The Law Society

Legal Education and Training Review

Response to Discussion Paper 02/2012

October 2012

Legal Education and Training Review Discussion Paper 02 / 2012

Response to the Paper

Introduction

The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to comment on the LETR's Discussion Paper 02/2012. Our general comments on the Discussion Paper are set out below and our response to the numbered questions is attached at **Annex A**. We have engaged in a dialogue with our members to establish solicitors' own views on the education and training needs of the profession. This paper represents views based, in part, on our understanding of the profession's needs.

The Society supports a flexible approach to training to be a lawyer. We believe that the traditional route of QLD/ GDL, then LPC followed by the training contract will continue to be a popular and effective way of enabling people to qualify as solicitors within a relatively condensed period of time. However, we strongly support the development and wider recognition of alternative routes which can achieve the same standard for qualification. This is particularly relevant and necessary as the costs of education and training rise, in order to enable new entrants to gain qualification through a modularised and work-based learning approach. What is paramount, however, is that the standards required for qualification are consistent across all routes to qualification.

The Society also supports a radically revised approach to CPD. This has an important role in supporting solicitors throughout their careers, through evolving needs as well as with specialisation and changes of career path.

General Comments on the discussion paper

<u>Equality and Diversity</u>

The Law Society would like to make a number of points in relation to this paper. Firstly, it is disappointing that the LETR Team decided not to address equality, diversity and social mobility in this final discussion paper. We firmly believe that these issues are central to any discussion around access to and routes into the profession, and should inform any serious consideration of ways to make legal education and training more accessible. These elements should be considered as integral factors in all the options and recommendations that are discussed in the final report and have formed part of the Law Society's thinking when drafting this response.

The paper considers at length the necessity for 'off-ramps' from different stages of the legal education and training continuum, but from an equality and diversity view it is equally important to consider 'on-ramps'. That is to say, how different people, at different levels, can access the legal profession and how those who have taken a break from practice can rejoin the profession.

The Law Society's Career Barriers research in 2010 showed that solicitors from Black, Asian and Minority Ethnic (BAME))backgrounds felt that, during their training, there was a distinct lack of advice available on potential career paths and progression within the sector. This led some to feel, subsequently, that they had made choices that they would not otherwise have made had more information been available. This is an issue which should be addressed throughout the legal education and training process.

The Society supports continuing equality and diversity training throughout a solicitor's career. It is especially important that those involved with the recruitment and training of solicitors be made aware of, and kept up to date with, equality and diversity considerations. Our career barriers research in 2010 suggested that a lack of education around equality and diversity generally in law firms and poor or outdated management practices contributed to lower progression rates for under-represented groups and to higher than average rates for women leaving the profession.

Regulatory Framework

It is disappointing that the issues within the paper are being discussed in a vacuum, without context. It is essential when considering whether the current pre-qualification education and training requirements for solicitors are fit for their purpose, and whether any changes are necessary or desirable, to bear in mind the wider professional and regulatory context in which they operate, including post-qualification training requirements. Notably, those very areas of regulation and CPD are omitted from the analysis in the present discussion paper.

Newly qualified solicitors practise in a highly regulated environment. Their activities as solicitors, whether in private practice or in-house, are governed by the SRA's Code of Conduct, which imposes high ethical and professional standards, including the requirement that a solicitor may only accept work which he or she is competent to undertake. Solicitors are required to attend the Solicitors Regulation Authority Management Course Stage 1 before the end of their third CPD year and must undertake annual CPD throughout their careers. In addition there are restrictions on practice, so that for three years after qualification, solicitors may not, without special permission from the SRA, practise as sole practitioners and for many areas of work, such as criminal or family law, additional accreditations may be required.

The overwhelming majority of solicitors in private practice work in entities regulated by the SRA, which must observe requirements to ensure compliance with the rules and to minimise risk to clients and the public, including the appointment of COLPs and COFAs. Firm-based Law Society accreditations, such as Lexcel and the Conveyancing Quality Scheme, support firms' efforts to comply with these requirements. Many regulated legal practices undertake ongoing training programmes for their solicitors, to ensure both regulatory compliance and the high professional standards that are necessary to succeed in our highly dynamic and competitive legal services market. Many practices support their solicitors to access education and training available from specialist professional organisations (including the Law Society's many groups and sections), as well as from universities and colleges, local law societies and commercial providers.

It is not possible for pre-qualification education and training alone to equip a solicitor to deal comprehensively with today's legal services world, in which the range and diversity of the work undertaken by lawyers changes constantly, as the demand for any type of practice alters in response to social, technological and economic change and to legislative reform. New entrants are constantly coming into the market and clients (both individual and corporate) are becoming ever more demanding and better informed. What can be expected, however, is that the newly qualified lawyer will have gained the grounding in legal knowledge and practical skills needed to develop into a sound practitioner and to adapt to the changes that will inevitably punctuate his or her career. Supervision, learning from practice and further training are all required and these are all delivered by the present system, so that the public are not placed at risk. Regulatory intervention is only required where such a risk is identified, having regard to all relevant features of the practising environment. The Law Society would not deny that there are issues that should be considered, but we would suggest that the Discussion Paper, in concluding that the current system is unfit for its purpose, without due consideration of the context, lacks rigour and is therefore unhelpful We return to these points in the paragraphs which follow.

CPD

In particular, removing references to CPD leads to confusion and a lack of recognition of the differences between pre- and post-qualification standards when attempting to identify 'gaps' in the current system. This is especially the case in the paragraphs leading up to 134, which identify 'gaps' in the current education and training system, without any consideration of the context, their degree of seriousness or whether filling such 'gaps' is appropriate for solicitors and other legal professionals at entry level. The decision to remove CPD leads to the conclusion at paragraph 134 that the current system of legal education and training is not fit for purpose, which is very far from the case when the system is considered in context and further comments are included in the response to question 14. The current system produces high calibre legal professionals who are respected world-wide.

Narrowing the focus of the paper

Discussions from previous papers and the LETR's July symposium seem to have been dropped without explanation in this paper. Examples include the important discussion about the point of qualification, the work-based learning pilot and the training contract. This, combined with the omission CPD and the lack of any meaningful discussion of reaccreditation or the assurance of on-going competence is of considerable concern. The decision not to proceed with the models published for the symposium and on which the Review team are clearly basing some of their thinking is unfortunate. These models produced full and frank discussions at the symposium and could have done so here. It is regrettable that some of the innovative and interesting topics have not been followed through in this paper. If these are still being developed then stakeholders should be given a further opportunity to comment.

Clarity of the questions

Finally, before turning to the numbered questions in the Discussion Paper, it seems necessary to state that, whilst the layout of the paper itself is an improvement on past papers, the questions within the discussion paper are not all easy to interpret and some appear to address issues which are not discussed in the paper at all. In particular, Questions 15 - 18 refer obliquely to broad areas of work, from which it appears that they may have further meaning to those who drafted them than is apparent from the actual questions. It is not entirely clear what is being asked in each of these questions and as a result, caution has been exercised in the answers to avoid broad, general statements.

Annex A

Discussion Paper 02/2012

Response to questions

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).

The Law Society is not aware of clear evidence that the current system is broken. Therefore we would contend that the academic stage should retain the current seven core areas but with the addition of legal ethics. The Society would also support the inclusion of a greater degree of company law, or the law of organisations. All foundation subjects should be assessed at Honours graduate level and marked to a common standard and this should be ensured through improved quality assurance mechanisms, including validation and monitoring. The Society recognises that there are time constraints with the QLD, but as students currently have non-qualifying options in the course of their studies, there is time available that could be utilised for other topics. Universities are able to offer other courses, which students can undertake if they wish to study law as a liberal arts degree, rather than as a qualifying law degree.

The Joint Statement should include a prescribed, structured syllabus to ensure a common educational content, while allowing flexibility in the teaching approach. In addition there should be a focus on clarity of written expression, and analytical skills such as fact management, critical thinking, problem solving and case analysis.

In relation to the GDL, the Law Society considers that the proposals make a fundamental error in confusing the learning outcomes required by the GDL with the time required for delivery. The GDL is a high value alternative route to meeting the outcomes of the QLD. If these outcomes are expanded, and the content of the GDL therefore has to expand, the accommodation of that expansion is a matter for those who wish to provide the GDL. The length of the course might be extended. The weekly teaching hours might be increased. Different and more effective modes of delivery might be adopted. These are issues of delivery and not principle.

There is no evidence that the GDL is an inadequate preparation for practice: on the contrary, the GDL is heavily supported by both students and firms, who believe the quality of GDL graduates is as high, if not higher, than QLD graduates. It would be disproportionate to remove this option because of misperceived concerns about replication and time constraints.

The legal education and training market is currently undergoing a period of innovation, with the possibility of multiple routes to qualification. Within this context it seems hugely disproportionate either to constrain what should be required for the QLD by the assumed time limits of the current GDL or to jettison the GDL because of perceived knock on effects restricting the QLD. There are many different ways to study and variations in the way in which courses are taught, and the approach taken in the discussion paper feels too parochial.

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 Law Society supports a multiplicity of routes to cater to all people with the requisite ability and other qualities who wish to qualify as a solicitor. It seems likely that the profession would be

more open to people from a wide range of social backgrounds if not all entrants were not required to have attended university or undertaken expensive courses such as the LPC.

The Law Society sees some advantages, from this perspective, in the approach taken by ICAEW, with their formalised system of exemptions for prior learning, academic or vocational learning integrated with work-based learning experience and the freedom to achieve the 'knowledge modules' without undertaking prescribed courses. If the ICAEW system could be adapted for use in the legal services market, to take account of the different conditions of that market, then some aspects of that system may merit further consideration.

What is crucial is that all those qualifying attain the breadth of knowledge that solicitors currently gain through the traditional route to qualification. A modularised approach must not lead to the dumbing down of standards and there should also be a time limit for the completion of modules. Otherwise there is no guarantee that knowledge will be sufficiently up to date by the time all the required modules are completed. Assessments such as those used in the ICAEW qualification process, if they were to be implemented, should be an alternative to the main QLD/ GDL, LPC and training contract route to qualification, not an additional requirement for all qualifiers.

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?

The Law Society supports more ethics training and a greater focus on the role of a professional in the provision of legal services within the core of the LPC. This should build on the compulsory ethics content which, we consider, should be included from the start of the QLD. Commercial awareness and equality and diversity training should also be included because an understanding of these is likely to be crucial to a lawyer's career. These elements should be woven into a number of the areas currently studied and need not require individual modules. The focus of the core training should be on vocational skills that are applicable to all solicitors, not knowledge about any particular area of law. The diversity of the market is reflected in the number of options that can be undertaken in the second part of the LPC, so the core need not cover all practice areas. Given the increasing areas of law and the likelihood that specialisation will become the norm, the LPC cannot possibly cover all areas within the core, but within a greater number and availability of options.

Respondents to our engagement exercise reported that the LPC fails to mirror practice adequately, which means that trainees have to make a considerable adjustment when joining firms. LPC providers told us that they have to simulate scenarios when teaching topics, which is not ideal, though it is probably the best that can be hoped for in a taught course. This situation is exacerbated by what appears to be patchy teaching by some providers and a lack of regulatory oversight of the quality of such teaching by the SRA. It was suggested that some element of work-based experience alongside the LPC would greatly enhance the learning that was achieved. The Law Society would support proposals that might combine the LPC with some elements of work-based learning, as this could provide invaluable experience as well as an early introduction to the workplace and the roles the students are working towards. This would also enable new trainees to start from a more advanced position. However, this blending should be optional, as a compulsory requirement would restrict how providers managed their courses and there might well be problems finding firms who could support it. It should be monitored closely by the SRA for any potential negative consequences, such as trainees being given inappropriate levels of responsibility.

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?*

No comment.

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?

If barristers are to be permitted to undertake activities more usually associated with solicitors then it is essential that they receive adequate training in these areas, akin to that required of solicitors. The matters listed above are currently the sort that are included in the LPC and if it is likely that significant numbers of barristers will be undertaking such work at an early stage then serious consideration should be give to including them in the BPTC. If they are not to be included then they must be covered by alternative means.

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?*

Of the options set out in the discussion paper, the Society supports the 'radical' approach of 'mixed economies' that the paper puts forward. This would lead to a range of legal education and training routes for entrants to the profession. Entrants could decide on whichever route suits them best in terms of time, costs and preferred method of study. This would benefit the legal profession, as it would widen opportunities for access and is likely to improve the diversity of the social background of lawyers. As these routes are developed, the Society would wish to see regular comparability studies carried out to ensure the standards of the different routes are maintained. Providers can market different qualifications, but must meet set outcomes and standards and be comprehensively quality-assured against them. The results of these studies should be published so that employers will gain greater confidence in these alternate routes. However, some thought should be given to the optimum number of alternate routes. The regulation of a large number of routes will create administrative burdens on an already overstretched regulator and the associated costs may increase. Alternate routes should not lead to increased regulatory costs for the profession.

While we have supported, in principle, blending vocational and work-based learning and we note that there appears to be flexibility within the existing structure of the LPC to combine these elements (as witnessed by the Northumbria Law School pilot), existing standards must be maintained. If less time is being spent on legal education and training prior to qualification, assurances must be given that gaps do not arise. Whilst the suggestion is that learning outcomes would be achieved more quickly with a more blended approach, this would need to be tracked over time to ensure that this is indeed the case.

The inclusion of work experience as part of any vocational course is likely to have a positive impact on social mobility within the solicitor's profession. Under the current system, where work experience is an extra-curricular activity, those students who cannot afford to forego paid employment outside their course, or who lack the necessary personal contacts, are often at a disadvantage in terms of experience when applying for training contracts and other employment in legal services. It should be noted that there is already a profound difference in experience between those students who have already secured a training contract before embarking on the LPC, and those who have not. The former are often put through courses specific to the needs of and paid for by their employer. The merging of the LPC with work experience may further encourage this. However, it is too early for this to become mandatory.

The proposal for an initial stage of shared training between barristers and solicitors, which would also be a standalone paralegal qualification, fails to reflect the different roles that the professions and other individuals undertake. Earlier in the discussion paper it is suggested that to have a common core to the LPC fails to reflect market variances in the roles solicitors undertake, so to suggest an even more homogenised training stage at this point seems questionable. Arguably, the homogenisation of training is not what is required in an increasingly specialised legal services market.

However, the Law Society recognises that with increasing overlap in the responsibilities of the professions, as indicated in answer to question 5, it may be possible or even desirable to have an initial stage of shared training, if a genuine 'core' of skills and knowledge were to be developed. It is difficult to see what this common core could be (possibly for the reasons suggested in the previous paragraph). Without the common core, this would merely entail an extension to the current LPC/ BPTC courses, which would have an impact on cost and would be likely to have a negative impact on social mobility on entry the professions.

Assuming this issue could be agreed, however, there could be overlap of the options which would be taken to complete the qualification as a step towards becoming either a solicitor or barrister. For example, making use of the natural overlap of advocacy training might lead to it becoming easier for those on the solicitor path to obtain a Higher Rights qualification.

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*.

As the professional body for solicitors the Law Society has little evidence to submit on this question. Many members of the professions referred to in this section of the paper are dual-qualified, having first qualified as solicitors, so the same requirements apply to them as all other solicitors. The Society would though like to draw attention to some aspects of the CILEx route to qualification as a solicitor.

The CILEx route provides more flexible access to a professional qualification as a solicitor because study can be completed in a modular format over a period of time, whilst working. As CILEx fellowship can also be the foundation to qualification as a solicitor, the Law Society has an interest in ensuring that the rigorous standards that solicitors meet through the traditional route are mirrored here. There seems to be little by way of assurance of this from the SRA and greater co-operation between IPS and the SRA, alongside publicly available information on the findings is desirable. This is especially true where there are exemptions which enable CILEx Fellows to complete two years of undefined legal practice which then exempts them from the far more rigorous and assessed training contract route.

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)?*

Lawyers undertaking reserved activities (and, indeed, many aspects of unreserved work) are likely to encounter work which requires a knowledge of the substantive law and research techniques, together with the ability to identify and solve problems which may be complex and wider than the substantive law (for example, involving professional ethics). This suggests that an intellectual attainment at a minimum of honours degree standard (Level 6) is essential to undertake this work (and, we would suggest, for the attainment of a professional qualification,

such as solicitor). However, this intellectual attainment needs to be supplemented by vocational and practical knowledge and skill which, in our view, provides an additional tier. Although this knowledge and skill may not in itself be as intellectually demanding as a degree, we believe that it is essential for practice and enhances the skills that the intellectual quality of a degree provides.

This level of qualification seems essential for a person carrying out unsupervised practice of reserved activities but this does not mean that everyone must have a degree or an LPC. Skills for Justice are developing a route to qualification as a solicitor with a level 7 apprenticeship qualification, which would provide a true alternate route to the appropriate level. The level of responsibility represents not just a specific task or area, which may initially be straightforward, but also the responsibility of being able to recognise when a simple task takes on more complex aspects and either being able to deal with these, or knowing when and where to refer them on.

In our view, any reduction in the intellectual level required to provide reserved activities, let alone practise under a professional title, would cause significant detriment to clients. As Stephen Mayson has indicated in his work on the subject, there are strong reasons for reserving work based on the likely danger to both clients and the administration of justice if it is carried out by inadequately trained or regulated people. We agree with this approach. There is a real danger that an individual, working unsupervised, without the intellectual ability to deal with the matters set out in the first paragraph of our answer to this question is likely to provide inadequate service, miss crucial issues or simply fail to deal with work efficiently on behalf of the client. While there may well be a number of individual matters within the current definitions of reserved work that do not require this level of attainment, it is equally the case that there are many matters which will require it. We would strongly oppose any reduction in the level required.

Such a reduction would also be detrimental to the reputation of English and Welsh law in an international context. There already exist non-graduate and non-law degree routes, which are not recognised in many other jurisdictions. In an increasingly globalised legal services market, such considerations must be taken into account when looking at the whole scope of any changes.

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?*

We are not aware of any formal set of standards for paralegals. The term is largely undefined and can be used, fluidly, to cover an apparently vast range of individuals carrying out different activities in varying environments. These activities will either be unreserved or, if reserved, carried out under the supervision of an authorised person. Some activities will be very simple, others highly complex. The individuals carrying them out will include BPTC or LPC graduates looking either for a temporary or permanent role in a firm, those with experience in a related field (e.g. in claims handling), highly experienced employees of firms and very junior members of a firm.

Where a firm is regulated by the SRA and the work is properly supervised, the Society's view is that it for the firm to make a judgement as to the most suitable person, to carry out a particular task and the level of training and supervision that is needed. This should be done with regard to the interests of their clients and the regulatory obligations of the practice. Firms need to have the flexibility to ensure that they are able to carry out work as efficiently as possible and it is neither necessary, nor desirable, for there to be any form of mandatory or inflexible qualification route. It may well be that firms would find it useful for certain employees to have a particular qualification which provides a level of skill and knowledge for the individual, which they can use to provide assurance to clients and use as a tool for career development. Such requirements

may vary over time as the market and technology moves forward. In our view, the market, assisted by Skills for Justice and the professional bodies, is best placed to respond to such needs. There is no need for involvement by the regulators, indeed, their involvement is likely to increase costs.

As we have suggested, an alternative, non-graduate, route to professional qualification might involve some modules that would be suited to the training of paralegals.

In the case of unreserved work being undertaken by unregulated individuals as part of an unregulated business, there is a wider question about whether the public interest requires that work to be reserved, as in the recent case of will-writing and estate administration. If it does need to be reserved, then we would expect regulators to set qualification and training requirements at the level that would currently be expected of a solicitor.

In summary, we can see value in the development of courses for individuals working in a legal environment but this should be done through the market. It is only where such courses might lead to a professional qualification or the ability to undertake reserved work that regulators need to be involved.

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?*

If the current work being undertaken by Skills for Justice fails in its aim of creating a recognised accreditation and/ or route to qualification as a solicitor for paralegals then the Law Society would support an alternative, credible, professional pathway for paralegals to qualify into the legal professions. This may include a voluntary scheme to gain recognition whilst on this pathway through interim accreditations.

However, this does not alter the Law Society's belief that the current regulation of paralegals, through regulated entities, is sufficient for this purpose. The Society does not consider it necessary to bring paralegals fully within the legal services regulation. Further work should be undertaken into any risks that are presented by paralegals and how this role is utilised by firms, which may indicate an appropriate course of action. It also highlights the need for a discussion of the definition of a paralegal.

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 priority 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?

The duties of lawyers have developed over the centuries as part of the dynamics of the legal system in England and Wales. An understanding of, and compliance with, them is key to the

rule of law and the proper administration of justice in England and Wales. This is not just a question of following a rule book. Concepts such as conflicts of interest, confidentiality and the tension between the duty to the client and the duty to the court are essential to the understanding of law and the legal system. In the Society's view, it is right that these should be studied at undergraduate level. They are not such large and complex subjects that they require a specific module. They would fit within a study of legal theory or, indeed, of the justice system and are likely to pervade many of the Foundation Subjects. For these reasons, the Law Society would wish to see Option C implemented.

The Society believes that ethics is of a higher priority than the law of organisations in the academic stage of legal education and training. Whilst the latter is useful to a solicitor entering practice, and the knowledge gained may indeed be useful to law graduates who pursue a career in business or the public sector, it may be dealt with at a later stage of education and training, as indicated above., The concepts within professional ethics, however, are key to an understanding of the legal system and are vital for an individual's practice within that system.

It is essential that all persons authorised under the Legal Services Act understand their ethical duties in relation to the provision of legal services. It should not be considered appropriate for the regulated professions to be held to one set of standards, but for others who may be authorised in the future to be exempt from them. The concepts here are crucial to the relationships with clients, with the court and with third parties.

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?*

The SRA, as a public interest regulator, must apply a public interest test to their assessment of the aims and outcomes of legal education already. The statutory duties cover legal education and training as they cover all other regulatory aspects. It is not clear to us that any further test is necessary: indeed, it is likely only to add confusion.

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

As a summary of the views and opinions expressed throughout the Review so far, this seems to cover the main issues. However, the Law Society would recommend caution in how this list is used. As the paper rightly points out, these issues do not arise equally in all quarters. It also needs to be recognised that there is a difference between the standards that must be met in order to qualify into a profession and the standards that subsequently apply for accreditations, for particular activities or for ensuring the ongoing competence of that professional through CPD. This distinction must be emphasised in any final recommendations made by the Review.

The Law Society shares the views expressed in the paper with regard to the challenges of over-supply and the cost of training in the current system, which have a considerable negative impact on social mobility. There is clearly an issue with people who are unlikely to qualify getting into serious levels of debt, but there is also an argument that the level of competition for training contracts is more likely to deter those students who have the least financial resources, even if they are bright and able. In recent years there has been an increase in applications for assistance, through the Law Society's Diversity Access Scheme, from individuals who are not necessarily from particularly disadvantaged backgrounds. They have simply incurred a level of debt that, combined with the lack of funding options available to them, means that they are simply not able to meet the cost of the LPC fees. Recent enquiries to the Diversity Access Scheme have also revealed an increase in the number of students seeking funding for a Masters in order to try and differentiate themselves from other candidates when applying for training contracts. If firms are genuinely differentiating on this basis then, again, those with greater financial resources are at an advantage.

The cost of legal education can also impact negatively on particular areas of law. A report from the Young Legal Aid Lawyers highlights that those seeking to enter less lucrative areas of law, such as legal aid, are very unlikely to earn a sufficient salary to be able to make repayments on very significant debt. This could result in students without financial resources having their choices of options at LPC, training paths and eventual careers, determined by a need to earn enough to pay off their debts as a primary concern.

The Law Society notes with interest the references to 'empathy' in relation to clients, and suggests that this could be improved by a greater diversity at all levels in the profession, or at least a greater understanding of a diverse range of experience. Both the Law Society's career barriers research in 2010 and the Diversity and Inclusion Charter 2011 Annual Review show that there is still some way to go before recruitment practices in firms, including those offering training contracts, are inclusive. Matters such as gap years, work placements and internship experience, which may be correlated with an applicant's socio-economic or ethnic background, were all found to be considered in the recruitment process, which potentially has a limiting effect on the recruitment of individuals from certain socio-economic and ethnic backgrounds, if adequate allowance is not made for such factors in the process.

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 Law Society has addressed the inherent issues with the information that has been used in this section of the discussion paper in the introduction to this response and would refer the Review to those comments. In short, it seems essential to challenge the conclusion drawn in paragraph 134, which is that the presence of the gaps identified by the LETR team renders the current system as a whole, not fit for purpose. The gaps identified in the paper are set out in sufficiently broad terms that they cover off some of the issues in the current education and training system, but the scale of the problem is not as cataclysmic as the conclusion suggests.

The fact that entrants to the professions do not complete their qualifying training with all the commercial skills of more senior practitioners does not support the contention that the system is not fit for purpose. Professionals progress and accrue additional knowledge and skills over the course of their careers, particularly in areas more appropriately associated with the workplace as opposed to the classroom. There are no doubt improvements that can and should be made to the current legal education and training model, but there is sufficient flexibility in most areas of the current system for innovation, without requiring a radical overhaul of the system as a whole.

This discussion paper has specifically decided not to deal with CPD but must not mistakenly therefore try to deal with post-qualification issues when looking at the routes to qualification. The aim of the current system is to prepare candidates for entry to the profession, from which point they can grow, acquire knowledge and specialise. Some of the gaps identified in the paper are simply not applicable at an entry level. Management of people and projects, for example, is not something a newly qualified professional would be expected to do, and is not something that they may ever choose to do in the course of their career. The post-qualification system could be updated to accommodate some of the aspects identified in the paper, whether through mandatory accreditations for some activities or a more targeted system of CPD, focussing on outcomes and reflections. The LETR team will need to consider this in their final recommendations.

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.

An outcomes approach may be an appropriate basis for assessing individual competence but it will depend largely on how this is implemented. There must be recognition from regulators that there are different levels of competence, depending on the different stage of training and career progression, and that these must be applied to the different areas of work that is undertaken by solicitors. For example, the work and outcomes that will be appropriate for someone working in the City are likely to be different from those of someone working within the legal aid field, or a sole practitioner. There should be a broad standards framework, within which there must be the flexibility to recognise existing and emerging specialties without it being necessary to complete post-qualification accreditations. Comprehensive but straightforward guidance would be required to enable practitioners to meet the expected outcomes for their specific area/s of work.

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?*

The Law Society would wish to see a greater degree of specification within the qualifying law degree and GDL than is currently expressed within the Joint Statement. There needs to be a structure to the law degree and oversight of the outcomes which sit within this. There is a great degree of variance reported by students and providers of legal education, as to what is actually studied on the law degree and, to a lesser extent, the GDL and even the LPC. This leads to value judgements about the institution attended, alongside the course undertaken, by prospective employers, which potentially undermines that candidate's achievements.

If the SRA (through the Joint Statement) more clearly set out what should be taught and what was acceptable within the scope of each topic, as well as the standards that must be achieved, there would be a more even playing field for entry to the profession. The SRA should not, however, attempt to define the method of teaching that must be undertaken, which should be left to the individual institution, thus retaining essential flexibility within the qualifications. This would almost certainly combat some of the entrenched equality and diversity and social mobility issues that currently exist.

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?*

The Law Society believes that significantly more work needs to be undertaken before a definitive answer can be given to this question. While it is ostensibly attractive to have a common set of “standards” across the professions, by which we assume is meant an equivalence to the National Occupational Standards for some of the reasons given in this paper, we are not clear that the work involved in doing so would be proportionate to the benefits of any result.

As has been made clear in this paper, the Society supports measures that will enable people to qualify by different routes and to transfer from one part of the profession to another, provided that the right standards are maintained in the public interest. However, it is not clear to us that the absence of common standards is in fact a significant barrier to the development of such flexible routes. What is of greater importance is the content of the training that is undertaken, which needs to ensure that individuals have the knowledge, skills and expertise for their particular role.

While there are substantial overlaps in the work done by individuals regulated by the different regulators, there are also substantial differences and these will not be addressed by common standards. Solicitors are not simply regulated to undertake reserved work, but also to run what may well be substantial general practices dealing directly with clients and holding significant amounts of client money. The skills, knowledge and competences required for that are substantially different from those of a practitioner with a largely referral advisory or advocacy practice which does not involve holding client money, or an individual who is simply regulated in respect of their conveyancing practice. It seems to us that, in this market, it is inevitable that individual regulators will want to ensure that those seeking to be regulated by them meet not just the standards, but also the level of knowledge and skill required for their practitioners. This is not "gold-plating", it is taking a proper and proportionate approach.

Moreover, the training of practitioners involves a range of mechanisms, including academic and vocational education, on the job training, CPD and supervision. Each element contributes to the development of a professional in whichever regulated environment they practise. It is not clear to us that it will be easy to develop standards that accurately reflect the range of skills and expertise that individuals attain through the route to qualification and beyond. While an Approved Regulator will wish to ensure equivalence as between any different routes to qualification which it may sanction, these considerations limit the relevance of standards which are equivalent to the National Occupational Standards to the process of qualification as a lawyer.

We are also concerned that there is a danger that such common standards might lead to a levelling down of existing standards to the extent that it compromises the standards of individual professions. We believe that it is for the regulators to decide what level is appropriate to the particular part of the market that they regulate and that there is a significant danger in a "one size fits all approach".

It also appears to us that more work needs to be done on the distinction suggested between quality assurance and designing courses. While we agree in principle that it is not for the regulators to deal with the nuts and bolts of course design, they do have an important role in setting the outcomes to be achieved by the courses and may well legitimately take the view that particular outcomes may be best achieved by a particular approach. As we have suggested, there are concerns about the effectiveness of the way in which regulators supervise some courses and we would not want this to be diluted.

We therefore urge caution before proceeding with this idea and a clear analysis of whether, in fact, it is necessary.

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.*

In our view, the current arrangements for qualification as a solicitor broadly provide the right level of outcomes, given that this is an entry level qualification and that supervision, CPD and specialisation provide important further safeguards for the market. There are ways in which this can be improved. Primarily ethics, but also the law of organisations or company law, should be additional required outcomes from the education and training process. At the academic (QLD) stage particularly the outcomes could be more comprehensive, which would have a positive effect on the detail of what is studied. The headline topics are set out in the JASB Joint Statement, but outcomes here would ensure comprehensive coverage of key areas within these. In addition, there should be scope for alternative routes to qualification. We would, however,

counsel against creating a significant group of qualifications for levels below authorisation which will be bureaucratic, confusing and unnecessary.