

# Legal Education and Training Review

## Discussion Paper 01/2012

### RESPONSE from the Society of Legal Scholars

(Throughout, references to paragraph numbers are to paragraphs of the Discussion Paper).

1. The Society of Legal Scholars (SLS) is a learned society whose members teach law in a University or similar institution or who are otherwise engaged in legal scholarship. Founded in 1909, and with over 2,700 members, it is the oldest as well as the largest learned society in the field. The great majority of members of the Society are legal academics in Universities, although members of the senior judiciary and members of the legal professions also participate regularly in its work. The Society's membership is drawn from all jurisdictions in the British Isles and Ireland and also includes some affiliated members typically working in other common law systems. The Society is one of the larger learned societies in arts, humanities and social science.
2. The Society welcomes the opportunity to contribute to the LETR by way of response to the Discussion Paper. The Society expects that some of its individual members will also be involved in the Review as members of focus groups and that as a 'key stakeholder' it will in due course have the opportunity to contribute to the qualitative research being carried out by the research team (para 7).
3. The Society supports the first assumption underlying the Review, namely that any recommendations for change must, as far as possible, be evidence-based. The Society would certainly support this approach so far as the academic stage of legal education is concerned.
4. Since the Review is essentially related to the purposes of regulation, the Society also supports the Review's second principle, that the primary focus is on the regulation of legal education and training. In this context, the Society is concerned to emphasise the fact that law degrees are pursued by a very wide range of students, both from within the U.K. and from around the world. Further, the majority of law graduates do not progress to regulated legal careers (and indeed, will take up a very wide variety of careers, many of them outside directly 'legal' fields). The law curriculum has to be constructed for all of those students, and not just those who wish to pursue a regulated legal career in the U.K. This factor needs to be taken into account when the issue of regulation by one employment sector is under consideration, not least because if students are faced with a very practical degree at an early stage of their legal education, they will be compelled to invest in a specific career path which they may later not wish to pursue, and which in any case may not have room for them; the Society would not support any changes to the law curriculum which would increase the possibility of raising unrealistic expectations on the part of students about their future careers, nor of narrowing the career choices available to law students.

In this context, the Society would also wish to draw attention to the wide range of skills and attributes which are already present within the law curriculum in university law schools. These include (but are not limited to) the general transferable skills set out in the Joint Announcement, as well as the skills required to satisfy the QAA's Law Subject Benchmark, which include subject-specific skills, general transferable intellectual skills and a range of key skills ([www.qaa.ac.uk](http://www.qaa.ac.uk)). Further, the Society would also wish to draw attention to the current employability agenda being pursued by institutions of higher education. In terms of the concerns of regulators, law degrees

offer a very wide range of skills (as well as knowledge) which law students can offer employers.

5. The Society notes that there are passing references in the Discussion Paper to 'outcomes-based legal education', for example in paragraph 59, where it is asserted that such an approach 'encourages providers of legal education to reflect on their role as educators and on their own developing educational professionalism in the widest sense, resulting in benefits for educators and students alike'. While it supports the notion of the reflective practitioner, the linking of such a notion exclusively to outcomes-based education, unsupported by reference to any particular evidence, is a matter of concern to the Society, particularly as it is not acknowledged in the surrounding discussion that any move to outcomes-based legal education (particularly at the undergraduate level) may be controversial.
6. Despite the underlying principle of a strong evidence base, the Society is concerned that some evidence gathered by the research team is being used in a rather loose way. The 'more senior people we have spoken to' (para 63) who have expressed concerns about standards of graduate literacy is a case in point. While it is inevitable that the standards of literacy vary among law graduates (who emanate from a range of institutions and possess varying classes of degree) the Society's view is that we currently do not have the research evidence to assess such claims.
7. The Discussion Paper notes (para 65) that there is a debate around the place of ethics in the law degree. The Society of Legal Scholars would take issue with any notion that the solution to the perceived problem with the ethical training of practising lawyers is to make changes to the undergraduate law curriculum. In the view of the Society, the aim of the undergraduate law degree, as far as employment is concerned, is to equip students with some legal knowledge and a wide range of transferable skills, including in particular the ability to function as independent critical thinkers, so that they are equipped to be as flexible as possible in responding to the demands of a fast-changing and somewhat unpredictable labour market. Thus, the Society does not accept that the undergraduate stage of legal education is best suited to teaching professional legal ethics to practising lawyers. In the view of the Society, any such training would be best carried out at the vocational training and CPD stages, where it can most effectively be contextualised as part of a lawyer's working life.
8. Apart from any other issues surrounding the position of legal ethics in legal education, it has to be borne in mind that it is only a minority of law graduates who will become members of regulated legal professions. Thus any curriculum which focused solely on legal professional ethics would be irrelevant to the majority of law graduates. It is no answer to this difficulty to suggest that legal ethics could be an optional subject within the law degree, since any suggestion that it would be needed for a regulated legal career would be likely to cause most law undergraduates to take such a subject in order to keep their options open for as long as possible (as is currently the case where students have the option to study for a non-QLD).
9. There are also more practical difficulties about any suggestion that legal ethics should be introduced into the undergraduate law curriculum, namely who is to provide the relevant expertise, and who is to pay for the additional resources needed to teach the subject? At present, legal ethics is the area of expertise of a handful of legal scholars. The Discussion Paper itself implicitly acknowledges this when it comments in paragraph 67 that 'The relative absence of professional ethics from the law degree has acted as a constraint on its development as an academic subject'. In terms of the

Society of Legal Scholars (bearing in mind that the Society is the largest association of academic lawyers in the UK and Ireland) legal ethics does not merit a 'subject section' of its own, but is merely part of the 'Practice, Profession and Ethics' subject section, reflecting its standing as a very specialised area of expertise and interest, pursued by only a few legal scholars. The Society has no evidence that there is a hidden pool of experts in university law schools who could teach the subject.

In the unlikely event that a large number of experts in legal ethics were to emerge, there remains the question of funding the additional teachers required. Universities are currently undergoing a period of profound financial uncertainty, as the new funding regime for higher education starts to be implemented. In such circumstances, university budgets are being very tightly controlled, and it is unlikely that additional resources would be made available to law schools to teach legal ethics.

10. The Society notes that although the Discussion Paper (para 65) refers to the 'complex debate' around the place of legal ethics in the law curriculum, it does not adopt a consistently balanced approach to this debate. While acknowledging that there are differences of opinion among experts in the field as to the precise nature of what is involved in teaching legal ethics at undergraduate level, it then goes on (in para 66) to give an example of how legal ethics has been introduced to the undergraduate curriculum in Australia, but does not balance this paragraph with any analysis of the work of scholars who would not see legal ethics as an appropriate subject for the undergraduate law curriculum (such as Brownsword, Bradney and Cownie). This is also true in Chapter 8 of the Literature Review, where the Australian system is discussed in more detail, as well as the Scottish system, but there is no analysis of any of the arguments against the inclusion of legal ethics in the undergraduate curriculum. The Society would hope to see a much more balanced discussion in the Final Report produced by the researchers.
11. The Society has concerns about the comment in paragraph 68 of the Discussion Paper that 'given the changes brought about by LSA 2007, some of the literature argues that the Joint Statement will require substantial renegotiation to align it with recent changes to professional standards'. Quite apart from the fact that it is not, in the view of the Society, the sole purpose of the Joint Statement to align the undergraduate curriculum with changes in professional standards, no evidence is produced to indicate precisely which commentators, nor how many of them, are making such a suggestion. The implications of this line of argument are significant, and the Society would expect that any suggestion that the Joint Statement should be re-negotiated would be supported by clear and unequivocal evidence showing that such a move was necessary, and that all arguments, both for and against such change, would be thoroughly explored before any alteration to the status quo was suggested.
12. The Society notes that in paras 89-96 the Discussion Paper lists various ways in which regulation of legal education and training might be decreased, together with possible advantages and disadvantages which might result if such changes were implemented. Since these suggestions are merely sketched out without reference to relevant evidence, the Society does not think it appropriate to comment on these at this stage. This is also true of para 98, where the Discussion Paper raises questions about the prescribed content of the undergraduate law degree, and focuses once more on outcomes-based education. It is the opinion of the Society that if such issues are to be discussed, they need to be analysed in considerably more detail, and using a more balanced approach than that currently adopted in the Discussion Paper or the accompanying literature review.

13. Finally, although the Society may wish to return to the subject at greater length elsewhere, it would like at this stage to make a general comment about the 'literature review'. The literature review as currently constituted is not merely a comprehensive list of the academic (and where relevant, practitioner) literature relating to the topics covered. It consists of a selected range of such literature, accompanied by commentary which firmly adopts the particular view of legal education and training held by members of the review team, as reflected in their published work (much of which is cited in the literature review). The Society is concerned that a particular view of legal education and training is being put forward, where it would be more appropriate for the Review to be underpinned by a conventional literature review, which embodies, to the extent that is practicable, all the relevant literature on the topics covered, whatever view of legal education and training is reflected therein.

**Response submitted on behalf of the Society of Legal Scholars by Professor Fiona Cownie, Chair, SLS Legal Education Committee. ( [F.Cownie@keele.ac.uk](mailto:F.Cownie@keele.ac.uk) )**