

SRA response

Legal Services Board Consultation on Draft Statutory Guidance on increasing flexibility in legal education and training

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[http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/20130918_consultation_paper_on_guidance_for_education_and_training_FINAL_for_publication.pdf]

1.

The SRA's strategy for the reform of the regulation of legal education and training, *Training for Tomorrow*, which was published on 16 October 2013, is consistent with the broad thrust of the LSB's consultation paper and draft guidance. In our view, it meets the five success criteria set out in paragraph six of the Chairman's foreword; and we support the five outcomes proposed in the draft guidance, with one addition (set out below).

2.

However, we are concerned that the LSB's consultation paper appears to be underpinned by a focus on only a limited number of the statutory objectives and, as a result, fails to give sufficient weight to wider public interest issues, including the duties solicitors owe as Officers of the Court (Solicitors' Act 1974, s.51(10)). In this regard we agree with the statement in para. 5 of the LSB's paper on the regulatory objectives that the public interest must be placed higher than sectional interests of particular consumer or professional interests. Thus the statement in para. 56 of the LSB's consultation paper that "It may be that there are some universal requirements that exist across the professions, such as the notions of professional principles or ethics, and then those that are specific to certain activities or roles." (underlining added) indicates a failure to give appropriate weight to the importance of ethics and legal reasoning as underpinning features of the professions and disregards the need to establish the foundation knowledge base for a person holding themselves out as a solicitor or legal professional.

3.

Given that our work to review and reform legal education and training addresses the draft guidance set out in the consultation paper, we question whether statutory guidance is necessary or appropriate at this stage, though it would not inhibit our programme of reform.

Question One

4.

Subject to two points, we agree with the stated outcomes, which align closely with the principles of our own *Training for Tomorrow* strategy. We have some observations, however, on the LSB's detailed guidance for certain of the outcomes, which we set out in the body of our response.

Our two observations on the LSB's proposed outcomes are as follows:

1.

It is our view that outcome (i) focuses too narrowly on the point of authorisation and omits the regulatory requirement to ensure continuing competence.

2.

In outcome (ii), it is training providers' function to deliver training which enables candidates to meet the outcomes, rather than to meet the outcomes themselves.

Question Two

5.

In our view, outcomes (i) and (iii) are the outcomes most critical to our regulatory objectives, but we support all five, and doubt that ranking them would be beneficial.

Outcome 1

In considering whether education and training requirements might be role or activity specific (as suggested in Outcome 1, para. (a)):

1.

The full range of regulatory objectives should be taken into account, not just the two identified in para. 29 of the consultation paper (protecting and promoting the interests of consumers and encouraging an independent, strong, diverse and effective legal profession). Ignoring other statutory objectives fails to give sufficient weight to wider public interest issues and the importance of establishing the common grounding for practice as a solicitor, for example, in ethics and in key legal skills such as research and communication. There is also the need to establish a basic understanding of key legal disciplines that are common across, or underpin, all areas of legal practice.

2.

We should be aware of the risk that too narrowly defined training requirements for specific activities might (a) create a barrier to a more flexible labour market for legal services, by requiring premature specialisation during training and/or making it more difficult to move practice area post-qualification; and (b) create a regulatory risk to the quality of legal services;

3.

We should take into account empirical evidence about what solicitors do in practice, and the extent to which particular roles require common or divergent knowledge, skills and attributes.

6.

We have already commissioned independent research into what newly qualified solicitors do in different practice areas, and what knowledge, skills and attributes they need in order to perform these functions competently. This will provide empirical evidence about the extent of the commonality or divergence between particular roles and functions, and will inform the competence statement for solicitors which we plan to consult on in 2014.

Question Three

7.

We agree with the proposed shift of focus from process to outcomes in relation to the initial authorisation of solicitors. However, as stated in our response to question one, it is our view that a risk based approach must focus on both authorisation and continuing competence. This is in line with our own Training For Tomorrow strategy. Risks to consumers and the public interest do not occur only at the point of authorisation, so focusing too narrowly on that point is not appropriate.

Question Four

8.

Our Training For Tomorrow strategy seeks to increase flexibility in the achievement of outcomes, and as part of this we will identify obstacles which prevent movement between the regulated professions. Our joint working on the LETR research report has given us a greater understanding of how and where we need to work with other regulators to ensure greater harmonisation. We are working closely with the Bar Standards Board and ILEX Professional Standards in the development of a competence statement. Our objective is to produce either a joint statement, or separate statements



which adopt a common structure and terminology and common standards for common areas of practice. We believe this will facilitate movement between the professions.

9.

We will be looking wherever possible to facilitate recognition of prior learning and experience of individuals, including those wishing to move between professions. Indeed we have already issued a consultation paper on facilitating the accreditation of prior learning through the introduction of an "equivalence" test into our training regulations, with effect from 2014.

Question Five

10.

We think that solely using time served as a proxy for quality is not effective. We consider that moving to an outcomes based approach will enable us better to assess competence at the point of qualification.

Question Six

11.

We are currently consulting on a proposal to remove compulsory student registration, on the grounds that it does not appear to address a regulatory risk. However, it is our view that, in the public interest, individuals in work-based practice (including practice under supervision) whose character and suitability have been called into question, do require a regulatory check. Our proposal is that this process should be undertaken at latest before the beginning of any such period.

12.

Outcome 2

The detailed guidance for outcome 2 assumes that we will continue to approve education and training providers as well as particular routes or pathways to qualification. In fact, whether and, if so, how we quality assure training providers is an issue we will be considering once we have developed our competence statement. We have therefore not yet come to a concluded view on this, but it would be consistent with outcomes-focused regulation for us to regulate the assessment of candidates at the point of entry to the profession, and to have no involvement in the processes leading up to assessment. This is the approach we have taken in the Qualified Lawyers' Transfer Scheme, where we regulate the assessment but not the tuition for the assessment.

Question Seven

13.

Yes. Our expectation is that focusing on outcomes rather than process will encourage legal education providers to develop new and different programmes which can enable candidates to achieve the required outcomes.

Question Eight

14.

Yes. Our focus will be on ensuring that those who qualify have the right competences to practise. Successfully meeting our competences creates a level playing field for all those who wish to qualify, regardless of where or how they have trained. We also expect that the removal of required processes will enable the development of cheaper and more flexible programmes which address the current financial barriers to access.

Question Nine

15.



Yes. We have already taken the decision to abolish the Joint Academic Stage Board and instead to rely on existing QAA procedures. We are consulting on extending this approach to other regulated courses.

16.

Outcome 3

We have already stated that we will be producing a competence statement for solicitors. As part of this work, we will be addressing the standard or level to which new entrants must meet the competence statement. We do not consider it to be helpful to discuss this standard as a "low", "high", "threshold" or "minimum" level. These terms are undefined, subjective and emotive. We also disagree, if this is the implication of paras. 27 or 62 of the draft guidance, that there is any evidence, whether in the LETR report, or elsewhere, that the current training requirements are set at too high a level, or that the entry-level requirements for solicitors need to be lowered.

17.

It is our view, instead, that the appropriate approach is to undertake empirical research to ascertain the knowledge, skills and attributes required for competent practice. This research is under way and will inform our competence statement.

Question Ten

18.

Yes. Please see our answers to earlier questions.

Question Eleven

19.

We have commented in relation to outcome 1 on the risks of focusing regulation too narrowly on particular activities. As we said then, there is a risk that developing narrow, regulated specialisms may create barriers preventing movement between different practice areas. Further, one of the findings of the LETR research was the importance of a broadly based ethical framework, and of key legal skills such as research and communication. Over-specialisation which ignores this context may create a regulatory risk to the quality of legal services.

20.

The empirical evidence we are gathering about what newly qualified solicitors need to know and do will affect decisions in relation to the continuing appropriateness of broad based training for a broadly based solicitors qualification. It will take into account evidence from consumers.

21.

It is important to recognise that legal services, including those regulated by the approved regulators, are delivered by a broad range of staff, many of whom do not have a regulated title and may specialise in certain areas. Our Training for Tomorrow policy statement says that "we must ensure that we have the right structures in place to ensure that everyone within our regulatory sphere who is involved with the delivery of legal services is competent to carry out their role in order to protect the interests of the public".

Question Twelve

22.

Our focus will be on ensuring competence at the point of qualification and continuing competence. As part of our work, we will be reviewing our CPD scheme to ensure it supports the achievement of this objective. We will look at the range of evidence, including but not limited to the findings of LETR, to determine whether there is a public interest case for moving beyond an enhanced CPD scheme to a

more formal system for reviewing continuing competence. We agree that any such scheme should be proportionate and targeted at areas of high regulatory risk.

Question Thirteen

Outcome 4

23.

Yes, within an appropriate regulatory framework (see further our response to question fourteen). We recognise the high quality of the training and development systems of many regulated entities, and that they are well placed to identify the training needs of their workforce which best meet their own strategic objectives. Our own developing work on continuing competence will recognise this context.

Question Fourteen

24.

We agree that entities are better placed than regulators to ensure their systems of education and training respond to changes in their strategic objectives and in the composition of their workforce. However, we believe that the regulator has a role in establishing the standards and regulatory framework within which firms develop their systems for education and training and ensuring that the entity's systems reflect not just the entity's own interests but broader public interest requirements.

25.

Our proposals for the continuing competence of solicitors will include requirements for individual solicitors, but will recognise the role of the entity in ensuring that the solicitors and all employees providing legal services have the competences they need.

26.

One of the conclusions of the LETR report was that little was known about the profile of the unregulated workforce. We will consider the appropriate balance between SRA regulation and entity responsibility for assuring the competence of this part of the legal services workforce as part of our ongoing Training for Tomorrow programme of work. Where that balance lies may differ for individuals involved in direct client-facing work who we do not directly regulate, and those who are involved in support functions.

27.

We recognise that some entities may not have such well developed training structures or resources. Through our own consultation processes we will be trying to identify any groups or organisations on whom our proposals might impact and how best to enable them to meet our requirements for continuing competence.

Question Fifteen

28.

Outcome 5

Yes.

Question Sixteen

29.

We currently have a regulatory requirement around the ratio of the number of supervisors to trainees. We are consulting on proposals to remove this as we think this creates an artificial barrier to entry to the profession. Removal of this requirement will not remove the obligation to supervise trainee work.