

# Work based learning

## Executive summary

### Background

The training contract stage of qualifying as a solicitor is a prime example of 'work based learning' (WBL), a phrase that generally describes the learning provided in connection with a person's employment. It is through work based learning that employees gain the vocational skills and knowledge needed to be competent in their job role or advance their career and while there is a general consensus within the profession that the training contract system seems to function well enough in providing the necessary knowledge and skills, nevertheless it has been vulnerable to the following concerns:

- standardisation: that the training contract does not expose all trainees to the same core areas of law and develop a set of skills that are qualitatively comparable whether from a small firm in the North or a magic circle firm in London;
- under representation of diverse socio-economic and cultural groups and of those with disabilities;
- unfairness to those in paralegal roles who had not been able to gain training contracts even although they had successfully completed the first two stages of the route to becoming a solicitor and who under the current system were highly unlikely to ever qualify.

Arising from these considerations, the Work Based Learning (WBL) pilot scheme was initiated by the SRA in September 2008 to research and explore an alternative model of assessing competence at the training contract stage of qualifying as a solicitor. The primary aims of the research were:

- to develop a method of assessment that was quality assured, consistent and reliable allowing demonstration of competence;
- to test a route to qualification that did not depend on the candidate having a training contract and as a vehicle for reducing barriers to access to the solicitors profession.

The Institute for Work Based Learning at Middlesex University tendered for the role of external evaluator for the pilot and was contracted in February 2009. The role of the external evaluator was to ensure an objective, thorough and informed assessment of

every aspect of the scheme. The evaluation was intended to provide the SRA with a reliable analysis of the scheme, across a range of set ups with a cross section of participants, to inform its education and training strategy, and to progress the development of a competence based framework that would fulfil its obligations as a regulator.

### **Project description**

The pilot tested and evaluated a point of admission assessment of competence against a set of WBL outcomes during the period 2008-2010. The outcomes specified fell under eight key headings:

1. application of legal expertise
2. communication
3. client relations
4. business awareness
5. workload management
6. working with others
7. self awareness and development
8. professional conduct.

There were four different strands to the SRA project, of which two have been completed in full and two are ongoing:

- The training contract/employer assessed route - employers assessed their trainees against the WBL outcomes;
- The training contract/externally assessed route - employers agreed that an external provider would assess their trainees.

The other two strands are:

- The paralegal route - aimed at those who do not have training contracts but whose legal work is commensurate with the work undertaken in a training contract. Assessment is provided by an external provider. Full time candidates have completed their assessment and the findings are included in this summary report. Part time candidates will be assessed during 2011 and 2012.
- The combined route - single provider providing a law degree, LPC and assessment of WBL in two contexts: client facing experience in the University's Student Law Office (a pro bono clinic providing free legal advice to the local community), and a placement with an employer. Assessments for this strand will take place in 2012.

The Middlesex Report evaluates those parts of the project that completed by December 2010. Findings from those on the part time paralegal route and the combined route will also be gathered and used to inform future work.

Under the WBL pilot, the SRA required candidates, both those in training contracts and paralegals, to complete a period of practical, assessed legal experience prior to qualification, with the aim of ensuring that each candidate should demonstrate the

required standard of competence through the WBL outcomes in supportive legal environments.

A portfolio was chosen by both the internal and external assessment organisations as the method by which trainees would be able to demonstrate evidence of their competency against the WBL outcomes. Such evidence included a range of material such as reflection sheets, supervisor feedback, examples of exposure to areas of law, and experience of contentious/non contentious work.

The basic nature of the current training system remained in that training was designed and delivered by autonomous organisations under the central regulations and guidance of the SRA. For candidates in paralegal roles in the WBL scheme, external assessment organisations designed and developed programmes under the new pilot framework which the SRA validated. The external assessment organisations performed the final assessment of competence for this group.

## **Methodology**

A system of mixed methods was used to gather the data including quantitative methods for benchmarking information and qualitative methods in the form of interviews and thematic analysis of questionnaires. The evaluation team at Middlesex judged that this would:

- best capture the range of data required to attend to the aims and objectives of the SRA
- ensure reliability over a wide range of variables in the absence of the diverse sample being able to produce significant statistical reliability in all aspects
- the opportunity for triangulation to increase reliability
- give, as far as possible, a balance between data that could be regarded as objective and data which would be experience and opinion focussed. This was important for candidates for whom this pilot would be an entirely new experience. It was anticipated that candidates on the paralegal route in particular would have a useful perspective on the endeavour to widen participation and that this would not be captured in depth through surveys only
- elicit data on both general and specific areas and issues
- capture representative individual views and perspectives as well as systemic considerations.

Other methodological considerations were:

- issues arising in the evaluation due to the number of variables contained in the sample: different set ups; different candidate streams; different assessment arrangements; different regions; different educational and experience levels among candidates
- the evaluation exercise itself could impact on the views of participants
- the additional time, over and above the requirements of their training, that those in the sample would be required to give to the evaluation

- the responsibilities of the evaluator to provide reliable data to inform future decisions in the light of the SRA's aims, and the potential of the evaluation exercise to impact on future policies.

To keep these considerations at the forefront of the evaluation exercise, the evaluation team had regular meetings with the SRA in the first phases of the research and involved external experts on law and professional qualifications to act as critical readers and advisers.

Participation in the scheme was limited to candidates at supportive organisations in England and Wales who had or would have completed the academic requirements (a law degree or GDL) and the LPC before the start of the scheme. The deadline was 3 April 2008.

There were two sources of candidates:

1. Candidates nominated by participating legal firms who had already agreed to take them on for training as solicitors
2. Candidates volunteering for the scheme who were in employment in legal roles (which would not otherwise have led to qualification) in legal firms or legal departments of other organisations.

The final number of candidates who participated in the scheme is shown below with assessment outcomes:

	No. candidates	Passed	Revised deadlines	Referred	Withdrawn
Externally Assessed by Nottingham Law School	35*	27	6	1	1
Externally Assessed by Oxford Institute of Legal Practice	8	8	0	0	0
Internally Assessed by Legal firms	36	35	0	0	1
<b>TOTAL</b>	<b>79</b>	<b>70</b>	<b>6</b>	<b>1</b>	<b>2</b>

\* Over 85% of this group were paralegals/in legal employment in organisations which were not legal firms.

## Analysis

A system of triangulation of data was used: each data stream (surveys, interviews, portfolios, literature, policy documents, quality assurance documents from the various set ups) was analysed and checked against each other until the distillation produced confident superordinate themes (high consensus) and subordinate themes (lower consensus but high significance for certain participants). Where there was no consensus in the data collected the data was either used to describe or illustrate particular problems, or omitted. The conclusions and recommendations in the final report are based on themes that were consistently superordinate and high subordinate in the final phases of the evaluation exercise.

## Key findings

The findings reported here are organised to address specifically the two primary aims of the project:

1. to develop a method of assessment that was quality assured, consistent and reliable allowing demonstration of competence;
2. to test a route to qualification that did not depend on the candidate having a training contract and as a vehicle for reducing barriers to access to the solicitors profession.

### 1.1 Work based learning outcomes

1.1.1 The WBL scheme demonstrated the value of learning outcomes as an appropriate learning and assessment approach for the vocational stage of training.

1.1.2 Learning outcomes were regarded by a large majority of respondents as 'good practice' in principle. Learning outcomes:

- are a move in the right direction to achieve objective measures and standards across all set ups
- assist in quality assurance
- enhance learning if delivered well
- guide the candidate and encourage, eventually, self managed learning
- guide the supervisor/reviewer in how best to support the candidate
- form a sound basis for assessment in skills application and competences
- encourage a professional (solicitor's ) attitude by their requirement to evidence all work, be proactive, disciplined, business aware and manage time appropriately.

1.1.3 All the learning outcomes were considered relevant but the business awareness outcome, particularly in the changing economic climate, emerged as a key one for both legal firms and other organisations.

1.1.4 While a large majority of respondents regarded the learning outcomes as good practice in principle, there were reservations and qualifications:

- in their current form they are administratively burdensome and time consuming for everyone

- although designed to be generic, not all may be relevant for all sets ups or should be given the same emphasis
- there are too many
- several overlap
- a number are challenging to evidence particularly those involving people skills
- concerns about assessing levels of incremental learning
- concerns about whether one could use, and the value of using, the same piece of evidence for several outcomes
- uncertainty about reflection sheets and how best to use them
- not convinced that on their own the learning outcomes measure anything more than skills application and track the development of that process.

## 1.2 Portfolios

There was no unanimity on the effectiveness of the WBL portfolio as an assessment tool but the consensus drawn from the data was that the portfolio was a useful tool for providing a picture of a candidate's readiness to be a 'Day 1 solicitor' in terms of certain specific skills and their application under supervision. However, the portfolio was considered insufficient to give a complete picture of whether or not that candidate would be a good solicitor. The limitation of this endorsement related to two crucial factors:

- i. the inability of the portfolio, by itself, to show necessary skills, in particular 'soft' skills, such as 'interpersonal communication'
- ii. strong confidence on the part of training organisations in the instincts, perceptiveness and good judgement of professionals involved in training in respect of the relevant qualities of trainees. It was frequently stated that these qualities were difficult, if not impossible, to describe, define or evidence in an objective format.

Most legal firms, even those expressing reservations, intended to do one of the following with a number stating they had already started to do i. or ii.:

- i. adopt a WBL scheme
- ii. adapt the best of the WBL scheme to the best of their own practices
- iii. be less resistant to an adapted version of WBL from the SRA

Benefits included for some

*...WBL is good because it helps a trainee to concentrate more on acquiring skills.*

*...It will produce a much more rounded individual.*

*...the responsibility WBL seemed to put on the trainee, is one thing that attracted [our firm] to the scheme.*

Overall, there was concern for everyone about what stages of the portfolio should be measured at what level. For those who had negative comments on the effectiveness of the portfolio, criticism focused on the whole exercise having the clear potential to become a meaningless, mechanical tick box process. There was an indication that 'just

getting on' with work, showing initiative, willingness, self managed learning, attention to detail, professional knowledge or how to get it and being proactive were clear enough indicators of employability in the profession. A more complex criticism arose from an overall perception that the scheme did not deliver a system more beneficial than the one used by the responding organisation.

## **2 Reducing barriers to access**

2.1 In relation to the aim to test WBL as a route to qualification that may help to reduce barriers to access to the solicitor's profession, the pilot found that:

- most candidates were convinced that such a scheme would help address the specific perceived barrier to entry into the profession of socio/educational background but only relating directly to paralegals and those in legal related employment
- professionals were not convinced that by itself the WBL scheme could address barriers to entry but rather barriers to entry needed to be addressed earlier in the education and training process, for example at the training contract application stage
- due to the economic climate, professionals in law firms believed that the level of degree and type of university would still need to be one of the criteria of initial selection for processing to interview stage
- professionals were not convinced that having a WBL portfolio would offer any particular advantage to the individual in seeking a newly qualified solicitor job in a legal firm. It could assist to secure an interview.

2.2 Professionals in legal firms all agreed that this route for paralegals to qualify as solicitors was a fairer system. However over the course of the pilot they became less convinced that it was desirable or feasible on a large scale due to a number of factors:

- shifting economic climate and potential professionalisation of other legal roles influenced a modification in views from 'supportive in principle' to 'perhaps not feasible'
- all professionals did believe it was 'fair' to have this route but were concerned that reduced availability of training contracts would make entry into the profession even more competitive and selection criteria would be even more refined making a change to the degree level requirement unlikely
- concerns over whether being employed as a paralegal could give full exposure to the areas of law without the paralegal becoming a full time trainee
- the process of replacing a paralegal would also incur more costs for the employer
- during the course of the scheme concerns arose, which were not evident in the first year, that giving access to paralegals to enter the profession through the WBL scheme may create a two-tier system because paralegals would never be able to have the same experience as trainees unless they were employed solely as trainees

- the impact of Alternative Business Structures as well as the emergence of a professional body for paralegals was mentioned in this context but not elaborated upon
- the possibility of firms becoming more specialised and traditional paralegal work going abroad meant that firms would be looking for individuals to enter the profession who had the highest knowledge and skills levels to bring in and maintain business. It was believed by some that this approach was a meritocratic approach, decided by the market, that would remove barriers to entry which were based on other factors such as age, ethnicity and gender.

2.3 The majority of other employers whose employees accounted for the majority of paralegals on the scheme all agreed that this route for paralegals to qualify as solicitors was a fairer system. However they were not convinced it was desirable in all cases and their reasons differed from the legal firms in a number of respects:

- if the paralegals were good at doing their job the employer would not want to lose them but recognised they also did not want to stand in the way of advancement
- extra cost incurred in terms of time to help their paralegals to qualify
- extra cost incurred if the paralegals wanted to stay on as qualified solicitors
- wanting to secure staff development for their employees and reconsidering whether this is the most appropriate way.

2.4 Candidates who were employed as paralegals were very enthusiastic about the scheme but also had reservations. Overall they reported:

- the pilot addressed barriers to entry on the grounds of socio/educational discrimination
- it was a fairer system because it recognised that without a training contract those who had successfully completed the first two stages of training could never qualify
- they understood why previous experience was not taken into consideration but would like to see it count if the scheme is rolled out
- the WBL framework encouraged them be more proactive in seeking opportunities that would enhance their learning
- the WBL framework helped them to engage at a more professional level of thinking
- concerns about whether their employer would be supportive, and were not clear what should be expected in terms of reasonable support
- differences arose/were accentuated between how they were treated in relation to trainees on standard training contracts e.g. for trainees on a training contract, the professional skills course was paid for by the employer and they had more freedom to move around 'seats'

- concern about getting exposure to all the areas of law required, contentious and non-contentious work, and a lack of confidence that a secondment could work for them or their employers
- little concern that WBL may be a second rate/tier route
- more concern about payment for professional skills course and exposure to advocacy.

2.5 Candidates who were employed as trainees were less enthusiastic in the first year of the scheme but on the whole were more enthusiastic towards the completion of their training contract:

- at first they felt they were being treated differently, having to do more work, meet higher levels of evidence than colleagues on standard training contracts
- during the second year confidence had increased, they felt they had achieved more and could evidence it
- unlike paralegals and those employed in other legal roles, they believe they were helped by their organisations, drawing on the organisations' existing training practice to support them as well as the WBL system
- they did not have concerns about exposure to areas of law but had concerns about getting experience of advocacy
- they had concerns that the profession may consider their WBL training to be inferior to the standard training contract because the profession did not really know about it.

### **Summary of key recommendations**

The Middlesex Evaluation Report found that the WBL framework demonstrated a level of success in providing the legal profession with a learning and development approach to the vocational stage of qualification that assures quality in assessment, and that can be monitored and contribute to enhancing standards across all set ups. The evaluation report also highlighted a number of key recommendations:

1. Undertake further work to set out the skills and attributes for qualifying as a solicitor;
2. Develop progressive steps of achievement linking the LPC, the vocational stage and Day 1 competences;
3. Set out the learning outcomes necessary to demonstrate competence;
4. Consider a credit system to assess incremental learning and to open the door to more flexible routes to qualification and transfer between professions;
5. Retain and develop the use of the portfolio as a learning journal;
6. Train key professionals in coaching and assessing within a WBL framework;
7. Continue the bold moves in widening participation through exploring an accredited learning scheme for prior learning;
8. Address barriers to entry at secondary school level when choices of university, courses and future careers are still in the formative stage.