningful baseline of data. This is not a gap which LETR can realistically attempt to close in the time available.

94. What consumers mean by, and how they assess, quality of service is, of course, problematic given the obvious difficulties of judging the quality of legal services. Part of the problem is that quality is itself a slippery concept (Goriely, 1994). Moreover, it is apparent that consumers use various proxies for quality in selecting service providers, (see, eg, Vanilla Research 2010 and references cited in Briefing Paper 02/2011). These factors include: personal recommendation, price, brand visibility, professional title, and quality of marketing information/websites, though research also suggests that consumers generally are quite limited or passive in searching for and comparing services.

95. Consumers may use quite different criteria for judging the quality of services actually delivered – most prominent are what we might call the 'visible features' of quality, such as empathy, professional presentation (the look and feel of the service), clarity and frequency of communication, timeliness of response, etc, but factors such as funding regime (eg, contingency fees – Moorhead and Cumming, 2009), or success or satisfaction with the outcome (BIS, 2010) may also influence – and perhaps actively distort – such after the event evaluations.

96. Most of the factors so far discussed tend to be limited as proxies for assessing quality of advice. As noted above, the quality of visible features of the service may offer only a relatively weak proxy for technical competence (Goriely, 1994, Vanilla Research 2010), though the strength of correlation between visible and invisible quality features has yet to be properly tested. (This is not to say that those visible features are not valued in their own right; they clearly are, and we return to this point below.) General (survey) measures of consumer satisfaction are a limited proxy for technical competence, though they might be a better proxy for satisfaction with these visible features.[38]

97. Price has been found to be a weak proxy for quality, most recently in the will-writing research conducted for the Legal Services Board and others (IFF Research, 2011). The relationship between quality and price is an interesting one. Consumers may use price as a proxy for quality, by assuming that higher priced services are likely to be better, but price by itself does not appear to be the major consideration for most individual purchasers of legal services: certainty of costs may be far more critical to consumers than baseline price.[39]

98. Various studies comparing delivery of services by 'lawyers' and 'non-lawyers' also indicate that title *per se* is not a strong quality proxy (Bogart and Vidmar, 1989; Kritzer, 1998; IFF Research, 2011; Moorhead et al, 2003). While the difficulty of comparing and measuring services needs to

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[38] This would be consistent with complaints data over the years which indicate that the majority of consumer complaints against lawyers also tend to relate to these visible features rather than underlying technical competence, though note the LSCP tracker surveys discussed below.

[39] In a recent YouGov poll for Jures, when asked which factors were likely to influence their decision to purchase legal services, 60% of respondents highlighted quality of service, 35% highlighted fixed fees, and a rather startling 25% highlighted cheapest price (Jures, 2010). Unfortunately the Jures study says nothing about the demographics of the sample polled. Vanilla Research (2010) emphasised that, not surprisingly, absolute price in its survey was most likely to be a key consideration for the lower income C2DE socio-economic group. This result does, of course, also highlight the risk of encouraging competition on price without quality controls, since any race to the bottom is most likely to impact the poorer, more vulnerable, sector of the community.

be acknowledged in interpreting such studies, the evidence is persuasive, though by no means conclusive. It is clear, of course, that variations in service delivery will depend on a range of factors, but in general, we would suggest that specialisation appears to be a better proxy for quality than possession of a professional legal qualification *per se* (cp. Genn and Genn, 1989; Moorhead et al, 2003).

99. The weaknesses of these other proxies point to the significant role that training and accreditation may have to play, and it is certainly notable that consumers assume that regulation and a common standard of qualification offer their best guarantee of competence (Vanilla Research, 2010). However, we should acknowledge that empirically ‘proving’ that specific education and training interventions make a measurable difference is difficult, not least because of the range and complexity of the variables involved.

100. In terms of general quality indicators, negligence claims against solicitors have fallen substantially during the last twelve months, whilst complaints about legal competence to the SRA and BSB have also fallen. Complaints on competence issues to the Legal Ombudsman account for about a third of the total (LSCP, 2012).

101. By contrast, evidence of specific quality/competence gaps is decidedly patchy. From existing research, we can offer the following propositions regarding reserved legal activities:

- Advocacy: we accept that there is a strong public interest argument that a high quality of advocacy needs to be assured, particularly in respect of criminal proceedings. Widespread opinion suggests that, at the upper end of the scale, standards of advocacy in England and Wales are very high, though it is also widely acknowledged that variability exists at lower levels. The QASA pilot study led by Professor Richard Moorhead offers some support. It found that most advocates performed well at lower and higher levels, however, level 2 advocates (lesser Crown Court trials) performed noticeably less well, with close to a 50% failure rate on some elements of the assessment. There is no comparable evidence of standards of civil advocacy. Our own qualitative research on civil advocacy also suggests greater variation at the lower levels. In interviews with experienced District Judges particular concerns were raised as regards the level of advocacy training on the LPC, though responses also pointed to variations in quality and weaknesses in performance across regulated titles. The point was also made that solicitor and barrister advocates were often less effective in conducting many of the routine chambers applications than agency paralegals who received more specific training in respect of those common proceedings. On the other hand, though not representative of reserved activity, studies of tribunal representation and advocacy suggest that qualified legal representation tends to produce better outcomes for clients than non-qualified representation in at least some jurisdictions – notably before employment tribunals (Genn and Genn, 1989; Latreille et al, 2005).

- Probate services: in 2004 a regulatory impact assessment by the (then) Department of Constitutional Affairs, in preparation for opening up the market for probate services, found that nearly one third of the applications received from solicitors by the Probate Registry in a

typical week were stopped because of errors or omissions (DCA, 2004). The LSCP reports in its evidence to LETR that 'recent anecdotal evidence' suggests that little has changed.

- Conveyancing services: again there appears to be little substantive recent research. Sparkes and Sebastian (2007: 190) report good levels of consumer satisfaction (mirrored recently by the LSCP tracker surveys), and add that:

> Competence in the practical aspects of chain management is reported to have improved under competitive pressure. Reported cases on mortgage fraud suggest that some solicitors cut corners e.g. in reliance on undertakings and in releasing mortgage funds before having executed documents. Concern is also expressed by the Land Registry about some technical aspects, for example in ensuring that applications are made within the priority period of searches. However, in general, standards are high.

102. Aside from data on specific areas of work, there is substantial evidence of consumer dissatisfaction regarding important visible features of service provision. Various studies and reports over the years have pointed consistently to the importance of communication to clients, and to consumer dissatisfaction with the quality and extent of communication with their lawyer, and to issues of timeliness, information about cost, and other aspects of client care (see, eg, Harris, 1994; Lewis, 1996; Witt and Stewart, 1996; OLSO, 2004 - the studies focus predominantly on solicitors). The LSCP tracker surveys suggest many of these issues still exist. Indeed the 2012 survey records its largest decline in satisfaction in respect of the level of personalised service or empathy, falling from 75% in 2011 to 70%; there is also less satisfaction with timeliness and communication once a matter is in progress.

103. Indicative though they may be, these data do suggest that we cannot assume that the current system, with its predominant focus an assuring competence to practice at an early stage of one's career, and a relatively light touch approach to CPD and continuing accreditation is capable of delivering competent service across the piece.

104. Before leaving this issue we should acknowledge that few studies specifically discuss the role of legal education, or examine the extent to which the failures identified may be mitigated by education and training. We should be careful not to assume that LET is a panacea. Studies like the probate study cited above may tell us relatively little about the extent to which inadequate performance reflects an underlying lack of technical competence, or other failures that may or may not be amenable to improvement via training. Carelessness is a competence issue, but to what extent can one be trained not to be careless? For example, anecdotal evidence suggests that many weaknesses in advocacy reflect inadequate preparation rather than an inability to advocate as such. Poor preparation may itself be a technical competence issue, or it may reflect other problems down the line – for example, delays by the CPS or instructing solicitor, employers overloading individuals beyond the point of competent practice, or a wider inability to manage the pressures of practice.

IV - LET and regulation

105. In exploring the role and limits of LET regulation we need to consider two questions: first, what are the appropriate aims/outcomes of LET, and second, whether regulation is required to ensure some or all of the minimum outcomes, and only then do we begin to consider what the most effective and efficient regulatory approaches are.

106. Defining the aims/outcomes of an activity is commonly seen as central to its quality assurance. These become, in effect, the means of assessing 'fitness for purpose'. The standard adopted may be:

- An internal one (does the activity satisfy its own aims and objectives?)
- An externally agreed specification or set of outcomes
- A needs-led standard (eg, does it meet the needs of the service user or ultimate consumer?)

107. These are not necessarily mutually exclusive. Standards for legal education and training have thus tended to be set as a mixture of internal and externally set standards, some of which have been defined by the anticipated needs of the employer as the primary user of LET. The extent to which the aims have been tested against any standard of public or consumer interest may be moot.

108. This has now changed in the wake of the Legal Services Act. As noted in Discussion Paper 01/2012 it is the function of each of the approved regulators to determine whether its system of training is consistent with and fulfils its duty to promote the regulatory objectives, and to that extent the regulatory objectives have become the context and principles in light of which the aims and outcomes of LET must be assessed.

109. It is readily apparent from the LSA itself that there is no order of priority between the regulatory objectives, and from debates in *Hansard* during the passage of the Legal Services Bill, it is clear that the idea of a hierarchy was considered and explicitly rejected by Parliament. As we observed in Discussion Paper 01/2012, the function of the regulators must thus be to balance the demands of these sometimes competing and sometimes complementary objectives. In assessing the aims and outcomes of LET it has been suggested that a further public interest test should serves as a 'tie-break' principle or additional balancing test, to resolve conflict or tensions between objectives. The kind of public interest test proposed is that *the benefit to the community of regulating exceeds its cost and is likely to have the greatest net public benefit of all alternative options considered.* Such tests are widely used by regulators, and have their origins in the welfare economics literature of the 1930s. Such public interest tests may take one of two forms:

  - A *total welfare standard*, ie, the sum of the effects (costs vs benefits) on consumers, producers/service providers, government, and the broader social impacts on the community
  - A *consumer welfare standard,* ie, one that focuses on consumer welfare as the pre-eminent interest, so that, for example, the impact on service providers would not be considered unless it also affected consumer benefit/detriment

110. Logically, the separation of public and consumer interests in the LSA, and the framing of the duty as one to 'protect and promote' the public interest would suggest a total welfare standard might be the more logically appropriate choice here, but we welcome views on the need for and appropriateness of such a test.

Question 12: Do you agree the need for an overarching public interest test in assessing the aims and outcomes of LET? If so do you have any view as to the form it should take?

111. We consider in principle the appropriate aims of LET for the legal services sector in section 5.

112. LET clearly supports the regulatory function in important ways. Effective education and training reduces risks; it can act as a substitute for more direct and intrusive regulatory interventions. It is important to ensure that LET systems do not actively impede responsive regulation and the development of new regulatory approaches, and to assure, so far as possible that the regulation of LET is proportionate: neither so excessive as to distort competition in the market,[40] nor so light touch as to undermine its public interest, effectiveness and consumer protection functions. More specifically changes to the regulatory context may impact the Review in the following three ways:

Entity-based regulation

113. Regulatory and business practices are combining to highlight the growing importance of the entity as the main 'unit of currency'. The current regulatory system is already placing increased emphasis on entity authorisation, and on whole-workforce development. The growth of multi-disciplinary practices and project teams, increased specialisation, the use of new technologies, and the competitive drive to decompose services will mean that clients and consumers are likely increasingly to experience their engagement with a 'lawyer' as engagement with the entity

[40] We should also acknowledge the risks in assuming that market liberalisation, by increasing competition, will necessarily drive-up quality, and without creating other significant risks. More detailed comparisons with other sectors of the economy may be instructive. For example, the Transport Act 1985, which achieved the deregulation of local bus services outside London has since been amended twice (by the Transport Acts 2000 and 2008) specifically in an attempt to facilitate quality enhancement (Mulley, 2009). Liberalisation of the UK energy market has, by contrast, seen improvements in the (measured) quality of service, but the exercise has been costly and accompanied by continuing concentrations of market power in suppliers who have tended to focus their efforts on maintaining dominance in certain areas of the market, rather than compete (Waddams Price, 2005; Harker and Waddams Price, 2007). Detriments to consumers, including increasing fuel poverty have also been noted, and, drawing on a meta-analysis of research across the European energy market, Bonneville and Rialhe (2005) have concluded that market liberalization has not, for the most part, generated anticipated price reductions in a market where elasticity of supply is limited. This sector also demonstrates well the need for regulatory responsiveness: the increasing need to push investment in sustainable and renewable energy is thus said to point to a new emphasis on the need for economic regulation and to a different approach to regulating in the public interest (Mitchell & Woodman, 2010). The assumed competition/quality nexus has been little tested in the legal services market, though there are two studies which offer some limited evidence against. Work tracking the reforms to the UK conveyancing market in the 1980s thus noted that whilst there was an apparent increase in quality during this period, it was statistically independent of changes in price (Domberger and Sherr, 1989). In one other European study, the impact of competition has been positively correlated to a *decline* in the quality of notarial acts submitted to the Netherlands' Land Registry (Nahuis and Noailly, 2005).

rather than a constant individual. None of this obviates the need for individual authorisation, but it shifts more of the onus of assuring compliance positively onto the entity.

114. This would seem to be consistent with the increasing emphasis on risk-based regulation. Individual authorisation is a relatively crude tool, for example, in contexts where work that can have a direct and significant impact on the quality of client outcomes may be decomposed between a mix of authorised and non-authorised staff, or outsourced. In these contexts, ensuring entities have appropriate work allocation and supervision policies and systems, backed-up by effective training programmes and good record-keeping seems a better way of demonstrating pro-active management of the risks. It also has the benefit to entities of enabling them to assess roles and training needs according to their priorities. It is critical that any training regime is flexible enough to ensure training integrates well with both the business model and needs of each regulated service provider, as well as with the needs of clients/consumers. For example a high CPD 'hourage' model that also included a blanket requirement that, say, 60% of CPD must relate to the individual's technical legal specialism could act as a barrier to innovation and hinder the development of client-facing hybrid functions that could add appreciably to the quality of service.

Risk-based and outcomes-focused regulation (OFR)

115. For regulators that adopt OFR and risk-based regulation, the assumption that 'once qualified' implies continuing competence becomes particularly questionable. Whilst 'day one' competence provides a baseline, it may not be enough, particularly for high risk areas of work where the public interest may demand evidence of continuing capability. Some would go further and suggest that the logic of a more risk-based and outcomes-focused approach to regulation implies that, firstly, we need to move increasingly (though not entirely) to what we would describe as an *active competence* orientation for both entities and individuals. This would recognises that the active promotion and maintenance of individual competence is a necessary and important (though not sufficient) goal of the regulatory system, and that individual authorised persons and, (where relevant) their employers, are responsible for assuring continuing competence. It contrasts with a *passive competence* orientation which exists where competence tends to be assumed by the regulatory system, unless and until evidence of incompetence comes to light, when the system may respond reactively.

116. Secondly, it may suggest that the regulation of education and training itself becomes more standards/outcomes-focused. Standards may be defined as regulatory tools which encourage the "pursuit or achievement of a value, a goal or an outcome, without specifying the action(s) required" (Braithwaite and Braithwaite, 1995: 307). They are thus less prescriptive than rules, which do specify the actions required to achieve an end.

117. The use of standards is increasingly common practice. Learning outcomes have been in widespread use for many years, including in the QAA Law Benchmark (Appendix B) (2007),[41] and are used, to varying degrees, by the majority of approved regulators; vocational course teachers

[41] Indicative learning outcomes are also being developed as part of the Bologna process, through the Tuning Project.

are familiar with the need to comply with 'written standards', and many entities also have their own sets of competence standards for training.

118. A good system of standards will satisfy tests of transparency (is it known and comprehensible), accessibility (is it readily applicable to its intended circumstances) and congruence (it is neither under- nor over-inclusive) (Scott, 2010). Looked at as a whole it is questionable whether the present system consistently meets these criteria, though we are continuing to evaluate the evidence on this point.

Activity-based authorisation

119. Both the LSB (2012) and the LSCP in their submission to LETR have suggested that legal services regulation has a specific trajectory towards greater activity-based authorisation, and they suggest that the LET system needs to be aligned more closely with this.

120. Stakeholder attitudes regarding a move to greater activity-based authorisation were tested by the research team in the context of both the June 2012 Consultation Steering Panel meeting, and in workshops at the LETR Symposium. The exercise was based on three simplified 'dummy' models or scenarios of how a modified regulatory structure might work: one that remains fundamentally title-based, one that moves substantially to activity-based authorisation, and an intermediate hybrid. In crude terms, preferences tended to favour either (in the majority of cases) a modified title-based system or (in the minority) an activity-based system. The hybrid was widely rejected on grounds of its likely complexity. The exercise was extremely useful, not least in clarifying the range of perceived risks and benefits associated with each approach. A summary of the perceived benefits and risks of greater activity-based regulation derived from those exercises is given in Appendix I.

121. At this stage, we have decided against consulting further on those specific scenarios. They have generated helpful data, but we are concerned that further discussion might suggest we are placing more weight on those specific models than we are, and that in turn might have the effect of closing down or narrowing debate in a way that would be unhelpful to the longer term aims of the Review. The scenarios and a summary of the discussions will be published separately as an output from the Symposium.

122. We also acknowledge that this is a sensitive issue for the Review. It is certainly not for the research team to drive forward a specific regulatory agenda, not least because that has potential ramifications beyond LET, and hence beyond our remit. Nor are we convinced that a single approach is necessarily the best option. As we noted in chapter 3 of the draft Literature Review, regulatory specialists are wary of the idea that there is a 'right' approach to regulation, or a 'right' set of tools. Different regulatory approaches can be used in a variety of ways; the mix will make a difference, and so the ramifications of choice of approaches are important. We acknowledge the force of Professor Julia Black's argument, in similar vein, that:

> Regulation by activity and regulation by title are not antithetical alternatives, but again can be combined. The real tensions lie not in the issue of whether the authorisation of individuals should be activity based or title based, but in the question of who has the power

to confer that authorisation, and whether that power should be a monopoly power, or one which is shared with others. It is at this point in the debate that the core goals of LET can become obscured. (Black, 2012)

123. Ultimately we take the view that questions of what are appropriate regulatory processes and outcomes are contextual matters for each approved regulator. It is their responsibility to ensure that their approach meets (inter alia) the needs of the public interest, consumers, and their specific regulated community. Their approach will be informed by a range of principles: notably the regulatory objectives laid out in s.1 of the Legal Services Act 2007,[42] and the overarching responsibility to assure that regulation is proportionate, consistent, transparent and targeted, but in meeting those objectives, each regulator has a degree of freedom to design their own regulatory approach.[43]

V - Developing the detail

124. In this final section we draw together some lessons and themes from the foregoing summary of progress, and highlight our thinking going forward.

125. Numerous respondents have highlighted the extent to which much of the current system works well and delivers high standards. Responses also stress the high degree of success and respect achieved internationally by lawyers trained in England and Wales, the preservation of which skills base is vital to the UK economy. We acknowledge those views, and the extent therefore to which part of the function of the Review must be to ensure that existing standards are maintained, and perhaps even enhanced, where it is in the public and/or consumer interest to do so.

126. Nevertheless, analysis to date suggests that there are a number of key problems which the Review must address.

Key issues for the Review

127. From the literature and work conducted to date we have identified the following issues as central to the review. The following summary is inevitably broad-brush. The issues identified do not arise equally in respect of all regulated occupations, or even parts of occupations. To take an obvious example, the risks to larger commercial clients are very different from the risks to SMEs and individual consumers. Commercial clients have greater power and knowledge, particularly

[42] We noted in para. 12 of Discussion Paper 01/2012 that a primary focus of the Review is on competence – which we aligned with encouraging effectiveness under s.1(1)(f) of the Act. A small number of respondents took this as a suggestion on our part that this objective had some priority over the others as regards education and training. This, of course, is not the case, as noted above (para. 108). It was not our intention thereby to suggest otherwise – our observation was intended to make a more limited, functional, point that LET most directly and most obviously supports that objective. As we observed in paras. 44-5 of Discussion Paper 01/2012, it is the job of the regulators to balance and prioritise these objectives in respect of all aspects of their work, including LET.

[43] Thus the Act states that each must act in a way they consider "most appropriate for the purposes of meeting those objectives" – s.28(2)(b) LSA 2007

insofar as the lawyer-client relationship is usually mediated/managed by in-house counsel. The regulation of education and training needs to be sensitive and responsive to these differences.

a. There is some evidence emerging of a mismatch between current training requirements and the skills sets required in both the current and future legal services market. Substantial evidence exists of failures in the domestic market amongst at least some parts of the regulated professions to meet existing consumer expectations as regards the visible quality of service delivered. There is only very partial evidence of technical competence problems, but sufficient examples of quality failures to raise it as a matter of concern. A number of gaps, particularly with respect to client relations[44]/relationship management, project management and more general team and individual management skills have been identified. These gaps are likely to become more critical as legal functions diversify.
b. There is too great a reliance on initial training as a guarantor of generalist or broad-based competence. The risks to consumers created by increased segmentation of the market and growing specialisation are not sufficiently addressed by regimes that place the onus on what we will define as primarily 'passive' competence, weighted towards training undertaken at the earlier stages of a career.[45]
c. There is insufficient recognition currently across a number of occupations of the centrality of ethics and values to the role of a regulated legal services provider.
d. The relative fragmentation of standards and the absence of a consistent training framework for paralegal staff is a matter of concern.
e. There is a relative lack of flexibility in training pathways and exit points and 'off-ramps' are sometimes treated as incidental or accidental outcomes rather than actively designed into qualifications and awards.

128. At this point we will also comment briefly on two further (related) issues that have been widely raised in discussion so far, these are the problems of over-supply and cost. These are primarily problems for the solicitors' profession and the Bar, rather than across the sector as a whole.

129. First, over-supply of itself is not a regulatory problem. As numerous respondents have pointed out, it is for the market to determine demand, and not for regulators to attempt artificially to manage the market. The recent Wood (BSB, 2010) and Burton (COIC, 2012) pupillage reports for the Bar illustrate well the enormous difficulties of trying to address the worst consequences of over-supply in a changing environment, without falling foul of competition laws, and without linking training directly to the immediate numerical needs of the profession. This problem is exacerbated by the high costs of training, perceptions of inter- and

[44] We use the term 'client relations' rather than just 'client communications' to capture the sense that developing the lawyer-client relationship requires an understanding of the context and power relations of that relationship as well as deployment of a range of skills and attributes (such as empathy) by the lawyer.

[45] The debate about specialisation has tended to focus on the risks to consumers inherent in over- or hyper-specialisation. The problem of over-specialisation is real, but should be distinguished from specialisation in general. Whilst specialisation undoubtedly carries both benefits and detriments (see Moorhead, 2010), there is also a risk that the focus on over-specialisation distracts attention from the ambiguity the profession faces in addressing specialisation, between upholding the public interest in competence, and protecting its members' individual interests, and its collective identity against the pressures of fragmentation (Moorhead, *id*).

intra-professional competition for high calibre trainees, and the association of high rewards with high status in the profession. These trends have seen training salaries at the top end of the professions increase dramatically over the last decade, and have combined to create what economists define as a 'sticky wage' problem – a market in which, despite considerable over-supply, employments costs (in this case training salaries/pupillage awards) remain above what the normal effects of supply and demand would predict. This is a difficult pattern to break as individual training providers will tend to be reluctant to 'blink first' and lower salaries/awards relative to competitors.

130. This does not mean that over-supply does not create subsidiary issues relevant to the Review, notably:

- The need for better information and careers advice on access to the professions and other legal service provider roles
- The need for 'off-ramps' (ie recognised routes/qualifications out of a particular pathway) and the ability to transfer into other occupations
- Possible equality and diversity issues in respect of who gets chosen at the various stages of LET

131. The cost of training is one of the most difficult issues to address. There is considerable discussion as to how far, if at all, this is a matter for regulation in a market-based system. It is a regulatory issue if the system of qualifications is imposing unnecessary barriers and burdens to accessing the market, and these add unnecessarily to the costs of entry. It is also a complex matter to assess whether costs are excessive relative to the nature of the training (we are seeking evidence on this), or whether there are simply too few incentives in the current market for providers to reduce costs. At present we take the view (a) that arguments about the costs of training cannot override the need to assure sufficient quality, and (b) that, if proposed changes have merit in educational and regulatory terms, *and* would reduce costs of training, then reduced cost can properly be regarded as an additional benefit that would weigh in favour of that solution. As part of this review further work will be undertaken independently of the research team to look at the economic costs of potential LETR recommendations, and who best should carry them.

Question 13: we would welcome any observations you might wish to make as regards our summary/evaluation of the key issues

Design principles

132. From the foregoing discussions, we think it helpful (and transparent) to identify a set of design principles which have assisted our work, and which, we suggest might have value in informing future discussions. We are not proposing these as regulatory principles:[46]

a. The specification of clear and consistent baseline standards is critical.
b. Standardisation should not mean over-specification, rigidity, or homogenisation; standards must be defined broadly enough to allow flexibility and innovation.

[46] We are grateful to Professor Wes Pue for suggesting a number of these.

c. Standards and pathways should support the development of a transparent *and* comprehensible continuum of legal education and training, regardless of the starting point.
d. Evidence of the risks/benefits of any change should be assessed against the regulatory objectives.
e. Dead-ends should be avoided: alternative pathways and 'off-ramps' should be identified in respect of all qualification pathways.
f. Unnecessary redundancies in training pathways should be avoided, if possible.
g. Simplicity and cost-effectiveness are good.

Aims

133. Previous reviews have not attempted to address the aims of LET across the piece, taking into account the needs of a range of occupations beyond solicitor and barrister. In terms of the social functions of law and legal services, we do not consider that a broadening of the view radically changes the vision. Based on the literature reviewed, responses from stakeholders and focus groups so far, we would propose the following as a basic statement of what the LET system should set out to achieve:[47]

- ***Core knowledge:*** all legal service providers must be able to demonstrate competence in their area of work. The breadth of that core knowledge may vary according to role, but all providers must be able to demonstrate a sufficient understanding of general legal principles and legal institutions and of the analytical and conceptual tools required by those who work with the law, and more specialist understanding as required.
- ***Practical skills:*** including legal research, IT skills, problem-solving, writing and drafting, interviewing and conferencing, providing legal advice and generating appropriate 'legal' and 'non-legal' solutions, negotiation, and advocacy.
- ***Ethics, values and attitudes:*** a commitment to the rule of law, justice, and fairness; a commitment to high ethical standards and to equality of opportunity; a commitment to professional development, and to being reflective and critically self-aware. This aim also assumes that an understanding of legal values implies some element of education *in* the law, not just *for* the law, ie, a broader understanding of the context and functions of law in a democratic society.
- ***Interpersonal and communication skills:*** communicating effectively by oral, written and electronic means; working with others, leading and managing others, enabling positive client relationships.[48]
- ***Organisational skills:*** personal management (eg managing time and workload), file management, project management, risk awareness and management.
- ***Commercial skills:*** commercial/client awareness, financial numeracy, networking and client relationship building/management, leading and managing organisations

134. The present arrangements for LET should be judged according to whether or not they are able to meet these general aims. Evidence to date, discussed in this paper, suggests that there

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[47] See also *Briefing Paper 01/2012*
[48] Including both the internal and external clients of in-house providers, and lay and professional clients for the Bar.

are gaps, for some purposes, in core knowledge and commercial skills. More fundamental gaps have been highlighted as regards client relations/communication skills, ethical awareness and organisational skills. If this is correct we suggest it is difficult to see that the system as a whole is fit for its purposes.

Question 14: Do you agree with the assessment of the gaps (now or arising in the foreseeable future) presented in this paper in respect of the part(s) of the sector with which you are familiar? If not, please indicate briefly the basis of your disagreement. [If you feel that you have already responded adequately to this question in your response to Discussion Paper 01/2012, please feel free simply to cross-refer]

The regulation of standards and qualifications

135. As noted above it is increasingly common practice for standards to be specified as a competence statement or outcome/set of outcomes.[49] Thus a standard for legal research might be expressed as

X is able to conduct research to progress legal matters

Such outcomes may represent a terminal standard (eg a 'day one' or exit standard) or an intermediate (on the way to an exit) standard or a continuing/repeat expectation (eg CPD outcomes). Because competence is often built up over time, outcomes may be constructed to show developmental progression through stages of training – the outcomes of one stage might thus also serve as a statement of the entry standard for the subsequent stage.

Question 15: do you consider an outcomes approach to be an appropriate basis for assessing individual competence across the regulated legal services sector? Please indicate reasons for your answer.

Question 16: in terms of the underlying academic and/or practical knowledge required of service providers in your part of the sector, would you expect to see some further specification of (eg) key topics or principles to be covered, or model curricula for each stage of training? If so do you have a view as to how they should be prescribed?

136. At present the LET system blurs the distinction between standards and qualifications, so that standards tend to be specified uniquely for a single qualification. It is suggested that some greater separation of standards from qualifications (and of the regulator from the awarding body) is functionally useful:

a. Clearer separation of standards from qualifications is likely to be a significant way of increasing consistency in the articulation of standards.[50]

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[49] We have discussed these issues already in *Briefing Paper 01/2011: Competence.* We assume here that reference to standards may include outcome statements rather than or in addition to competences, since the former are better able to express knowledge requirements than are functional competences. Standards are commonly expanded to include knowledge outcomes or descriptors.

[50] Both between and within regulatory systems – eg the disconnect between SRA 'Day One' and work-based learning outcomes.

b. It would assist in clarifying the core common competences that should apply to all forms of regulated legal activity.
c. It would support the integration between paralegal and legal training, so that both are meeting the same standard (albeit at different levels and/or across a different range of activities/occupations).
d. It would assist consistent and transparent decision-making across the system regarding transfer and progression between qualifications and occupations.
e. It could encourage greater flexibility and innovation by opening up a more competitive market for awards and pathways. There is an element of this flexibility already in the system, but it could be increased.
f. It may help disentangle regulatory from non-regulatory functions - for example, it is a regulatory function to set the outcome or standard, define minima, approve and quality assure the work of qualification bodies. It is not a regulatory function to design and develop the qualification itself, or to 'gold-plate' standards above the minima.[51]
g. It would properly separate any decision to offer specific qualifications above the minimum standard allowed by the regulator from the regulator. Setting a qualification at a level of 'competent +', or enabling qualifications that accredit progression from competent to expert practitioner (eg through designations such as 'associate', 'member', 'fellow') are fundamentally decisions that should be made by qualification bodies in the light of their own assessment of the market.
h. If quality assurance of providers was transferred (back) to qualification bodies,[52] this would reduce the extent to which the regulators themselves are responsible for designing and overseeing the quality assurance of LET, a position which, arguably, currently creates a substantial *quis custodiet* (who regulates the regulator) problem.

Question 17: Would you consider it to be in the public interest to separate standards from qualifications? What particular risks and/or benefits would you anticipate emerging from a separation of standards and qualifications as here described?

137. We continue to assume that the ability to provide training should not be limited, for competition reasons, to a restricted set of education and training providers, so long as prospective providers can deliver to the desired standard and are able to meet quality assurance thresholds.

138. This approach may particularly assist in enhancing competition and innovation in training, building-in flexibility to pathways and supporting diversity, though there may be associated risks in adding complexity to the system and in assuring quality across a more diverse field of providers.

[51] The debate about gold-plate standards can generate more heat than light. It should not be assumed that a standard of 'bare' competence is necessarily low, or lower than prevailing standards. A risk-based approach to competence would suggest that for some skills (eg higher court advocacy) the public interest demands a high competence threshold across the board. This may be demonstrated in a variety of ways – eg, by setting higher pass marks for some areas of assessment, requiring learning at a higher level, or imposing re-accreditation requirements, or a combination of such mechanisms.
[52] It is assumed here that the professional bodies who are the owners of existing titles would be the initial qualification bodies.

Establishing a map and framework for training up to the level of authorisation

139. We are of the view that a critical step in developing a revised system of LET for England and Wales is to encourage a more coherent approach to mapping and defining entry, exit and progression points through the system to the point(s) of authorisation. The system is complex, reflecting increasing functional specialisation, non-exclusive rights to practice, potential graduate and non-graduate entry routes, and issues of passporting-in or awarding credit to multiple other certificated qualifications. We need to be able to capture and manage that complexity successfully, and identify points at which we might be able to simplify without significant loss of flexibility.

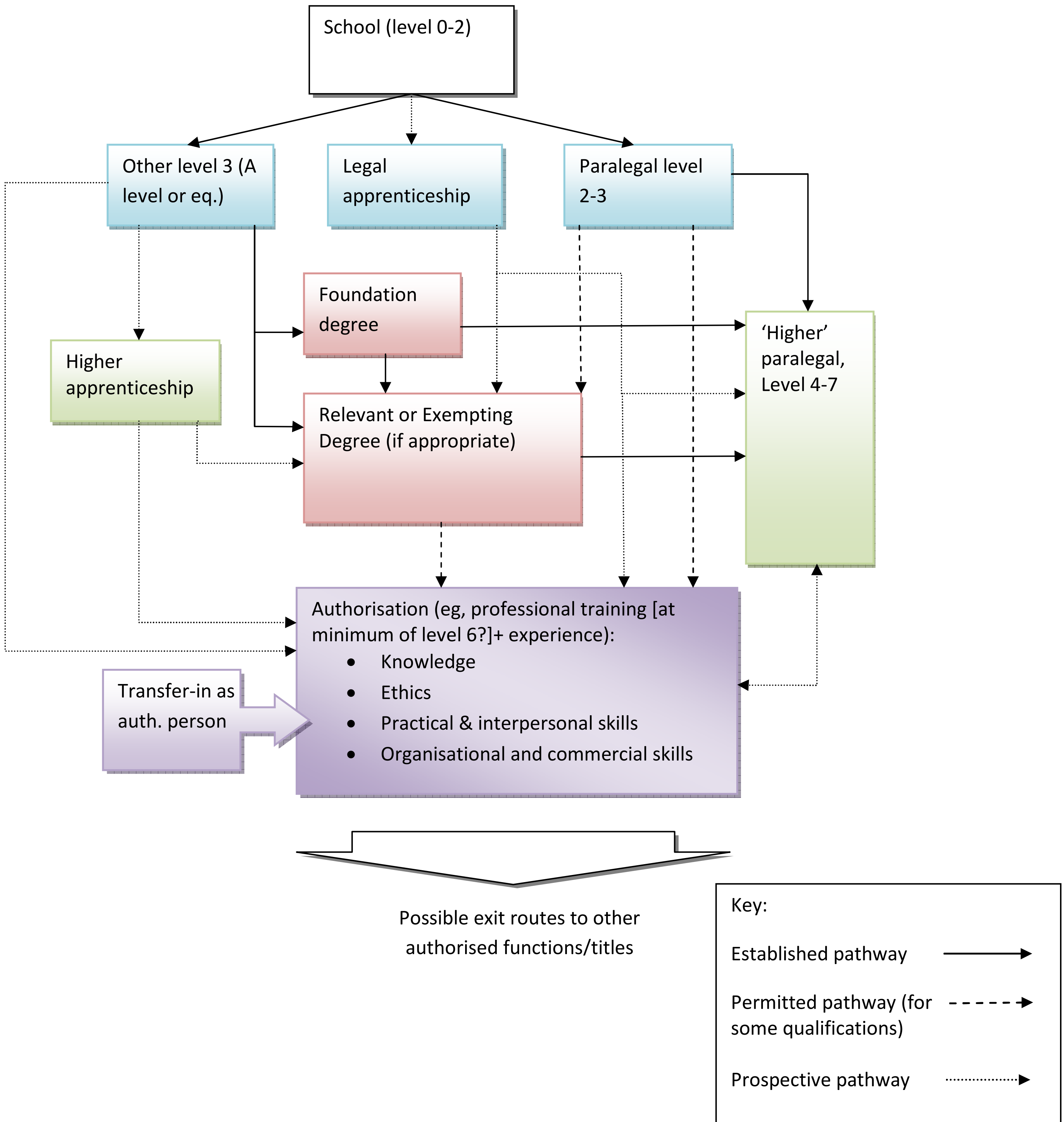
140. We are not of the view that systematisation requires a wholly common system within which each regulated occupation must sit. As stated earlier, each approved regulator must have discretion to make those decisions for itself. But we do consider that there is value in developing, so far as possible, a common framework for identifying pathways and key decision-points. This in itself will be valuable in identifying breaks and regulatory gaps, and in enabling applicants and advisors to understand how the system fits together.

141. The following structure makes two significant assumptions about appropriate levels of training. First that transition from general education or 'lower' paralegal education to *training* as an authorised person requires *some* education to at least level 3 (A-level equivalent). Secondly, it assumes that *qualification* as an authorised person in independent practice requires *some* evidence of proficiency at level 6 (equivalent to the final year of an honours degree); this does not mean that all categories of authorised person must demonstrate the same range of proficiency at those levels. This assumption may be problematic in some instances. For example, if the basic authorisation for will writing were to be set at level 3.

142. The main pathways for any regulated occupation are likely to be derived from the following options, shown overleaf. The schematic is slightly simplified as it does not map all moves across equivalent levels (eg from A level to paralegal level 3). The schematic is also not intended to preclude, for example, a model akin to ICAEW where there is relatively little prescription prior to the authorisation stage (so far example, it might be permissible, as shown overleaf, for a candidate with level 3 qualifications simply to enter for a set of assessments that would give them an authorisation to practice without the necessity of achieving intermediate qualifications).

143. With regard to the authorisation stage itself, the schematic overleaf does not make any assumptions about the form this takes. Thus, it could be based on a combination of classroom learning and work experience, or purely work-based learning. The precise details may thus vary between authorised routes to practice/titles.

144. We suggest that these pathways represent a reasonable minimum set on which regulators/qualification bodies must in the near future (if they have not already done so) make judgements in terms of permitted or excluded pathways and exemption (credit for prior learning).


School (level 0-2)
Other level 3 (A level or eq.)
Legal apprenticeship
Paralegal level 2-3
Foundation degree
Higher apprenticeship
'Higher' paralegal, Level 4-7
Relevant or Exempting Degree (if appropriate)
Authorisation (eg, professional training [at minimum of level 6?]+ experience):
• Knowledge
• Ethics
• Practical & interpersonal skills
• Organisational and commercial skills
Transfer-in as auth. person
Possible exit routes to other authorised functions/titles
Key:
Established pathway
Permitted pathway (for some qualifications)
Prospective pathway

Question 18: Decisions as to stage, progression and exemption depend upon the range and level of outcomes prescribed for becoming an authorised person. A critical question in respect of existing systems of authorisation is whether the range of training outcomes prescribed is adequate or over-extensive. We would welcome respondents' views on this in respect of any of the regulated occupations.

Move from 'input' to 'output' regulation

145. In exploring the uses of LET in regulating legal competence we can make two key sets of distinctions. The first is between what we have already called *active* and *passive* competence approaches. The second is between interventions that are based on *input, process* or *output* regulation:

146. *Input* regulation refers to regulation by achievement of certain qualifications, or training obligations. Competence on an input model tends to be assumed by one's ability to jump through certain hoops at specific stages of a career.

147. *Output* regulation[53] focuses on the quality of service actually delivered; it tends to require the practitioner to abstract from training inputs that which is of value to the particular services being delivered, and tends to involve continuing rather than one-off evaluations.

148. *Process* regulation, as the name suggests, recognises that the processes may be integral to assuring that outcomes are achieved – such processes are often described in terms of quality assurance or other means of 'closing the quality loop' in organisations.[54]

149. On this basis the main categories of LET intervention can be categorised as follows:

[53] We are using the term output regulation deliberately and in contra-distinction to the idea of outcomes: inputs, outputs and processes can all be regulated, at least to a degree, through outcomes.

[54] There is a long standing debate about whether processes or outcomes are a 'better' guide to quality of services. Our aim is not to enter into that debate as such here, but to recognise that there may be an element of false dichotomy in the debate, in that even an outcomes approach has to make certain minimum demands of, or, failing that, assumptions about processes.

Intervention	Examples	Input/Output/ Process	Active/Passive
Minimum entry standards	General education requirements (eg GCSE/A Level/degree)	Input	Passive (once achieved)
	Aptitude tests	Input	Passive (once achieved)
Training for certification[55]	Grant of legal qualification	Input	Passive (once granted)
Training for licensure	Grant of protected title and/or access to reserved activities	Predominantly input; WBL, QLTS & CILEx are emerging output models	Passive (once granted) but may become active if subject to re-accreditation (below)
Specialist accreditation/certification	Police station accreditation; higher court rights; QC, etc	Input (mostly) or output (if continuing accreditation required)	Passive or active
Mandatory CPD	CPD 'hourages'	Input	Passive or active
	Output-led (eg 'just in time' learning activities; realistic assessment tasks, portfolios)	Output	Active
Mandatory re-accreditation	No current examples – but cp QASA	Input	Active
Disciplinary sanctions	Specific training (eg in ethics) or re-accreditation	Input or output	Passive or active
Appraisal	Widespread in employment	Process	Active
External peer review	Cp. Legal Services Commission contracts	Process, and possibly output	Active

150. As we noted earlier in this paper a greater focus on active/output modes, would seem consistent with the perceived need to develop a risk-based and evidence-based system able to demonstrate actual rather than assumed competence. Active competence approaches also fit better with consumer expectations - the recent study by Vanilla Research (2010) for the LSCP demonstrates that consumers see education and training tools as having particular merit in assuring quality standards through:

- regular competence checks/re-accreditation
- compulsory CPD
- ongoing assessment

[55] The distinction between licensure and certification is important in regulatory terms: a **certification regime** "certifies or designates individual professionals who have acquired requisite training inputs but does not preclude uncertified professions from competing in the same market"; a **licensure regime** "precludes unlicensed professions from competing in the same service sector" (Trebilcock, 2001: 448). The Anglo-Welsh system is a hybrid in that it combines both limited licensure and more extensive certification systems across the legal services sector.

151. Some tools, like mandatory re-accreditation, or the use of re-training to address certain regulatory or disciplinary failings, appear to be relatively little utilised by the system at present. There is clearly scope to explore these further as part of the Review.

152. We are also considering the possible risks/benefits of utilising a system of practice reviews, as developed in New South Wales (see Mark & Gordon, 2009; Parker et al, 2010), to enable entities to self assess performance on compliance issues, which could include training. In general we consider it is also necessary to identify what information the regulators need on education and training in order to construct a more reliable evidence base on which to assess risk or engage with regulatees.

Summary of next steps

153. This is the final Discussion Paper before the research team submits its report in December, though a range of other reports remain to be published in the run-up to the final report, including headline findings from both empirical phases of our work. Papers will continue to be published on the LETR website as they are completed and signed-off.

154. Research activities remain broadly on track. With the exception of responses to this paper, data collection will be completed by early to mid-October. The review has generated a substantial range of both quantitative and qualitative data for analysis, as follows.

- Original quantitative data:
    - LETR website survey (under analysis)[56]
    - LETR will writers' survey (completed)
    - LETR university careers advisers' survey (completed)
    - "Solicitors and their skills" timesheet survey (underway)
    - Workforce projections (Warwick IER data) (completed)
    - Legal Services Consumer Panel 2012 legal benchmarking (consumer) data (under analysis)[57]
- Original qualitative data:
    - Practitioner, academic and student focus groups
    - Interviews with key stakeholders/change agents across the sector
    - Stakeholder meetings (with approved regulators and specific interest groups)
    - Stakeholder responses to Discussion Papers

[56] There were 1,186 completed responses to the LETR Online Survey by 16th August when the survey closed. Based on the raw data, 29.7% of responses were from barristers, 27.9% from solicitors and 15.9% from chartered legal executives. Whilst the survey requested a wide variety of quantitative data, there are also a total of 958 comments which will be analysed qualitatively.

[57] The benchmark survey was completed in July 2012, and we received the data set in August. This will constitute the main element of consumer research for LETR. We are very grateful to the LSCP for sharing its data with us.

155. Content analysis of the qualitative data is being undertaken using a specialist qualitative data analysis software package (NVivo). With the amount of data to be analysed it is critical that remaining deadlines for responses (published on the LETR website) are adhered to. A number of these deadlines have been revised to accommodate slippage in the publication schedule over the summer period. Any responses received after the revised published deadlines will not be considered.

156. External stakeholder engagement by the research team will reduce from October to enable the team to focus on producing its final report, though two further meetings will take place with the Consultation Steering Panel in September and November. Plans for publication and dissemination of the research team's report will be discussed at the September CSP meeting and, once finalised, made public. It is anticipated that the final report will be submitted initially to the BSB, IPS and SRA in late December, and published formally in January 2013.

157. We strongly encourage all stakeholders and anyone else interested in the future of legal services to take the remaining opportunities to engage with LETR. We reiterate the view expressed at the beginning of this process, that this is a once in a generation opportunity to influence the shape and direction of legal education and training, and to ensure that we have a system of training capable of meeting the varied demands of the 21st century legal workplace.

List of abbreviations used

ABS Alternative business structure (under the Legal Services Act)
ACL Association of Costs Lawyers
ACLEC Lord Chancellor's Advisory Committee on Legal Education and Conduct
BIS Department for Business, Innovation and Skills
BPTC Bar Professional Training Course
BSB Bar Standards Board
BVC Bar Vocational Course (now BPTC)
CILEx Chartered Institute of Legal Executives
CLC Council for Licensed Conveyancers
CLSB Costs Lawyers Standards Board
COIC Council of the Inns of Court
CPD continuing professional development
CPE Common Professional Examination (Course)
EDSM Equality, diversity and social mobility
GDL Graduate Diploma in Law (see also CPE)
ICAEW Institute of Chartered Accountants of England and Wales
IPReg Intellectual Property Regulation Board
IPS ILEX Professional Standards
LET Legal education and training
LETR Legal Education and Training Review
LLB Bachelor of Laws
LDP Legal Disciplinary Practice
LPC Legal Practice Course
LSA Legal Services Act 2007
LSB Legal Services Board
LSCP Legal Services Consumer Panel
MDP multi-disciplinary practice
NOS National Occupational Standards
OISC Office of the Immigration Services Commissioner
QAA Quality Assurance Agency for Higher Education
QLD Qualifying Law Degree
SME small and medium-sized enterprises
SRA Solicitors Regulation Authority
UKCES UK Commission for Employment and Skills

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APPENDIX I

Activity Based Regulation: Benefits and Drawbacks

The following table presents a summary of the benefits and drawbacks proposed by stakeholders in response to 'Scenario 3' of the research team dummy scenarios (which explored a model of regulation by activity). Benefits and drawbacks are grouped according to stakeholder group affected, rather than by the background of the individual or group who proposed each benefit or drawback. The benefits and drawbacks are as stated and have not been evaluated by the research team.

	Benefits	**Drawbacks**
Consumers	Activity based education and regulation may make it easier for consumers to access the legal services they need. Removal of title based education and regulation will help to demystify legal services, reducing the asymmetry of power in the relationship between consumer and service provider. May lend itself to a model of regulation whereby one regulator oversees competence standards for all individuals providing legal advice. As such consumers may find it easier to access support when and if they have a complaint. Lower costs of insurance may be passed onto the consumer. Certain types of legal advice may become much cheaper, as a result of increased specialisation.	Consumers may lose out if practitioners across the sector are no longer required to possess common body of knowledge. Certain kinds of legal advice may become more expensive, "advice deserts" tend to affect the most disadvantaged consumers disproportionately, the implementation of this type of scenario may exacerbate the problem. Consumers may not necessarily be sufficiently informed to understand what type of legal advice they require- it may be necessary to implement a triage based system to help direct them to the right type of advisor, in the absence of practitioners with a breadth of knowledge and skills. May result in greater variations in the standard of legal advice provided in different areas of law. May impact negatively on consumer confidence. The lack of a common core with an emphasis on inculcating ethical behaviour may have a negative impact on the standard of service consumers receive.

Employers	Insurance costs may be reduced if regulation is made more reactive. This may result in making legal advice cheaper and therefore more competitive, both nationally and internationally. May lower recruitment costs by enabling firms to target specific groups of students.	Employers may find it more difficult to replace individuals leaving their organisation whose role required them to have a specific set of skills. Under the current system, you can rely on qualifications as a marker of the possession of certain sets of skills. This approach may lead to overspecialisation, with smaller organisations losing business as a result of being unable to provide a breadth of expertise. Legal problems rarely confine themselves to one specific body of law, the example of will writing demonstrates the necessity of a common core of knowledge. May create a tiered system with a perceived variance in standards of knowledge, competence and advice. Some firms will benefit whilst others may lose out.
Education providers	Educators may find it easier to teach specialist skills under this system. Education providers may be able to increase revenue by charging a premium for teaching certain modules e.g. advocacy. By teaching a range of modules education providers will be able to subsidise under subscribed modules with more expensive popular modules, improving the range of subjects that they can teach.	Abolition of the qualifying law degree may have deleterious financial implications for education providers.
Regulators	This system will facilitate more efficient regulation that is targeted at risk. Specialist sector or niche regulators may be well suited to a system of this kind.	May introduce dimensions of complexity (i.e. in devising and setting standards for a plurality of activities) that are difficult for current regulators to deal with in a timely and cost effective fashion. Potentially more cumbersome and difficult to regulate. Lack of a common core and professional code of ethics may result in an increase in instances of unethical behaviour. It may be difficult for regulators to implement such a system in the absence of support of existing stakeholders in developing standards.

Students	The shorter route to qualification created by this model means that students may be able to start earning more quickly, reducing the amount of debt they incur. Access to the professions for currently under-represented groups will be improved. May impact negatively on diversity within particular specialisms if education providers are able to charge more for training in certain modules than others. Wide range of modules and lack of restrictive pathways may make for a more interesting educational experience. Students will benefit from being able to follow their interests and strengths. May result in reductions in cost of legal education for students.	Students may find it more difficult to plan their career as it may not be immediately apparent which modules you should take if you want to pursue a particular specialism. Students may be forced into specialising at too early a stage, before they have had the chance to experience different types of legal career. This scenario is ill equipped to address the biggest problem facing students: lack of jobs.
Existing practitioners	This model may improve flexibility and make it easier for individuals to move between different sectors within the profession.	Practitioners are proud of their titles and what they represent. Many may be resistant to the dismantling of these “badges of professionalism”. May threaten the social capital of existing professionals and the standing of individuals within their communities. Move toward this model may result in diminished consumer confidence in existing professionals.
The UK economy	Potential cost savings may result in legal services becoming cheaper and therefore more competitive internationally.	Legal services and LET in the UK have an excellent international reputation, radical departure from the present system may damage this.

Appendix II

QCF Level Descriptors.

Level	Summary	Knowledge and understanding.	Application and Action	Autonomy and accountability
Level 3	Achievement at level 3 reflects the ability to identify and use relevant understanding, methods and skills to complete tasks and address problems that, while well defined, have a measure of complexity. It includes taking responsibility for initiating and completing tasks and procedures as well as exercising autonomy and judgement within limited parameters. It also reflects awareness of different perspectives or approaches within an area of study or work.	Use factual, procedural and theoretical understanding to complete tasks and address problems that, while well defined, may be complex and non-routine Interpret and evaluate relevant information and ideas Be aware of the nature of the area of study or work.	Have awareness of different perspectives or approaches within the area of study or work Address problems that, while well defined, may be complex and non-routine Identify, select and use appropriate skills, methods and procedures Use appropriate investigation to inform actions Review how effective methods and actions have been.	Take responsibility for initiating and completing tasks and procedures, including, where relevant, responsibility for supervising or guiding others Exercise autonomy and judgement within limited parameters.

Level	Summary	Knowledge and understanding.	Application and Action	Autonomy and accountability
Level 4	Achievement at level 4 reflects the ability to identify and use relevant understanding, methods and skills to address problems that are well defined but complex and non-routine. It includes taking responsibility for overall courses of action as well as exercising autonomy and judgement within fairly broad parameters. It also reflects understanding of different perspectives or approaches within an area of study or work.	Use practical, theoretical or technical understanding to address problems that are well defined but complex and non-routine Analyse, interpret and evaluate relevant information and ideas Be aware of the nature and approximate scope of the area of study or work Have an informed awareness of different perspectives or approaches within the area of study or work.	Address problems that are complex and non-routine while normally fairly well defined Identify, adapt and use appropriate methods and skills Initiate and use appropriate investigation to inform actions Review the effectiveness and appropriateness of methods, actions and results.	Take responsibility for courses of action, including, where relevant, responsibility for the work of others Exercise autonomy and judgement within broad but generally well-defined parameters.

Level	Summary	Knowledge and understanding.	Application and Action	Autonomy and accountability
Level 6	Achievement at level 6 reflects the ability to refine and use relevant understanding, methods and skills to address complex problems that have limited definition. It includes taking responsibility for planning and developing courses of action that are able to underpin substantial change or development, as well as exercising broad autonomy and judgement. It also reflects an understanding of different perspectives, approaches or schools of thought and the theories that underpin them.	Refine and use practical, conceptual or technological understanding to create ways forward in contexts where there are many interacting factors Critically analyse, interpret and evaluate complex information, concepts and ideas Understand the context in which thearea of study or work is located Be aware of current developments in the area of study or work Understand different perspectives, approaches or schools of thought and the theories that underpin them	Address problems that have limited definition and involve many interacting factors Determine, refine, adapt and use appropriate methods and skills Use and, where appropriate, design relevant research and development to inform actions Evaluate actions, methods and results and their implication	Take responsibility for planning and developing courses of action that are capable of underpinning substantial changes or developments Initiate and lead tasks and processes, taking responsibility, where relevant, for the work and roles of others Exercise broad autonomy and judgement

Taken from: OCN North Eastern Region, *Qualifications and Credit Framework (QCF) Assessment: Definitions Guidance - Assessing Learning – Descriptors* (April 2012).

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