LETG 2020 Forum Response to:

The LETR Research Team's "Discussion Paper 02/2012 Key Issues II: Developing the detail"

In this Response, we have selected Questions where we:

- feel capable of submitting what we believe to be a representative response and
- have observations additional to those made previously in relation to Discussion Paper 01/2012 (Key Issues 1) and 02/2011 (Equality & Diversity)

Question 1: in the light of limited evidence received so far we would welcome further input as regards the preferred scope of QLD 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).

We support the QLD and GDL constructs - in general, they deliver graduates with a predictable core knowledge base. Of course, this does not mean that they will have all the knowledge or skills needed for practice but that is not their purpose.

Question 2: Do you see merit in developing an approach to initial education and training akin to the Institute of Chartered Accountants of England and Wales? What would you see as the risks and benefits of such a system?

This question requires a greater degree of familiarity (in both breadth and depth) with the ICAEW approach and its overall regulatory/admissions framework than we currently possess in order to make a meaningful response at this stage. The ICAEW model may have some merit and it may generate some useful insights but it would indeed be a radical departure from our tradition and approach in law. The accountancy and legal professions have their own histories and the ICAEW model has evolved and developed from one which is fundamentally different in many respects, notably in the way that accountancy did not emerge, in the same way or to the same extent as the LLB, as a significant, well-established, stand-alone degree course capable, in turn, of informing a QLD.

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?

In principle we feel that there is scope for the LPC core to be revisited with a view to reducing it. It is a moot point whether anything is "missing" - there are perhaps areas of knowledge or skills (e.g. commercial awareness, client relationship management identified in Discussion Paper 02/2012) that some firms may feel isn't sufficiently developed during the LPC but it is not clear that this knowledge or these skills can or should be taught at the LPC stage.

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?

In principle, greater integration - or, more accurately, the option of greater integration - between the LPC and the work based period of education and training would be a positive development. However, we emphasise the word 'option' because some firms will not, at least immediately, feel they can support more integrated models and may wish to continue with the more traditional, linear option. As ever, there will be early and late adopters. Allowing the regulatory framework to support greater integration, and then allowing employers to decide which model they want to adopt (and when) would be our preferred route forward.

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)?

We feel that looking to 'move the bar' for unsupervised practice of reserved activities from its current graduate 'Level 6' would be too much too soon at this stage. The question may be better framed at a later date once we have been able to reflect on the profession's experience of more innovative ways of delivering reserved legal services, be this through the increased and more sophisticated use of qualified paralegals or otherwise. It may in due course become clearer which reserved activities, or which elements within them, can safely be entrusted on an unsupervised basis to less qualified lawyers. This may in turn only become clearer as and when a more coherent set of legal standards emerges and is road tested at levels below graduate Level 6.

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?

Yes and yes.

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?

The answer to this question may become clearer once we have a better idea of the issues that may be raised by the development of a defined, qualified body of paralegals at Level 4 upwards. Entity regulation in the interim would on the face of it be sufficient.

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.

Broadly speaking, yes. We are of the view that the "passive competence" model 'works' in the sense that firms represented in our membership are producing qualified solicitors with high standards of competence. However, we recognise that the same may not be true across the profession as a whole and that a more outcomes-focused, "active competence" model could help ensure minimum standards more consistently throughout the profession. In addition, an outcomes-focused approach may facilitate more diverse routes to qualification as a solicitor (as originally envisaged by the SRA's Work Based Learning pilot). However, the proof of the pudding will be in the eating and the structure and mechanics of any outcomes-focused, more "active competence" model would be crucially important. In relation to trainee solicitors, for example, we would not welcome a system that skewed time, focus and financial resources disproportionately towards, in effect, 'exam prepping' lawyers for a competence assessment disconnected from the reality and needs of their practice. A framework of assessment that recognised and embraced the practical and high quality training and development lawyers receive on the job would from our perspective be a pre-requisite to any move towards more outcomes-focused assessment.

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?

Broadly speaking, we see merit in the idea of separating standards from qualifications and titles because we can see how this might in principle help create a platform for more diverse and flexible forms of qualification and progression throughout the legal profession.

The obvious risk is creating a system in which a plethora of competing qualifications emerge from competing providers/awarding bodies which are not fully trusted or recognised by employers.

London, October 2012