



SETTING STANDARDS

The final report of the Legal Education and Training Review independent research team

THE FUTURE OF LEGAL SERVICES
EDUCATION AND TRAINING REGULATION
IN ENGLAND AND WALES

June 2013

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Introduction

The quality of our legal system and its lawyers is recognised worldwide. The national and international provision of legal services contributes billions of pounds annually to our economy. The high standard of entrants into the legal professions as currently regulated has been made possible by a widely respected system of legal education and training in England and Wales, which has continued to evolve over the years at what, until recently at least, may fairly be described as a leisurely pace.

Save for the Report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) in 1996, whose recommendations were never implemented, the last major sector-wide review of legal education and training was undertaken by Lord Justice Ormrod in 1971. More recently, the Law Society Training Framework Review in 2005 and the Wood Reports for the Bar Standards Board in 2008 and 2011 have made progressive changes but have been concerned only with their respective constituencies.

The current legal services market

However, today's expanding legal services market is in a state of rapid development and transition, triggered by regulatory and other developments, primarily as a result of the Legal Services Act 2007 which set out eight regulatory objectives in respect of the supply of legal services as follows:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and improving the interests of consumers;
- promoting competition in the provision of services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of the citizen's legal rights and duties;
- promoting and maintaining adherence to the professional principles set out.

The 2007 Act was passed with the intention of liberalising the legal services market by, for example, allowing Alternative Business Structures (ABSs) and encouraging innovative new models for the provision of legal services. The continuing advances in technology; globalisation; demographic and social changes; demands for better value for money and the rise of consumerism have all led to altered expectations of what is required from legal advisers and those who train them.

At the same time, growing student numbers, the escalating costs of qualification and difficulties in finding employment after qualification have also resulted in calls for reform of the current system of legal education and training. There is the further complication that, save in the field of corporate advice and disputes, the background against which reform falls to be considered is one of cuts in the availability of legal aid advice and representation for individuals in the vast majority of civil and family disputes and ever tightening limitations on the availability and funding of criminal legal aid.

The Legal Education and Training Review

In January 2011, the Solicitors Regulation Authority, the Bar Standards Board and ILEX Professional Standards announced the establishment of a joint fundamental Review of the legal education and training requirements of individuals and entities delivering legal services. The Review, as established, comprises a research stage; consideration by the three commissioning regulators (individually and where appropriate collectively) of the approach to any consequent reform of

their education and training requirements; and any formal consultation required as a result of the regulators' decisions on policy.

The UK Centre for Legal Education (UKCLE) Research Consortium, led by Professor Julian Webb of the University of Warwick, was appointed to conduct the research stage of the Review in May 2011.

We were also appointed as Co-Chairs of the Consultation Steering Panel for the research stage of the Review, which includes representatives of key stakeholder groups, including practitioners, legal education and training providers, consumers and other regulatory bodies. The Panel's task has been to provide advice and information to the research team and regulators during the research stage of the Review. Through six meetings of the Panel and additional meetings with individuals and groups, we have also endeavoured to enable the research team to receive directly the views of all those interested in the outcome of the Review.

However, the report which follows and the content of the recommendations are solely the work of the research team, led by Professor Webb.

The report

The report is an independent report to the commissioning regulators. Its ambit is England and Wales, although education and training systems in other jurisdictions are considered, where appropriate.

It is the product of the academic work of the research team. It is intended to provide to the regulators the evidence needed by them to make decisions on education and training policy going forward.

The report does not seek to predict the future of the legal services market, since many potential drivers of change are still emerging. Nor does it set out in detail a strategy or prescription for future legal education and training. The focus is on systems and structures, rather than content.

In relation to some issues, such as common professional training for solicitors and barristers, the report does not include a recommendation. It describes the benefits for the system of such a requirement as equivocal at best and invites further discussion.

The approach of the report is first to set out the context in which the commissioning regulators will be considering the future of legal education and training, given their respective roles; and second to focus on legal services education and training, rather than academic education in the law, thus reflecting the need to assure the quality and competence of all those who deliver legal services, whether or not under an established professional title.

The key messages

The report contains a number of key messages underlying its recommendations, which, as we believe, deserve emphasis.

Quality and Competitiveness

As already noted, our legal system has served us well for many years. While improvements can always be made, it is vital to ensure that the quality of our lawyers and the legal advice which they give are maintained. We must build on existing strengths. While new topics of learning are identified in the Report, there are areas of required skills which do not change and must continue to be taught. It is also vital that the international competitiveness of English and Welsh law and legal education should be maintained and safeguarded.

Flexibility

The uncertainty and fluidity of the current legal services marketplace means that flexibility and responsiveness will be essential. So, for example, new pathways to qualification (such as apprenticeships), ease of transfer between disciplines and increased flexibility in training regimes need to be vigorously explored. Also, technology will continue to reshape the manner in which law is taught and practised.

Talent management

We must encourage and harness the abilities of those who should succeed on merit but who currently fail to complete the required legal education and training or abandon their careers in the law. This must involve increasing efforts to promote diversity and social mobility within the workforce of providers of legal services. The report rightly highlights the need for greater transparency and easily accessible information about the opportunities for careers in legal services.

Ethics

As the report makes clear, the teaching and maintenance of professional ethics and values are central to the assurance of integrity in the administration of justice and quality across the entire legal services sector. Both require emphasis in the course of the education and training of suppliers of legal services.

New ways of learning

Learning in the workplace is critical for the effective delivery of legal services. Hitherto, the requirements of pupillage for the practising bar and the training contract for solicitors have been key to the qualification and quality assurance of practising barristers and solicitors. However, there may be different configurations of 'supervised practice' in an increasingly wide range of practice contexts. The perceived transition from content-focused to outcomes-focused learning in legal education requires analysis. Increased consistency and sharing of standards are required. In addition, continuing learning must support the maintenance of ongoing competence and the use of such techniques as re-accreditation require further considered thought. Continuous professional development may need reform in some parts of the legal services sector.

Regulatory challenges

There will be a number of challenges for regulators in the future. These will include the question of how to identify and regulate general legal advice and assistance and to decide whether the regulatory framework itself is fit for the future legal services market. For example, the report notes the lack of an overall and coherent legal education system as such. That being so, and in order to avoid a tournament of regulators as to who will regulate whom, the regulators are encouraged to consider greater collaboration. Examples of this collaboration include a data archive, an advice shop, a hub of innovative practice; a legal education laboratory and clearing house; and a Legal Education Council/Board/Authority. The report also identifies a number of over-arching issues for the regulators, designed to promote common learning outcomes and consistency.

The need for further work

There are a number of issues identified in the Report, which require further research or investigation. They include, without ascribing any order of priority, the options for activity-based education and regulation; the unregulated legal services sector (the research team only having examined to any extent the activities of paralegals and some independent unregulated practitioners); consumer experience of legal services; and the collection of data which may increase understanding of what impedes the access to and progression of meritorious students in the legal services sector.

Conclusion

This long awaited report provides invaluable material and comment on which to base future decision-making by those charged with regulating and assuring the ongoing stability and success of legal services delivery in England and Wales.

Once completed, the Legal Education and Training Review will enable the regulators to set out and implement a strategic plan for assuring the competence and ethical conduct of legal practitioners in the rapidly changing legal services market.

We take this opportunity of thanking all those who have contributed to the production of the report, including, in particular, the research team led by Professor Julian Webb.

Dame Janet Gaymer DBE QC (Hon.)

Sir Mark Potter

Introduction

This is the final report of the **Legal Education and Training Review (LETR) research phase**, which has been undertaken on behalf of the Bar Standards Board (BSB), ILEX Professional Standards (IPS) and the Solicitors Regulation Authority (SRA). It is the first sector-wide review of legal services since the Ormrod Report of 1971 (*Report of the Committee on Legal Education*, Cmnd 4595).

This report has been commissioned as the first stage of a wide-ranging review process that is designed to ensure that England and Wales have a system of legal services education and training (LSET) that is fit for the future, and one that advances the regulatory objectives of the Legal Services Act 2007 in the interests of society, consumers and justice.

The Review takes place against the backdrop of a legal services sector experiencing an unprecedented period of change, which has the potential over the next two decades to transform the shape of the legal services market. Global economic conditions and increasing competition will continue to provide a challenging and uncertain context for the international and domestic markets. Market liberalisation and funding reforms in the domestic legal services sector are transforming the face of consumer legal services, and influencing buyer behaviour, shaped by technological and demographic changes. These influences are already driving technological, role and process innovations within legal services, innovations with which LSET must keep pace.

The remit of the research phase has therefore been to develop a set of recommendations that will ensure three things. First, that the individual legal services providers of the future have the knowledge, skills and professional attributes to meet present and future needs of business, consumers and the public interest. Secondly, education and training providers are supported by regulation in delivering LSET that ensures the initial and continuing competence of practitioners, and thirdly, that employers have the flexibility to develop their workforce to deliver an effective and professional service to their clients.

Headline findings and recommendations

The report recognises that the current LSET system provides, for the most part, a good standard of education and training enabling the development of the core knowledge and skills needed for practice across the range of regulated professions. At the same time the research has identified a number of ways in which the *quality*, *accessibility* and *flexibility* of LSET need to be enhanced to ensure the system remains fit for the future. The report proposes a range of incremental but collectively significant reforms. Key recommendations will:

Quality

- strengthen requirements for education and training in legal ethics, values and professionalism, the development of management skills, communication skills, and equality and diversity;
- enhance consistency of education and training through a more robust system of learning outcomes and standards, and increased standardisation of assessment;
- place greater emphasis on assuring the continuing competence of legal service providers through a system of continuing professional development that will require practitioners more actively to plan and demonstrate the value of continuing learning;
- require regulators to gather and make available key data and information that will reduce information gaps, support decision-making by prospective entrants, consumers and employers, and increase the effective market regulation of LSET.

Access and mobility

- establish professional standards for internships and work experience;
- enhance quality and increase opportunities for career progression and mobility within paralegal work, by encouraging regulatory and representative bodies to collaborate in the development of a single voluntary system of certification/licensing for paralegal staff, based on a common set of paralegal outcomes and standards;
- provide higher quality and more accessible information on the range of legal careers and the realities of the legal services job market;
- support and monitor the development of higher apprenticeships at levels 6-7 as a non-graduate pathway into the regulated sector.

Flexibility

- expect regulators to co-operate in setting outcomes for LSET to ensure equivalence of baseline standards;
- clarify systems for accreditation of prior learning and transfer between professional routes, and ensure that these do not create unnecessary barriers to progression;
- remove requirements in training regulations that unduly restrict the development of innovative and flexible pathways to qualification, including the more effective integration of classroom- and workplace-learning.

The report does not recommend a move at this stage to greater activity-based authorisation, for reasons of potential cost and complexity, particularly within the present system of multiple regulators.

The research

The independent research team commenced work in June 2011 and this Final Report is delivered to the Review Executive in June 2013. It is a matter for each of the frontline regulators to decide, in the light of their regulatory responsibilities, what action they will take in response to the report's recommendations.

The research was conducted in three stages, involving a literature review, analysis of the context of the legal services sector and analysis of the content of LSET and the systems and structures by which it is delivered. Research methods included: analysis of policy documents, regulations and secondary literature; qualitative research involving interviews and focus groups with 307 academics (including vocational stage academics), students, practitioners and others; quantitative research by way of an online survey attracting 1,128 respondents from the professions, the academy and other interested persons; online surveys of will-writers and careers advisers and an analysis of the way in which solicitors use their time on specific tasks and skills. The research team was also provided with access to data collected by the Legal Services Board (LSB) on the consumer experience of legal services. Collectively the empirical research sought to discover both the advantages and disadvantages of the current system and what was necessary and possible for the future. Further input was provided by the work of two expert consultants: Professor Richard Susskind on future developments in legal services, and Professor Rob Wilson on future demand for employment in the legal services sector. Interim papers, presentations and stakeholder responses published during the course of the research can be found on the research website at <http://letr.org.uk/>.

Advisory groups

The overall conduct of the research stage of the Review was managed by a Review Executive, comprising the Chief Executive Officers of the BSB, IPS and SRA. A Consultation Steering Panel (CSP) comprising representatives of key stakeholders operated in both a consultative and advisory role with Dame Janet Gaymer and Sir Mark Potter as Co-Chairs. The CSP met on six occasions to comment on and review progress and give guidance to the research team, and will meet again to consider this final report. An independent Equality, Diversity and Social Mobility Expert Advisory Group chaired by Professor Gus John was formed to advise the research team and the CSP. A symposium entitled 'Assuring competence in a changing legal services market' was held in Manchester on 10-11 July 2012 and benefited from the participation of a wide range of eminent contributors to legal education, practice and regulation.

The report

This report sets out the methodology and findings from the research phase, identifies the evidence on which those findings are based and presents a set of recommendations for the approved regulators and the LSB. The substantive chapters follow three broad themes of context (the social, economic, and policy environment within which LSET takes place), content (the knowledge, skills and attributes to be developed by LSET), and systems (the structures and processes informing, administering, and facilitating LSET). The report is organised as follows:

- Chapter 1 provides an introduction to the aims, scope and methods of the LETR research phase.
- Chapter 2 looks at the background to, and current context of, legal education and training, contrasting the model of training for barristers and solicitors with those of the other professions and offers some evaluation of the strengths and weaknesses of current approaches.
- Chapter 3 focuses on trends in the legal services market and the changing regulatory landscape. The implications for LSET of projected legal workforce needs are considered, together with the emergence of new roles for regulated professionals and paralegals and key developments in the unregulated sector.
- Drawing on comparative research on other professions and in other jurisdictions Chapter 4 focuses on the identification and signalling of competence in legal services. It looks at the range of appropriate competencies or learning outcomes and the need to close perceived knowledge and skills gaps. The chapter concludes by exploring the setting of standards and the need for relevant and robust assessment practices.
- Chapter 5 develops the theme of assuring competence for the future, and considers the role of regulated titles and how title-based regulation may be supported or supplanted by more entity- or activity-based approaches. It looks at ways to increase the flexibility of routes to qualification, and the possibility of more common or integrated training between the different legal professions. It also considers the relative roles of CPD and re-accreditation in assuring continuing competence. The chapter concludes by discussing the contribution of quality assurance processes to maintaining competent performance.
- Chapter 6 focuses on four issues critical to the future development of LSET: the promotion of fair access; the assurance of continuing competence through enhanced supervised practice; a revised approach to CPD, and the possibility of increased regulation or quality recognition for paralegals. The chapter concludes by exploring a range of institutional changes intended to support information flows and cultural change in the future regulation of LSET.
- Chapter 7 summarises key findings and conclusions drawn from the research set against an equality impact assessment. It also sets out the recommendations for the regulatory bodies and identifies areas requiring further research.

Context for the recommendations

The recommendations address those aspects of LSET that have been highlighted by the research as either currently deficient or in need of reconsideration to ensure the future effectiveness of the system. Chief amongst these are:

- insufficient assurance of a consistent quality of outcomes and standards of assessment, particularly for those professions where an element of education or training is delivered by a range of semi-autonomous providers;
- limits on the acceptable forms of professional training (notably at vocational and CPD stages) which may unnecessarily impact the utility of training, inhibit innovation, or restrict competition;
- knowledge and skills gaps in respect of legal values and professional ethics, communication, management skills and equality and diversity awareness;
- limits on horizontal and vertical mobility, which may become increasingly important as the market becomes more fluid. Although numbers seeking to transfer between professions appear relatively small, there may be appreciable equality and diversity effects in restricting vertical mobility between the smaller and larger professions, and in unduly restricting paralegal access to regulated occupations. Limits on horizontal mobility may be less significant in diversity terms, but such constraints may still be difficult to justify on objective, risk-based, criteria;
- the impact of increasing cost barriers affecting access to academic, professional and workplace training particularly for solicitors and barristers in non-commercial practice;
- limitations placed on the capacity for coherent evidence-based policy-making in respect of LSET by a lack of research and information.

The overarching approach taken by the report has been to encourage incremental reform where possible, through a process in which regulators and stakeholders collaboratively ‘co-design’ LSET. This will enable the LSET system to respond strategically to change in what is likely to remain a very uncertain economic and political environment over the next decade.

Recommendations

The full recommendations are listed below. They are organised into four groups: outcomes and standards; content; structures and review process. Each set of recommendations is preceded by a brief explanation of the grounds for making them. A fuller explanation of the scope and intent of each recommendation is included in Chapter 7. There is no particular significance to the order in which the recommendations are presented, and no implications are intended with regard to the priority of any item.¹

Outcomes and standards

The tasks of establishing, monitoring and enforcing standards of competence are central to professional regulation, and education and training are means used by regulators to achieve compliance with those standards. Competence must, therefore, be demonstrably attained, signalled and assured.

The current system of LSET does not consistently ensure that desired levels of competence are reliably and demonstrably achieved. The key weaknesses in the system are: its reliance on relatively shallow, vague or narrow conceptions of competence; too great a reliance on initial qualification as a foundation for continuing competence; insufficient clarity and consistency around standards at

¹ In the text which follows ‘trainee’ includes members of any profession prior to qualification or, in the case of barristers and notaries, prior to authorisation to conduct independent practice. References to ‘levels’ are to the National Qualifications Framework in which A-level is level 3, undergraduate degrees straddle levels 4-6 and masters’ qualifications are at level 7 (including their vocational equivalents). A ‘period of supervised practice’ includes all periods of required workplace experience prior to qualification or, in the case of barristers and notaries, prior to authorisation to conduct independent practice.

points of entry; the absence, in general, of robust mechanisms for standardising assessment and a lack of coherence as regards transfer and exemption between regulated titles.

The development of a more robust and systematised range of outcomes and standards, coordinated between the professions, would enhance the reliability and consistency with which competence is achieved; enable proper accreditation of prior experience and formal learning against those outcomes and facilitate greater clarity about horizontal transfer between professional routes.

Recommendation 1

Learning outcomes should be prescribed for the knowledge, skills and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.

Recommendation 2

Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.

Recommendation 3

Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required. They should begin with a set of 'day one' learning outcomes that must be achieved before trainees can receive authorisation to practise. These learning outcomes could be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET. Learning outcomes may also be set (see below) for post-qualification activities.

Further, if the public is entitled to expect a single level of competence across at least the range of reserved activities and common core skills, there will need to be some coordination in setting threshold levels of competence. This does not mean that different pathways or qualifications must adopt common learning processes, or that qualifications cannot be set above the threshold, but it does mean that different approaches must have at least equivalent effect. It is recommended that, to assure an appropriate underlying standard, the threshold for authorisation should be at not less than level 6. Further, longer term, a national framework for the sector would simplify decisions about transfer between professions and qualification routes, and about partial authorisation. It will facilitate the development of specialist activity-based qualifications or accreditations. It could also provide a single framework to support progression from paralegal to authorised practitioner.

Recommendation 4

Mechanisms should be put in place for regulators to coordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes and prescription of standards.

Recommendation 5

Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.

Content

A number of gaps and deficiencies are identified in the knowledge, skills and attributes currently developed by LSET. The centrality of professional ethics and legal values to practice across the regulated workforce is one of the clearest conclusions to be drawn from the LETR research data, and yet the treatment of professional conduct, ethics and 'professionalism' is of variable quality across the regulated professions. There was general support in the research data for all authorised persons receiving some education in legal values and regulators are encouraged to consider developing a broad approach to this subject rather than a limited focus on conduct rules or principles.

There is strong support for properly and sensitively integrating equality and diversity training into LSET as a part of both initial and continuing education.

Skills gaps in commercial awareness, legal research skills, and communication - in particular writing and drafting and, in some contexts, advocacy - were identified in respect of the initial stages of training.

The importance of developing business and management skills is widely acknowledged as important but this is not well embedded across the sector. The research data highlighted the need to develop training in client relationship management and project management as well as in supervision of trainees and others.

Recommendation 6

LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.

Recommendation 7

The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.

Recommendation 8

Advocacy training across the sector should pay greater attention to preparing trainees and practitioners in their role and duties as advocates when appearing against self-represented litigants.

Recommendation 9

Learning outcomes should be developed for post-qualification continuing learning in the specific areas of:

- *Professional conduct and governance.*
- *Management skills (at the appropriate points in the practitioner's career. This may also be targeted to high risk sectors, such as sole practice).*
- *Equality and diversity (not necessarily as a cyclical obligation).*

A number of recommendations are made in respect of the Qualifying Law Degree (QLD) and Graduate Diploma in Law (GDL). These continue to provide an important pathway into the legal services sector for a range of authorised persons, and thus constitute an important foundation for professional training. However, the report also takes the view that the need to ensure continuing competence places the primary focus of the LETR on the later stages of initial and continuing education, and acknowledges that the QLD serves multiple purposes and should not be over-regulated.

The extent to which the Foundations of Legal Knowledge will need to change will be determined by work on the outcomes described above, and the report does not seek to pre-empt that process. The research data make no clear-cut case for either extending or reducing the existing Foundation subjects; in particular there is no consensus to include professional ethics as a discrete Foundation subject. At the same time, in the interests of transparency and consistency for students and employers alike, there is a case for providing some additional content prescription and guidance on the balance between the Foundation subjects.

Widespread concerns are noted regarding the development of legal writing, and, to a somewhat lesser extent, research and reasoning skills. A discrete assessment in the skills of research, writing and critical thinking is therefore recommended as a necessary and proportionate response.

Recommendation 10

The balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed, and the statement of knowledge and skills within the Joint Statement should be reconsidered with particular regard to its consistency with the Law Benchmark statement and in the light of the other recommendations in this report. A broad content specification should be introduced for the Foundation subjects. The revised requirements should, as at present, not exceed 180 credits within a standard three-year Qualifying Law Degree course.

Recommendation 11

There should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law. Educational providers should retain discretion in setting the context and parameters of the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.

A number of specific concerns regarding quality of training are highlighted throughout the report in relation to reserved activities, specifically advocacy and will-writing. Vocational programmes are presently caught between trying to replicate the growing range of likely future practice environments, including work in alternative contexts such as alternative business structures (ABSs), alternative roles, and rapidly developing activities such as alternative dispute resolution, and providing the depth of training that would better prepare them for a stratified and increasingly specialised marketplace. Consequently the following specific recommendations are made:

Recommendation 12

The structure of the Legal Practice Course stage 1 (for intending solicitors) should be modified with a view to increasing flexibility of delivery and the development of specialist pathways. Reduction of the breadth of the required technical knowledge-base is desirable, so as to include an appropriate focus on commercial awareness, and better preparation for alternative practice contexts. The adequacy of advocacy training and education in the preparation and drafting of wills needs to be addressed.

Recommendation 13

On the Bar Professional Training Course (for intending barristers), Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy.

Structures

Periods of supervised practice

Respondents who commented on supervised practice were almost universally of the view that some element of supervised workplace training must be retained, however consistency of experience and quality of supervision remain significant issues. There was also concern that existing regulatory structures governing supervised practice inhibited useful alternative routes to qualification, which could reduce the bottleneck around training for some professions and also help to ensure that employers have the ability to train individuals in a way that suits their needs and those of their clients.

There is growing stakeholder interest in LSET structures in which trainees are able to work concurrently with formal study, not only to defray cost, but also to facilitate consistency between what is learned in both contexts and the development of attributes such as commercial awareness. Nevertheless, such blending, if compulsory, would create additional costs for smaller entities. A market-led 'mixed economy' is therefore proposed, in which the burden should be on the regulator, adopting a risk-based approach, to identify why a proposed route should not be permitted if the relevant learning outcomes can be achieved. This can lead to multiple routes to achieving the same outcomes.

Reforms are thus proposed that seek to balance a greater emphasis on quality assurance and supervisor training, with greater flexibility in regulating the duration of supervised practice (consistent with an outcomes-based approach to LSET), the environments within which training is permitted, and any unnecessary constraints on the nature of the person supervising.

Recommendation 14

LSET structures which allow different levels or stages (in particular formal education and periods of supervised practice) to take place concurrently should be encouraged where they do not already exist. It should not be mandated. Sequential LSET structures, where formal education is completed before starting supervised practice, should also be permitted where appropriate. In either case, consistency between what is learned in formal education and what is learned in the workplace is encouraged, and facilitated by the setting of 'day one' outcomes.

Recommendation 15

Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes. Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.

CPD and continuing learning

While there is high quality training available and many practitioners take their commitments seriously, there was some considerable cynicism and doubt amongst respondents about the effectiveness of current, usually hours-based, continuing professional development schemes. The majority of CPD schemes in the legal services sector are out-of-line with recognised best practice in professions generally and by comparison with 'leading edge' schemes for lawyers in other jurisdictions. A number of barriers to effective participation, including cost, the exclusion of useful, often informal, learning activity, and difficulties for sole practitioners, small groups and organisations employing members of different professions, were identified. The potential importance of CPD to ensuring continuing competence highlights the need to create schemes that are effective at supporting useful learning and reflection, and provide appropriate quality assurance. Effective practice points to the use of an entity-led approach to quality assurance, with developmental audits as a way of ensuring schemes are properly embedded within the organisational environment. The disciplinary functions of audit should be secondary.

Recommendation 16

Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.

Recommendation 17

Models of CPD that require participants to plan, implement, evaluate and reflect annually on their training needs and their learning should be adopted where they are not already in place. This approach may, but need not, prescribe minimum hours. If a time requirement is not included, a robust approach to monitoring planning and performance must be developed to ensure appropriate activity is undertaken. Where feasible, much of the supervisory task may be delegated to appropriate entities (including chambers), subject to audit.

Recommendation 18

There should be regular and appropriate supervision of CPD, and schemes should be audited to ensure that they correspond to appropriate learning outcomes. Audit should be a developmental process involving practitioners, entities and the regulator.

Recommendation 19

In the short to medium-term, regulators should cooperate with one another to facilitate the cross-recognition of CPD activities, as a step towards more cost-effective CPD and harmonisation of approaches in the longer term.

Apprentices, paralegals and work experience

Changes to gearing, recruitment patterns and the impact of the paralegal workforce are explored in Chapters 3 and 6 of the report. A number of issues of fair access and barriers to entry are discussed, including cost of training and the significance of prior work experience (eg, internship or paralegal work, which may not be easily accessible to all) in recruitment decisions. The research concludes that there is no straightforward solution to the problems of cost and numbers entering training, and expresses significant doubt as to whether these are properly matters for regulation. Both can be ameliorated, albeit only to a limited degree, by a combination of measures which increase access to information on the risks of entering professional training, awareness of alternative professional careers and training pathways, enable more flexibility in training pathways, and enhance competition.

The development of apprenticeships is also considered. These have largely been welcomed by relevant stakeholders as a means of increasing diversity, and in creating competition between training pathways, particular in terms of access to the solicitors' profession. The extent to which these objectives will be achieved remains to be seen, but they are not a foregone conclusion. An apprenticeship pathway may also create risks to competence if an appropriate quality of workplace and classroom training cannot be maintained. The report therefore recommends continuing monitoring and evaluation of the apprenticeship pathway.

The report also considers the apparent expansion of paralegal roles, and the challenges created by a potentially growing paralegal workforce, including lack of progression from paralegal roles into qualification in the sector, and the appropriate means of regulating paralegals. Concerns about the quality of supervision and training of paralegals, and the lack of progression or professional recognition for their work are highlighted in the research data. In the context of the significant and substantial changes to both the private and public funding of legal services, there may be a role for independent paralegals in delivering well-priced quality services outside the currently regulated market. Further work should be undertaken to explore the potential of licensed paralegal schemes.

Recommendation 20

In the light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.

Recommendation 21

Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.

Recommendation 22

Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

Recommendation 23

Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.

Information and collaboration

A recurring theme in the research data is the extent to which lawyers, students and consumers lack readily accessible information about LSET. There is a strong desire amongst students and trainees for greater transparency about the costs of training, the prospects for employment and the various pathways and training options available across the sector as a whole. There was some distrust of the impartiality of information provided by education and training providers themselves. Data also highlight some lack of awareness amongst practitioners and employers of the range of training options currently available.

Many of the developments discussed in the report are at an early stage. The longer term consequences of the emergence of ABSs, trends in the employment of paralegals, the impact of the latest legal aid changes, and the effect of university fees are difficult to predict. If regulators are to maintain a continuing evidence-based approach to regulation and policy-making there will be a continuing need for research and good quality information. The pace of change is unlikely to slow in the short to medium term. This suggests that the model of large scale, infrequent, reviews of LSET is outmoded and should be replaced by a more continuous and incremental approach. The setting of outcomes and standards described above by itself demands an increased degree of collaboration and co-operation across the sector in the context of continuing review. Consequently a number of recommendations are also made for the creation of tools and environments for information sharing, collaboration and experimentation.

Recommendation 24

Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.

Recommendation 25

A body, the 'Legal Education Council', should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice. The Council should also oversee a collaborative hub of legal information resources and activities able to perform the following functions:

- *Data archive (including diversity monitoring and evaluation of diversity initiatives);*
- *Advice shop (careers information);*
- *Legal Education Laboratory (supporting collaborative research and development);*
- *Clearing house (advertising work experience; advising on transfer regulations and reviewing disputed transfer decisions).*

The review process

Although useful contributions were received from the Legal Services Consumer Panel and from in-house lawyers as buyers of legal services, there was limited consumer engagement in the LETR research phase. The consumer perspective on LSET remains underdeveloped, and should be addressed by ensuring consumer representation in the next phase of the review.

The report stops short of making specific recommendations in respect of the unregulated sector as a whole. Although some preliminary research was undertaken, this served largely to highlight the paucity of existing research and information about that sector. In the context of any potential review by government of the scope of legal services regulation, additional research into the current functioning of the unregulated sector should be commissioned as a matter of priority.

Recommendation 26

In the light of the regulatory objectives and the limited engagement by consumers and consumer organisations in the research phase of the LETR, it is recommended that the regulators ensure that appropriate consumer input and representation are integrated into the consultation and implementation activities planned for the next phase of the LETR.

The research team extends its profound thanks to all those who have given up time and resource to assist in the review. Our particular thanks go to Dame Janet Gaymer and Sir Mark Potter, Co-Chairs of the LETR Consultation Steering Panel, for their excellent support and advice throughout the research phase, and to the members of the CSP who were an invaluable resource and sounding board during the project. We also express our sincere gratitude to the members of the Review Executive representing the BSB, IPS and SRA, and to Tracey Varnava and colleagues within the SRA Education and Training Unit for their support and assistance. Thanks are also due to our respective university colleagues and heads for their support and forbearance during the gestation of this report. With our apologies to any we have inadvertently missed from the list in Appendix A, and to those whose identities, for sound research reasons or at their request, we keep anonymous, we are indebted to all the participants who made this research possible.

Background

- 1.1 The Legal Education and Training Review (LETR) began in May 2011 funded by the Bar Standards Board (BSB), ILEX Professional Standards (IPS) and the Solicitors Regulation Authority (SRA) (the ‘commissioning regulators’) to consider the future of legal education and training following the Legal Services Act 2007 (LSA 2007). The primary objective of the Review is to ensure that England and Wales have a legal education and training system which advances the regulatory objectives contained in the LSA 2007.
- 1.2 The LETR seeks to develop and enhance legal services education and training (LSET) within the context of a number of recent and critical market and regulatory changes. These include increasing globalisation and segmentation of the market, the emergence of new business structures and new technologies (Edmonds, 2010) and changes in the public funding of legal services.¹ As a joint project between the three largest regulators of the legal services sector, it represents a unique opportunity to take a broader view of the future education and training needs of that sector.
- 1.3 Following a formal tendering process, a research team² was appointed by the commissioning regulators, to complete an initial research phase of the Review. The research phase is to be followed by consultations and decisions based around professional groupings and regulators. This report, prepared by the research team, addresses the findings from the research phase and makes a number of recommendations in Chapter 7 for the future development of legal services education and training in England and Wales.
- 1.4 A LETR Consultation Steering Panel (CSP) was established at the outset of the project under the joint chairmanship of Dame Janet Gaymer and Sir Mark Potter.³ The function of the CSP has been consultative and advisory rather than directive. Its remit was to act as a ‘critical friend’ to the research team and as a bridge between the research phase and the key stakeholders that members represent. The full membership of the CSP is published in Appendix B.
- 1.5 This report is addressed primarily to the commissioning regulators and other approved regulators. It is a matter for each to decide, in the light of their regulatory responsibilities, what action they will take in response to the report’s findings and recommendations.
- 1.6 This first chapter sets out to describe the aims and scope of the research, the range of work undertaken by the research team and the methods adopted, and concludes by laying out the structure of this report.

1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on 1 April 2013. See eg, <https://www.justice.gov.uk/legal-aid/news/latest-updates/legal-aid-reform>

2 Headed by Professor Julian Webb (University of Warwick) with Professor Jane Ching (Nottingham Trent University), Professor Paul Maharg (Australian National University; formerly at the University of Northumbria) and Professor Avrom Sherr (Institute of Advanced Legal Studies (IALS), University of London). The team was ably assisted by Simon Thomson (IALS), Natalie Byrom (Warwick - until Oct 2012) and Dr Joanne Coysh (Warwick, Sept-Dec 2012). Additional part-time research and editorial assistance in the later stages of the project were provided by Alison Struthers and Nina Song.

3 Dame Janet Gaymer is a leading employment lawyer and former Senior Partner of Simmons & Simmons. She is currently one of the independent lay members of the Speaker’s Committee for the Independent Parliamentary Standards Authority and recently stepped down from the Board of the Financial Ombudsman Service Limited. Between 2006 and 2010, she was the Commissioner for Public Appointments in England and Wales and a Civil Service Commissioner. In 2004 she was awarded the CBE for services to employment law and as Chair of the Employment Tribunal System Taskforce, and, in 2010, was appointed Dame Commander of the Order of the British Empire in further recognition of her public service. Since 2008 Dame Janet has also been an Honorary Visiting Professor in Strategy and Human Resources in the Faculty of Management of Cass Business School, City University.

Sir Mark Potter was called to the Bar in 1963 and was appointed Queens Counsel in 1981. He was appointed to the High Court (Commercial Court) in 1988 and promoted to the Court of Appeal in 1996. As an appellate judge he sat in the full range of civil and commercial appeals and continued to do so for a proportion of each term throughout his appointment as Head of Family Justice between 2005 and 2010. From 2000-2005 he was also Chairman of the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC) and its replacement, the Legal Services Consultative Panel, advising government during a busy period of change and modernisation in the supply of legal services.

In April 2010, Sir Mark retired as a judge of the Court of Appeal, President of the High Court Family Division and President of the Court of Protection and returned to the field of commercial law as an arbitrator.

Aims of the study

- 1.7 This report is intended to assist the regulators in developing legal services education and training policy and practice by:
- a) assessing the perceived strengths and weaknesses of the existing systems of legal education and training across the regulated and unregulated sectors in England and Wales;
 - b) identifying the skills, knowledge and attributes required by a range of legal service providers currently and in the future;
 - c) assessing the potential to move to sector-wide outcomes for legal services education and training;
 - d) assessing the potential extension of regulation of legal services education and training for the currently unregulated sector;
 - e) making recommendations as to whether and, if so, how, the system of legal services education and training in England and Wales may be made more responsive to emerging needs;
 - f) including suggestions and alternative models to assure that the system will support the delivery of:
 - i. high quality, competitive and ethical legal services;
 - ii. flexible education and training options, responsive to the need for different career pathways, and capable of promoting diversity.
- 1.8 To achieve this, the research has focused primarily on the *context, content, and systems and structures* of legal services education and training:
- The *context* - the report describes the current legal services and related regulatory environment, and identifies drivers for change that have the potential to shape workforce demand and development, including:
 - the impact of innovation in the development of new business models and approaches to delivery, and of new technologies in delivering both legal services and education and training;
 - trends within the international legal services market;
 - competition and movements in the intersections between regulated and unregulated legal services providers;
 - relevant changes to regulation, notably moves towards more outcomes-focused and/or principles-based regulation.
 - *Content* - the report sets out to identify and assess perceived gaps in the development of knowledge, skills and attributes in legal services education and training. These gaps are identified primarily by triangulating data from the available literature; qualitative and quantitative information generated by the LETR research among legal service providers (including employers); regulatory and representative bodies; trainees, students and teachers, and studies of client and consumer perceptions/needs.
 - *Systems and structures* - the primary focus has been on those aspects that are perceived positively to shape legal services education and training in England and Wales, or create barriers or adverse impacts in respect of:
 - the setting and maintenance of standards;
 - workforce supply and access to education and training;
 - progression within and transfer between regulated pathways;
 - the diversity of the regulated sector.

The scope of the research

- 1.9 LETR has been the first review to consider legal services education and training across the whole legal services market, including both regulated and unregulated providers.
- 1.10 Strategic decisions regarding the scope of the research were made to ensure that, within constraints of time and funding, a balance was achieved between breadth and depth of review, and between matters of general principle and detailed evaluation.
- 1.11 The research has focused on LSET, rather than legal education more generally. LSET:
- focuses specifically on a central purpose of legal education and training - assuring the quality and competence of those who deliver legal services, whether under an established professional title or not. LSET also draws attention to the fact that legal education is, at least to some extent, geared towards the delivery of *services*. LSET is not exclusively an education in the law, but a preparation for all aspects of the public profession of law. This encompasses the development of (inter)personal and business skills that will enable practitioners effectively to deliver legal services to consumers,⁴ a commitment to standards of ethics and service due to clients, other lawyers and consumers and a commitment to the rule of law, to democracy and justice;⁵
 - acknowledges that ‘liberal’ academic legal education and public legal education are largely outside LETR’s terms of reference, except insofar as their outcomes are directly relevant to regulating the legal services market; and
 - does not limit analysis specifically to any place, time or conventional stage of education and/or training.
- 1.12 The research specification prioritises investigation of the regulated sector. This is defined as those delivering legal services as authorised persons⁶ or as paralegals working under supervision within a regulated environment, such as traditional law firm entities, alternative business structures (ABSs) and any other licensed entities under the LSA 2007. Work on the unregulated sector has involved a review of the literature on unregulated legal services and some qualitative and quantitative research focusing chiefly on will-writing and employment advice and representation. Conclusions in respect of the unregulated sector are provisional and intended to set an agenda for further research, but the unregulated sector is seen to be important and is not ignored.
- 1.13 Attention has been given where possible to the smaller professional groupings and interesting findings arise from these. Work has focused on the constituencies of the three largest approved regulators: the BSB, IPS and SRA and the size of each constituency and their consumer focus has dictated to some extent the depth of enquiry.
- 1.14 In conducting the research, LSET has been viewed, understood and, so far as possible, treated as a single system of education and training within an overarching and diverse legal services sector. Education and training practices have developed individually within autonomous occupations. This tendency has had an important impact on legal services as a whole. This is not to imply that the consequences of such occupational individualism have been entirely negative. They are in part a reflection of specialisms and market effects that

⁴ In general this report will use the term ‘consumer’ to denote all those who are actual or potential users of legal services in England and Wales (cp the definition of consumer in s.207, LSA 2007), and the term ‘client’ to denote those who are actually using specific legal service providers. The term consumer is used generically to include both individual and commercial/corporate consumers, though it is of course recognised that there are commonly substantial differences in terms (eg) of access and informational barriers between corporate and individual consumers.

⁵ These wider purposes are at the core of the regulatory objectives created by the LSA 2007, and are discussed in the Literature Review, Chapter 3.

⁶ Barristers, Chartered Legal Executives, costs lawyers, licensed conveyancers, notaries, patent and registered trade mark attorneys, and solicitors, as well as accountants authorised to undertake reserved probate activities.

have seen legal services become increasingly segmented, and roles within the sector more specialised and functionally differentiated from each other. But such segmentation of training has major consequences for workforce flexibility and mobility, cost of training and access to legal services. These issues are explored in this report, and are reflected in a number of the final recommendations.

Approach to the study

- 1.15 Legal education and training have received considerable attention in a range of reports delivered over the last 40 years.⁷ The Review has been given the opportunity to revisit these reports and create more of a foundation⁸ for evidence-based decision-making. The LETR process has been research-led in order to discover not only the need for change but how best to approach change in a manner that will be tolerable for the regulated and unregulated professions concerned. The data sources and methods adopted will be fully explained in this chapter.

An ‘adequately complex’ approach to LSET research

- 1.16 The research team has sought to develop a methodology with a range of data which will provide an overview of the trends shaping LSET. It will enable exploration of aspects of context, content and system that may represent barriers to the continuing competence, flexibility, mobility, and diversity of the legal services workforce.
- 1.17 The aim of this approach is to produce an ‘adequately complex’ description and analysis of the problems inherent in current legal services education and, where necessary, identify opportunities for reform. Legal services education reform needs to be understood as a ‘complex’ social problem. More than just ‘complicated’ or technically difficult, LSET, and any reform of LSET, operates under conditions of ‘social complexity’. ‘Socially complex’ problems demonstrate a number of characteristics, shown in Table 1.1.⁹ The second column of the table offers illustrative aspects of LSET and LSET reform which appear to fit that descriptor.
- 1.18 This perspective has implications for both the project’s methodology, and its recommendations. LETR takes a ‘problem-based’ approach (cp Savery and Duffy, 1995; Brown, 2010). This can be seen as an iterative approach that uses the methods of thematic inquiry (see Appendix D) to ground a process of collective learning and collaborative problem-solving. This three-stage process builds up a picture of the problem, including potential solutions to the problem, then identifies and addresses critical information gaps, before developing the actual solution(s) to the problem collaboratively with stakeholders.

⁷ Chiefly Ormrod (1971); Marre (1988); ACLEC (1996 and 1997), the Law Society Training Framework Review, and the various Wood Reports for the BSB (BSB, 2008, 2010, 2011).

⁸ Through the Literature Review, published separately on the LETR website.

⁹ Drawing on work by Rittel & Webber, (1973); Wiecek, (1984); Watson, (2000); Wegner, (2009).

1. Introduction

Table 1.1: Understanding LSET reform as a ‘socially complex’ problem

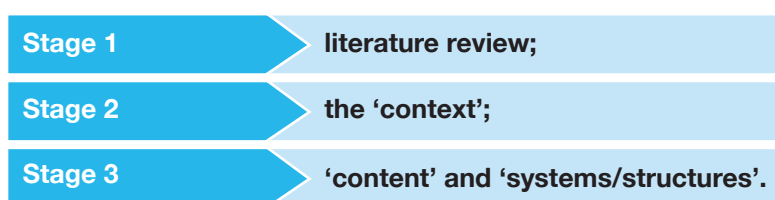
Characteristics of socially complex problems	Corresponding features of LSET (eg)
There is no definitive definition of the problem	Some agreement over a need for reform, but widespread disagreement over the extent, priorities and nature of the changes required
They tend to be intractable	General lack of effect from a number of recent education and training reviews Specific intractable problems: Achieving consistency of standards Reducing costs of training Managing increasing numbers
The information needed to make sense of the problem is often ill-defined, changing and may be difficult to put into use	Currently operating in rapidly changing work and educational environments Relative lack of robust, especially longitudinal, data Costs of deriving meaningful information are relatively high
They emerge in fields where there are multiple stakeholders; limited consensus as to who the legitimate stakeholders and/or problem-solvers are, and stakeholders are likely to have different criteria of success	Large number of stakeholders, with different understandings of the problem(s), and different levels of engagement with the process Legitimacy questions exist, eg, over the extent of professional and regulatory interest in the Bachelor of Laws (LLB) Evidence of different stakeholders having different ‘objectives’ for the review
Every attempt at a solution matters significantly	Reform tends to be a ‘one-shot’ operation so relatively high risk Exacerbated by uncertainties about the new regulatory environment, and the tendency of the LSET system to operate as a relatively low trust environment

- 1.19 There are risks in treating socially complex problems as ‘tame’ issues capable of traditional linear resolution. Socially complex problems are more likely to require solutions that:
- recognise that there are few right/wrong solutions as opposed to better/worse outcomes;
 - build shared understanding of the problem amongst a range of stakeholders;
 - build a shared commitment to action;
 - recognise that ‘one-shot’ reforms will affect the system dynamics, often in unexpected or unintended ways;
 - recognise that capacity for continuing engagement, and institutional (re)design needs to be taken seriously.

- 1.20 The distinctive treatment of solutions is a key feature of this approach. Under conditions of social complexity, solutions have important social as well as technical dimensions; they tend not to be right or wrong, but better or worse. Consequently they tend to be evaluated on ‘goodness of fit’ criteria or ‘social robustness’ (Nowotny et al, 2001). As such they need to be regarded as not just a potential outcome of the problem-solving process, but as part of a process of *problem definition*. In examining why a solution is or is not acceptable, or the nature of the objections, one comes to understand something more about the nature and scope of the problem itself.¹⁰
- 1.21 The ultimately collaborative basis on which solutions are agreed also reflects the need for solutions to exhibit social as well as technical robustness. It is clear from previous attempts at legal education reform, and from the research and literature relating to other professions, including especially the medical profession, that without substantial professional agreement there is a considerable ‘gravitational pull’ towards the *status quo*. It was therefore essential to focus on finding out not just what the stakeholders thought was wrong, but also what would be likely to succeed in making recommendations for change.

Processes and methods

- 1.22 The aims of the study, discussed above, were expressed in seven specific research questions. The report addresses these research questions thematically rather than sequentially; this is reflected in the structure and organisation of the chapters that follow.
- 1.23 A draft of the research questions was discussed with key stakeholders at the first LETR Consultation Steering Panel meeting in July 2011.¹¹ Following this exercise, the draft questions were lightly revised. The final versions are shown in Table 1.2, mapped against key respondent groups and the methods adopted for gathering information in response to each question.
- 1.24 The three stages of the research were as follows:



Stage 3 was used to identify training needs at both pre- and post-qualification stages of LSET (the ‘workforce development’ stage). Much of the qualitative data for stages 2 and 3 were derived in tandem.

¹⁰ Hence Discussion Paper 01/2012 sought to focus at an early stage on some of the more radical options for reform; similarly the use of scenarios at the LETR Symposium, described in Discussion Paper 02/2012, served to clarify a number of issues around activity-based regulation.

¹¹ Discussion Paper 01/2011.

1. Introduction

Table 1.2: Research questions mapped against key participants and methods

RESEARCH QUESTION	KEY PARTICIPANTS	METHODS
i What legal skills, knowledge and experience are required of different kinds of lawyers and other emerging roles currently? (<i>content</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups Careers advisers (CAs) Consumers	Desk research Interviews Focus groups Online survey Careers advisers survey BRDC Continental survey 'Solicitors and their skills' Public consultation (DP 01/2012; 02/2012)
ii What legal skills, knowledge and experience will be required of lawyers and other key roles in the provision of legal services in 2020? ¹² (<i>content</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups Careers advisers Consumers	Desk research Interviews Focus groups Online survey Careers advisers survey BRDC survey 'Solicitors and their skills' Public consultation (DP 01/2012; 02/2012)
iii What kind of LSET system(s) will support the delivery of high quality, competitive legal services and high ethical standards (<i>systems and structures</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups	Desk research Interviews Focus groups Online survey Public consultation (DP 01/2012; 02/2012)
iv What kind of LSET systems will deliver flexible education and training options, responsive to the need for different career pathways, promoting mobility in the sector and encouraging social mobility and diversity (<i>context/systems and structures</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups	Desk research Interviews Focus groups Online survey Public consultation (DP 02/2011; 02/2012) EDSM Advisory Group report
v What characteristics/processes will enable qualification routes to be responsive to emerging needs (eg, of students, training organisations, consumers)? (<i>context/systems and structures</i>)	Legal service providers Employers Teachers Students/trainees Consumers Stakeholder groups	Desk research Interviews Focus groups Online survey Public consultation (DP 02/2012)
vi To what extent, if any, is there scope (and might it be desirable) to move to sector-wide LSET outcomes (<i>content/systems and structures</i>)	Legal service providers Employers Teachers Stakeholder groups	Desk research Interviews Online survey Public consultation (DP01/2012; DP02/2012)
vii To what extent, if any, should LSET regulation be extended to currently unregulated groups? (<i>context/systems and structures</i>)	Legal service providers Employers Consumers Stakeholder groups	Interviews Online survey Will-writer survey Public consultation (DP01/2012; DP02/2012)

¹² 2020 has been used as an end date for the quantitative workforce projections discussed in Chapter 3. In other areas of the research the extent to which individuals could project into the future, still less to a specific date, was more problematic.

KEY

CA survey: LETR survey of Higher Education Institute (HEI) careers advisers.

BDRC Continental survey: data from a consumer benchmarking survey conducted for the LSB in 2012.

DP: LETR Discussion Papers 02/2011; 01/2012; 02/2012.

'Solicitors and their Skills': LETR research phase time-based survey of solicitors' work activities.

EDSM report: report of the Equality, Diversity and Social Mobility Advisory Group, a sub-group of the CSP.

- 1.25 The empirical research involved four methods: (i) meta-analysis of existing research data; (ii) collection of original qualitative research from interviews and focus groups; (iii) collection of original quantitative data, primarily from online surveys, and (iv) collection of further qualitative data from a range of stakeholder engagement activities. The result is a large dataset, including a literature review of over 300 pages, and in excess of 1,200 pages of 'raw' qualitative data. When combined with the quantitative data generated, this provides a robust foundation on which to base recommendations. Participant confidentiality precludes publication of the raw data in its entirety, but representative quotations from that data are included in this report.
- 1.26 A summary of each element of the research follows. A fuller technical explanation of the research methodology is contained in Appendix D.

The literature review

- 1.27 An extensive literature review was undertaken as the first stage of the research. This work was intended to constitute a resource in its own right, and to provide the primary data for a number of elements, notably:
- comparison with other legal and professional education systems;
 - meta-analysis of existing empirical research (eg, on consumer perceptions of legal services provision, and on equality and diversity trends);
 - concept mapping regarding the proper functions and reach of LSET regulation.
- It also enabled the research team to highlight gaps in the research base and to construct some parameters for the work.
- 1.28 In more detail, nine topics were identified, all broadly focused on the relationship between regulation and education in law:
- the role of legal education and training and its relationship to maintaining professional standards and regulation in the sector;
 - the role of formal education and training requirements working in concert with other regulatory tools to deliver regulatory objectives;
 - educational standards for entry to the regulated profession;
 - the requirements for continuing education;
 - the requirements placed on approved providers of legal education and training;
 - existing equality and diversity issues;
 - comparative analysis of international systems and other relevant sectors and professions;
 - possible impacts of the 2012/2013 reforms in the higher education sector on legal education and training and in particular the increases in undergraduate tuition fees;
 - the impact of the LSA 2007 on education, training and practice models.¹³

¹³ The last two topics have as yet little literature attached to them; in the case of the impact of the LSA 2007, the literature is very small and so has not been analysed in a separate chapter in the Literature Review, though aspects of the effect of the LSA 2007 on legal education are discussed at points in the Discussion and Briefing Papers and in this report.

- 1.29 A draft of the literature review was published at the beginning of March 2012, and feedback invited. The final literature review is published on the LETR website simultaneously with this report. A full bibliography is also included among the project outputs on the website. Some additional literature, particularly in respect of issues that did not readily fit within this thematic structure (such as research on unregulated legal services), has been identified and highlighted in LETR working papers as the research progressed, and is referred to, where necessary, in this report. These additional sources are also included in the bibliography.
- 1.30 Four key issues emerged from the Literature Review, which influenced the approach and direction of travel of the research phase. These are:
- persistently divergent views about the purposes of legal education and training, and lack of clear definition of education and training outcomes, particularly in respect of post-qualification workforce development;
 - neglect of regulation of education and training in the literature;
 - impact of structural factors (including resource constraints, information asymmetries, fragmentation of legal work, and proliferation of regulators and regulations) making it difficult to design and sustain a coherent network of pathways into and between the legal professions;
 - the need for enhanced, genuine and continuing collaboration between education and training providers, practitioners and regulators, and the need therefore to consider how such collaboration may be designed into regulatory tools and structures for the future, together with input from consumers.

The qualitative research

- 1.31 Qualitative research, as adopted in both stages 2 and 3 and, as Table 1.2 demonstrates, contributed to all of the research questions posed. The rationale for adopting a primarily qualitative approach, and the precise methodology followed, is explained in Appendix D. Content analysis of the qualitative data was undertaken using a specialist qualitative data analysis software package (NVivo).
- 1.32 Qualitative analysis is based on the following range of data generated as part of the LETR research phase:
- individual and stakeholder responses to Discussion Papers (see below);
 - unsolicited submissions to the research team;¹⁴
 - free text comments submitted as part of the online survey (see below and Appendix D);
 - interviews, meetings and focus groups.¹⁵
- 1.33 A total of 56 individuals were interviewed and 39 focus groups took place, involving 307 participants in total. A breakdown of participant numbers by occupation is included in Appendix D, Table D.1. A cross-section of the interview guides used to facilitate these activities is included in Appendix E.
- 1.34 Participants for interviews were selected purposively. Specific individuals or groups were identified as significant stakeholders, affected persons or change agents, both at the outset of the research and through ‘snowball sampling’ and sometimes by further cascade in which existing participants suggested or invited others. Interviews were held with representatives of all the approved regulators; senior partners of both City and high street law firms; senior members of the Bar; managers of ABSs and unregulated entities, and representatives of

¹⁴ In addition to solicited submissions in response to specific LETR research publications, the project website also invited interested persons to make submissions on any issue at any time up to 28 September 2012. By that closing date six such submissions had been received.

¹⁵ Interviews are classified as semi-structured discussions with individuals or no more than two persons. Focus groups are larger (3+) and, whilst also semi-structured, discussion may be rather more free-form and guided by participants as well as the facilitator.

specialist associations of lawyers and paralegals, including ‘young lawyer’ and diversity groups.

- 1.35 Focus group participants were also invited purposively and were added to by cascade or snowballing. In organising focus groups the research team sought to ensure a cross-section of occupations, seniority and geographical location. The research team inevitably had limited control over who would attend, as access was often facilitated by intermediary institutions - local law societies, Bar circuits, universities, the senior judiciary, etc, and participation might be determined by a mix of participant knowledge, availability and willingness to attend. In some instances, as the work progressed, this necessitated convening additional focus groups to close gaps that emerged.

The quantitative research

- 1.36 In addition to utilising existing quantitative research, the research team also generated original quantitative data from five surveys. These surveys contributed to both stages 2 and 3 of the project.

Public online survey

- 1.37 The primary source of quantitative data for this phase was the LETR online survey. Between 30 April and 16 August 2012, the LETR research team conducted a large-scale open survey of individuals with an interest in matters relating to legal education. The survey was designed using the proprietary online research utility SurveyMonkey, and promoted through the LETR website, by the commissioning regulators and both social and print media. By the closing date the survey achieved a broad and statistically robust sample of 1,128 persons (see further Appendix D).
- 1.38 The survey was designed to obtain both demographic and quantitative attitudinal data from respondents on a range of issues, including the necessary knowledge, skills and attributes required of legal service providers. A number of the attitudinal questions linked directly to issues explored in Discussion Paper 01/2012, and thus provided data that could be contrasted to the formal stakeholder responses. All quantitative data were analysed using the SPSS statistical package. The survey also gave respondents scope to add free text comments, which were separately analysed as part of the qualitative data.
- 1.39 Respondents came from a wide range of occupations in the sector (Table 1.3). Solicitors narrowly constituted the largest group (326 respondents, or 28.9%), followed by barristers (312 respondents, or 27.7%) and CILEx members (162 respondents, or 14.4%). Based on these figures the Bar and CILEx are proportionately over-represented and solicitors under-represented in the sample, relative to their total populations. Consequently, an exercise was undertaken to assign weighting factors to the responses of the three largest professions. This has the effect of adjusting responses so that, when compared, the data better reflect the actual population as a whole (Table 1.4). For transparency, responses from these groups are presented in both unadjusted and weighted form. The weighting methodology is explained more fully in Appendix D.
- 1.40 There was also a strong response from academics and public sector law teachers (64 respondents, or 5.7%), and a high response rate from notaries public (43 respondents, or 3.8%). Thirty-four paralegals (3.0%, two-thirds of whom worked in regulated entities) also responded to the survey. The remaining regulated legal professions were relatively poorly represented, with no responses from either patent attorneys or licensed conveyancers.¹⁶ Of

¹⁶ As a result full, specific interviews and focus groups were held with IP attorneys, costs lawyers and licensed conveyancers.

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Table 1.3: Survey respondent occupation clusters (unweighted data)

RESPONDENT OCCUPATION (CONDENSED)	VALID % OF RESPONDENTS	FREQUENCY
Solicitors (including trainees)	28.9	326
Barristers (including pupils)	27.7	312
CILEx members (including trainees)	14.4	162
Other Legal Practitioners	8.7	98
Legal Academics/Training Providers	7.4	84
Other Occupations	7.0	79
Law Students	5.9	67
TOTAL	100.0	1128

Table 1.4: Comparison of 'responses' in the unweighted and weighted surveys¹⁷

	UNWEIGHTED SURVEY	WEIGHTED SURVEY
Barristers (including pupils)	312	312
Solicitors (including trainees)	326	652
CILEx members (including trainees)	162	486
Notaries Public (including trainees)	43	0
Paralegals	34	0
Legal Academics/Training Providers	84	0
Law Students	67	0
Other Interested People	100	0
TOTAL	1128	1450

¹⁷ Responses in the 'weighted survey' result from the application of a weighting function to the responses of barristers, CILEx members and solicitors to the LETR online survey - see Appendix D for explanation.

those respondents in practice, just under 75% were in private practice, with 12.7% working in the public sector and 9.2% in-house.

- 1.41 Demographically the survey cohort matches its target population quite well with near parity of gender overall; the stronger male bias of the Bar and significant female bias in CILEx membership are also reflected in the data. BME respondents appear to be a little under-represented, though it should be noted that over 8% of respondents declined to disclose their ethnicity. Nearly 7% of the sample declared a disability or long-term illness, although, again, there was a relatively high non-response to this item (7.4%).¹⁸ Further analysis of the sample demographics can be found in Appendix D.

BDRC Consumer survey

- 1.42 Following discussions in the autumn of 2011 between the research team and the Legal Services Board (LSB), it was agreed that the research team would be granted advance access¹⁹ to the consumer data produced for the LSB by the research consultancy BDRC Continental through an online survey (see also BDRC, 2012).
- 1.43 The purpose of the research was to examine how individual consumers identified and responded to legal needs, including exploring their advice-seeking behaviour, and their experience of and satisfaction with the legal services used. The survey is methodologically robust, and draws on a sample of 4,017 respondents. It covers a broader range of legal problems than the Civil and Social Justice Survey and explores in-depth respondents' experiences of purchasing conveyancing, divorce and probate services. It does not explore issues of education and training with consumers, but adds significantly to the data on consumer needs discussed in Chapter 2.

Will-writer and careers adviser surveys

- 1.44 Two smaller surveys were also produced for specific purposes by the research team. Between January and March 2012, a survey was conducted among law careers advisers in higher education. Careers advisers were selected because of their role as knowledgeable intermediaries between the legal services market and students, and hence as a relatively impartial source of triangulation for a range of issues being explored through the qualitative and quantitative data. They were asked in the survey about their perceptions of the skills, knowledge and behaviours sought by recruiters and the deficiencies in new recruits which appeared to be of most concern to prospective employers. Respondents also provided data on extra-curricular activities and the 'social capital'²⁰ sought by employers; on prospective changes in employers' preferences, and possible trends in relation to the CILEx graduate entry programme. The survey was facilitated by convenors of a specialist online discussion list; it obtained 19 responses from a cross-section of institutions (out of a possible estimated 124 list: users = 15%). Further details of the range of institutions participating appear in Appendix D.
- 1.45 A survey of will-writers was piloted in paper form at the Institute of Professional Will-writers Annual Conference in February 2012, and subsequently circulated in electronic form to the wider membership of the Society of Will-Writers and the Institute of Professional Willwriters. It sought to examine attitudes amongst will-writers to the move to make will-writing a reserved activity. It also canvassed opinion on the form that any regulation should take. Whether there ought to be a prior educational standard for will-writers and the adequacy of existing continuing professional development were also examined. A total of 139 responses

¹⁸ Further qualitative work was conducted in relation to issues of diversity, as set out in succeeding chapters.

¹⁹ The dataset has subsequently been made publicly available by the LSB at <https://research.legalservicesboard.org.uk/reports/consumers-unmet-legal-needs/>

²⁰ Social capital is variously defined, but generally describes those resources and assets that an individual derives from and mobilises through their network of relationships and institutional affiliations.

were received. No claims are made as to the representativeness of this data, and it should particularly be noted that responses do not include will-writers operating outside the voluntary standards imposed by membership of these associations.

Solicitors and their skills

- 1.46 In advance of the development of the new Legal Practice Course (LPC) in 1990 the Law Society Research and Policy Planning Unit commissioned work to explore the viability of different research methods for collating and categorising the skills solicitors use in their work. The results were published in 1991 (Sherr, 1991). The review of the literature which accompanied the 1991 study showed how little empirical work had been conducted on what lawyers actually did and what their daily work consisted of. Almost all of the previous research was based on assumptions relating to activity rather than empirical observation or assessment. The 1991 study sought to narrow that gap by undertaking direct participant observation of the activities on which solicitors spent their time, thereby giving a quantitative indication of the work that solicitors do.
- 1.47 In considering what forms of legal services education and training will be most appropriate for the future, the research team compared the 1991 results with how solicitors spent their time in 2012. Twenty-one years later, the nature of lawyers' work could have changed significantly. The balance of time spent on different tasks might be different. If so the necessary training for these functions would need to be revised to reflect those changes.
- 1.48 Time recording and time management have moved on and been computerised since 1991. Many lawyers now use 'smart timers' which provide a much more accurate account of the exact time used on different elements of their work than the old time sheets, often filled in subsequently. A new approach to assessing the use of solicitors' time was therefore implemented. Solicitors involved in the exercise were asked to review their 'smart timers' at the end of each day and at the end of each week in order to note down the different types of work in which they had been involved. Smart timers are likely to produce a fairly accurate assessment of time spent. A copy of the forms used for collating these assessments can be found in Appendix E. Within each of the entities researched, these 'work diaries' were collated, ensuring that all client information was removed and then passed to the research team for assessment and analysis. Thirty-six lawyers were involved in this part of the research, from a total of six firms: two of the largest commercial firms, a mid-range city firm, and three firms dealing more with personal plight work. Data from 34 of the participants were included in the final dataset. The results of this exercise are considered in Chapter 2.

Stakeholder engagement

- 1.49 Much of the research team's work involved stakeholder engagement activities. These were designed both to inform stakeholders about LETR issues and progress, and to enable stakeholders to engage with the research and contribute additional information to the process. Stakeholder engagement activities included:
 - stakeholder responses to LETR publications;
 - CSP meetings and advice;
 - the LETR Symposium;
 - events and meetings attended by research team members and organised by the team or by others.

The contribution of each of these to the research is considered below:

Responses to LETR publications

- 1.50 Over the course of the research the LETR team published 12 papers: four Discussion Papers, six Briefing Papers and two Research Updates. A summary of all the papers is provided in Appendix C, and copies of the papers are downloadable from the LETR website.
- 1.51 The Discussion Papers were the most significant in contributing to the data. Three Discussion Papers were designed to identify trends and questions, and to explore issues for the Review in a way that encouraged response and debate. They were drafted in the context of the other work undertaken by the research team. DP02/2011 (Equality, Diversity and Social Mobility) thus fed into both the equality and diversity impact analysis, and wider discussion of appropriate systems and structures; DP01/2012 (Key Issues I: Call for Evidence) and DP02/2012 (Key Issues II: Developing the Detail) provided a significant iterative development and testing of themes emerging from the fieldwork. All responses to Discussion Papers have been included in the NVivo database and analysed as part of that dataset. The original responses are available in full on the LETR website, except where the response was provided on condition of non-disclosure.
- 1.52 A summary of the responses to DP01/2012 was included in DP02/2012. The number and range of responses to the three substantive Discussion Papers, DP02/2011, DP01/2012 and DP02/2012 are shown in Table 1.5. It should be noted that the majority of these are institutional or collective responses, so that the number of organisations or persons represented is greater than the numbers suggest. The numbers in brackets indicate the number of personal (individual) responses in each category. A full list of respondents is contained in Appendix A.

Table 1.5: Number and breakdown of responses to LETR Discussion Papers

PAPER	PUBLISHED	DEADLINE	RESPONSES									
			Reg	Rep	LSP	Acad	Trn	IG	Eq	Oth	Tot	
02/2011	23.4.12	02.7.12	1	4	4	1 (1)	2	1	2	0	15	
01/2012	12.3.12	10.5.12	2	6	9 (2)	12 (1)	2	1	0	3 (1)	35	
02/2012	28.8.12	23.10.12	2	10	6	12 (4)	1	3	0	5 (1)	39	

KEY

Reg regulator

Rep representative body

LSP legal services provider (eg, a law firm)

Acad academic institutions

Trn training providers

IG interest group

Eq equality and diversity group

Oth other.

Consultation Steering Panel meetings

- 1.53 The LETR CSP is mentioned above at 1.4. As noted there the function of the CSP was consultative and advisory. Its remit was to act as a 'critical friend' to the research team and as a bridge between the research phase and the key stakeholders whom members represent.
- 1.54 Six meetings of the CSP were held from July 2011 through to November 2012. The meetings were used to test ideas, present and discuss work in progress, and to provide a forum within which members and the research team could learn about relevant developments within LSET, or in other professional service sectors. A number of 'external' (ie, non-research team) presentations were made to the CSP that have contributed to the work of the research team:
- Emma Matthews (Architects Registration Board), The regulation of architects - standards and continuing professional development (March 2012);
 - Charles Welsh (Skills for Justice), Setting standards and apprenticeships for those performing paralegal functions (March 2012);
 - David Dixon (Cardiff Law School), Legal education and training - the Welsh dimension (June 2012);
 - Richard Moorhead (UCL), Are there LETR lessons from empirical approaches to ethics? (September 2012);
 - Victoria Purtill (ILEX Professional Standards) CPD Review: Proposed changes to CPD for members of CILEx (September 2012);
 - Sara Kovach Clark (General Medical Council), Medical revalidation (November 2012).
- 1.55 CSP agendas, notes of meetings and slides from presentations are located on the LETR website. Other information arising from CSP meetings has helped inform the research team's views and enabled the team to gauge the level of receptiveness towards ideas in the course of development.

LETR Symposium and external events

- 1.56 An international symposium entitled *Assuring Competence In A Changing Legal Services Market* was held in Manchester in July 2012. The conference comprised a range of keynote and parallel presentations. Keynotes were presented by Professor Julia Black (London School of Economics), Steve Mark (Legal Services Commissioner, New South Wales), Professor Richard Susskind (independent LETR research consultant) and Professor Wes Pue (University of British Columbia). Two sets of parallel sessions were also held. The first of these involved presentations and discussion on themes relevant to the review, including: the changing workforce; new business structures; CPD reform; apprenticeships and workplace learning; innovation in undergraduate education; lessons from other professions and from Europe, and consumer perspectives on LSET. The second set of parallel sessions explored, in a workshop setting, a set of scenarios for the regulation of LSET developed by the research team.
- 1.57 The keynote papers and summaries of the parallel and workshop sessions have been published as Briefing Paper 4/2012, and contribute to the literature base that informs the research. Slides from the presentations are also available on the LETR website.
- 1.58 In addition, members of the research team attended a range of meetings, seminars and events during the course of the research. Where these were accompanied by formal publications or other record of note, these have been included within the bibliography. A list of all external events attended by members of the research team and/or the CSP Co-Chairs appears in Appendix C.

Structure of the report

- 1.59 The seven chapters of the report set out the findings from the research phase as a whole, identify the evidence on which those findings are based, and present a range of recommendations for the approved regulators and the Legal Services Board. The chapters follow the development and interplay of the themes identified: context, content, and systems.
- 1.60 Chapter 2 looks at the background to, and current context of, legal education and training, contrasting the model of training for barristers and solicitors with those of the other professions and offers some evaluation of the strengths and weaknesses of current approaches.
- 1.61 Chapter 3 focuses on trends in the legal services market and the changing regulatory landscape. The implications for LSET of projected legal workforce needs are considered, together with the emergence of new roles for regulated professionals and paralegals and key developments in the unregulated sector.
- 1.62 Drawing on comparative research on other professions and in other jurisdictions, Chapter 4 focuses on the identification and signalling of competence in legal services. It looks at the range of appropriate competencies or learning outcomes and the need to close perceived knowledge and skills gaps. The chapter concludes by exploring the setting of standards and the need for relevant and robust assessment practices.
- 1.63 Chapter 5 develops the theme of assuring competence for the future, and considers the role of regulated titles and how title based regulation may be supported or supplanted by more entity- or activity-based approaches. It looks at ways to increase the flexibility of routes to qualification, and the possibility of more common or integrated training between the different legal professions. It also considers the relative roles of CPD and re-accreditation in assuring continuing competence. The chapter concludes by discussing the contribution of quality assurance processes to maintaining competent performance.
- 1.64 Chapter 6 focuses on four issues critical to the future development of LSET: the promotion of fair access; the assurance of continuing competence through enhanced supervised practice and a revised approach to CPD, and the possibility of increased regulation or quality recognition for paralegals. The chapter concludes by exploring a range of institutional changes intended to support information flows and cultural change in the future regulation of LSET.
- 1.65 Chapter 7 summarises key findings and conclusions drawn from the research set against an equality impact assessment. It also sets out the recommendations for the regulatory bodies and identifies areas requiring further research.

1. Introduction

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Introduction

- 2.1 A primary task for the LETR research phase is to identify the fundamental challenges facing LSET in the early part of the 21st century, and from there to consider what changes may be necessary. The context of the research has two dimensions: the current system of legal services education itself, addressed in this chapter and the developments in the environment within which LSET must continue to operate, addressed in Chapter 3.
- 2.2 This chapter sets out:
- to explain the basic mechanics of the main routes to qualification in the Anglo-Welsh system;
 - to identify those features or characteristics of the current system that are valued and required by the sector, and
 - to identify key perceived strengths and weaknesses of the system as it currently stands.
- 2.3 The chapter then concludes by drawing together the key points emerging from the research data sources as a basis for the discussion of the problems and potential solutions in later chapters.

The current LSET systems

- 2.4 The system for educating and training lawyers in England and Wales is mature and well-established, having evolved over the last 150 years from an unstructured apprenticeship model to a relatively sophisticated collection of training regimes. These reflect in large part an accretion of practices over time. Two major attempts have been made to review the system of legal education for the professions of barrister and solicitor in the last half century: by both the Ormrod Committee in 1971 and the Lord Chancellor's Advisory Committee (ACLEC) in 1996.
- 2.5 Many of the key structures for barristers and solicitors have remained largely unchanged from that first review. It was the Ormrod Report which:
- determined that the law degree should become the normal route of entry to the profession;
 - proposed a 'Common Professional Examination' (now Graduate Diploma in Law or GDL) for non-law graduates;
 - emphasised a linked but separate vocational stage of training and
 - proposed the need to develop a system of structured 'continuing education' (Ormrod Report, 1971).
- 2.6 The implications for the LETR of the various reports since Ormrod are raised in the Literature Review. This chapter sets out the structure of the current regimes of education and training adopted by all the regulated professions, not just barristers and solicitors, and therefore adopts a broader perspective than either Ormrod or ACLEC. Nevertheless, it is helpful to follow the three-part linear process created by Ormrod, to consider:
- programmes and structures at the academic stage;
 - programmes and structures in professional education, and
 - post-qualification training and specialisation.
- 2.7 This division does not neatly reflect the approach of all legal professions. Structures for CILEx members and licensed conveyancers, for example, 'blend' education and training concurrently with workplace experience. Such approaches are addressed primarily under the heading of 'Education and Training for the Smaller Professions', below.

Programmes and structures at the academic stage

- 2.8 Although it is not essential to have a degree in law to practise, the law degree remains, numerically, a significant route into the sector, particularly for those entering the solicitors' and barristers' professions. Law graduates continue to be the largest single group of entrants (42.8% of newly admitted solicitors in 2010-11 and, it is estimated, about two-thirds of those entering pupillage at the Bar¹). Notaries and IP attorneys constitute the other predominantly graduate professions. The majority of notaries are also solicitors, and will frequently possess law degrees on that basis (Master of the Faculties, 2012), while patent attorneys, by virtue of the technical nature of their work, tend to be graduates in science and engineering fields. Registered trade mark attorneys are more likely to be non-law graduates, but this may be changing, and law graduates are a growing group within CILEx membership, following the development of a graduate fast-track route to qualification, and are present in lesser numbers amongst costs lawyers and licensed conveyancers.²
- 2.9 A brief comparison of academic and vocational qualifications, including those of the smaller professions,³ appears in Annex I at the end of this chapter.

The qualifying law degree

- 2.10 A qualifying law degree (QLD) is one that is recognised by the BSB and SRA as satisfying the academic or initial stage of qualification as a barrister or solicitor.
- 2.11 Demand for QLDs has continued to grow across the higher education sector since the 1960s, tracking the general expansion of UK higher education. Today, accounting for all single and joint honour variants available, there are over 600 QLD courses available across the UK and the Republic of Ireland. These include joint honours degrees; sandwich degrees; part-time degrees; degrees which incorporate parts of the qualification regime of other jurisdictions, such as the Anglo-French double *maîtrise* and degrees which incorporate the Legal Practice Course (LPC), the Bar Professional Training Course (BPTC) or CILEx and paralegal qualifications.
- 2.12 To be a QLD, the programme must satisfy the requirements of the Joint Announcement on Qualifying Law Degrees (JASB, 2012; SRA, 2011a).⁴ QLDs primarily require 240 of the total of 360 credits (assuming a typical three-year degree, or part-time equivalent) to be in law subjects. This includes the seven Foundations of Legal Knowledge (the Foundation subjects), which together must amount to no fewer than 180 credits; legal research, and a requirement for some legal study in the final year (at level 6).⁵ Although titles will vary by institution, the Foundation subjects are public law (constitutional, administrative and human rights); EU law; criminal law; obligations (contract, restitution and tort); property law; equity and trusts.

¹ The annual statistics published by the Bar do not distinguish between QLD and GDL graduates; interestingly data produced by Shapland et al (1995) is consistent with that estimate, showing that 69% of first six pupils in 1991 had obtained a QLD.

² During the research process it was suggested that, since the recession, the Institute of Trade Mark Attorneys (ITMA) was seeing a lot more interest from solicitors wanting to become registered trade mark attorneys. Costs lawyers also observed that 'generally the entrance route for some people might be with A-levels. Now ... fifty per cent plus are coming ... with a law degree and some have completed the Legal Practice Course'.

³ For the purposes of this report we do not follow the LSB practice of including IPS within the smaller approved regulators, since, on total numbers, including those actively under training, CILEx is, by its own estimates, larger than the Bar. Consequently, we refer to barristers, CILEx members and solicitors as the larger professions throughout this report, and smaller therefore incorporates costs lawyers, licensed conveyancers, notaries and IP attorneys. For consistency we have also adopted that approach when referring to their regulators.

⁴ All undergraduate law study must also satisfy the Quality Assurance Agency (QAA) benchmark statement for law (QAA, 2007).

⁵ All modules on degree programmes in England, Wales and Northern Ireland are given a credit rating which reflects the size of the component of study, and are assigned to a level equivalent to those used on the National Qualification Framework (Ofqual, 2012). Higher education qualifications range from levels 4 to 8, with levels 4-6 equating to undergraduate work, masters degrees at level 7, and doctoral qualifications at level 8. The levels are designed to indicate the expected progression in the development of knowledge and understanding, cognitive and other skills.

- 2.13 There is little prescription of how subjects are organised, or the stage of the degree at which they should be delivered, so the same subjects may be taught at any of levels 4, 5 or 6 by different institutions. In practice, however, the majority of the Foundation subject credits tend to be concentrated in the first two years of the programme.

Graduate Diploma in Law

- 2.14 The Graduate Diploma in Law (GDL) is offered by 44 institutions⁶ and in full time (one year) or part-time (two year) formats. Its primary function is to deliver the seven QLD Foundation subjects to graduates of non law degrees although there is provision for one additional subject, which may be prescribed by an institution, a taught module or a research project (JASB, 2012). Although the course is postgraduate in time, all teaching is at level 6. There is a common belief that GDL students are preferred by recruiters by reason of maturity or the breadth of learning and experience conferred by their undergraduate degree subject. In 2011 just under 15% of admissions of solicitors to the Roll were GDL graduates (Fletcher, 2012). Some law firms, particularly in the City, explicitly advertise that they recruit QLD and GDL graduates in a roughly 50:50 ratio. It is more difficult to establish an equivalent figure for the Bar although, as noted above, it is believed that as many as a third of pupils are GDL graduates.

Programmes and structures in professional education

The Legal Practice Course

- 2.15 The Legal Practice Course (LPC) was introduced in 1993/1994 to replace the Law Society Finals Course. In its current iteration, it is offered by 29 institutions⁷ and in full time (one year) or part-time (two year) formats. In 2012/2013 there are 6,035 full-time and 2,793 part-time students enrolled on the course (both years).⁸ The SRA does not prescribe a National Qualifications Framework (NQF) level for the course: consequently institutions may place it at level 6, or level 7, or a combination of the two.
- 2.16 The LPC consists of a mandatory stage 1 and elective stage 2 which are detachable, allowing students to transfer to institutions offering different electives or to combine study for stage 2 with working (SRA, 2013b). Compulsory components, for which outcomes are prescribed, are business law and practice; property law and practice; civil and criminal litigation and the skills of practical legal research, writing, drafting, interviewing and advising, and advocacy (SRA, 2011b). Students must also cover wills and administration of estates, taxation and professional conduct. For stage 2, students are required to take three elective subjects. There is a small number of institutions which offer an 'exempting law degree' in which the LPC subjects occupy the non-compulsory credits in the JASB framework. In this format students are credited with a QLD and an LPC having successfully completed the course. In recent years it has also become comparatively common for institutions to allow students to 'top-up' their LPC to a Master of Laws (LLM) with a short period of additional study or a research project.
- 2.17 The LPC was originally designed to be completed before the student began a training contract. It is, however, possible for a part-time LPC to overlap with a training contract (SRA, 2013b) and one national law firm is currently piloting a model in which the electives are disaggregated and combined with the early stages of the training contract.⁹

⁶ Institutions with franchises or with multiple sites are counted as single institutions for this purpose.

⁷ Institutions with franchises or with multiple sites are again counted as single institutions. Oxford Brookes, which has recently announced the closure of its LPC, is not included in this total.

⁸ Thanks are due to the SRA for these figures.

⁹ <http://www.eversheds.com/global/en/where/europe/uk/overview/careers/graduates/combined-study-training-contract.page>

- 2.18 Larger firms tend to stipulate the LPC provider which their recruits must attend, and the elective subjects they must study. A number of firms, in consortia or individually, have worked with LPC providers to create bespoke courses or electives in which firm precedents are used and where members of the firm may contribute to the teaching to promote consistency between classroom and practice. In a move to accommodate different kinds of practice, some providers offer streams representing City, general commercial or high street/legal aid practice in which the compulsory subjects are taught in the relevant context. A short form LPC is also available to BVC and BPTC graduates who have not completed pupillage and are therefore not eligible for transfer into the solicitors' profession through the Qualified Lawyers Transfer Scheme (SRA, 2013a).

The Bar Professional Training Course

- 2.19 Following the Wood Review (BSB, 2008), the Bar Vocational Course (BVC) was replaced in 2010 by the Bar Professional Training Course (BPTC). The BPTC is offered by eight institutions¹⁰ and in both full-time and part-time formats. Its outcomes are broadly aligned with NQF level 7 (BSB, 2012a; 2012b). One QLD provider offers an exempting degree which also includes the BPTC. As with the LPC, some institutions permit top-up to an LLM.
- 2.20 Compulsory components are civil litigation, evidence and remedies; criminal litigation and evidence; advocacy; opinion writing; drafting; conference skills; resolution of disputes out of court (ReDOC) and professional ethics. Writing skills, casework skills, fact management, legal research, management and interpersonal skills are embedded in the curriculum. Students also study two optional subjects. During the BPTC, students are also expected to attend a total of 12 qualifying sessions run by the Inn to which they belong.
- 2.21 In 2010/2011, of the 1,682 enrolled, 1,113 students passed the course (Bar Council/BSB, 2012). On successful completion of the BPTC, the student can be called to the Bar. However, he or she is unable to practise as a barrister without subsequently completing pupillage.

CILEx qualifications

- 2.22 The qualification scheme of the Chartered Institute of Legal Executives follows a very different model. There are two distinct stages, and those who do not wish to progress to Chartered status may terminate study after the first stage, or select specific courses as stand-alone paralegal specialisms. The qualifications are offered by colleges or by distance learning (CILEx, n.d. a¹¹). Indications are that the number of institutions offering face-to-face tuition at the second stage may have declined in recent years,¹² reducing study options in some parts of the country. In a small number of cases exemptions have been designed into foundation degrees or QLDs.
- 2.23 The first stage of qualification is the Level 3 Professional Diploma in Law and Practice (CILEx, n.d.c). This can be entered from GCSE or from an introductory CILEx level 2 certificate. There are seven mandatory law units of study. The mandatory units are: introduction to law and practice; contract law; criminal law; land law; law of tort. In addition students also have to complete units in client care skills and in legal research skills. Students also take three related units of their choice, two of which must be practice papers linked to law subjects studied at level 3, in topics such as employment law; family law and conveyancing. On completion of this stage, students can apply for associate membership

¹⁰ Institutions with franchises or with multiple sites are counted as single institutions for this purpose.

¹¹ http://www.cilex.org.uk/study/lawyer_qualifications/cilex_lawyer_study_centres.aspx

¹² *Ibid.*

status, at which point the CPD obligation begins. QLD graduates may also enter at associate member grade.

- 2.24 The second stage is the Level 6 Professional Higher Diploma in Law and Practice (CILEx, n.d.c). This, in contrast to the broad-based LPC, is a consciously specialist course of study. Students complete further units in research and in client care, together with one legal practice unit and its related law unit and two further law units. The law units available include all of the Foundation subjects as well as more specialist topics such as landlord and tenant and planning law. On completion of this stage, students can apply for graduate membership status. LPC and BPTC graduates can enter at graduate member grade and need only satisfy the qualifying employment requirements to achieve Chartered status (CILEx, 2012).
- 2.25 CILEx members cannot at present undertake reserved activities other than under the supervision of a solicitor. There is no formal restriction (other than the ethical obligation to act in areas where one is competent) on their ability to undertake unreserved activities. Some CILEx members are employed within the unregulated sector, though the numbers are not thought to be large.¹³ If they do not already have Chartered status, career progression for these individuals may be limited if they are not under the supervision of an authorised person under the LSA 2007.

Education and training for the smaller legal professions

- 2.26 Other routes into the regulated workforce comprise a mix of graduate and non-graduate entry. The notarial and IP professions are (effectively) graduate entry (Master of the Faculties, 1998; IPReg, 2011; ITMA, 2012). The specialist qualifications for notaries and registered trade mark attorneys are validated and delivered by universities. They are postgraduate in time, and accredited and quality assured by university processes. The training for patent attorneys is seen by the profession as particularly demanding.¹⁴ Costs lawyers and licensed conveyancers have relatively open access policies and so are closer to CILEx in approach, though in content terms they start from a narrower or more specialised knowledge base (CLC, n.d.; CLSB, 2013).
- 2.27 All of these professions employ a system of education and training, in contrast to training for barristers and solicitors, that is based upon blending on-the-job and off-the-job learning concurrently rather than in strict sequence. Blended and 'earn while you learn' approaches are generally seen by these professions as more effective at assuring 'day one' competence, though it should be noted that in most instances the knowledge components of training cover a narrower range of competencies than the LPC or BPTC.
- 2.28 There is also marked variation in the training in what some refer to as 'non-core' and soft skills. Some gaps in relation to client-facing and management skills are evident in these groups.¹⁵

Periods of supervised practice

- 2.29 Most of the regulated professions provide for a period of pre-qualification supervised practice. There may also be restrictions on practice in the early years after qualification (for example, the rule that solicitors may become sole practitioners only after three years of employed practice: SRA, 2013e, rule 12). For the Bar and for notaries, although the period of supervised practice is formally post-qualification, it also operates as a constraint on exercising full (ie, unsupervised) practice rights.

¹³ Ibid.

¹⁴ See eg, Sherr and Harding (2002). It should be noted that the provision for intending registered trade mark attorneys has been substantially altered since this report and now includes a skills element: see Annex I.

¹⁵ Ibid.

2. The Current System of Legal Services Education and Training

- 2.30 Quality assurance and requirements for periods of supervised practice have been explored in detail in Chapter 6 of the Literature Review. Regulation of supervised practice involves three types of control: the length of the period; the nature of the supervisor; and the context (the nature of the work or of the organisation).
- 2.31 For some professions (costs lawyers, licensed conveyancers, IP attorneys) supervision and classroom training normally will, or must, be undertaken concurrently. This may consequently limit the numbers entering those professions.
- 2.32 For CILEx students, from 2013, the period of qualifying employment has been reduced from five to three years; two years of the qualifying period may run alongside the period of study, leaving one year of qualifying employment to be completed after graduate member status has been achieved. There may be a bottleneck effect if suitable employment is not readily available in the later stages, and a number of respondents commented on the risk of commencing training outside employment. However, the definition of suitable employment is more generous than that for solicitors and there is no requirement that a number of different areas of law be covered (IPS, n.d. b). A CILEx member can, therefore, become a specialist at a relatively early stage.
- 2.33 Trainee solicitors must complete a two-year 'training contract' with an authorised training establishment (SRA, 2013c). Up to six months of this period may be reduced for relevant prior experience, and the contract must provide experience in at least three distinct areas of law and in both contentious and non-contentious work. There is some provision to overlap parts of the training contract with the QLD, GDL or LPC. A Professional Skills Course must also be completed during the period of the training contract. In 2010-2011, 5,441 new training contracts were registered (Fletcher, 2012). There are, at the time of writing, 8,991 trainees registered with the SRA.¹⁶
- 2.34 For the Bar, the BPTC must be completed before the 12 month pupillage can be commenced (BSB, 2012b, 2012c). The time period may be reduced to account for prior experience. An Advocacy Training and Practice Management course must also be completed during pupillage.¹⁷ Although it is possible for a pupil to experience a range of different areas of law during pupillage, this is not required and many pupils will already be focusing on quite specialist areas of work. There is currently no provision to integrate the BPTC with pupillage. In 2010/2011 446 first six pupillages were registered (Bar Council/BSB, 2012:7).
- 2.35 There is no requirement for entrants to the Bar or the solicitors' profession to obtain suitable employment before embarking on the LPC or BPTC. In 2010-2011, however, 32.4% of pupils had secured pupillage prior to taking the BPTC (Bar Council/BSB, 2012).¹⁸

Reviews of supervised practice requirements

- 2.36 Each of the larger professions has considered its period of supervised practice in the recent past with some emphasis on the standard of competence to be achieved at the end of the period and on the quality of supervision.
- 2.37 The SRA has not undertaken any detailed review of the training contract as such, but it has developed a work-based learning pilot out of the work of the Training Framework Review Group (the pilot operated between 2008 and 2013; see SRA, 2009). The pilot was primarily designed to research and explore an alternative model of assessing competence at the

¹⁶ Figures provided by the SRA.

¹⁷ Although part-time pupillage is permitted, both the Wood Review (BSB, 2010) and the Burton Review (COIC, 2012) considered that it should be better publicised.

¹⁸ No equivalent data for solicitors are publicly available.

training contract stage. There were three aims: to develop a method of assessment that demonstrated competence; to test a route that did not depend on candidates having a training contract; and to see if the route could help to reduce barriers to access. Candidates were required to successfully acquire, develop, apply and evidence skills and knowledge relating to eight key learning outcomes. The learning outcomes were developed by the SRA to reflect the key skills newly qualified solicitors should be able to demonstrate and included: communication; client relations; business awareness; workload management; working with others; self-awareness and development; 'application of legal expertise' (including research, writing and drafting, interviewing and advocacy) and professional conduct.¹⁹ Those on the pilot had to evidence through the use of portfolios that they had demonstrated the necessary achievements in these eight areas.²⁰

- 2.38 In 2011, IPS initiated consultation and a pilot on a range of outcomes for the period of qualifying employment required for Chartered status (IPS, 2011). A pilot was carried out over a six month period in 2012, resulting in an analysis of the articulation of the outcomes, feasibility of evidencing outcomes and their assessment (IPS, n.d. a). In the final iteration of the CILEx Competency Framework, there are eight competencies: practical application of the law and legal practice, communication skills, client relations, management of workload, business awareness, professional conduct, self-awareness and development and working with others, divided into 27 outcomes (IPS, n.d. b).
- 2.39 Guidance for each outcome and other supporting documents are provided and assessment is by portfolio and supporting documents against assessment criteria. Initial summative assessment is by the employer. A moderation process then involves review of all portfolios by IPS officers and reference to the IPS Admission and Licensing Committee (IPS, n.d. c). The scheme in its final iteration will apply from June 2013 with transitional provisions for those already in the system.
- 2.40 For the Bar, a detailed review of pupillage led by Derek Wood QC (BSB, 2010) made a number of recommendations about the infrastructure of pupillage, and recruitment.²¹ The standard of performance, to be assessed by supervisors and the director of training, is defined as:

the standard at which the work (whether it is oral advocacy or written work of any description) professionally addresses all the points raised, and is capable of rendering a real and valuable service to the client.
BSB, (2012a:54)

Pupils must achieve this standard in conduct and etiquette; advocacy; conferences and negotiations; drafting, paperwork and legal research and, normally, in their field of specialist work.

- 2.41 A fuller comparison of periods of supervised practice appears in Annex II.

¹⁹ Note that these are not identical to the 'day one outcomes', currently assessed only on the QLTS.

²⁰ Individual assessment organisations may have provided explicit statements of what would amount to competent performance of each of the outcomes. Each outcome was defined to include a number of subsidiary outcomes, 37 in total.

²¹ More recently, the Burton Review (COIC, 2012) has suggested that the shortfall in pupillage places could be addressed by a combination of encouragement of the profession and, for example, sponsorship by the Inns; external sponsorship and reconsideration of the availability of waivers of the funding requirements for, for example, part-time pupils and other, better resourced entrants.

Post-qualification training and specialisation

- 2.42 The continuing professional development (CPD) schemes of the legal professions of England and Wales, of comparable professions (specifically medicine and accountancy) and of international legal professions are examined in Chapter 5 of the Literature Review. The traditional model of CPD in the regulated sector has been input-driven schemes, focused on compliance with a minimum number of hours of activity, often in attending accredited courses. Regulation is by reference to completion of hours and to definition of the range of permitted forms of activity. In contrast with some other schemes for the legal sector internationally, there has been no regulation by reference to either the topic (including, for example, mandatory coverage of ethics or practice management) or what has been learned from the CPD activity itself (the output). For professional bodies as a class, including those of the domestic medical and accountancy professions, there has been a trend towards two other models of CPD. One model seeks deliberately to monitor outputs (including in some cases, learning that has taken place as a result of day-to-day practice experience). The other, examples of which are discussed in Chapter 6, involves a more cyclical model, recognising phases of planning, activity and improved practice arising from the activity.
- 2.43 This has been a much worked area for proposed changes. During the course of the LETR research phase, the BSB (BSB, 2011a-c, 2013a); IPS (IPS, 2012a-b); IPReg (2012a) and the SRA (Henderson et al, 2012), all conducted investigations into their CPD schemes. The BSB, at the time of writing, is evaluating consultation responses on a more cyclical model that would retain a minimum hours requirement whilst extending the range of permitted activities and making explicit reference to ‘further ethics training’ and to ‘equality and diversity training’. IPS is already implementing moves to a cyclical model that has no minimum hours requirement. A brief comparison of the structure of the existing CPD schemes for each of the regulated professions appears in Annex III. This report therefore takes note of the fact that existing CPD schemes are already in the course of transition and this is reflected in the scope of the report’s recommendations.

Summary

- 2.44 In summary then, this section has explained the key stages and structures of LSET in England and Wales. It has focused on technical detail relevant to later parts of the report. The picture described also reveals the extent to which the current system involves component stages, including the distinction between pre- and post-qualification. In the context of the professions of barrister and solicitor this is particularly marked by a shift from classroom to workplace learning.
- 2.45 The professions have maintained a sphere of relative autonomy around their professional training and CPD. The result is a set of semi-autonomous systems of quite considerable complexity and variation.
- 2.46 Another marked difference between the regulated professions that is apparent from this survey of the field is the extent to which occupational groups locate their training along two axes: one being the extent to which training is broad-based or specialist, the other is the extent to which it is ‘knowledge’ or ‘practice’ based. This latter distinction seeks to capture a combination of technical and cultural assumptions about the training process. The traditional professions can be seen as primarily knowledge based. They have moved away from apprenticeship both as a style of, and setting for learning, with more of their training located in the classroom and focused on learning the ‘science’ of law. It is only in the later stages that this knowledge is re-integrated into practice. Other occupations start from a more ‘blended’ approach that seeks to integrate what is covered in the classroom with what is done in the workplace from the outset. The degree to which practice-based and ‘book-based’ or classroom learning are integrated or simply conducted concurrently

is an interesting and relevant source of variation in these models. In recent history, much of the focus of training has moved away from the workplace and into the classroom. The current levels of interest and activity around work-based learning, apprenticeships, and the re-design of CPD point to a renewed interest in the workplace as a site of learning and source of professional competence. This in itself is a matter of some relevance to the LETR in determining focus and direction of travel.

What is valued and required by the legal services sector?

- 2.47 In order to assess attitudes to existing education and training schemes and to identify the knowledge, skills and attributes currently valued and required by the legal services sector, the report draws on:
- responses to attitudinal questions in the online survey about the various stages of education and training;
 - responses to online survey questions regarding the importance of various knowledge, skills and attributes;
 - qualitative data from focus groups and interviews;
 - data on what consumers value or expect from legal service providers;
 - analysis of solicitors' working time.

Attitudes to current legal services education and training

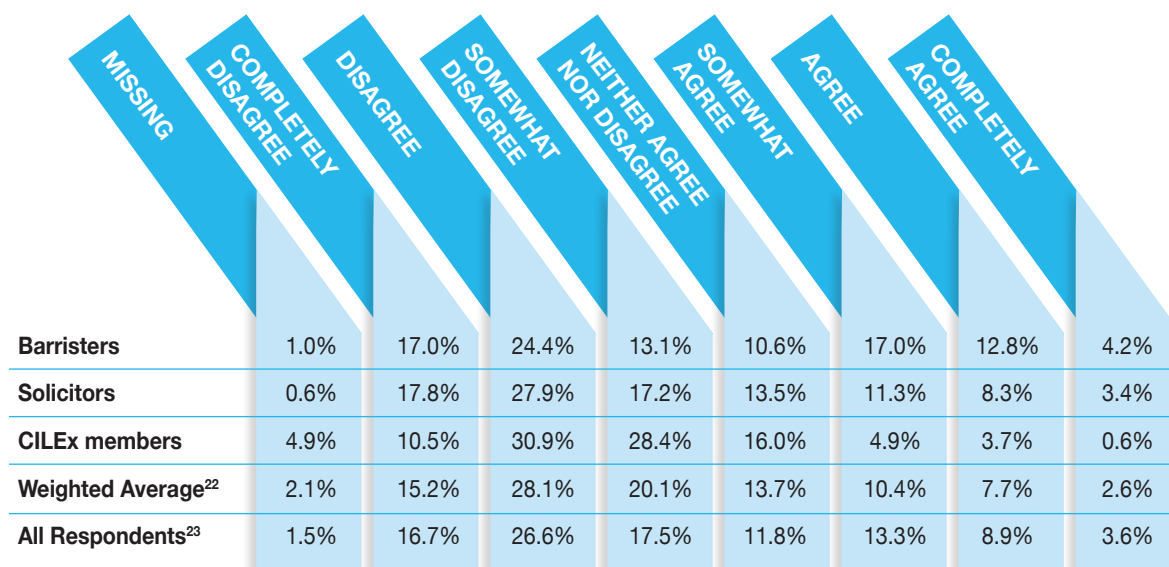
- 2.48 There was a range of levels of support for existing LSET structures among practitioners. There were, however, important differences between established practitioners and those seeking entry.
- 2.49 Looking at the main stages of LSET for the professions of solicitors and barristers, 79% of all respondents favoured retention of the QLD. The majority also saw the need to maintain both its 'liberal' and 'professional preparation' functions; as one solicitor respondent to the online survey observed: 'There must be scope for law as a liberal art, as well as a career, and a balance must be struck'.
- 2.50 This view was broadly reflected in the responses to two contrasting items in the online survey, which asked whether respondents thought the law degree should (i) primarily adopt a 'liberal arts' approach focusing on understanding law in context, or (ii) focus on the knowledge and skills required for the legal profession. A majority of all respondents felt that the degree should not just be a liberal arts degree, and a smaller majority took the view that it should not be professionally-focused either. These overall figures, however, hide some quite substantial variations between the different professional groups, notably a substantial 'academic' bias to the Bar response, and a stronger vocational bias amongst CILEx members (Table 2.1).

2. The Current System of Legal Services Education and Training

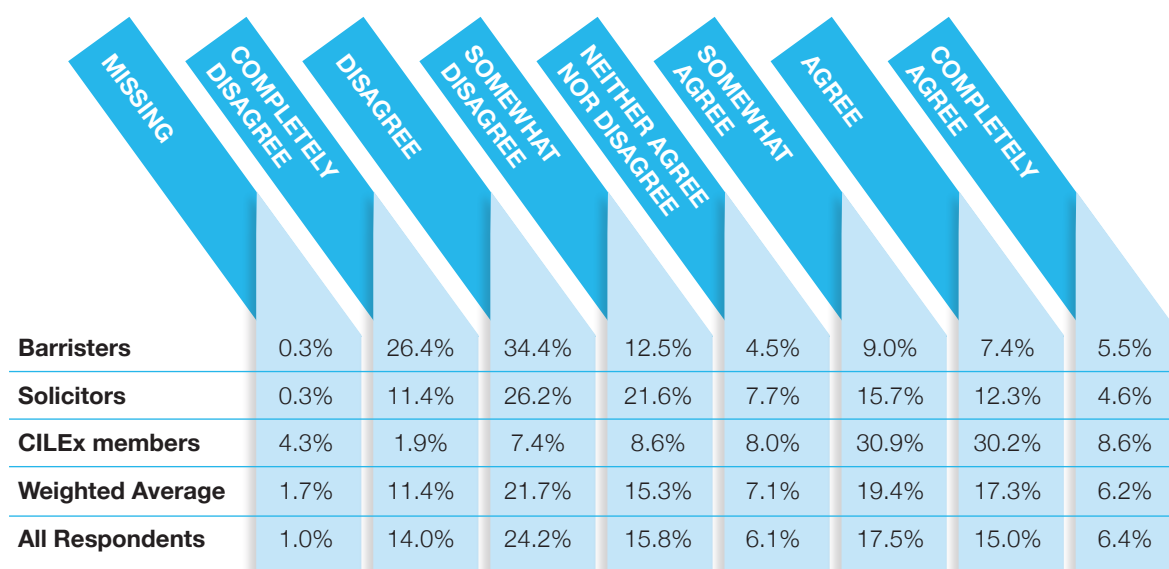
Table 2.1: Law degrees: ‘liberal arts’ or ‘professional preparation’?

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).

‘Undergraduate law courses should be primarily liberal arts degrees that look at the law in a rich cultural context.’



‘Undergraduate law courses should be primarily practically focused on the skills and knowledge needed to work in the legal professions.’



²² The weighted average was calculated by ‘weighting’ the numbers of those from each of the three largest legal professions (barristers, CILEx members and solicitors) responding to the survey to reflect their proportions in the actual population who might have responded: see Appendix D. This accepted method of presentation of results provides a more accurate account of what a representative sample might have revealed. In view of the numbers it makes only a small amount of difference to these results.

²³ This is the average of all responses to the survey, including respondents from the three largest professions, other legal practitioners, academics and training providers, students, and others with an informed interest in matters of LSET. It is not weighted, as it is not possible to estimate accurately the size of all the various groups in the population.

- 2.51 This is also reflected in the qualitative data where barristers were more likely than other respondents to be critical of the introduction of practical skills into the academic curriculum, at the perceived expense of academic rigour. In respect of this issue it is also important to consider the content of the QLD and GDL.

What are the appropriate ‘foundations’ of legal knowledge?

- 2.52 Most systems of legal education and training have evolved based on a ‘building blocks’ approach, which assumes that there are certain forms and areas of legal knowledge that are foundational or fundamental. In the broad-based professions (the Bar and solicitors and, to some extent, CILEx members), this is particularly reflected in the requirement for the seven Foundation subjects. But are these still considered to be the most appropriate building blocks?
- 2.53 The argument for retention of the existing Foundation subjects appears to be based on essentially two premises:
- a) Some prescription of content is necessary/desirable (eg to ensure basic consistency of coverage across education and training providers);²⁴
 - b) The currently prescribed content represents a reasonable proxy (to paraphrase the Bar Council’s response to Discussion Paper 01/2012) for the necessary underlying knowledge.
- 2.54 Each of these premises is open to challenge, though there appears to be little appetite across the sector for removing prescription entirely - as the majority of responses to Discussion Paper 01/2012 demonstrated. However, the current Foundation subjects may still be too wide or too narrow or they may be less appropriate, given the new regulatory context created by the LSA 2007 (cp Legal Services Institute, 2010).²⁵
- 2.55 If prescription were to be retained on similar terms, are the ‘right things’ being prescribed? Overall, both qualitative and quantitative data tend to support the status quo. In the quantitative analysis, support for the existing Foundation subjects is notable amongst the Bar, 80% of whom regarded the existing ‘core’ as providing a (more or less) sufficient knowledge base for the academic stage.²⁶ This view was also held by a majority of solicitor respondents.²⁷ Table 2.2 sets out the findings in more detail:

²⁴ Eg, *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.*

Legal Education and Training Group response to Discussion Paper 02/2012

²⁵ The report’s conclusions as regards the Foundation subjects are considered in Chapter 4.

²⁶ Weighted data.

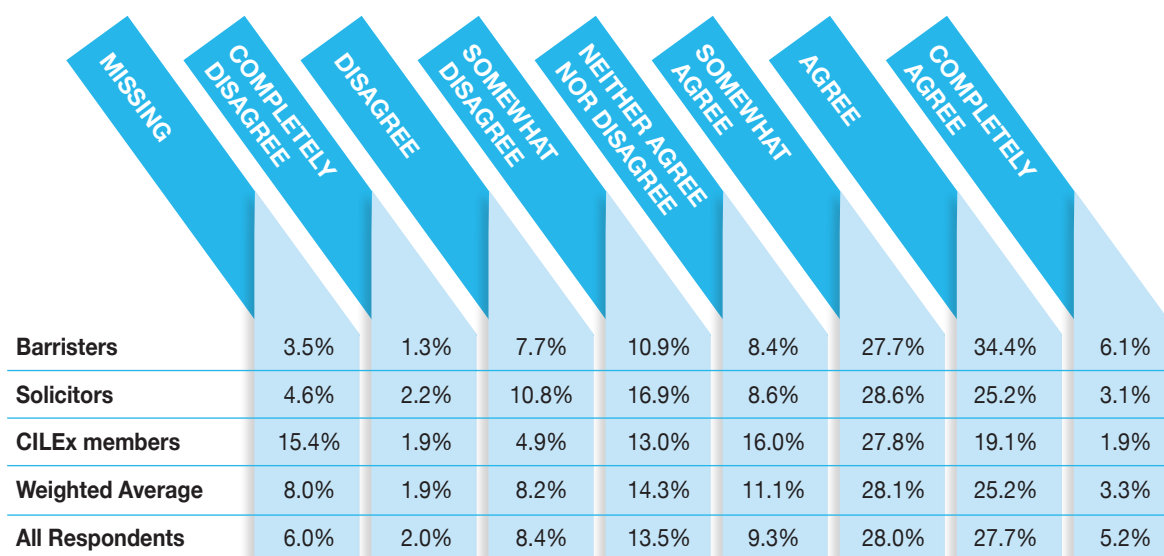
²⁷ Though solicitors were also the group most likely to disagree with the statement that the existing ‘core’ provided a (more or less) sufficient knowledge base for the academic stage.

2. The Current System of Legal Services Education and Training

Table 2.2: The practical adequacy of the Qualifying Law Degree

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).

'The core subjects prescribed within the Qualifying Law Degree (QLD) provide students with a sufficient knowledge base.'



2.56 The majority of the key stakeholders, including, for example, the Council of the Inns of Court, the Law Society and the Society of Legal Scholars, share the view that the existing Foundation subjects remain a good proxy, albeit with some qualification.

2.57 As the Law Society response to Discussion Paper 02/2012 indicates,²⁸ there were suggestions for additions to the Foundation subjects. The range of subjects proposed was diverse, including professional ethics, company or commercial law, (these being the most common suggestions) international law, comparative law, information technology law, and also, on the private plight side, some pleas for more emphasis on 'social welfare' areas such as housing law. As is reported in Research Update 12/02, focus group participants also debated the possibility of an increased recognition of divergence between English and Welsh law.

²⁸ [W]e 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.

2.58 On the other hand, concerns were also expressed by a range of respondents as to the effect of extending the core. These concerns focused on the risk of diluting emphasis on the existing Foundation subjects (especially if new knowledge components were added to a growing list of skills), reducing depth and intellectual development in favour of breadth, and potentially impacting on the GDL, which has to cover the Foundation subjects in a much shorter time frame.²⁹ Any extension could also have implications for the CILEx route.³⁰

Attitudes to vocational training

2.59 Turning to the major professional courses (LPC and BPTC), a minority of respondents (including trainees) amongst the most relevant occupational groups took the view that the LPC and BPTC are positively unfit for purpose – 29.5% and 31.1% of solicitors and barristers respectively.³¹ But there was no strong endorsement either. Thus, 45% of solicitors responding to the survey agreed that the LPC is ‘fit for purpose’,³² while 38.5% of barristers so agreed with regard to the BPTC.³³

2.60 A range of opinion also comes across in the qualitative data, where the LPC attracts a range of epithets from ‘superb’ to ‘pointless’. From many of the comments it is clear that the LPC is affected by the growing fragmentation of practice (discussed in Chapter 3). This is reflected in debates about the appropriateness of its breadth and depth, and whether it is intended to provide only a general introduction to practice, or provide a springboard to more specialised subject matter and immediate fee-earning.³⁴ In this context, it is notable that 43% of solicitor respondents to the online survey felt that the attempt to retain a ‘common core’ course is outmoded. This is not shown in stakeholder responses to Discussion Papers, where a majority indicate approval of the course as it stands. The City sector, represented in some of these responses, has been best placed to take advantage of the flexibility the SRA has built into the system to ‘re-engineer’ the LPC to its own needs. Other groups need to work out how best to do this for themselves and course providers need to be encouraged to work with them in order to satisfy their needs.

2.61 The negative response to the BPTC probably needs to be viewed with some caution. The BPTC has only been in operation since 2010/11, so the majority of LETR research data from those in practice are likely to reflect experiences and perceptions of the BVC. Although some student and academic responses clearly did refer to the BPTC, these were not sufficiently numerous to warrant separate analysis. The Wood Review (BSB,

29 Eg, *A wider but shallower compulsory curriculum would significantly inhibit the ability of the law degree to provide a grounding in the kind of in-depth analysis, critical thinking and writing skills which is essential both to a liberal education and the development of neophyte lawyers. If an aim of the Review is to increase the development of these core skills, such a proposal will not, in our view, achieve the objective.*

University College, London response to Discussion Paper 02/2012

A: I think I was really more thinking about expanding the academic phase to cover other things than purely just-

B: But if you put other things into the academic phase then you - you don't want to lengthen the time period so what are you taking out of it?

C: And then you'd have to cope with the fact that the ones who hadn't done a law degree, if you've put some extra stuff into the law degree, the ones who haven't done a law degree need to pick it up later. Perhaps it's at the LPC that we should be addressing some of this.

Solicitors

30 Though the CILEx route already includes ethics, those who wish to retain the possibility of transferring into the solicitors' profession must pass all of the Foundation subjects at level 6. Consequently additional subjects would add to the loading across that stage.

31 Weighted data.

32 Weighted data. Note that 19.4% respond neutrally to this item (ie, neither agree nor disagree), and missing responses = 6.2%, so that, in effect, 25% of solicitor respondents do not express an opinion.

33 Weighted data. The level of effective non-response from the Bar is even higher at 30.5%: 16.7% respond neutrally and 13.8% are recorded as missing data.

34 The dichotomy is represented by this exchange between trainee solicitors at the same firm:

A: I didn't take the legal aid route although I'm now working in the family department and all my work is legal aid. And I'm glad I didn't because I got a taste of different areas of law. I took the commercial module, family law and personal injury - so I took different modules. I think it's helped me to decide which area of law I wanted to focus on and I think that's why I probably disagree with some of my colleagues. I think it doesn't need to be so specific.

B: I think you should be able to pick the route you go down from the offset and then be trained on that basis rather than learning - I've forgotten nearly everything of what I learned for the LPC which was property or business. I did well in my exams, I memorised it for a week and now it's completely gone, it's a complete waste of time. I think you should be able to - there should be maybe two routes on the LPC. I think the GDL works quite well but I think the LPC should be either a legal aid LPC, maybe a public and a private law one, I don't know. Where you still learn the basics of everything but you go into detail more so in one aspect, either the private law or public law.

C: It goes back to the LPC that it is - it's forcing you to take variety that you may have little to no interest in ever taking.

2. The Current System of Legal Services Education and Training

2008) acknowledged that the Bar had not been effectively brought into understanding and engaging with the BVC, and this effect may still be visible. It is too soon to say whether the BPTC has effectively escaped from any limitations of its past. As with the LPC, qualitative views varied widely from the very positive, through to 'not completely useless' and to 'positively sclerotic and completely inadequate'. Institutional responses tended to the view that any significant problems (except cost) had been addressed by the Wood Review.

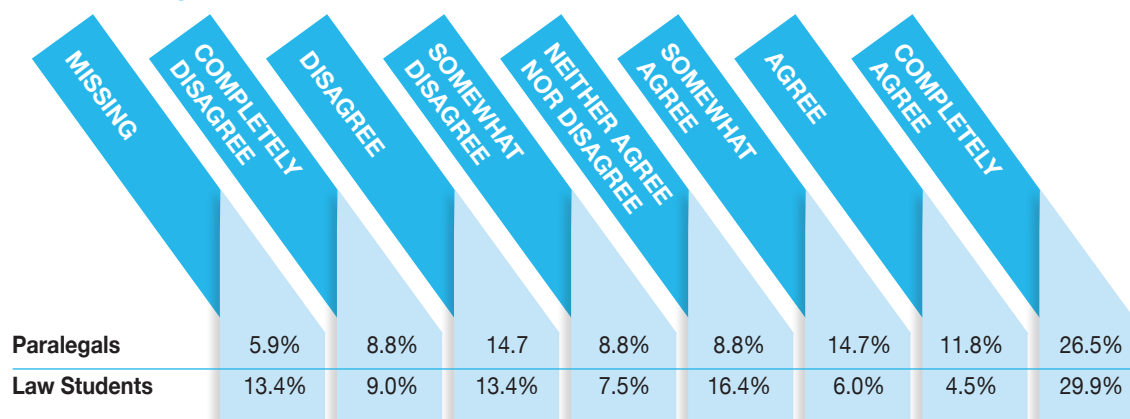
- 2.62 By contrast, attitudes to the training contract and pupillage were markedly different, with 38% of solicitors 'completely disagreeing' with the abolition of the training contract. An emphatic 58% of barristers similarly 'completely' disagreed with the abolition of pupillage.³⁵
- 2.63 However, those who may have been unable to find a training contract or pupillage, or who face the prospect of attempting to find one, have unsurprisingly negative views about how the current system works. The quantitative data do not show whether this view is driven by a fear of exclusion from the profession, or a more sophisticated perception that paralegal or other forms of work experience should be equally permissible as a route to qualification. Elements of the latter view do emerge from the qualitative material.

³⁵ Weighted data.

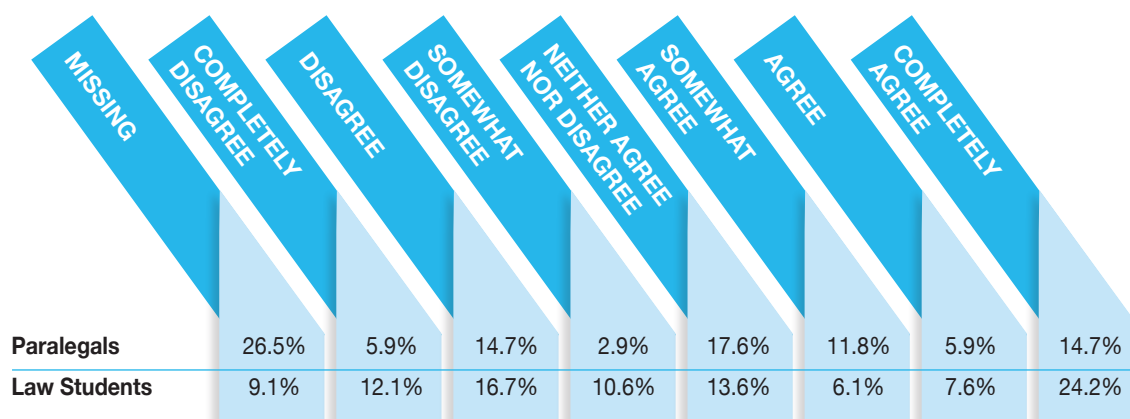
Table 2.3: Removing the training contract and pupillage: responses of law students/paralegals

Unweighted data.

'The training contract should be abolished.'



'Pupillage should be abolished.'



Attitudes towards CILEx education and training

- 2.64 Finally, it is notable that CILEx members and their employers for the most part emerge as well-satisfied with their training process. LETR qualitative data indicate that respondents were better informed about the CILEx route than about paralegal options and perceived it to be of utility, particularly by providing more tailored training for smaller firms (which might not be able to offer training contracts). The CILEx route also found some favour among some of the respondents from both in-house practice and local government.
- 2.65 CILEx members were also positive about their route in terms of accessibility, particularly for mature students - a view that was also advanced by employers. The pathway from Fellowship/Chartered status to the solicitors' qualification was viewed by some employers as a valuable way of increasing the diversity of the solicitors' profession (see, eg, CLLS response to Discussion Paper 01/2012). There were some doubts about the suitability of

the CILEx route (as noted above) for those who were not already in legal employment.³⁶ The majority of trainee legal executives appear to progress from secretarial or paralegal work and thus have a familiarity with the firm culture and office practice, which gives them some advantage relative to new trainee solicitors. Although a number commented on the challenges of an 'earn while you learn' approach, in terms of the difficulties of distance learning and juggling studying with other commitments, most respondents felt the system worked well for them, and were keen that it be strengthened and retained.

- 2.66 Positive views about the effectiveness of work-based approaches to education and training were expressed by the smaller professions which adopted them. The integration of workplace and classroom learning will be considered further in Chapter 5.

Professional knowledge

- 2.67 Table 2.4 shows the importance attributed in the online survey to a list of different knowledge elements by the three largest groups of professional respondents, (separately and as a weighted average) and, in the final column, for all respondents to the survey. The low response rate from the majority of smaller professions has meant that the online survey does not consistently provide robust evidence of the knowledge priorities of those professions. The items are presented in rank order according to the proportion of respondents who designated the topic 'somewhat important' or 'important', with the most highly rated item at the top.
- 2.68 It can be seen that legal ethics and procedure came out above all other areas, having been rated 'important' or 'somewhat important' by over 95% and 94% of respondents, respectively.³⁷ Contract law, the next highest rated item, was rated important by 85% of respondents. The items below criminal law (50.3%) were all rated 'important'/somewhat important' by fewer than 50% of respondents overall.

³⁶ The blended nature of the CILEx route is sufficiently embedded that some participants doubted whether entry into full time study directly from school was appropriate. They were concerned whether such students had necessarily made an informed career choice: they might simply be taking the course for its own sake.

³⁷ The high ratings given to procedure and ethics reflect the fact that they had both universal relevance across the range of regulated professions, and that they were genuinely perceived within most groups as the most important areas. Thus, focusing on the most favourable grading of 'important', procedure was rated 'important' by 90.3% of barristers, 76.7% of solicitors and 79.7% of CILEx members; ethics similarly was rated 'important' by 81.4% of barristers, 80.1% of solicitors, and 76.9% of CILEx members. Whereas the functional importance of procedure might be expected to be rated highly, it would not be expected necessarily to see legal ethics placed so highly. There may be some effect of the newness of outcomes-focused regulation and risk-based regulation.

Table 2.4: Ranking of importance of knowledge items by legal services providers Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).

RANKING	BARRISTERS	SOLICITORS	CILEx MEMBERS	WEIGHTED AVERAGE OF THREE LARGEST PROFESSIONALS	ALL RESPONDENTS (AVERAGE)
1	Procedure Professional Ethics	Legal and Professional Ethics	Procedure	Legal and Professional Ethics	Legal and Professional Ethics
2	Legal and Professional Ethics	Procedure	Legal and Professional Ethics	Procedure	Procedure
3	Contract Law	Contract Law	Contract Law	Contract Law	Contract Law
4	Tort Law	Tort Law	Tort Law	Tort Law	Tort Law
5	Human Rights	Business	Land Law	Business	Equity
6	European Law	Equity	Equity	Equity	Business
7	Equity	Land Law	Business	Land Law	European Law
8	Alternative Dispute Resolution	European Law Resolution	Alternative Dispute Resolution	Alternative Dispute	Land Law
9	Public Law	Alternative Dispute Resolution	Human Rights	Human Rights Resolution	Alternative Dispute
10	Land Law	Human Rights	Public Law	European Law	Human Rights
11	Criminal Law	Public Law	European Law	Public Law	Public Law
12	Business	Criminal Law	Criminal Law	Criminal Law	Criminal Law
13	Jurisprudence	Jurisprudence	Jurisprudence	Jurisprudence	Jurisprudence
14	International Law	International Law	Socio-legal Studies	International Law	International Law
15	Psychology	Psychology	International Law	Psychology	Psychology
16	Socio-legal Studies	Socio-legal Studies	Psychology	Socio-legal Studies	Socio-legal Studies

- 2.69 Another feature of this table is that it highlights considerable commonalities between the three larger professions in terms of the knowledge areas that are considered fundamental, with few differences emerging across the top eight items.
- 2.70 Two areas are also often mentioned as lacking among new recruits in interviews and focus groups - ethics/professionalism and 'commercial awareness'. These are considered first.

Ethics and professionalism

- 2.71 The importance of ethics is signalled, to a high degree, throughout the qualitative data. Professional ethics, and its regulation, are seen as a critical defining feature of professional service. For many practitioners, the growing commercialisation of practice, including the advent of ABSs,³⁸ threatens, as one solicitor put it, the profession's 'moral compass'. These concerns were expressed across most of the sector, and not just by practitioners:

38 Discussed in Chapter 3, following. From the perspective of those involved, the adoption of a new business structure does not necessarily dilute or weaken the ethics. The Co-operative Legal Service has thus argued that there is a strong synergy between the perceived ethical values of the Co-op and its approach to legal business, and has emphasised the importance of training in ethics and values across its workforce (See Briefing Paper 4/2012). Another ABS commented: *Our clients, our people and our business partners value the enhanced ethical and professional standards we adhere to as part of a regulated profession. The effective regulation of the profession is, in our view, vitally important to maintaining the high standards consumers rightly expect of regulated professionals.* ABS (written response)

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... they need high ethical standards. And I think again the way it is becoming a business and not a profession is meaning that those matters are being neglected.

Academic

The principal change is that all lawyers (including the self employed) now seem to be regarded as running a business, rather than conducting a profession.

Chancery Bar Association response to Discussion Paper 01/2012

Our concern, I think, is with commercial providers coming into the legal market that they will adopt a very business attitude to the delivery of legal services, just like any other commodity and will lose the professional ethos of really putting your client first.

Solicitor

- 2.72 A striking feature of many of these responses is the extent to which ethics and 'business' appear incompatible. Solicitors and costs lawyers in particular foresaw a growing need to 'hold their own' with (cheaper and possibly more eager to please) unregulated or differently regulated competitors. Some saw their professional ethos and regulated status as part of the means by which that could be achieved, but relatively little of the discussion of ethics and professionalism in the qualitative material framed it in terms of competitive advantage.
- 2.73 Turning specifically to the role of education and training, it is not surprising in this context that the issue is not whether ethics and professionalism should be taught and developed through LSET, but how much, and when. In response to a specific question in Discussion Paper 02/2012, there was support for more and earlier emphasis on legal values and ethics across the regulated sector. In the context of the undergraduate degree, however, this did not amount to extensive support for ethics to become a separate Foundation subject.

'Commercial awareness'

- 2.74 In the online survey 68.9% of practitioners indicated that knowledge of the business context is important or very important to their work, ranking it above a number of areas of 'core' legal knowledge. This emphasis on 'commercial awareness' in training has been a recurrent finding in the research, though support is not uniform. Members of the Bar, public sector and personal plight³⁹ lawyer respondents have commented, sometimes strongly, to the contrary. Although this is considered by many respondents to be a significant deficiency in new recruits, the nature of the deficiency is not always clearly articulated, and respondents were divided on when that deficit (whatever it is) should be addressed.
- 2.75 The careers advisers' survey offers some assistance on what, from their experience, employers are looking for when they talk about 'commercial awareness'. This suggests that commercial awareness is a composite concept that may comprise a broad body of knowledge, as well as a number of associated skills and attributes:
- awareness of the sector and the clients' business; having an interest in the sector so as to be able to communicate with clients;
 - appreciation of law as a business: that firms (etc) are profit-making entities; marketing and networking; how law firms are run;
 - an ability to recognise clients' commercial objectives rather than proposing 'pure law' solutions;
 - wider knowledge of commercial and financial subjects: understanding financial products; corporate structures; markets and sectors; knowledge of the wider economic environment and business issues in the news;

³⁹ Personal plight clients are individuals who have a problem which they take to a lawyer.

- general knowledge of current world and political affairs;
 - numeracy and ability to interpret financial data; office skills and use of specific tools such as Microsoft Excel;
 - personal attributes of common sense, independent thinking; critical thinking - not accepting views or approaches at their face value.
- 2.76 There may be grounds for saying, especially in the context of solicitors' training, that some commercial awareness potentially falls through the gaps between areas studied. LPC outcomes require students to 'understand the organisation, regulation and ethics of the profession' with specific reference to the principles of the SRA Code, and to 'be aware of the financial, commercial ... priorities and constraints' in identifying and achieving clients' objectives, but these are narrower and more instrumental than the range indicated above (SRA, 2011b).⁴⁰ Though some of the 'bespoke' LPCs appear to use law firm staff to develop knowledge and understanding beyond this point, through either the formal or informal curriculum, this is not universal. While corporate, commercial and financial law options are extremely popular in law school, these also may not develop the contextual understanding that 'commercial awareness' implies.
- 2.77 Consequently, perhaps, this is also an area where the more aware students appear to be developing knowledge and skills outside the formal curriculum. Numerous university student unions, for example, have 'finance societies' which are open to students from all disciplines who are interested in finance and the financial markets, and whilst some of these are geared more to those who are looking for careers in the finance sector, others have a broader perspective. In a smaller number of institutions, (the LSE and Warwick, for example) these have spawned specific 'law and finance societies' to support students in developing the knowledge they need.⁴¹

Skills and attributes

- 2.78 Table 2.5 shows the ranking by people working within the different legal professions of the importance of various skills and personal attributes. Responses to the list of skills and attributes are less diverse than in relation to knowledge - the first 18 items were all rated important or somewhat important by over 90% of respondents, though there is some interest in areas where there are clear differences, such as 'Oral advocacy'. This is probably explicable by the more generic character of these skills and attributes when compared to the greater specificity of legal knowledge, but it also means that it would not be appropriate to place too much weight on the precise rank ordering of items in this table.⁴²

⁴⁰ From 2013, Chartered Legal Executives will be required to have demonstrated competence in 'business awareness' (IPS, n. d. b).

⁴¹ LSESU Finance Society, <http://www.finance-society.co.uk/>; Warwick Finance and Law, <http://www.wfsocieties.com/wfl/>.

⁴² Weighted and unweighted data.

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Table 2.5: Ranking of importance of skills and attributes by legal services providers Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).

RANKING	BARRISTERS	SOLICITORS	CILEx MEMBERS	WEIGHTED AVERAGE OF THREE LARGEST PROFESSIONALS	ALL RESPONDENTS (AVERAGE)
1	Communicating in Person	Identifying and Understanding Problems	Explaining Legal Matters	Explaining Legal Matters	Explaining Legal Matters
2	Identifying and Understanding Problems	Solving Problems Integrity	Honesty and in Person	Communicating in Person	Communicating
3	Explaining Legal Matters	Attention to Detail	Dealing with Difficult Issues or People	Identifying and Understanding Problems	Identifying and Understanding Problems
4	Solving Problems	Writing and Drafting	Attention to Detail	Solving Problems	Attention to Detail
5	Legal Research	Communicating in Person	Writing and Drafting	Attention to Detail	Honesty and Integrity
6	Attention to Detail	Explaining Legal Matters	Communicating in Person	Honesty and Drafting	Writing and Integrity
7	Working to Achieve Clients' Objectives	Working to Achieve Clients' Objectives	Working to Achieve Clients' Objectives	Writing and Drafting	Working to Achieve Clients' Objectives
8	Honesty and Integrity	Honesty and Integrity	Developing and Maintaining Good Relationships with Clients	Working to Achieve Clients' Objectives	Solving Problems
9	Common Sense	Keeping Clients Informed	Responsibility	Dealing with Difficult Issues or People	Developing and Maintaining Good Relationships with Clients
10	Writing and Drafting	Developing and Maintaining Good Relationships with Clients	Identifying and Understanding Problems	Developing and Maintaining Good Relationships with Clients	Dealing with Difficult Issues or People
11	Dealing with Difficult Issues or People	Common Sense	Solving Problems	Responsibility	Responsibility
12	Developing and Maintaining Good Relationships with Clients	Responsibility	Keeping Clients Informed	Legal Research	Common Sense
13	Responsibility	Dealing with Difficult Issues or People	Legal Research	Common Sense	Legal Research
14	Resilience and Coping with Stress	Legal Research	Initiative	Keeping Clients Informed	Resilience and Coping with Stress
15	Oral Advocacy	Negotiation	Resilience and Coping with Stress	Resilience and Coping with Stress	Keeping Clients Informed
16	Negotiation	Resilience and	Common Sense	Initiative	Initiative
17	Initiative	Initiative	Communicating Electronically	Negotiation	Communicating Electronically
18	Good Personal	Communicating	Effective Teamwork	Communicating Electronically	Good Personal Electronically
19	Keeping Clients	Good Personal Informed	Negotiation Presentation	Good Personal	Negotiation Presentation
20	Communicating Electronically	Effective Teamwork	Good Personal Presentation	Effective Teamwork	Effective Teamwork
21	Commitment to the Profession	Project Management	Commitment to the Profession	Commitment to the Profession	Commitment to the Profession
22	Effective Teamwork	Commitment to the Profession	Project Management	Project Management	Oral Advocacy
23	Project Management	Oral Advocacy	Oral Advocacy	Oral Advocacy	Project Management
24	Social Responsibility or Pro Bono Work	Social Responsibility or Pro Bono Work	Social Responsibility or Pro Bono Work	Social Responsibility or Pro Bono Work	Social Responsibility or Pro Bono Work
25	Ability to Work in Another Language	Ability to Work in Another Language	Ability to Work in Another Language	Ability to Work in Another Language	Ability to Work in Another Language

2.79 The 'Solicitors and their Skills' exercise provided a further instrument to assess the relative importance of different skills and tasks in terms of the proportions of time spent on these, on average, by solicitors. In 1991, as described in Chapter 1, research was carried out on the proportion of time spent by solicitors on different activities (Sherr, 1991).⁴³ By repeating this exercise on the actual work practices of solicitors in 2012 it was possible to make comparison between the work practices of solicitors 20 years apart. As a result it also offered a means of checking whether the use or balance of skills had changed significantly over time. Table 2.6 below compares the proportions of time spent on different activities in 2012 and in 1991.

Table 2.6: Proportions of time spent on different activities in 2012 compared with the 1991 study

	1991	2012
Client Handling	13.0%	22.8%
Non-billable Work/Administration	22.0%	15.7%
Drafting	11.0%	14.5%
Reading and Assessing	9.0%	12.6%
Supervising or Being Supervised, Discussions with Co-workers	7.0%	8.4%
Other	4.0%	2.6%
Travelling	6.0%	2.6%
Legal Research	2.0%	2.5%
Negotiation	5.0%	2.1%
Advocacy	3.0%	0.6%
Conference with Counsel	2.0%	0.5%
Taking Oaths/Swearing Affidavits, etc	0.0%	0.0%
Dead Time	16.0%	15.0%

2.80 It is apparent that the relative proportions of time spent on most of the tasks are strikingly similar in the two time periods. The time spent in handling clients seems to have actually grown rather than diminished in the last 20 years. Drafting is the second most time intensive activity, followed by reading and assessing documents, and then the work of supervision or being supervised. Excluding travel (which seems to have reduced somewhat) legal research continues to occupy a very small proportion of time, and negotiation and advocacy both seem to take up less time in 2012.

⁴³ This work then informed the development of the more skills-based LPC curriculum.

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- 2.81 The addition of more non-lawyer managers into many law firms might well have assisted the reduction in time spent on non-billable work and administration. A greater concentration on efficiency may have affected the 'dead time' which builds up jumping between tasks.
- 2.82 More detail can be presented by comparing what is happening in the different types of firm. Six firms were involved in this research including two of the largest commercial firms, a mid-range city firm, and three firms dealing more with personal plight work. The profiles in Table 2.7 (below) show the results. For all of them the predominance of client handling over other tasks is again apparent, but as a proportion of time it is especially marked in one of the largest commercial firms and in one of the legal aid firms. The proportion of time spent drafting is relatively consistent across the board, but the amount of time spent reading and assessing, on supervision, legal research and negotiation is more varied between different firms.
- 2.83 With such a small quantitative change overall in the average time spent on these core skills and tasks, it seems that there is something ineffable about them. Perhaps the nature of legal work and the lawyering process tends to dictate these proportions of time spent. Or, less charitably, perhaps legal services education fosters continuity rather than change, or lawyers are not trained to use ingenuity or lack impetus to work in radically different ways. But it does point to something relatively unchanging about the fundamental tasks and skills of solicitors, and suggests that these areas of skill still need to be taught. Though this report tends to question, in other respects, the lack of change in the content of LSET over the period considered, these findings seem to suggest that the core nature of legal activity itself is relatively unchanging. Though these findings cannot predict what a repetition of this exercise in another 20 years might produce, drawing these data together with Table 2.6 the continuing centrality of communication, client-handling and problem-solving skills is readily apparent.

Table 2.7: Proportions of time spent in 2012 in different kinds of practice

	SMALL LEGAL AID FIRM	MID-SIZED LEGAL AID FIRM	MID-SIZED LEGAL PRACTICE FIRM	MID-SIZED GENERAL CITY FIRM	LARGE CITY-FIRM	LARGE CITY-FIRM	AVERAGE OF FIRMS	AVERAGE OF INDIVIDUALS
Non-billable Work/ Administration	12.6%	21.5%	33.6%	16.7%	10.3%	10.2%	17.5%	15.7%
Advocacy	3.4%	1.4%	0.0%	0.0%	0.4%	0.0%	0.9%	0.6%
Conference with Counsel	0.0%	0.8%	0.0%	0.1%	0.9%	0.0%	0.3%	0.5%
Client Handling	21.2%	28.3%	20.9%	16.7%	29.4%	15.4%	22.0%	22.7%
Supervising or Being Supervised, Discussions with Co-workers	6.5%	3.7%	8.1%	8.5%	9.3%	17.3%	8.9%	8.4%
Drafting	12.1%	10.9%	11.1%	15.3%	17.1%	15.6%	13.7%	14.6%
Legal Research	1.7%	0.1%	0.0%	4.7%	1.9%	3.2%	1.9%	2.6%
Negotiation	3.1%	0.5%	5.0%	1.1%	2.4%	7.7%	3.3%	2.2%
Taking Oaths/ Swearing Affidavits, etc	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Reading and Assessing	7.2%	7.1%	6.3%	20.2%	8.6%	14.6%	10.7%	12.8%
Travelling	7.9%	6.7%	0.0%	1.8%	0.4%	0.0%	2.8%	2.6%
Other	9.3%	4.0%	0.0%	0.0%	4.5%	1.1%	3.1%	2.6%
Dead Time	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%

Communication skills

Communication with clients is something that probably deserves a whole subject of its own and this is true for both barristers and solicitors. You have to get things right. It goes ... almost hand in hand with contracts because that's a form of communication as well. You have to be sure that you are translating ... into the words of the contract what the client actually wants. All of those soft skills are very, very important and will be even more important if we want to keep our edge.

Barrister

- 2.84 The quotation above encapsulates many of the findings from the data on communication. While the research generated some debate (and disagreement) about the range of communication skills which needed attention, concerns about two areas came particularly to the fore: written skills and advocacy.

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- 2.85 New lawyers' written skills have previously been a matter for concern. A large number of comments in the survey and Discussion Paper responses referred to poor spelling, grammar and punctuation.⁴⁴ Fuller responses from the LETR research data point also to gaps in the structuring of written communications, developing familiarity with writing for different purposes, and their relationship to legal analysis skills and meeting client expectations:

One skill that I perceive comes up time and time again is the ability to actually produce a coherent written piece of advice. And this is so difficult to teach to students, because most of them are coming with their undergraduate heads on. When they've had the luxury of time, being able to sit in a library and produce a beautifully written dissertation. But it's completely different, particularly when you're under pressure, time pressure to be able to produce sensible coherent and correct written advice.

Academic (LPC)

... on the written side it is distilling vast quantities of information - they get ever increasing volumes of information - succinctly and getting the analysis right. Brevity is something that's all too uncommon amongst the younger generation.

Solicitor

- 2.86 The data tend therefore to align with Hilsdon who, in a study of undergraduate students' writing skills, (Hilsdon, 1998:34) pointed to the need for more guidance in topics such as:
- describing, defining and explaining concepts or points;
 - reporting, referring to and quoting the views of others;
 - supporting a position with reasoned argument;
 - evaluating information, views and ideas;
 - summing up points and coming to conclusions.
- 2.87 There is a strong view amongst stakeholders that writing skills require further development at the degree stage, though a number of concerns were also expressed about the quality of writing and, particularly, drafting on the LPC.
- 2.88 Advocacy is, of course, a critical and definitive legal skill. The risks flowing from poor quality advocacy and case preparation can be substantial. It is also an area of work where there is significant and growing competition: the BSB, the Costs Lawyer Standards Board (CLSB), Intellectual Property Regulation Board (IPReg), IPS and the SRA regulate advocacy; the Council for Licensed Conveyancers (CLC) applied to do so and paralegals are also operating in the field.⁴⁵
- 2.89 Standards of specialist advocacy training on the BPTC and through the Inns of Court were generally very well regarded. The advocacy component of the Professional Skills Course (PSC) was not for the most part strongly endorsed, and was widely considered irrelevant to City practice. Several CILEx members in the online survey expressed a desire for enhanced advocacy training.⁴⁶

44 Objective evidence of a general decline in writing and literacy is difficult to obtain; two studies by Massey and others published in 1996 and 2005 have analysed technical standards of writing in GCSE English language examinations conducted in 1980, 1993, 1994 and 2004. The analysis indicated some fall in standards between 1980 and 1994, but a return to about the overall 1980 standard in 2004. In spelling specifically, 1980 pupils were much better, whereas in other aspects (eg, punctuation) the 2004 students exceeded those in 1980. The use of non-standard English was also shown to have increased through the years: results reported in Rashid and Brooks (2010:36-37).

45 Advocacy is authorised outside the LSA 2007 under other statutes, eg, s. 223, Local Government Act 1972.

46 CILEx Fellows do not have automatic rights of audience. However, for those Fellows who want to train as advocates there is a robust application and training process which must be successfully completed before rights of audience can be obtained.

- 2.90 The amount and quality of advocacy training on the LPC came in for the strongest criticism: ‘... advocacy is so poorly taught on the LPC it is almost irrelevant’; ‘pretty rubbish’; ‘very disappointing’ are among the phrases used.
- 2.91 A number of these criticisms of the LPC were echoed by a group of district judges who, commenting on advocacy in general, highlighted a number of common failings by advocates:
- poor preparation;
 - lack of familiarity with the papers;
 - failure to understand law and procedure (eg, unable to tell the judge what his or her jurisdiction is for a particular action or order);
 - limited advocacy skills;
 - lack of familiarity with courtroom etiquette;
 - inability to learn from own errors.
- 2.92 Participants in the qualitative research also discussed the importance of understanding different modes of advocacy: telephone and video hearings. Tribunals (which might involve paralegal advocates), international arbitration, statutory adjudication, and mediation emerged as different contexts for advocacy. The growth in numbers of self-represented litigants was also seen as a particular challenge for which training will need to prepare new lawyers. The development of ReDOC in the BPTC was welcomed as ‘a very brave move’ by a participant, but thought not to go far enough:

[T]he arbitration component of ReDOC is very well-thought out and well-designed ... All you need to know is the various different schools of arbitration, how rules work, appeals from that into the legal system and so on ... it's very difficult to assess the students' ability to actually do the skill [of mediation advocacy] when all they've got to do is write about it, which they could just copy from a book. ...

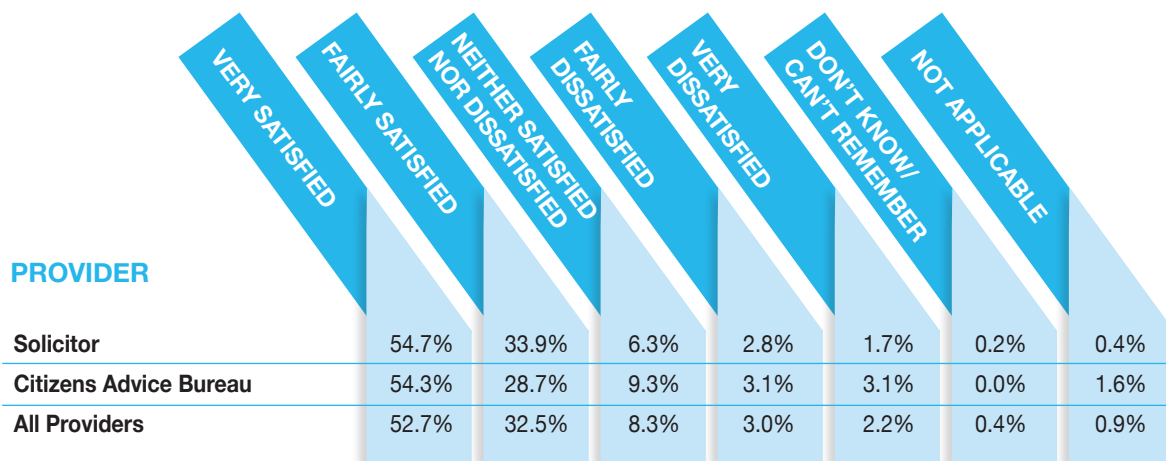
‘Client-handling’ skills

- 2.93 The qualitative data also draw attention to a range of skills that link with effective communication skills to enhance the client’s experience or maintain the quality of the lawyer-client relationship. This aspect was described by respondents in various ways: at its broadest it was called common sense, or psychology, and described as an aspect of both professional ethics and commercial (or sometimes ‘social’) awareness. More specifically, it involved elements of being able to see things from the client’s point of view, emotional intelligence, engendering trust, managing the client’s expectations, the ability to deal with difficult or vulnerable people, and displaying courtesy.
- 2.94 As noted in Discussion Paper 02/2012, consumers’ perceptions of the quality of legal services tend to focus on the extrinsic or ‘visible’ features of the service rather than intrinsic features such as the quality of advice. These are therefore useful in identifying, from a consumer perspective, what constitutes a ‘good’ experience. Most of the data refer to solicitors, or alternative and sometimes unregulated frontline advisers.
- 2.95 The 2012 LSCP tracker survey recorded a decline in satisfaction in respect of the level of personalised service and empathy, falling from 75% in 2011 to 70%; there was also less satisfaction with timeliness and communication once a matter is in progress. It should be noted, however, that these results are in a context where consumer satisfaction with a range of professional services appears to have declined across the board (LSCP, 2012). To investigate this further the results of the two largest groups of service providers (solicitors and Citizens Advice Bureaux advisers) in the LSB/BRDC dataset were analysed, and

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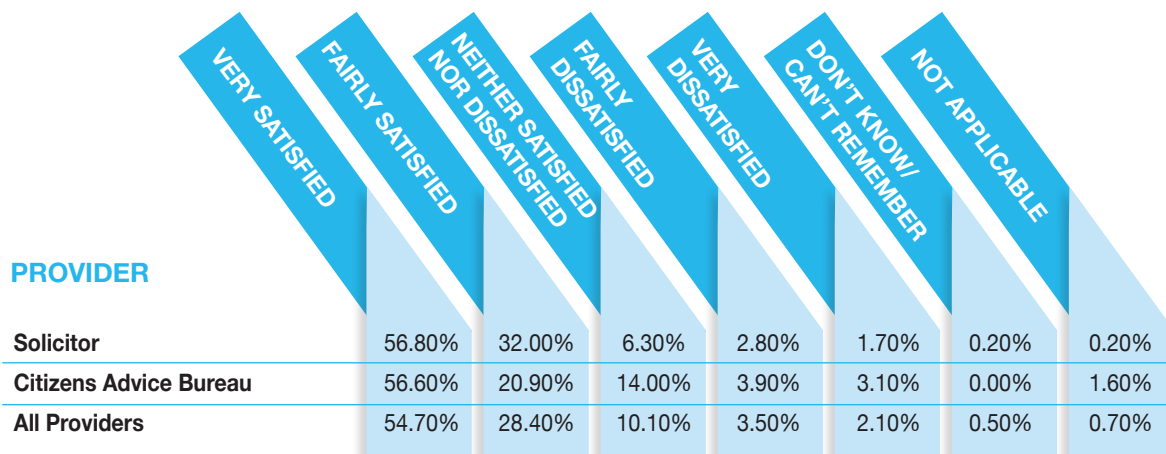
contrasted with the average results for all providers. Table 2.8 details responses to the question ‘How satisfied were you that your service provider clearly explained the service being provided?’ Similarly, Table 2.9 shows responses to the question ‘How satisfied were you that your service provider treated you as an individual?’

Table 2.8: ‘How satisfied were you that your service provider clearly explained the service being provided?’



2.96 The results for both items are similar, suggesting a strong interdependence between being respected and feeling satisfied with other aspects of the service. Both show high levels of satisfaction, and relatively little differentiation between service providers. These findings fit with earlier research suggesting that qualified lawyers do not necessarily deliver a visibly better service than other providers. Nevertheless the similar levels of satisfaction across the board may also indicate that a ‘ceiling effect’ is in play and that important differences may be uncovered by the use of other measures. How communications were handled was rated lower, as was clarity of costs, and speed of process. However, even for these elements, over 75% of users were generally satisfied. It is notable that advice agencies achieved the highest level of satisfaction for speed of service.

Table 2.9: How satisfied were you that your service provider treated you as an individual?



- 2.97 The qualitative data undoubtedly demonstrate that these client-facing skills are required, valued, and well understood by legal services provider respondents. Even though the consumer evidence points to somewhere between relatively good and high satisfaction, participants in the LETR focus groups and interviews also felt more could and should be done to develop and maintain these skills, treating them as a matter of ‘lifelong learning’ (see for example the response from the Junior Lawyers Division to Discussion Paper 02/2012), though overall there was little consensus about the most appropriate stage of training.⁴⁷
- 2.98 Some participants suggested that providing advice is something which trainees and newly-qualified practitioners tend to find very difficult, and in some instances concerns were raised about the variation in client contact that trainees (both CILEx members and solicitors) experience. Some also recognised the need for those professionals who had not previously engaged in much direct client contact to develop these ‘soft skills’, especially in the context of ABSs and greater public access.

Legal research and digital literacy

- 2.99 There was a strong consensus that legal research skills are important and need to be addressed at different stages in the training process. Despite the small proportion of time spent, on average, doing legal research in practice, it is still considered to be a crucial skill especially for trainee solicitors. It was widely recognised that legal research skills were not sufficiently acquired by the end of the academic stage,⁴⁸ and that the transition from an academic to a vocational training course, and then to the reality of real-world problems, involved the use of different research methods and the development of different strategies:

Well, the one that I'm conscious of not matching up is research. I don't think we go far enough. Before I became a lecturer I [worked] at a big City firm and they were very conscious of the LPC not producing students with the right written research skills. Because the problem with the way we teach research is that there is an answer. Because it has to be marked. But that isn't how it works in practice. And so I did a lot of work before I came here on teaching new recruits how to do research and to tackle the issue that you might not find the answer to a question. It might be that there is no answer. And how to deal with that is something which we don't really equip students for, I think.

Academic

Legal research should be taught using the resources that people will actually have access to in their practice. On the BVC legal research was easy with access to a full complement of electronic and paper resources, but most chambers cannot afford to maintain such a comprehensive library and much of pupillage and the early years have consisted of teaching myself how to find answers using freely available resources.

Barrister (online survey)

⁴⁷ A more developed view of what happens in lawyers' meetings with clients can be found in Sherr, 1986 and 1999. These also provide fuller details on training needs.

⁴⁸ There were in any event mixed views about how well the LLB or GDL prepared students. This was particularly linked with whether enough was done to focus on finding and using primary materials, and notably statute law. The British and Irish Association of Law Librarians (BIALL) Working Party on Legal Information Literacy also put forward the view that the academic stage focused on content too much, so that there has been little space in it for focus on process, ie, how students learn what they learn. It should be noted that the CILEx study unit on legal research, which should circumvent some of these stage problems, is a comparatively recent course development which had not been available to all those who provided data. Consequently there was little commentary on it. One respondent did comment that the research task set did not reflect the reality of practice, as it was more demanding and more time consuming than most research undertaken in the office, which might raise the perennial problem of how far training is meant to replicate routine practice or challenge trainees' capabilities.

2. The Current System of Legal Services Education and Training

2.100 A meeting with representatives of the British and Irish Association of Law Librarians (BIALL) Working Party on Legal Information Literacy highlighted a number of problems with trainees' research practices which had been reported to BIALL as part of their research project into digital literacy. Trainees appeared to be generally unfamiliar with paper-based resources by comparison with digital resources. In addition they noted that trainees seemed to depend on one-hit-only searching; in other words they did not check thoroughly and contextually around their findings. They used Google extensively and their searches tended to be shallow and brief. Trainees were also increasingly unable to distinguish between the genres of legal research tools - the difference between an encyclopaedia and a digest, for example. They seemed to lack persistence and diligence in searching, as well as organisation. Digital literacy in general was also raised as part of the wider research and literacy issue. The BIALL Legal Information Literacy Statement (2012), together with the Society of College, National and University Libraries (SCONUL) Digital Literacy Lens, are key documents for the development of digital legal literacies. These provide a framework for a statement of outcomes, as well as for forms of learning, teaching and assessment in relation to digital literacy.

Summary

2.101 It follows from the above that many of the traditional elements of education and training are still relevant and valued. But there are a number of areas where there are gaps or, at least, where something more or better could be done. Key amongst these substantive subject areas is the perceived need to increase emphasis on professional ethics and legal values, on commercial awareness, and, arguably, commercial law. On the skills front, the need to enhance writing skills is almost universally acknowledged, as is a greater focus on drafting skills (particularly in the context of the LPC). There is a perceived need to enhance legal research at all stages, and to maintain a focus on communication and related soft skills, particularly post-qualification.

2.102 The findings on skills offer a number of challenges. The similar levels of relative importance of specific skills in the survey data suggests that all of the skills mentioned are important and therefore need to be addressed somewhere. Respondents were not able to suggest clearly where the teaching for each should best occur. CILEx has pointed out:

There is a temptation to revert to an 'all you can eat buffet' approach to skills. The review should consider carefully where the eventual cost burden of skills training will fall.
CILEx response to Discussion Paper 02/2012.

2.103 The issue of skills in the undergraduate degree seems particularly to divide opinion. Students and trainees participating in focus groups and interviews tended to want more skills and employability-based activities. This pressure may well increase in a more highly marketised higher education system. But the same message is not necessarily coming from practice, and academics are also divided:

And I can see that the more you start incorporating these skills into the degree within our sort of timetable, things like communication and mooted and legal skills and presentations and group work and possibly ethics - the more you start getting these skills in, the less room you have to teach philosophy, theory, rights, justice, the liberal arts kind of side of it. And it's difficult because I can see why employers would want people coming out with these skills. But then you squeeze the amount of room that's left for what you consider to be the more traditional academic side of things.
Academic

- 2.104 Comments from the Bar in particular raised concerns that a focus on ‘wishy-washy’ skills threatened to divert attention away from the core job of the law degree. This they saw to be to develop a high level of academic knowledge and intellectual (analytical) skills.

Perceived strengths and weaknesses of the current system

- 2.105 This section now moves from content to more structural issues. Many stakeholders were broadly satisfied with the operation of legal education. Any dissatisfaction tended to be voiced by the ‘grassroots’ of the professions and by some students. Most of this dissatisfaction related directly to issues of access, cost and diversity, though concerns about the quality of some of the training also emerged.
- 2.106 The dominant opinion derived from the research is that the system of LSET works well, but there is room for improvement. Participants in this research, however, struggled to articulate a clear future vision. Some of the reasons for that struggle will become more apparent in Chapter 3, and the issue of future-readiness is returned to later in the report.
- 2.107 Five themes emerge from the data as central to any debate about preserving the current strengths of LSET while addressing weaknesses and ensuring fitness for the future: quality; consistency of levels of attainment; mobility and career progression; access, numbers and cost and, finally, the effectiveness of CPD. In this chapter, these issues will be considered in more detail.

(International) quality

Debates about the impacts of globalization on the legal profession are now well developed. Yet the way structures and processes of legal education interact with and may even be changed by processes of globalization has received considerably less attention than debates about the relevance of curriculum content for ‘global lawyers’. As a result, the impacts of processes of globalization on the very structure of legal education, the regulation of education providers and the role of education in maintaining professional values and competency levels are all in urgent need of analysis.

Faulconbridge and Muzio (2009)

- 2.108 The significance of English law as a jurisdiction of choice in international trade and commerce is widely recognised. This recognition is of major importance to the UK economy, and supports the reputation of the system both domestically and internationally. Lady Justice Hallett (2012) has pointed out:

The British legal profession and the judiciary, produced from amongst its ranks, are currently held in high esteem throughout the world. Their reputation for professionalism and integrity is second to none. As a result the UK attracts work (on a conservative estimate £3.2 billion in 2009) and we attract requests for assistance from developed and developing countries from every continent. We are constantly being asked to provide British judges and lawyers to advise other jurisdictions on how best to develop and sustain robust legal systems and to provide advocacy and judicial training.⁴⁹

49 Submitted by the Council of the Inns of Court (COIC).

2. The Current System of Legal Services Education and Training

2.109 The quality and international standing of English and Welsh lawyers were widely declared by participants in focus groups and interviews and respondents to discussion papers, and the quality of education and training was commonly inferred. Whilst many of these comments were general assertions, they also reflected a significant foundation of experience:

We see lawyers from virtually every country in the world, and collectively practise in many of them. An English legal education is a good legal education.

City of London Law Society response to Discussion Paper 01/2012

Our courts and legal system could not possibly have the universal reputation that they have if the lawyers who operate it were being educated and trained inappropriately.

Chancery Bar Association response to Discussion Paper 01/2012

2.110 A considerable number of similar comments were received in responses to Discussion Papers, in the online survey, and in some of the focus groups and interviews. Many of these also emphasised that the LETR should not do anything that would diminish that reputation, and the international competitiveness of the law of England and Wales.

2.111 In terms of isolating those features that contribute to the standing of the English and Welsh professions, a number of respondents emphasised the commitment to maintaining what was often referred to as a 'gold standard' of qualification. This could mean something different for different professions. For some, whether in respect of degree courses or specific professional training, it was the basic rigour of the qualification and its assessment, as one patent attorney observed:

... the UK profession has a world-wide reputation for excellence. If you're a fellow of the Chartered Institute of Patent Attorneys, actually people come to you when they've got something hard to do ... [Y]ou have no control over the standard of European attorneys, that's down to the EPO, and the EPO alone - but you can control the standards of UK attorneys ... the profession basically controls itself. And that's why people would choose a UK attorney to represent them before the EPO, because by virtue of being trained in the UK, qualified in the UK, they expect that higher standard.

2.112 Others, across a range of occupations, highlighted the significance of good quality work-based learning. Being based in an international practice environment in the UK - and particularly London - itself creates the opportunity to build quality, by exposing trainees to high level commercial and international work that might not be available in many jurisdictions. Whether this required training individuals in a radically different skill set from those doing other categories of work was perhaps more moot; one barrister, for example, did not think that the training was necessarily or substantially more 'international' in design, but was rather 'domestic training in disputes involving international parties'. As noted above more generally, the training contract and pupillage were viewed as a defining feature of the education and training system; characterised, for example, by the City of London Law Society as the 'jewel in the crown'.⁵⁰ The other professions similarly tend to see the work-based aspect of training as essential to maintaining high standards.

⁵⁰ The emphasis on work-based training has arguably been the key differential between UK and US training systems. There are now a number of examples of US law firms who have sought to 're-engineer' the first year associateship to build-in a higher degree of structured training that enhances both the new associates' development and their value to clients – see Furlong (2010).

- 2.113 The international standard of English and Welsh legal education can be assessed by objective measures. Domestically, institutions and courses are quality assured, but there is no equivalent international benchmark. Continuing international demand for UK legal qualifications can be seen as a plausible proxy for quality, and undergraduate and academic postgraduate courses continue to recruit strongly in the global market, despite increasing competition from continental Europe, North America and Australia. Official figures indicate that 22% of law students at UK universities are domiciled overseas (UKCISA, 2012), including nearly 80% of (academic) law postgraduates. This places law in the top four subject areas by level of international recruitment, behind business studies and engineering and technology. The Bar also continues to draw international students: about a third of BVC/BPTC students annually tend to be international (BSB response to Discussion Paper 01/2012), and over 50% of those called to the Bar in 2010/11 were non-UK nationals. (Equivalent data are not published for the LPC.) The top tier of UK universities performs well in global rankings.⁵¹
- 2.114 Nevertheless concerns were expressed by respondents about the relative quality and competitiveness of both the LLM and the professional qualification compared with the US system. Lawyers who are qualified in other countries may become qualified under the New York Bar by taking an LLM course in a US University and thereafter passing the New York Bar Examination. Subsequently the visa rules allow them to practise for one year in a US law firm before they must return to their country of origin, or go elsewhere. This scheme allows a real understanding of US law to be developed within 2-3 years, and it is argued⁵² has become the most important method of qualification as ‘an international lawyer’. In comparison the system of requalification in England and Wales is said not to be so attractive.⁵³ A very different view also appears:

... effectively the New York Bar qualification de-values itself. As a purchaser of those individuals to come and work at your firm, ... you're going to say to yourself 'well everyone's got that, it's frankly not good enough to do this job so I'm not going to set that much store by it' and then people will stop taking it, and they'll be doing something else that employers consider more effective.
Solicitor

- 2.115 The concerns expressed may therefore be misplaced, and the report returns to this issue in discussing comparability of standards in Chapter 5.

Consistency of standards

- 2.116 At the same time as recognising the international quality of the top end of the LSET ‘product’, some concerns were raised about the consistency of levels of attainment across both academic and professional awards. These concerns were particularly apparent in the Bar and solicitors’ professions, where there is a greater diversity of providers and ‘product’. It is possible that at least some of the variations in views recorded earlier in this chapter are reflective of that diversity and the variety of experiences that the system accommodates. The issue of consistency cannot be addressed in the context of most forms of work-based learning across the sector because, currently, any appraisal is a matter primarily for the employer/supervisor, without significant external comparison or validation.

⁵¹ Taking the two most established global rankings, in 2011/12 the UK had 10 in the THE world ranking top 100 (in order of ranking): Oxford; Cambridge; Imperial College, London; UCL; Edinburgh; LSE; Manchester; Kings College, London; Bristol, and Durham, with a further 21 institutions in the top 200. By contrast 19 UK institutions made the equivalent QS top 100: Cambridge; Oxford; Imperial College, London; UCL; Edinburgh; Kings College, London; Manchester; Bristol; Warwick; Glasgow; LSE; Birmingham; Sheffield; Nottingham; Southampton; Leeds; Durham; York, and St Andrews.

⁵² In a letter to the LETR research team from a ‘Magic Circle’ firm, backed up by comments from the College of Law (now the University of Law).

⁵³ *Ibid.*

2. The Current System of Legal Services Education and Training

- 2.117 Two particular points of inconsistency were mentioned in the LETR research. Certain respondents identified inconsistencies in the breadth or depth of coverage of the 'core' subjects provided under the prescribed curricula of different universities. Others complained of inconsistency of standards and comparability as between equivalent qualifications awarded by different institutions. Responses raising inconsistency as an issue included some key institutional respondents and providers.
- 2.118 In relation to the law degree, respondents reflected more widespread concerns about 'grade inflation', the increasing numbers of upper seconds, and perceived variability between them:

I think the focus on the standard of degree is perhaps a little outdated now. I think degrees vary so widely and what a 2:1 means at one university is vastly different from another. So I'm slightly dubious about that as a standard.

Barrister

The problem is the diversity. Law degrees vary in quality and the assessment methods used.
Academic (online survey)

This was seen to create selection difficulties for employers, particularly as recruitment decisions are increasingly being made on (predicted) degree grades, rather than performance on the LPC or BPTC. The point was also made that uncertainty over standards could have an impact on diversity, as recruiters were wary of moving away from tried and trusted 'brands'. Interestingly, given the degree of discussion about consistency on the QLD, concerns about consistency barely arose in discussions about the GDL which covers the same ground.

- 2.119 The LPC generated a number of strong views, where concerns about consistency uncovered larger issues for some about the programme's perceived lack of underlying rigour. As the comments below indicate, variation in assessment methods and practices may account for much of the perception of inconsistency.

LPC courses are more or less farcical when one institution has, for example, a take away drafting assessment and other institutions do not. Students are quite able to get others to do their work for them when it is not done in supervised conditions. One student complained on failing the LPC that he would have been able to do the drafting assessment in non-examination conditions at another institution and would thereby have passed. The process of external examining is a very basic safeguard, one step up from mere face-saving, based on subjective views of a range of individuals with varying experience and little authority to deal with their concerns. They maintain a certain rigour but the resultant assessment instruments allow competency to be measured on a wide spectrum.

Academic (online survey)

The vocational stage of education for solicitors is currently characterised by varying standards of provision across those institutions that offer the programme. While the providers are currently 'policed' by SRA external examiners, LPC assessments are nevertheless of variable standard and content. This can be confusing for employers and students.

Kaplan Law School response to Discussion Paper 02/2012

Current assessments are not assessed vigorously enough and are unrealistic, with little practical application.

Junior Lawyers' Division response to Discussion Paper 02/2012

- 2.120 CILEx courses and the BPTC take contrasting approaches to assessment from the LLB and LPC. CILEx level 6 law and practice papers are set centrally, 'so teacher and examiner are separate: students can only rely on past papers to anticipate what might be in an exam. We believe this creates a consistent and reliable standard'.⁵⁴ It is notable that, in interviews and focus groups, no issues of consistency were raised, though there was some recognition that consistency was bought at some cost to both flexibility and, in assessment, verisimilitude to practice, though the latter problem is not unique to CILEx course assessments.
- 2.121 The BPTC, by comparison, has moved to a half-way house with a mix of internal and centrally-set assessments.⁵⁵ This change followed the 2008 Wood Report's recommendation that the knowledge-based areas (civil and criminal litigation, professional ethics), should be assessed by a mix of centrally set and assessed multiple choice questions, and short answer questions that are centrally set but marked locally against a standard set of assessment criteria.
- 2.122 The data gathered does tend to suggest that any move to more centralised assessments is likely to be controversial. For example, while it is supported by Kaplan, based on their experience of QLTS, it is regarded by the University of Law as a retrograde step which, by separating the assessment from the learning, would take the LPC backwards (see responses to Discussion Paper 02/2012).⁵⁶
- 2.123 Implementation of centralised assessments can be challenging, as demonstrated by the change process undertaken by the BSB, (acknowledged in response to Discussion Paper 01/2012). This was exacerbated by student complaints regarding the fairness of the summer assessment in 2012. A small number of comments was received on this from students, providers and practitioners. One of the more constructive highlighted the importance of building in sufficient lead-time and trialling into any change process, and possible implications for the LETR.

[O]ur experience of introducing central assessments, which has come from the BPTC, has not been smooth and so if there was to be any sort of transition in the future to more, I don't know, national qualifications which I suppose is a possibility I would think there really has to be quite a long lead-in time to that - lots of trialling and very strong systems in place before that was introduced ... I think there's been a lot of things that it's thrown up that we perhaps hadn't expected and it's been a tremendous amount of work. I think if you spoke to anybody from any of the providers I think they'd say the same thing.
Academic (online survey)

- 2.124 The question then is, if inconsistency is an acknowledged weakness of the current system, whether there are mechanisms - such as those employed in the QLTS - that can more robustly secure a consistent standard of attainment, and the extent to which standing-setting or assessment need be centralised?⁵⁷

⁵⁴ CILEx response to Discussion Paper 02/2012.

⁵⁵ Licensed conveyancer and patent attorney examinations are also set centrally. Other smaller professions have centralised assessment by default where they use a single educational provider.

⁵⁶ The reasons why the centrally-set Solicitors Final Examination was replaced by the LPC seem to be argued as follows. The curriculum was driven by the requirements of a centrally set examination, thus teachers felt no ownership of it. This led to unimaginative teaching and rote learning. A return to that system could remove the flexibility that enables LPC programmes to be tailored to the needs of individual firms or types of legal practice. A centrally set examination cannot cater for the assessment of practical skills. A major criticism of the former Final Examination, and of the programmes leading to it, was that trainees entered employment with wholly inadequate skills. To the extent that the Final Examination addressed skills at all, it was by expecting students to write about them, rather than to demonstrate their possession. There would therefore be, it is argued, significant risks to the quality and relevance of the LPC.

⁵⁷ See preceding footnote.

Mobility/career progression

2.125 Another perceived weakness of the current system is poor mobility in terms of transfer between professions, or parts of a profession, dual qualification, mobility between full and partial titles, and partial qualifications under, eg, EU free movement provisions.

2.126 Examples include:

- an LPC graduate looking for alternative forms of employment in the regulated sector (eg, by qualifying with CILEx) as a result of not finding a training contract;
- a Chartered Legal Executive who wishes to become either a solicitor or barrister, or a registered trade mark attorney who wishes to become a solicitor;
- a barrister who wishes to move in-house from the self-employed Bar;
- a French notary who wishes to practise out of London.

2.127 With multiple professional titles there is a potential network of permitted and exempted pathways. In some instances, for example, as between Chartered Legal Executive and solicitor there is a clear transfer route (though the actual process of transfer may not be so straightforward), and in others (as between Chartered Legal Executive and barrister), there is equally clearly none (since CILEx Fellows are not 'graduates' by virtue of that qualification). In discussion respondents pointed out a number of anomalies such as the lack of transferability/reciprocity between registered trade mark attorneys and solicitors; the need for barristers to take the formal step of giving-up independent practice to move in-house; and the limits on Chartered Legal Executives applying to the Bar.

2.128 It may be that few would wish to take these steps. It may not be easy to predict demand for something that does not currently exist. Three potential issues seem worthy of consideration.

2.129 First, a system should not create barriers to pursuing a career without a risk-based justification. Regulatory constraints may not be transparent.

I currently have four years of work - more than would be done under a training contract - but because I did not complete my LPC before gaining enough work to complete my Fellowship I still have to sit a two year training contract (if I ever get one, my lack of degree seems to be an issue because I did not take the traditional route). Surely the four years I already have should have covered everything a training contract would?

CILEx member (online survey)

Mobility and horizontal mobility within the sector may become an increasingly critical issue for all the regulated professions if the market becomes more fluid. There are a number of problems in the existing set of LSET structures created by a lack of defined 'off-ramps' and 'on-ramps'. Examples of those 'blocked' in the existing structure include individuals who are part qualified and decide they are on the wrong pathway; those who are prevented by market conditions from completing a qualification (eg, a BPTC graduate who cannot get a pupillage) and those individuals who wish to develop a particular skill set further than they can under an existing title.

2.130 Second there may be specific equality and diversity effects in restricting vertical mobility, eg, in preventing a paralegal from 'moving-up' to a regulated title:

The challenge is therefore to accept and embrace the diversity of legal professionals operating at different levels and in different areas within the legal services sector whilst endeavouring to ensure that those who are willing and able to cross-qualify sideways or 'upwards' are able to do so. This is where the regulatory attention on diversity and social mobility in the legal education and training context should fall and we would look with interest upon any recommendations for positive change in this area.

Legal Education and Training Group response to Discussion Paper 01/2012

- 2.131 Third, European free movement provisions add to the complexity of pathways (by adding registered foreign lawyers, Bar Transfer Test (BTT) and Qualified Lawyer Transfer Scheme (QLTS) graduates and transferees in the smaller professions) and need to be factored-in. For some of the smaller regulators, for whom these issues have yet to arise in practice, restricted practising certificates may be an option. Possible changes to the Mutual Recognition Directive, permitting mobility in cases where a migrant can claim partial access to a reserved activity could be perceived as more problematic for the professions, allowing in outsiders without sufficient knowledge of the law and procedure in England and Wales.

Access, cost and numbers

- 2.132 The largest concerns among those who were critical of the system related to growing student numbers and the escalating cost of qualification. Despite the increase in fees, demand for undergraduate level law remains high and, anecdotally, a number of university law schools anticipate scope for further expansion. In conjunction with numbers graduating with a GDL this popularity has enabled the vocational education sector, and particularly the University of Law and BPP (the two largest private providers), to grow rapidly since the 1990s, even though only half of law graduates progress to vocational training. However, there are recent signs that a plateau has been reached with most providers now having excess capacity.⁵⁸ The recent announcement by Oxford Brookes University that it intends to close its LPC course in 2014 may mark the start of shrinkage and consolidation of the LPC market. Nonetheless, despite excess capacity and contraction of the market, there are still currently more LPC graduates than training contracts, creating a further bottleneck in the system.
- 2.133 Numbers seeking access to the BPTC, despite the enormous difficulties of obtaining pupillage, continue to grow (Bar Council/BSB, 2012).
- 2.134 It is clear from analysis of the data that there is a significant level of concern, if not anger, among those who have invested much time and money in the initial stages of education and then been unable to find qualifying employment within the regulated sector. Respondents mentioned:
- lack of initial information about the likelihood of obtaining the right kind of employment;
 - fears of - and experiences perceived to have involved - discrimination or unfair disadvantage in recruitment, and particularly the perception that the system only 'works' for people with certain kinds of attributes (discussed further below);
 - being left 'in limbo' with no recognisable status if an individual is unable to obtain the right kind of employment to qualify;
 - potential for exploitation if entrants are required to undertake unpaid internships and/or lengthy periods as paralegals in the hope of obtaining the right kind of employment;

⁵⁸ The SRA's current information is that there are 9,626 full-time LPC places (as against 6,035 students enrolled in 2012/2013) and 2,854 part-time places (as against 2,793 students).

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- lack of recognition of prior experience, and other disadvantages experienced by mature entrants.
- 2.135 The prospects for resolution of these issues need to be considered in the context of the structural changes now facing the sector, which are discussed further in Chapter 3.
- 2.136 The potential shift in balance between trainees and paralegals in law firms, and the impact on recruitment, is a key issue. There are reports of firms diverting recruitment substantially or entirely away from conventional training contracts, making the paralegal role a common point of entry, from which trainees could subsequently be selected according to need and capacity. Some evidence was obtained of firms making the process even more attenuated, so that those seeking work must first undertake an unpaid work placement or internship even to be considered for a paralegal role. This not only has implications for training contracts, but for the development of at least part of the paralegal workforce, as LPC/BPTC paralegals step into roles that might previously have been filled by CILEx members or even unqualified clerks or secretaries.
- 2.137 Options, beyond paralegal work, for those seeking entry to the Bar are, if anything, more narrow given the number of BPTC graduates chasing a very small number of pupillages. It is unlikely that, if implemented, proposals in the Burton Report (COIC, 2012) to create additional pupil numbers will make a significant difference. The likelihood of further attrition in the wake of changes to both legal aid and personal injury funding also cannot be ruled out.
- 2.138 In response to this situation respondents made the following suggestions:
- LPC places should be confined to those who have already obtained training contracts, as in Northern Ireland;
 - vocational education for solicitors should be absorbed entirely into the workplace, supported if necessary by consortia of employers, and
 - the BPTC could be confined to those who have already obtained pupillage, or be blended with pupillage in a model similar to that used by CILEx, supported perhaps by the Inns.
- 2.139 There was a lack of consensus about whether, if the regulation of periods of supervised practice were changed to allow employment in a broader range of contexts, this would enable more people to qualify. Some felt that the practice of employing paralegals with no guarantee of progression was now so common that employers would simply continue to hire paralegals rather than undertake the additional administration of a period of supervised practice. Others felt that the market for solicitors and barristers was unlikely to increase, but that different roles, or more paralegal roles would become the norm in any event. Some respondents, however, felt that there was an appetite, in some sectors (for example, in-house practice) to provide supervised practice where that is currently blocked.
- 2.140 Cost and bottlenecks obviously have implications for access, diversity and social mobility. In Discussion Paper 02/2011, it was observed that the legal profession appears to be performing 'well' in terms of what might rather crudely be called 'middle class' diversity, but that social mobility was actually in decline. The paper concluded (para. 113):

In terms of access to the profession, the qualification process, requiring as it does a mix of strong credentials and ascriptive attributes, creates successive barriers to entry which tend significantly to reduce the opportunities for those from the most disadvantaged backgrounds. There are unlikely to be 'quick fixes' to a problem that is, in many respects, shaped by intergenerational patterns of advantage and disadvantage.

- 2.141 Despite the good intentions of some legal services sector employers, there are distinct barriers to entry into the legal professions, arguably more challenging than the barriers to entry to Higher Education generally. Place of study is highly relevant in accessing crucial vacation schemes and internships and obtaining training contracts and pupillage.⁵⁹
- 2.142 Prospective applicants may be affected in two ways: those who lack the social and economic capital to be able to take the risk of not succeeding may be deterred from competing at all⁶⁰, and in a 'buyer's market' employers may be averse to taking recruitment 'risks'. One respondent thus described the recruitment process as 'infected by a safe approach'.⁶¹
- 2.143 The professions' strong preference for, and belief in, the reliability of academic results and credentials also comes out strongly in the quantitative data, as Table 2.10 demonstrates. They look for 'good A levels and a 2:1 from a good university'. 95% of respondents to the survey, on average, thought that academic qualifications were a reliable system for determining access to professional education.⁶²

Table 2.10: Pre-entry qualifications; reliability of using results from secondary, further or higher education, or specially administered tests, to determine access to professional education and training

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).

	MISSING	COMPLETELY UNRELIABLE	UNRELIABLE	SOMEWHAT UNRELIABLE	NO-EFFECT	SOMEWHAT RELIABLE	RELIABLE	COMPLETELY RELIABLE
Barristers	0.3%	0.6%	0.6%	1.6%	1.6%	20.9%	56.6%	17.7%
Solicitors	0.0%	0.0%	0.6%	3.1%	1.8%	29.8%	49.4%	15.3%
CILEx members	0.6%	0.0%	0.6%	0.0%	1.2%	18.6%	46.6%	32.3%
Weighted Average	0.3%	0.1%	0.6%	1.7%	1.6%	24.1%	50.0%	21.5%
All Respondents	0.3%	0.3%	0.7%	1.9%	2.0%	24.2%	51.6%	19.1%

2.144 This can be juxtaposed against a number of responses that recognised the importance of diversity, and demonstrated commitment to diversity initiatives such as PRIME. However, there was limited evidence, in responses to Discussion Paper 02/2011, as to the amount of difference such initiatives will actually make to the workplace. As a student focus group participant observed:

59 Shiner and Newburn, (1995).

60 The background evidence for this is discussed more fully in Chapter 7 of the Literature Review.

61 Paralegal, online survey.

62 Unweighted data.

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There are a few diversity access schemes and bursaries, but through my research, it seems to me that you've got to be kind of exceptionally bright and from a really poor background, as in you know gone through foster care and the only person in your family to go to university and things like that.

- 2.145 There were some responses which identified ways in which institutions and employers might go further:

... performance (more than A-Level and tertiary-level achievement), is an accurate indicator of a student's employment and social mobility prospects, we suggest deeper, sustained and more meaningful contact with students, parents and teachers, at this stage, as opposed to more superficial contact afforded by some current work-experience initiatives.
Freshfields response to Discussion Paper 02/2011

- 2.146 Although the Bar and solicitors look for excellence in academic qualifications and are risk averse in selecting pupils and trainees; CILEx members, costs lawyers and licensed conveyancers are far more socially diverse occupations. The impact on these professions of an influx of graduates who cannot get into the Bar and solicitors' professions might well affect this social diversity. Further, if those graduates see these roles essentially as stepping stones to other 'more prestigious' licensed titles that might also cause perturbations in the market beyond. The significance of newly emerging apprenticeships also needs to be factored in, as these may be seen as a more viable way of increasing diversity at entry level,⁶³ and, by attracting government funding at least at the outset, they have obvious attractions to employers. All of these developments have some further effect on the make-up of the unregulated sector, which is discussed in Chapter 3.

Effectiveness of CPD

- 2.147 Regulated continuing professional development (CPD) exists in many professions, but there is increasing concern about whether CPD is a sufficient guarantor of continuing competence. Attitudes to CPD have been explored in both the LETR research and a range of other studies and consultations, noted above.
- 2.148 There is consensus among respondents that there is value in undertaking CPD, though respondents have mixed views about whether CPD should be a regulated activity. Some respondents suggest that professionals should be trusted to do their job in their own way. But there is also an acknowledgement that other professionals might need some motivation to keep up with changes (see Table 2.12 below).
- 2.149 Some respondents took the view that CPD was only carried out because it is required by the regulator:

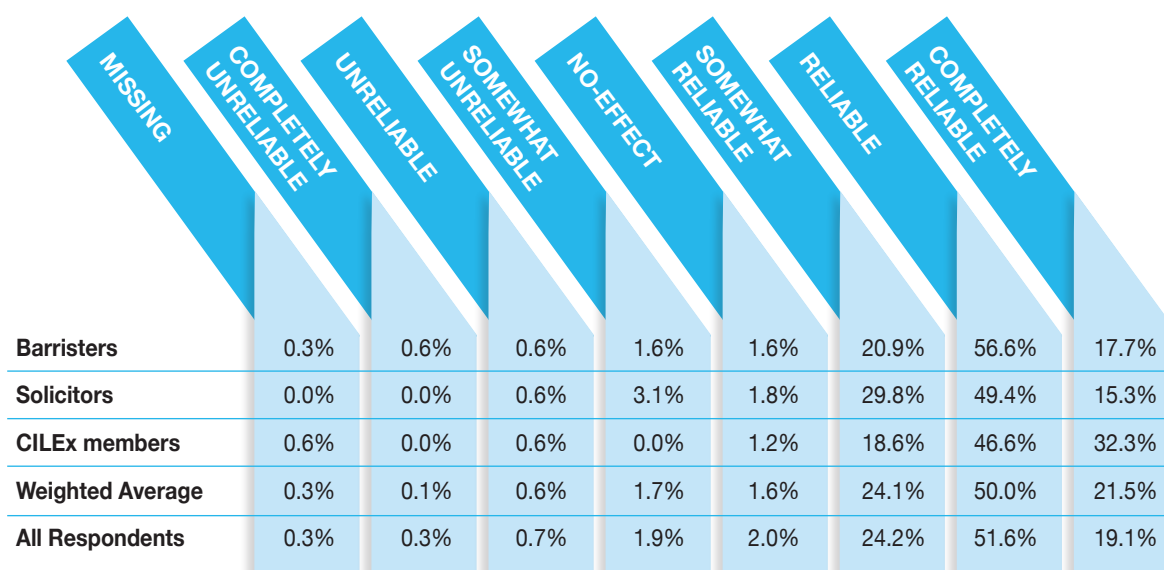
There's too much of it - I think it's a waste of space quite frankly. We have to do it because we're told to do it. I mean I think it's ridiculous quite frankly. The amount of time I spend keeping up with stuff because I have to for my job but I do it on cases. That doesn't count but - you know - I have to go along to series of lectures ...
Barrister

⁶³ Although monitoring of the demographic actually obtaining access may, however, be useful.

2.150 This quotation also corresponds with a clear view about the value of ‘on the job’ learning, ie, that, as a professional you are learning as you work. This perception is even more prevalent than average for CILEx members and the Bar (Table 2.11).

Table 2.11: On-the-job learning; reliability of the knowledge that legal professionals acquire through their day-to-day experience

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).



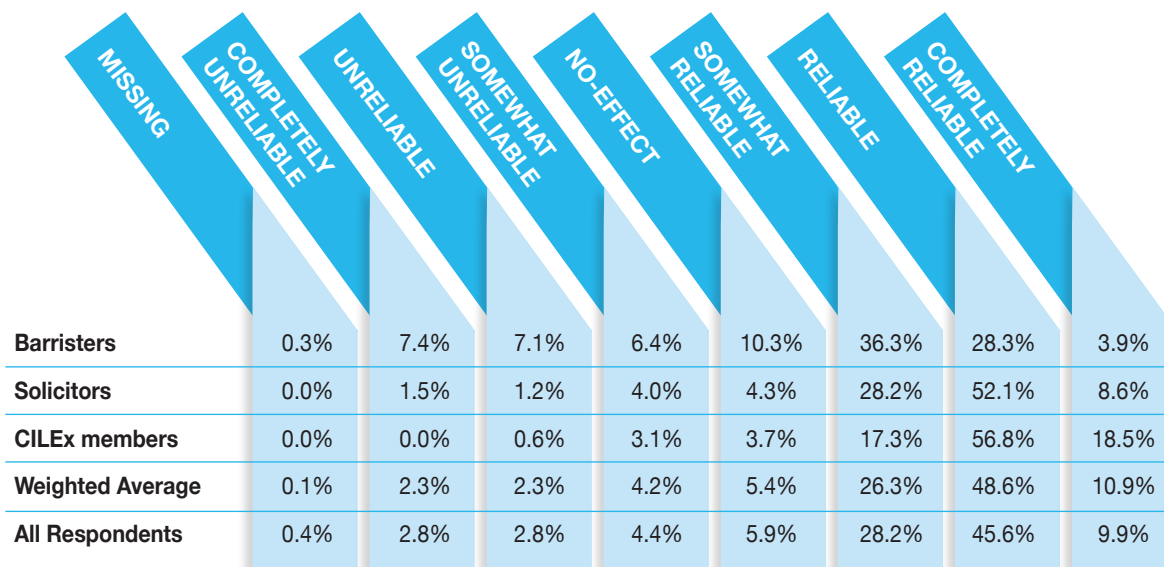
2.151 There is a clear majority view in the survey that mandatory CPD is a reliable indicator of competence (Table 2.12).⁶⁴ This is to be contrasted with the more detailed criticisms, set out below, about the effectiveness of CPD schemes as regulatory tools which in fact assure, rather than simply permit, continuing competence.

⁶⁴ Weighted and unweighted data.

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Table 2.12: Continuing professional development; reliability of training required by a regulator to ensure that legal professionals are competent in, and aware of developments in their field of practice

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).



2.152 A majority of stakeholders seemed to agree that CPD schemes do not achieve all they are supposed to achieve. Many thought current schemes - with the exception of some provision by specialist groups - were 'box ticking exercises', concerned only with compliance and not the learning or enhanced practice that should result from undertaking the CPD activity:

... we need to think about actually where is it not actually working at the moment? And it's in continuing education which, to be honest, everybody sees as something you tick the box and hope nobody examines you because you've done it as quickly as possible. That's got to be made a serious issue.

Academic

... there is merit in thinking about whether CPD as it stands - the way it's run at the moment - is really a valuable or a meaningful way of pursuing professional development. The truth is at the moment most of it is just getting the points. I think the new practitioners' courses are different. They are more genuinely focussed on professional development. And that can continue ... But certainly my feeling about CPD in chambers is that it's not really meaningful.

Barrister

The current inputs based model does not seem to promote the kind of activity that is beneficial in all cases. Whilst it is impossible to build a model that ensures that CPD will be valuable to all comers, a focus on what is being learnt from CPD, reflection on how to incorporate it into practice and planning for future activities, may all encourage a more productive culture. CPD has to be done in an effective manner; built in and reinforced over time and at a stretching level.

Law Society response to Discussion Paper 01/2012

- 2.153 A compliance approach was perceived by some to be of benefit only to the CPD providers who charge fees for delivering such courses. Cost was perceived as a barrier for those in sole or small practice in particular or those who could not guarantee that employers would subsidise appropriate activity:

Unlike solicitors, barristers incur a double financial whammy when they enrol on a CPD course - the cost of the course and the loss of income by taking time out of practice to attend the course. I have not seen any plausible justification for increasing the number of CPD hours for barristers.

Barrister (online survey)

I think that Continuing Professional Development is essential in any legal profession and it should not necessarily be restricted to what is necessary to meet the requirements of CILEx or the Law Society. As a parent it isn't easy to find the time, and the Local Authority I work for, like most, have budget restraints that severely affects training, but 16 hours of training a year is NOT enough to keep abreast of changes and expectations of a professional in practice today.

CILEx member (online survey)

- 2.154 Some respondents suggested that they found regulated CPD schemes irrelevant in helping to assure quality. Many of these respondents argued that it is the market which ensures that only good, effective professionals remain in practice, as those who do not meet clients' standards will simply cease to be instructed.
- 2.155 As the kinds of activity demanded by existing CPD schemes were not perceived to be necessarily the most useful means of maintaining and enhancing competence, some respondents suggested that complete redesign was required.

I'd try and start all over again on how to devise a sensible CPD system ... I think people should look at how rigorous it should be, how it's going to be assessed, but at the same time, make it accessible. I think it's right that there doesn't all have to be classroom activity but I'd say that much of it should be.

Academic

- 2.156 It was, in addition, suggested that regulators could do more to support those in sole practice or small firms where BME individuals might be over-represented. One solicitor suggested treating the whole of CPD from the perspective of risk analysis:

I would scrap CPD. I would scrap that completely and find a different way of doing that. I think looking at what are key components that need to be checked and then the SRA actually being robust about doing that rather than saying you all tick a form and it's a complete waste of time. So you either have something, and it is checked and followed through, or you just don't bother with anything at all.

Solicitor

- 2.157 A range of more administrative concerns were also discussed. These included the pressures on compliance for, for example, those on maternity leave and those (eg, CILEx members) whose employers might prioritise the CPD of other employees, such as solicitors, above their own; and the need for separate accreditations to be sought from different regulators in organisations which included members of more than one profession.

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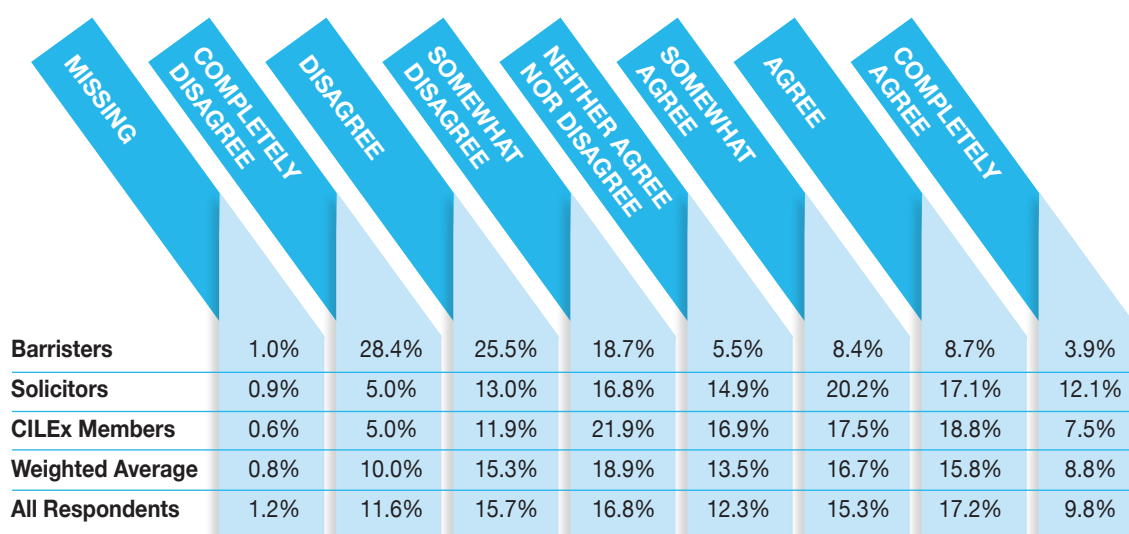
2.158 Finally it should be noted that, in the online survey, increased CPD (likely to be envisaged as increased hours) was strongly opposed by barristers and notaries, while other groups overall were generally evenly split.⁶⁵

2.159 The findings of the CPD review commissioned by the SRA and its recommendations (Henderson et al, 2012) fit well with the findings in this report. These suggest that there should be more flexibility in terms of what is counted for CPD, that external providers of CPD should be further monitored and regulated and that CPD should be better planned and tailored to individual needs. Recommendations to the SRA included:

- authorise independent schemes operated by employers, law societies or affinity groups;
- reconsider the purpose of accreditation (including the possibility of dispensing with the requirement of a proportion of accredited activity);
- require CPD providers to provide more detailed pre-booking information;
- require providers of public CPD to publish online ratings/feedback;
- require providers to report annually to the SRA;
- reconsider the provision that employers are not required to pay for CPD or to release time;
- retain a minimum hours requirement, but of no more than 16 hours;
- require documentation of a learning cycle;
- require individuals to log all their CPD activity, not just the minimum to satisfy regulation;
- implement an auditing process of individuals' records;
- implement a progressive enforcement and sanctions system;
- review the Management Course Stage 1 for relevance;
- consult the profession more widely on the need for any compulsory CPD components (eg, ethics).

Table 2.13: Practitioners should be required to do more CPD

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).



⁶⁵ Weighted and unweighted data. A survey of CPD for IP attorneys (IPReg, 2012) produced a 77% response that their 16 hours requirement was 'about right'. In the LETR will writers' survey, the current level of CPD activity was considered to be sufficient to maintain competence by over two-thirds of respondents.

- 2.160 The BSB Review on CPD arrived at broadly similar findings, but its conclusions were a little different, suggesting the BSB should:
- increase the range of approved CPD activities;
 - correspondingly increase the number of CPD hours which established practitioners must undertake each year;
 - raise the standard of record-keeping;
 - simplify the system of reporting and
 - simplify enforcement of the CPD regulations.
- 2.161 The proposal for increased CPD hours in particular has met with strong opposition from the profession, and this was reflected in responses from the Bar to the LETR online survey. The BSB has commissioned a CPD Steering Group to follow-up and implement the CPD Review, and this is expected to report its final conclusions in Spring/Summer 2013.
- 2.162 The concurrent IPS study evaluated a number of other CPD schemes, drawing conclusions about both inefficiency in purely 'inputs' schemes and the difficulty, for a regulator, of effectively measuring pure 'outputs'. The new scheme, to be implemented in 2014, was developed by reference to a revised definition of CPD aligned to the regulatory objectives of the LSA 2007 related to the public interest and the protection of consumers. It moves away from input-led approaches and adopts a cyclical model involving 'reflection, planning, action and evaluation'. In the annual cycle, each member must record nine activities, of which at least one must relate to ethics. No activities will be accredited by IPS and both planned and unplanned⁶⁶ learning is accommodated in the scheme. The new model invites individuals to refer their planning to the competency framework to be used for the period of qualifying employment that is a precursor to application for Chartered status.
- 2.163 Although the LETR research data addresses issues across the sector, a number of themes in these investigations align very closely with the findings and conclusions of the reviews by the individual professions: cost; 'box ticking' compliance; exclusion of relevant activity; differential impacts on sole practitioners and small groups.
- 2.164 Issues that arose clearly in the LETR research data included the extent to which CPD activity should be permitted outside one's own specialism and detailed discussion of revalidation or re-accreditation. Some respondents, including the Legal Services Consumer Panel (LSCP), favoured re-accreditation and some in-house lawyers were already very familiar with substantial internal procedures for appraisal and review. Others were more wary, with fears about cost and what re-accreditation might entail. They were also concerned that re-accreditation might duplicate other processes and about who, appropriately, might carry out such a review.

I think re-evaluation is a problem. As somebody who deals with professional negligence claims against solicitors, some of the things you see happen are awful. And you think if there was some sort of re-evaluation process there in terms of what they were doing, would it have made a difference, I don't know. But the thought of trying to put that on the profession, I would have thought would go down like a lead balloon.

Solicitor

⁶⁶ By way of critical incident analysis.

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- 2.165 Given its sector-wide remit, the research investigated both the possibility of increased cross-recognition of activity across the sector and the viability of a single sector-wide scheme (present in some non-law disciplines, see Literature Review, Chapter 5). There was some support for the latter.

This might be worth considering, depending on how any new model was derived and implemented. Needs vary tremendously and so any overall scheme would need to be flexible enough to accommodate this - which may in turn lead to such a scheme being too all-embracing and vague.

BSB response to Discussion Paper 01/2012

This is a sensible suggestion in so far as the future deliverers of legal services will be less defined by their badge and more by their demonstrable competences. Nonetheless CPD should recognise the link between the scope of competency (perhaps this is defined by professional status) and the CPD requirement placed upon them.

CILEx Law School (formerly ILEX Tutorial College) response to Discussion Paper 01/2012

- 2.166 The question of mandatory content was pursued, including, but not confined to reinforcement of ethics and equality and diversity training⁶⁷ as well as management training and specific CPD for those intending to practise in Wales. The issue of mandatory content is discussed in further depth in Chapter 5.

Summary

- 2.167 The perceived inconsistency of standards across the system is a challenging issue for the LETR, particularly in relation to the QLD and LPC. Such consistency problems are a function of scale given the number of different providers of the QLD and the LPC, and can be difficult for regulators to address in a proportionate fashion without risking the benefits of the system. Potential solutions to this critical issue are considered in Chapter 4.
- 2.168 CPD also stands out as an important issue. The extent to which CPD schemes adequately assure competence is an open question, though it is noted that many of the regulators are already working on changes.
- 2.169 The cost of training coupled with the oversupply of qualified persons may not be a regulatory issue. However the concomitant, critical issue of access is of regulatory concern and needs to be addressed in the complex balance to be made between diversity and business risk.

Conclusions

- 2.170 This chapter has focused on three aspects of current LSET: firstly the structure and content of its main programmes; secondly, the knowledge and skills that are considered important by the sector, and the knowledge/skills gaps that are thought to exist: and, in the final section, the perceived strengths and weaknesses of the system of LSET itself.

⁶⁷ A number of stakeholders, it should be noted, identified voluntary or mandatory diversity training already taking place in their own profession or field of practice.

- 2.171 The chapter highlights the relative complexity of a system that operates through a multiplicity of discrete individual training systems with a range of content and objectives. Two fundamental axes are identified around which current models of training for legal services are constructed:
- axis (i) those that frontload foundational knowledge and skills in an academic environment and those which embed training, to varying degrees, within the workplace, and
 - axis (ii) those which start from a broad knowledge-base as against those which develop a relatively narrow specialism from the outset.
- 2.172 Despite these different operating environments, there is a relatively high level of agreement on many of the key knowledge and skills areas required, with a high degree of support for the existing Foundation subjects at QLD and GDL levels. Many of the traditional foci of education and training are perceived still to be relevant and valued, and there is concern that the core functions of each stage should not be altered by adding more or different objectives.
- 2.173 There was a high level of consistency in the skills and tasks utilised as part of solicitors' work in 1991 and 2012 and in the relative proportions of time spent on each of these. However the data offers some clear indications of both knowledge and skills gaps, and areas for improvement. These arise across the training regimes considered. Key amongst them is: professional ethics and legal values, commercial awareness, and, less consistently, commercial law. On the skills front, the need to enhance writing skills and communication generally is widely recognised, and drafting deficiencies tend to follow on from that (particularly in the context of the LPC). There is a perceived need to enhance legal research at all stages, and to maintain an adequate focus on communication and related 'soft' skills.
- 2.174 The final section of this chapter looked at the assurance of quality through consistency of standards, issues of mobility, progression and access, and the effectiveness of CPD. These themes are linked by the concerns for quality in LSET, and the need to ensure that LSET has the flexibility to respond to a changing market environment. The system needs to be able to identify, attract and retain the best for every role, assure their continuing competence, and provide a reasonable degree of workforce mobility across, as well as within, regulated and related occupations.
- 2.175 There is no evidence that the system, or any one professional regimen, is fundamentally 'broken'. Indeed there is substantial evidence of the strength of the system, both from domestic and international viewpoints. However, consistency of standards is a challenging problem for some training routes. As already recognised by regulators, CPD is an area in need of substantial attention.
- 2.176 At the 'grassroots' and among those, mostly at the early stages of a legal career, who feel that the system for qualification as solicitors and barristers does not work well for them there is a different view. This largely reflects their dissatisfaction with cost, and the difficulties of access to the profession. Inevitably, some will spend considerable sums in pursuit of a career that they are never likely to achieve. The impact of such a waste of human and economic resources, and its particular consequences for the development of a diverse and socially representative profession is a growing concern. Elements of this problem are susceptible to regulatory influence and others may not be. There is a complex balance to be sought between satisfying the business needs of the future legal services sector (to be addressed in the next chapter) and seeking to achieve equality of access to all.

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2. The Current System of Legal Services Education and Training

Annex I Knowledge, skills and attributes - currently prescribed

As curricula may state learning outcomes in considerable detail, this is necessarily a simplification. Nor does it map detailed content, e.g. whether one profession's syllabus for contract law is identical to, or at the same level of complexity as, another's.

	KNOWLEDGE (MANDATED SUBJECTS)	SKILLS	OPTIONAL SUBJECTS ENABLING SPECIALISATION	'ETHICS/PROFESSIONAL CONDUCT' COMPONENTS	NOF LEVEL (IF ANY)
JASB statement (QLD/GDL)	Sources of law, institutions and personnel Public law (constitutional, administrative and human rights) EU law Criminal law Obligations (contract, restitution and tort) Property Equity and trusts	Legal research, analysis and application 'to the solution of legal problems' Oral and written communication 'to the needs of a variety of audiences' General transferable skills including problem solving, use of language 'with care and accuracy', electronic research, communication and word-processing	QLD: Yes (range available will vary by provider) GDL: one optional subject (may be a research project)	'a wide range of legal concepts, values, principles and rules'	QLD: 4-6 GDL: 6
BPTC	Civil litigation, evidence and remedies Criminal litigation evidence and remedies	Advocacy Opinion writing Drafting Conference skills Resolution of disputes out of court Legal research (embedded in the curriculum: writing skills, casework skills, fact management, legal research, management and interpersonal skills.)	Yes (range available will vary by provider)	Professional Ethics Note also that 3 hours on ethics appears in the new practitioners programme.	6-7
BTT (BSB, 2012b)	The QLD Foundation subjects plus BPTC knowledge subjects	BPTC skills	No	As BPTC	3
CILEX level 3 (professional diploma)	Introduction to law and practice Contract Criminal Land Tort	Client care Legal research	Yes	Key professional values embedded in client care unit and referred to in other units	
CILEX level 6 (professional higher diploma)	Additional law and practice units	Client care Legal research	Yes	Key professional values embedded in client care unit and referred to in other units	6

	KNOWLEDGE (MANDATED SUBJECTS)	SKILLS	OPTIONAL SUBJECTS ENABLING SPECIALISATION	'ETHICS/PROFESSIONAL CONDUCT' COMPONENTS	NQF LEVEL (IF ANY)
Costs lawyers (ACL course)	<p>General and Civil Costs. Introduction to the English Legal System, Contact, Tort, Civil Procedure, General Costs Law and Practice, Litigation Funding and Costs Pleadings.</p> <p>Solicitor and Client Costs, Special Courts and Tribunals. Introduction to the English Legal System, Property, Ethics and Professional Standards, Solicitor and Client Costs, Costs in Special Courts, Costs in Arbitration Proceedings and Tribunals and Legal Accounts.</p> <p>Public Funding/Legal Aid. Introduction to the English Legal System, Family Law, Criminal Law, Costs in Family Law Proceedings, Costs in Criminal Law Proceedings (non Legal Aid), Civil Legal Aid, Family Legal Aid and Criminal Legal Aid.</p>	Critical and analytical skills are identified. Some element of drafting present.	No	Ethics and professional standards in module 2	
Licensed conveyancers (CLC, 2011a, 2011b)	<p>Foundation level: Introduction to conveyancing Introduction to law and legal method Land law Contract</p> <p>Final level: Accounts Conveyancing law and practice Landlord and tenant</p>	Legal method includes research and settling disputes Accounts involves some elements of book-keeping	No	CLC accounts and a section on 'the licensed conveyancer'.	4-6
Notaries (see also Society of Scriveners, 1998)	<p>Constitutional/Public Law The Law of Property The Law of Contract Equity and the Law of Trusts Private International Law Conveyancing Business Law and Practice The Law of the European Union Roman Law as an Introduction to Civil-Law Systems Wills Probate and Administration</p>	Notarial Practice (including Bills of Exchange)	No	The function of a notary as a public certifying officer The Notaries Practice Rules and other rules and regulations	7

2. The Current System of Legal Services Education and Training

	KNOWLEDGE (MANDATED SUBJECTS)	SKILLS	OPTIONAL SUBJECTS ENABLING SPECIALISATION	'ETHICS/PROFESSIONAL CONDUCT' COMPONENTS	NQF LEVEL (IF ANY)
Patent attorneys (domestic qualification) (IPReg, 2011) For European qualifications, see EPO (2011).	Basic United Kingdom Patent Law and Procedure Basic Overseas Patent Law and Procedure Basic United Kingdom Trade Mark Law Basic Overseas Trade Mark Law and Practice United Kingdom Designs and Copyright Law Basic English Law Patent Agent's Practice Preparation of Specifications for United Kingdom and Overseas Patents Amendments of Specifications for United Kingdom Patents/Applications in Prosecution, Revocation Proceedings or Otherwise Infringement and Validity of United Kingdom Patents	Some elements of drafting and searching	No	Not apparent in publicly available materials	
Registered trade mark attorneys (IPReg, 2011)	Academic stage Foundations of Law for Trade Mark Practice Trade Mark Law & Practice A Trade Mark Law & Practice B Designs and Copyright Law Vocational stage Introduction to trade mark practice and client relationships skills (including interviewing) Litigation and tribunal practice and procedure and advocacy Professional and self-management	Advocacy Interviewing Trade mark filing/searching Negotiation Reflective learning (assessed)	No	Ethics included in client relationships skills and advocacy at vocational stage	Academic stage: 7 Vocational stage: 6-7
LPC (see also SRA, 2012a)	Business law and practice Property law and practice Litigation (civil and criminal) Wills and administration of estates Taxation	Practical legal research, Writing, Drafting, Interviewing and advising, Advocacy (problem solving embedded) ⁶⁸	Yes (range available will vary by provider)	Professional Conduct and Regulation (including solicitors' accounts)	6-7 (will vary by provider)
PSC		Advocacy and communication skills Client care and professional standards Finance and business skills	Yes (range available will vary by provider)	Client care and professional standards. Also coverage of FSMA and related issues of professional conduct	
QLTS	Foundation subjects as for QLD/GDL Knowledge of the regulatory and fiscal frameworks within which business, legal and financial services transactions are conducted LPC subjects ⁶⁹	Intellectual analytical and problem solving skills are assumed and not tested. LPC skills ⁷⁰	No	Knowledge of the rules of professional conduct, including the SRA Accounts Rules	

⁶⁸ Reflective learning is identified as an outcome, but not assessed.

⁶⁹ However as the LPC outcomes and day one outcomes are not identical, some element of mapping and attribution

to learning in the training contract has been necessary.
⁷⁰ See previous footnote.

Annex II Periods of supervised practice

	LENGTH	SUPERVISOR REQUIREMENTS	PRESCRIBED CONTENT OR OUTCOMES	SIGN OFF OR ASSESSMENT	AVAILABILITY OF PART-TIME OR INTEGRATED MODELS
Barristers	One year pupillage (possible reduction for relevant prior experience)	<p>A barrister who</p> <ul style="list-style-type: none"> • is registered with the Bar Standards Board, • holds a current practising certificate, • has practised for six out of the last eight years, • has regularly practised as a barrister over the past two years • is entitled to exercise a right of audience before every court in England and Wales in relation to all proceedings. There is training for supervisors through the Inns of Court and circuits. <p>Pupillage must take place within an Authorised Training Organisation.</p>	<p>Pupils must achieve a stated minimum level of competence, with specific reference to advocacy.</p> <p>Core:</p> <ul style="list-style-type: none"> • Conduct and etiquette • Advocacy • Conferences and Negotiations • Drafting, paperwork and Legal Research • Specialist work is likely to form a fifth element. • Pupils may in principle undertake fee-earning work in the second 6 months. Prescribed courses must be completed during pupillage. 	<p>Certification by pupil supervisor, director of training and head of chambers using pupillage checklists.</p>	<p>Part-time pupillage is available in principle. BPTC must be completed prior to entry into pupillage.</p>
CILEx members (to 2013)	Five years qualifying employment	<p>Employment must be:</p> <p>(a) by a solicitor or a firm of solicitors in private practice;</p> <p>(b) by a Licensed Conveyancer or a firm of Licensed Conveyancers; or</p> <p>(c) by any firm, corporation, undertaking, department or office where the employment is subject to supervision by a Fellow, Solicitor, Barrister or Licensed Conveyancer employed in duties of a legal nature by that firm, corporation, undertaking, department or office.</p>	<p>This must be work of a legal, as distinct from an administrative nature.</p>	<p>Completion confirmed on application for fellowship</p>	<p>Three of the five years may be concurrent with study. The final two years (post level 6 assessment) must be consecutive. There is provision for part-time work and for breaks in employment. Up to 43 weeks spent on an LPC can be counted as part of the period.</p>
CILEx members (from 2013)	Three years qualifying employment	<p>employed by either:</p> <ul style="list-style-type: none"> • an authorised person in private practice; • an organisation where the employment is subject to supervision by an authorised person employed in duties of a legal nature by that firm, corporation, undertaking, department or office; and <p>in each case, the trainee must undertake work that is wholly of a legal nature⁷¹ for at least 20 hours per week.</p>	<p>Work-based learning competencies divided into eight areas;</p> <ul style="list-style-type: none"> • practical application of the law and legal practice, • communication skills, • client relations, • management of workload, • business awareness, • professional conduct, • self awareness and development; • working with others. 	<p>Assessed by reference to a portfolio and supporting documents.</p>	<p>Two of the three years may be concurrent with study. The final two years of qualifying employment prior to application for Chartered status must be consecutive. There is provision for part-time work (in the 20 hours requirement) and for breaks in employment of up to 12 months. Up to 43 weeks spent on an LPC or BPTC can be counted as part of the period.</p>

⁷¹ Defined as work that 'involves the application of the law or legal practice or procedure in areas such as:

- taking instructions;
- advising and making recommendations;
- drafting documents;
- undertaking legal research;
- corresponding with the parties to an action or transaction;
- making decisions in a legal matter based on legal principles or rule of law;
- representing in negotiations and submissions';

2. The Current System of Legal Services Education and Training

	LENGTH	SUPERVISOR REQUIREMENTS	PRESCRIBED CONTENT OR OUTCOMES	SIGN OFF OR ASSESSMENT	AVAILABILITY OF PART-TIME OR INTEGRATED MODELS
Costs lawyers	Three years relevant work experience	No specific provision as to the nature of supervision	In costs law and practice	ACL/CLSB may audit alleged relevant experience to ensure it was achieved and was indeed relevant.	Period may be before, during or after the period of study and need not be continuous.
Licensed conveyancers	At least 1200 chargeable hours based on 25 supervised hours a week for 48 weeks	A licensed conveyancer, a solicitor or a FILEX who in either case is entitled to offer conveyancing services directly to the public	Assisting in the provision of conveyancing services. A practical training checklist sets out a number of tasks to be performed during the period.	For each period of training the trainee will be required to submit a statement to the Council, signed by the supervisor giving an account of the training received. If the supervisor is not 'qualified' as above, the statement must be countersigned by a 'qualified' person. Only after all the examinations have been successfully completed or been exempted and practical training certificates have been submitted to the CLC can a first licence be applied for.	Normally in parallel with study for CLC assignments and examinations.
Notaries (Master of the Faculties, 2009)	Normally two years	Supervision by a notary with at least five years experience. Notaries carrying out probate or conveyancing may have supervision from solicitors or licensed conveyancers with experience in the fields.	Notarial practice	Supervision involves visits and inspection of work and mandatory course attendance (which may be examined). The supervisor then indicates whether the notary is fit to practise. Scrivener notaries (who must first have qualified as a notary) are required to undertake two years training with a scrivener notary involving inspection of work and the possibility of final assessment by viva	Supervised practice is post-qualification.

	LENGTH	SUPERVISOR REQUIREMENTS	PRESCRIBED CONTENT OR OUTCOMES	SIGN OFF OR ASSESSMENT	AVAILABILITY OF PART-TIME OR INTEGRATED MODELS
Patent attorneys (European qualification)	Not less than three years	Supervision by a professional representative or as an employee dealing with patent matters in an industrial company.	The trainee must take part in 'a wide range of activities pertaining to patent applications or patents'.		Period must be completed at the date of the EPO examination.
Patent Attorneys (domestic qualification)	Not less than two years	Supervision by a registered patent attorney or by a barrister, solicitor or advocate engaged in or with substantial experience of patent attorney work in the UK. NB: 'unsupervised' practice of no less than four years relevant work is an alternative	Practice in the field of intellectual property, including 'substantial experience of patent attorney work'	Evidence of this experience (eg, in a training diary) may be required on application for registration.	Period often in parallel with study and assessment.
Registered trade mark attorneys	Not less than two years	Supervision by a registered trade mark attorney or by a barrister, solicitor or advocate engaged in or with substantial experience of trade mark attorney work in the UK. NB: 'unsupervised' practice of no less than four years relevant work is an alternative	Practice in the field of intellectual property, including 'substantial experience of trade mark attorney work'	Evidence of this experience (eg, in a training diary) may be required on application for registration.	Period often in parallel with study and assessment.
Solicitors	Two years (possible reduction for relevant prior experience)	Supervision by a solicitor with at least five years experience, a barrister or a legal executive. The training contract must be with an authorised Training Establishment.	The compulsory Professional Skills Course (part of which is examined) must be completed by the end of the training contract. Completion is certified by the Training Establishment. Trainees must be provided with: <ul style="list-style-type: none"> • Practical experience – by secondment if necessary - in at least three distinct areas of English law⁷² • Development of skills in both contentious and non-contentious work • Development of skills needed in practice (Practice Skills Standards • Guiding and tutoring in professional conduct, ethics and client care • Gradual increase in level and complexity of work. • Proper supervision 	Training record of experience must be kept. Sign off is by training principal.	Training contracts may be full or part time following completion of the LPC or part-time study contracts, where work is full time and study of QLD, GDL or LPC is part time. Variants allow for the elective stage to be disaggregated and taken into the workplace.

⁷² Compare, however, the Republic of Ireland, where the training contract must encompass: conveyancing, landlord and tenant and litigation and two of wills, probate and administration/commercial, corporate, insolvency/other specialisations including criminal or family law.

Annex III Continuing professional development schemes

NB other than specific requirements for advocates and early career lawyers, this table does not include specialist accreditations for eg pupil supervisors, recruitment or specialist accreditations.

	MODEL: INPUT, OUTPUT, CYCLICAL	MINIMUM HOURS ANNUALLY	PRESCRIBED CONTENT/ ACTIVITY	PERMITTED ACTIVITIES	PRO RATA OR AVAILABLE (other than for new entrants or retired members)	CROSS-RECOGNITION OF ACTIVITIES	CARRY OVER OF SURPLUS HOURS	METHOD OF ASSESSMENT OR REPORTING
Barristers (current system) ⁷³ (BSB, 2013b)	Input	12 hours	New practitioners programmes (including nine hours of advocacy and three of ethics and a forensic accountancy course). Of the 12 hours at least four must be in accredited activities (events accredited by the BSB).	Other activities may include: other courses; being a judicial assistant; teaching, writing books, articles of practice notes (up to 4 hours); moots (up to 2 hours)	Dispensation for eg, illness or sabbatical. Power to waive requirements.	Courses run by the CPS, JSB or Ministry of Justice.	No	Annual submission of record card.
CILEX members to 2013 (CILEX, 2013)	Input (although the output of eg coaching, CILEX Law School tests may be submitted in the record)	6 to 12 hours depending on grade of membership (in 2013 – a shortened year top accommodate implementation of new scheme below))	Five hours of advocacy for CILEX advocates. At least half must be in the individual's specialist area and some activities are weighted dependent on their relationship to the specialist area.	CILEX Law School Updates 2013 (maximum 75%) Relevant Journal or Internet Articles 2013 Attendance at courses or seminars in specialist or non-specialist areas Distance Learning Courses (including e-learning) in specialist or non-specialist areas In-house training by employer in specialist or non-specialist areas Training by local CILEX or Law Society Branches in specialist or non-specialist areas Academic or professional study in specialist or non-specialist areas Production of a dissertation in specialist or non-specialist areas Research of a legal topic in specialist areas only Preparation and delivery of training courses in specialist or non-specialist areas Work shadowing in specialist or non-specialist areas Coaching or mentoring in specialist or non-specialist areas Participation in development of areas of law through Committee or Working Party activity – specialist areas only Writing on law or practice – specialist areas only.	Dispensation for eg, illness, but no pro rata for part-time working	Courses accredited by the Law Society or any other professional body provided it complies with CILEX scheme. Dual counting (eg with CLC) permitted.	No	Online submission of annual logbook.

⁷³ Pending completion of further consultation, the proposed new scheme has not been included.

MODEL: INPUT, OUTPUT, CYCLICAL	MINIMUM HOURS ANNUALLY	PRESCRIBED CONTENT/ACTIVITY	PERMITTED ACTIVITIES	PRO RATA OR REDUCTION AVAILABLE (other than for new entrants or retired members)	CROSS-RECOGNITION OF ACTIVITIES	CARRY OVER OF SURPLUS HOURS	METHOD OF ASSESSMENT OR REPORTING
CILEX members from 2014	9 (of which at least five must be 'planned' activities) for all grades of membership from associate upwards.	At least one entry must be on ethics. CILEX advocates must make at least two entries on advocacy.	The new scheme recognises as an indicative list the activities permitted in the old scheme and adds that the new scheme permits 'learning gained from being involved in a 'critical incident' and learning through the experience of new tasks.' ('unplanned activity')	No (there is a reduction for those working towards Chartered status through the work-based learning requirements)	N/A	No	Annual submission of record (evidence may be demanded)
Costs lawyers	12 points from: Attending ACL National Conference Attending ACL training course Attending CPD approved costs conference or training (in-house or external) on costs related subject matter Attending CPD approved training (in-house or external) on subject matter of relevance e.g. advocacy, area of law in which bills are drafted Attending training by a CLSB Accredited Costs Lawyer Delivery of training on costs by a CLSB Accredited Costs Lawyer Completing CPD approved webinars	A minimum of six hours must be from: Marking of Costs Lawyer examination papers and assignments Attending non CPD accredited in-house training by employer on any legal subject matter Writing articles relating to costs law for the Costs Lawyer Journal or other legal publications Coaching and mentoring of Trainee Costs Lawyers Reading and completing ACL tutorial updates Reading all Costs Lawyer Journals throughout the CPD Year	Other activities must be from the following list: Marking of Costs Lawyer examination papers and assignments Attending non CPD accredited in-house training by employer on any legal subject matter Writing articles relating to costs law for the Costs Lawyer Journal or other legal publications Coaching and mentoring of Trainee Costs Lawyers Reading and completing ACL tutorial updates Reading all Costs Lawyer Journals throughout the CPD Year	No	Law Society, Bar Council and CILEX.	No	Annual declaration of compliance and records may be demanded
Licensed conveyancers (CLC, 2011a)	12-16 hours of 'recognised courses' for managers; 6-8 hours of 'recognised courses' for non-managers	Subject matter must be relevant to the individual's professional development and help to deliver positive outcomes to clients.	Requirement is defined in terms of 'recognised courses' only. However an outcomes focused code refers to standard of work; the best interests of clients; ethics; equality and obligations to keep one's skills and knowledge up to date; to act only within one's competence and to ensure the competence of all employees of any regulated entity	No	Courses must be provided by the CLC or CLC approved providers	No	Self certification of training record.

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	MODEL: INPUT, OUTPUT, CYCLICAL	MINIMUM HOURS ANNUALLY	PRESCRIBED CONTENT/ ACTIVITY	PERMITTED ACTIVITIES	PRO RATA OR AVAILABLE (other than for new entrants or retired members)	CROSS-RECOGNITION OF ACTIVITIES	CARRY OVER OF SURPLUS HOURS	METHOD OF ASSESSMENT OR REPORTING
Notaries (Master of the Faculties, 2010)	Input/some element of output	6 points	At least three points must be in accredited activity (additional requirements for those practising in probate and conveyancing). Accredited activity is defined as a) a face to face course or b) a distance learning course which involves a dissertation or other written assessment.	Non accredited activity is defined as Lectures and seminars; Coaching and mentoring sessions (including supervision of trainees) face to face or at a distance; Writing on law or practice Research on law or practice leading to such outputs as forms, surveys, precedents; Watching and listening Work shadowing; Specialist committees and working parties; Studying for professional qualifications; Setting, marking and moderating professional examinations	Waiver possible.	No explicit provision	No (explicitly prohibited)	Accredited activities must have some form of assessment of learning outcomes (although this could be a questionnaire). Records submitted annually
Patent attorneys/ registered trade mark attorneys (IPReg, 2013)	Input	16	Specific annual requirements for advocates and for litigators. Less formal activities may not normally comprise more than 25% of CPD activity.	An indicative list is provided: Attending or speaking at a CPD event Participating in a formally organised in-house', educational meeting or discussion Preparing a lecture, seminar, book, article or law report where legal research is involved of the standard and extent required for publication in an established legal publication The following activities may not amount to more than 25% of the total: Speaking and preparing for a client seminar Providing a tutorial for trainees and examination candidates Giving and preparing for a lecture on careers in IP Personal study towards professional qualifications Examining for UK (or European) qualifying examinations Activities that relate to relevant European and/or foreign law	Dispensation for illness, career break etc. No pro rata for part-time working.	Yes	No	Annual self-certification

	MODEL: INPUT, OUTPUT, CYCLICAL	MINIMUM HOURS ANNUALLY	PRESCRIBED CONTENT/ACTIVITY	PERMITTED ACTIVITIES	PRO RATA OR REDUCTION AVAILABLE (other than for new entrants or retired members)	CROSS-RECOGNITION OF ACTIVITIES	CARRY OVER OF SURPLUS HOURS	METHOD OF ASSESSMENT OR REPORTING
Solicitors (SRA, 2013d)	Input (a SWOT analysis is recommended but not required)	16	Management Course stage 1 within first three years of practice. QLTS entrants are required to complete parts of the PSC. At least 25% must be by attendance at accredited courses.	<p>Keeping up to date on developments in a specific specialist technological field</p> <p>Personal training in practice management</p> <p>Personal study of books, articles, law reports, conference papers, recordings (eg webinars that are not interactive) and the like</p> <p>Serving on a committee of ITMA or CIPA expressly concerned with IP law and practice or on an IP related committee of a body such as the IP Federation, LES or FICPI</p> <p>Marking papers for UK (or European) qualifying exams</p>	Pro rata reduction for part-time workers. Provision for waiver.	No explicit reference	No	Self-certification. Records may be demanded.

Introduction

- 3.1 Chapter 2 considered the current system of legal services education and this chapter focuses on the legal services marketplace. The chapter surveys available information and research data about the sector that LSET serves, and how it is changing. It then considers what implications such changes might have for LSET.
- 3.2 The legal services sector is facing a set of challenging conditions. Richard Susskind, in his work for the research phase, suggests that the 'next two decades will see more change than the past two centuries in the way in which lawyers and the courts function' (2012:41).¹ The uncertainty that this signals presents a significant challenge for the provision of legal services, LSET, regulation of the professions and for this research. This chapter focuses on the most important trends, with the most wide-ranging implication for the future. The research is considerably helped by work that has been carried out for the Law Society to assist in planning the next 20 years, and this is discussed in the next section. It should be noted that many of the potential drivers of change in this environment are, at best, still emerging.
- 3.3 In examining trends and developments in the sector, the chapter draws both on published research, forecasts and scenarios, and on the quantitative and qualitative data from the LETR research. It begins with a brief overview of economic performance and then moves to the findings of the Law Society research which assist in providing a structure within which to examine possible change. The LSET research on workforce projection provides the final section of the chapter before conclusions are drawn.

Economic performance of the legal services market

- 3.4 On the face of it, the value and scale of the legal services market makes it an economic success story. The value of the sector has risen steeply since the 1980s and this has fuelled a massive expansion of the legal profession. While the overall trend has been upward, year on year growth peaked in the early 2000s. Turnover in the UK legal services sector² grew by 60% between 1995 and 2003, to a total of £19bn (Department of Constitutional Affairs, 2005); by 2010, despite downturns in performance, it had grown by another 35% to reach £25.6bn, or 1.48% of GVA (gross value added) (Law Society, 2012a). It is estimated that solicitors in England and Wales accounted for over £16bn of that total (LSB, 2013:1). As in other successful areas of the economy, however, this picture of steady growth has been interrupted by the recent recession. With evidence of widespread contraction in the demand for legal services (LSB, 2012), turnover has fallen in real terms across the sector as a whole between 2010 and 2012 (Law Society, 2012a). Looking towards 2020, the rate of recovery remains uncertain. The Law Society forecasts that after the dip of 2012, legal services will return to 'modest' economic growth in 2013, with longer term growth predicted to be over 4.2% from 2015 (Law Society, 2012a). The projections developed by Wilson (2012) for the LETR research similarly anticipate little economic growth in real terms before 2015 at the earliest. Such projections are, of course, grounded in part on historic performance, and may well underestimate the impact of critical changes to the regulation and funding of legal services, that will impact different parts of the legal services sector very differently.³ These changes will be explored through this chapter.

¹ See also Espirito Santo, 2011.

² Note - these figures refer to the United Kingdom and not just England and Wales.

³ Data from the recent Time of Change study thus demonstrate that recent performance has tended to vary substantially according to firm size and market segment. Medium sized and large firms were most likely to report increases in turnover, with single solicitor firms least likely to do so. Firms with 25% or more of their work in property or crime were most likely to report a decrease in turnover of 10% or more, whereas those concentrating on commercial and personal injury work had 'fared best overall' (Plesance et al, 2012:52). Survey data based on a sample of 2,007 firms across England and Wales.

Looking to the future: identifying the drivers of change

- 3.5 In a recent and valuable scenario building exercise, the Law Society (2012b) has identified four future scenarios (Table 3.1). The scenarios, which also draw on the earlier Law of the Future scenario planning exercise undertaken by the Hague Institute for the Internationalisation of Law (HiIL)(2011), are not predictions but attempts to identify plausible futures. Focusing on a range of drivers for change that are likely to have high impact and also high uncertainty in terms of possible outcomes, the developers of the scenarios identified a cluster of factors based around global and domestic economic and business performance and purchaser behaviour that were considered key. These were then used to create possible versions of the legal services environment as it might appear in 2025.⁴

Table 3.1: The legal services market in 2025: Law Society scenario overviews

<p>'THE LAW IS AN APP'</p> <ul style="list-style-type: none"> • Highly interconnected, global economy • High global and domestic economic growth • Global legal environment marked by growth in international rules and institutions, which runs alongside growing dominance of private-public governance mechanisms • 'Leading buyers' play an active role in shaping the services they want, supported by strong and active civil society organisations • Innovation has transformed the market • Smaller number of lawyer-owned entities, but opportunities for all sorts of providers and individual lawyers if they can meet the high expectations of buyers 	<p>'WISE COUNSEL'</p> <ul style="list-style-type: none"> • Rapid economic and socio-cultural globalisation together with increased complexity • High global and domestic economic growth • Increased internationalisation of law and legal institutions of a predominantly public nature • 'Receiving' buyers present very limited stimulus for providers to change • Innovation is enhancing rather than transformational • Solicitor-managed enterprises remain the largest block of providers and retain a substantial share of the growing pool of work
<p>'MINI CLUBMEN'</p> <ul style="list-style-type: none"> • Global markets have levelled out – nation states are more inward-looking and protectionist • Low global and domestic economic growth • Global legal environment is fragmented – legal borders have thickened and the former trend of expansion of international rules is in reverse • 'Receiving' buyers present very limited stimulus for providers to change • Innovation has enhanced rather than transformed • The market for legal services is smaller overall, but the 'solicitor' title is often preferred to alternatives, so their share of this smaller market is protected and is relatively stable at 2018 levels. 	<p>'BLEAK HOUSE'</p> <ul style="list-style-type: none"> • Low growth globally and nationally - wealth, effort and profit tend to be generated at the local level • Processes of legal internationalisation are in reverse leading to a fragmented global legal environment - regional legal pluralism; 'thickened' legal borders; protectionism is rife. The importance of private legal and governance regimes is on the rise • 'Leading' buyers shop around, search for and use information, have high expectations of delivery and service and are prepared to be actively involved in the resolution of their problems • Innovation in the legal services market has been stifled • Traditional forms of law firm persist, but their share of the total market - in terms of turnover contribution - is at an all time low; overall, their numbers are in decline in the face of competition for a reduced volume of legal work.

⁴ The process of scenario development is described more fully in Law Society (2012c).

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- 3.6 The four scenarios demonstrate a wide range of possible outcomes for legal services generally and the solicitors' profession in particular in 2025, outcomes that could easily be extended to the sector at large with relatively minor additions and variations. The four scenarios are built around an axis of high vs low economic growth. Continued low growth for much of the period to 2025 would have radical consequences for the sector as a whole, reducing, perhaps quite substantially, the volume of legal work, increasing competition but also limiting innovation. It is notable that, even if there is a return to pre-2008 levels of growth (or better), none of the scenarios simply predicts a return to pre-2008 'normality', though the 'Wise Counsel' scenario probably comes closest in this respect. It is significant that this is the only one of the three scenarios that sees solicitor-managed enterprises retaining a dominant share of the market. Change in buyer behaviour is also an important external variable. The scenarios distinguish between markets that are dominated by 'leading' or 'receiving' clients/consumers - the 'receiving' concept is closest to the status quo - an environment in which information asymmetry between lawyers and clients remains high, particularly in the private client sphere, and where access may be mediated by knowledgeable intermediaries (eg, the role of in-house counsel). A market shaped by 'leading' purchasers, in contrast, will be characterised by more empowered and knowledgeable buyers, who are less inclined to see the purchase of legal services as different from the purchase of other goods and services. There is limited evidence for the latter at present, though regulation and technology, as the scenarios suggest, both have the potential to transform the demand side of the market.
- 3.7 For present purposes, the immediate value of this analysis lies chiefly with the range of key variables identified. These can be summarised as:
- changes in the global forces shaping international and national markets, politics and civil society;
 - the impact of key political, economic and regulatory changes, including market liberalisation strategies and changes to the regulatory and funding environment on the sector;
 - consequent technological, role and process innovation within legal services;
 - changing behaviour among buyers of legal services, shaped by economic, technological and demographic influences.
- 3.8 These variables will be used to inform discussion in the next sections of this chapter, and to consider how such environmental factors might shape not just the legal services sector, but the LSET system on which it draws.

The international dimension

- 3.9 International legal practice is a high value area of activity in England and Wales, one which highlights the segmentation of UK legal services into largely separate corporate and private client spheres. So far as the regulated professions are concerned, there is in broad terms a distinction to be drawn between those professions or individual entities whose practices are exclusively or essentially international in character and those which are not. Notaries (particularly scrivener notaries) and IP attorneys perceive their professions to be inherently (even if not exclusively) international in outlook and operation. Whilst the same is not true of the barristers' and solicitors' professions, international practice is nonetheless dominated by a relatively small number of international law firms, and the commercial Bar.
- 3.10 UK lawyers are still beneficiaries of the value attached to English law in international commerce, and the 'rule of law' agenda that has, since the Washington Consensus, shaped the activities of international institutions such as the International Monetary Fund, World Bank and World Trade Organisation, but the environment is acknowledged to be

increasingly challenging. It is in the 'City' part of the sector that the links between the global economy and legal practice are, unsurprisingly, the strongest. Consequently the two key economic drivers in this area are likely to be the future of the Eurozone, and the strength of the emerging economies in BRIC(A) and the East.

- 3.11 The majority of the UK's trade is with the Eurozone. Major changes in the Eurozone are likely therefore to have significant effects on the UK economy, including international legal services. Changes in the broader economic and political relationship between the UK and Eurozone/EU are also likely to have an impact. A significant deterioration of transnational and regional relationships within the EU might contribute to that thickening of legal borders highlighted by one of the *Law of the Future* scenarios (see also Hill, 2011).
- 3.12 Short-term signs are, however, that dependence on the Eurozone is being ameliorated in the international legal services market by the greater focus of law firms on emerging markets, which have been less affected by the recessionary pressures impacting mature Western economies. This trend is reflected in a number of surveys. In the Winmark (2012) survey, large law firms are expecting growth from international expansion, especially in the emerging economies; 30% of managing partners consider the greatest growth opportunity near-term to lie in overseas work, compared with only 17% in 2011. Similarly, Deloitte Consulting's (2011) general business survey reported that 60% of corporate leaders saw developing their international capability as critical, particularly in emerging markets.
- 3.13 This is echoed from within the LETR research data:

... the UK now accounts for probably about forty per cent of the total firm so we have more lawyers outside and more partners outside the UK than we do inside which has always been a deliberate strategy and that's broadly reflected in the revenues as well and we expect the UK to be a smaller part of a larger pie. Not necessarily because the UK's shrinking dramatically but it's just not growing at the same pace and we can grow the business elsewhere.
Solicitor

- 3.14 Turning to LSET specifically, it is clear that the perceived quality of English and Welsh lawyers, and the extent to which, as the BRIC(A) countries develop, they (and others) use the law of England and Wales for business will have important implications for legal training, and the jurisdiction's ability to maintain its role as a significant net exporter of 'legal talent' (see Flood, 2011). As one respondent observed:

... looking at how our business is going, the chances are that of the fifty trainees that qualified at our firm in the last twelve months, fifty per cent of them will be making their careers somewhere else in the world, not in the UK ..., they're going to be somewhere in Asia which is most likely where they'll end up. You know, Europe is a mature economy. There are no opportunities for growth, not really, for the international firms. We're all looking much further afield. There are not enough qualified lawyers of the right standard out there. We are going to be sending our home grown people out.
Solicitor

- 3.15 LSET inevitably has an essential role to play in continuing that success, both by maintaining or enhancing its own attractiveness and accessibility to international students and practitioners, and, as has been widely pointed out in responses in the LETR research, by ensuring that existing quality and reputation are not diluted. The attractiveness of the commercially trained English or Welsh lawyer internationally has benefits also for the LSET system and its trainees. The continuing strength of the commercial sector is critical to the

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future of LSET since it dominates the market for trainee solicitors,⁵ and is an important source of work for paralegals, too. Commercial chambers are also a significant, and highly competitive destination for pupillage (Bar Council/BSB, 2012:46).

- 3.16 A number of respondents have emphasised that ensuring that LSET remains competitive internationally will require preservation of demonstrably higher standards of competence:

So although absolutely there has to be a sort of floor of competence that we're making sure that everyone hurdles, I actually think stretching to make sure that the top end of the profession is as stretched as it can be and actually manages to ride out the storms that will largely sweep out the bottom floors of the house. I think it's actually preservation of that that will retain the UK as a, if you like, a market leader in legal services.

Solicitor

- 3.17 To some extent it is also recognised that this is a status and standing issue, influenced by markers and visible proxies for not just competence, but 'professionalism':

It's a worldwide competition point I think here. I think ... it would be pretty drastic if the general counsel of [a big UK company] was not fully qualified in one profession, or one branch of the profession because you can bet your bottom dollar that his German equivalent would be Herr Doktor Professor

Employed barrister

- 3.18 And, to preserve quality and standing, there are probably some things which the LETR should not do:

One of the issues is that a lot of the European countries require more in depth academic law so that I've had people commenting to me how bizarre it is that we have people who've got non law degrees who can qualify so quickly. So in terms of our standing in the world if we were to go reducing it down yet further, then we may actually have a sort of standing issue to consider.

Solicitor

- 3.19 A further factor emerges from the data, which can be described as 'regulatory enablement'. In the LETR context, this considers the competitive position of the English and Welsh product internationally by facilitating recruitment, retention and training, and can be summarised in the need to 'anticipate the impact of regulation on international practice'.⁶
- 3.20 The importance of the US legal education system as a likely competitor for the 'international lawyer' qualification needs to be acknowledged. There is a paradox, already touched on in Chapter 2: that a US legal education system that has been heavily criticised at home (see, eg, Sullivan et al, 2007, the 'Carnegie report') has become an important model internationally, even in common law jurisdictions such as Canada and Australia, in competition with the UK model of the undergraduate degree.

⁵ As a reasonable proxy, 36.6% of training contracts in 2010-11 were registered to firms in the City of London (Fletcher, 2012:28).

⁶ Specific points are made by a range of respondents, mostly solicitors, but the underlying concern was expressed pithily by a notary responding to the online survey: *Regulations for regulating the activities of over 100,000 solicitors, legal execs etc are not really relevant to the few hundred notaries whose activities are largely governed by the requirements of FOREIGN jurisdictions rather than those of the UK.*

Key political, legislative and structural changes

- 3.21 Although the international dimension is important, it is equally essential to ensure that the system is capable of delivering what is required by the domestic legal system in increasingly challenging and complex circumstances. Many areas of domestic political decision-making will have the potential to shape the future direction of the legal services market, not least decisions about general monetary and fiscal policy. However, the focus in this section is on more immediate legal services policy and developments.

Devolution issues

- 3.22 Wales has distinct economic and social attributes relevant both to legal services and to LSET.⁷ In legal services provision, with lower overheads, Wales may be a target for law firm outsourcing and ABS provision. The infrastructure of local and Welsh Government suggests that there is a comparatively high proportion of lawyers employed in the government sector (Law Society, 2010). Welsh language standards for organisations - including providers of legal services - are planned to become effective before the end of 2014.
- 3.23 Twenty areas of legislative competence, largely in health, education⁸ and social care, are devolved to the Welsh Government under the Government of Wales Act 2006. During the LETR research phase, the Welsh Government consulted on a separate legal jurisdiction.⁹ The consultation paper specifically sought views on the changes which might be necessary or desirable in relation to the regulation and education, training and qualification of the legal professions in Wales in the event either that a separate jurisdiction was, or was not, instituted (Welsh Government, 2012a). Responses to that consultation raise questions about the cost and resources required for separate training and regulation; distinct questions of Welsh culture, language and identity and, from practitioners in particular, a desire for individuals to be authorised to practise in both countries (Welsh Government, 2012b).
- 3.24 Although a separate jurisdiction is not yet planned, in a submission to the Silk Commission investigating constitutional and financial arrangements in Wales, the Welsh Government recently indicated its intentions as follows:

While it would not be appropriate to establish a separate legal jurisdiction for Wales now, such a development is very likely in the longer term¹⁰ and action can be taken which would help to ensure a smoother transition to such a jurisdiction in due course. These include achieving a more clearly Welsh identity in the higher courts of England and Wales; new Welsh offices for the Court of Appeal and the High Court; and acceptance of the principle that the legal business of people in Wales should be administered and dealt with in Wales wherever possible.

Welsh Government (2013:2)

- 3.25 Question 25 of the LETR online survey invited participants to respond to the question 'Should the education and training of legal professionals in Wales differ from the education and training of legal professionals in England?' Cross-tabulation permitted evaluation both of responses from those located in England and located in Wales and by national identity (wherever located).

7 See Franklin and Lee, (2007); Davies and Mainwaring, (2007); Welsh Assembly Government and Legal Services Commission, (2007).

8 A Welsh baccalaureate Advanced Diploma is equivalent to A-level. The Welsh Government subsidises the university fees of students ordinarily resident in Wales by a tuition fee grant above the threshold of £3,465. The effect of this on students' choices to study (or not) in Wales and on the demographics of university cohorts, particularly in Wales, is yet to be seen. A distinct Credit and Qualification Framework for Wales exists although at the time of writing, no LSET qualifications appeared to have been accredited into it: <http://wales.gov.uk/topics/educationandskills/qualificationsinwales/creditqualificationsframework/?lang=en>

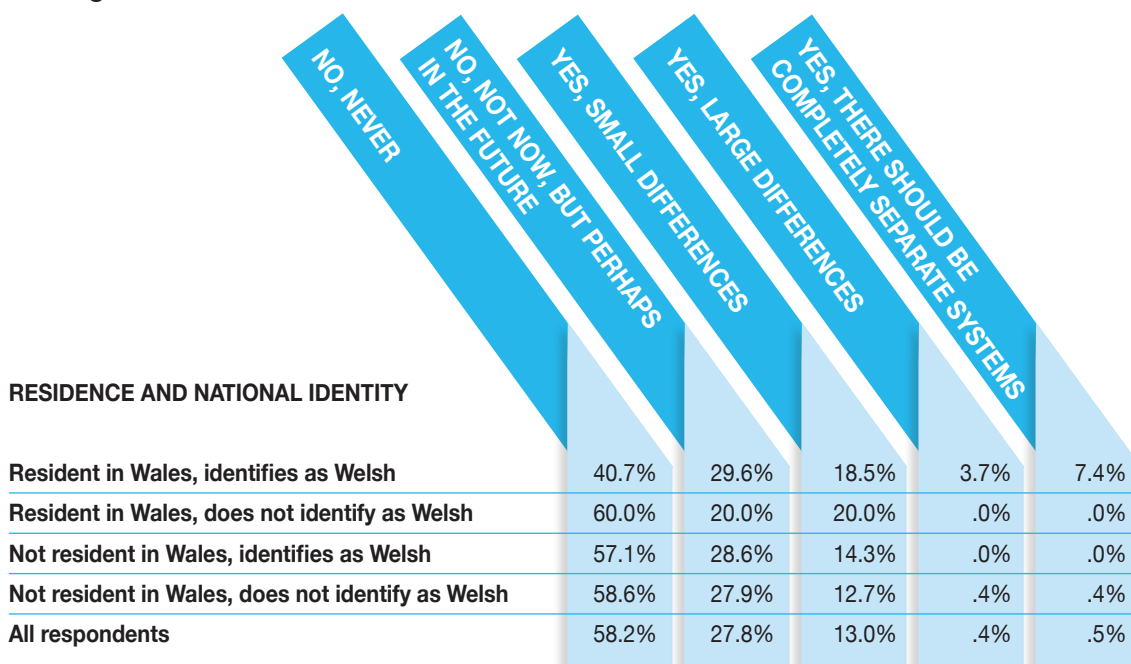
9 Welsh Government, (2012a), questions 9 and 20.1.

10 2020/2021.

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Table 3.2: Should the education of legal professionals in Wales differ from the education and training of legal professionals in England?

Unweighted data.



3.26 Several participants in focus groups¹¹ endorsed the idea that any wholesale change (to the extent of, for example, separate degrees or separate training regimes) was premature. Concern was expressed about overloading the curriculum. Some respondents, however, indicated that undergraduates, and not just those in Wales, should at least be aware of the developing differences: the JASB statement refers explicitly to the law of 'England and Wales'.

Changes to legal services funding

3.27 Changes to legal aid and civil litigation funding are key structural changes to the legal services market and the legal system. In terms of LSET these are important because financial and other pressures on providers within the civil and criminal justice systems could, as well as impacting on access to justice:¹²

- Impact on training opportunities and diversity, including creating a risk of training/advice deserts;
- potentially drive providers towards particular forms of business structure/process innovation (with implications for workforce demand, needs for different skills set and competencies); and
- create new risks for regulation, particularly as regards the current and future competence of the workforce.

¹¹ The focus group data is largely - although not exclusively - drawn from those involved with the LLB, LPC or BPTC and from solicitors in practice.

¹² <http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/lord-dyson-mr-speech-law-society-keynote-reforms.pdf>

Legal Aid reforms

- 3.28 The reform of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and associated reforms presents a major challenge to a number of 'High Street' law firms, chambers and not for profit legal service providers, by further cutting payment rates for civil and criminal legal aid, and removing large elements of social welfare and family law from the scope of funded activity. Multiple reforms to the system have already led to a growing specialisation and concentration of legal aid in fewer and generally larger providers (see Moorhead, 2004). While overall spending between 2008/09 and 2010/11 remained more or less constant at 6-8% of total industry turnover, changes to remuneration saw funding being redistributed across suppliers in a way that affected around a quarter of all solicitors' firms and self-employed barristers (LSB, 2012:21).
- 3.29 Evidence of concentration is apparent from the *Time of Change study* (Plesance et al, 2012). Nearly a third of those firms sampled undertook legally aided work in 2010-11. For a significant proportion of these firms, legally aided work was core to the business: over half reported that 50% or more of their clients were publicly-funded, and over a quarter of them were entirely, or almost entirely dependent on legal aid. Within this latter set of firms entirely dependent on legal aid, 70% of firms were criminal legal aid specialists, and another 20% worked in family law (Plesance et al, 2012:17). With these levels of concentration there are concerns that further cutbacks are likely to have dramatic consequences for local access, with the risk of increasing 'advice deserts' as more organisations withdraw, or are forced out of business. Plesance et al (2012:44) reported that nearly a third of legal aid firms were considering leaving one or more areas of publicly-funded work. The research also indicated that new firms set up in the three years preceding the study were significantly less likely than established firms to be undertaking legal aided work.¹³
- 3.30 The impact on particular areas of work is likely to be profound. The number of regulated immigration advisers has fallen in general, and specialist advice on the complex matter of asylum appears particularly vulnerable (Trude and Gibbs, 2010; Asylum Aid, 2011). Welfare benefits advice is also seen as highly vulnerable. In more 'mainstream' areas like family law, the courts are already reporting a substantial increase in self-represented litigants (Civil Justice Council, 2011), and the recent removal of the right to legal aid in many family proceedings will compound such increase yet further, but the largest impact on practitioners across the sector is likely to be on criminal practice. Even before the latest round of reforms, over half the criminal legal aid firms surveyed for the National Audit Office in 2009 doubted that they would still be undertaking legally aided work five years hence (GfK NOP, 2009).¹⁴ The *Time for Change* report simply describes criminal practice as 'in decline' (Plesance et al, 2012:54) with falling volumes of work and revenues. The 2011 survey of the Bar (Pike and Robinson, 2012)¹⁵ offers a similar snapshot of the state and morale of the criminal Bar, which relies heavily on public funding. A third of barristers in independent practice have criminal law as their main practice area. Sixty per cent of those have seen their work decline over the last year, and 50% had also seen a decline in fee income. When asked, some 40% of criminal law practitioners stated they would not choose the Bar if they could start their careers again.
- 3.31 The high cost of legal training and the relatively low return on publicly funded work were seen by respondents as creating real risks to the quality of legal aid services and the diversity and representative nature of the professions in this field:

¹³ The data do not, however, distinguish between firms for whom that has been a deliberate business decision, and those who have not yet had an opportunity to bid.

¹⁴ As a statement of intent, this is of course very different from demonstrating that over 50% of firms have left the scheme.

¹⁵ Based on a sample survey of just under 3,000 barristers in practice.

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At the publicly funded bar the government prizes ability far lower than it prizes affordability. For this reason the general level of candidates' competence and potential is reducing every year and the ability of those from a lower socio-economic background to even study for the bar is being damaged; the low remuneration at the criminal bar combine with the massive training costs to make the career increasingly unviable for all but the wealthiest.
Barrister (online survey)

...there's certainly going to be fewer trainees in the legal aid subjects ... they will use paralegals where they can which means that in ten, twenty years time the qualified solicitors are not going to be there to do that sort of work.
Solicitor

- 3.32 The risk that the changes will negatively impact upon the diversity of the professions is highlighted by research which shows high concentrations of women and BME lawyers in publicly-funded work (Pike and Robinson, 2012). BSB data indicate that there are very different demographic profiles for self-employed barristers across different categories of work, with BME and female barristers working in areas associated with public funding. Twice as many women work in family as in any other practice. BME barristers are most likely to work in civil law (14%) and family (10%). Publicly funded work dominates crime (87%) and family (58%). LSB analysis of SRA data suggests that a greater proportion of BME firms undertake work in immigration, crime, and family compared to non-BME firms. Furthermore, 23% of all BME firms derive more than 50% of their income from public funding compared to just 7% of non-BME firms (LSB, 2012:35).
- 3.33 The changes could also have a significant impact on the viability of specialist service providers, such as regulated immigration advisers and legal aid costs lawyers:

The cuts in legal aid will impact particularly in relation to family law costs. I would guess that is the bread and butter - but potentially a hundred [costs lawyers] will be in serious difficulty as a result, it may be that they still get work but of less income. They may decide there's no longer any benefit of being a costs lawyer ...
Costs lawyer

- 3.34 Whilst a degree of self-interest doubtless informs responses on this topic, it is also clear that the survey and interviews elicited genuine concerns about the social consequences of these cumulative changes:

We've met with local MPs and Lords to voice our opposition to [the reforms to public funding] not least because they don't make any financial sense from the Government's point of view and would only end up damaging the entire judicial system in the country, in our opinion, because there won't be enough resources to deal with all these litigants in person. So it won't just be the poor in society who'll be disadvantaged but also businesses and others who are trying to gain access to the courts. Their cases will take longer to go through and so forth and we've already seen local firms close down and that will only continue ... I think our greatest concern perhaps is that the public again are being let down and they will not have the access to the legal advice that they need. The local Citizens Advice Bureaux are under a tremendous pressure as well and they are nationally now voicing their concerns that they aren't going to be able to cope.
Solicitor

Which means that people that require the best representation ... are not necessarily going to get it because many chambers are saying well let's look at disciplinary work, let's look at branching into other areas of work. I think that is a threat to the Bar in the sense that the Bar should be seen as providing the best representation for the most vulnerable members of society. It should be able to say to the public: that's what we are here for. And unfortunately there are only certain sets with a particular ideological view that are actually willing to say we'll take the hit and just do publicly funded work.

Barrister

- 3.35 As these quotations highlight, the reforms have implications for access to justice, consumer choice and the quality of the legal system in England and Wales, all matters of concern to the approved regulators and likely to have consequences for LSET in the future.

Civil litigation cost reforms

- 3.36 Changes to the civil justice costs system following Lord Justice Jackson's review (Jackson, 2009) and related reforms may similarly reduce the value and the volume of non-commercial civil litigation. There are four key developments that could have significant consequences on civil justice; although the precise effects remain uncertain while the detail of the reforms are being finalised.
- 3.37 First, the profitability of conditional fee agreements (CFAs) has been restricted by preventing claimant solicitors from recovering their success fees from unsuccessful defendants and capping the amount of recoverable success fees from clients. Insurance premiums are also no longer recoverable. This will probably have the effect of making more high risk or marginal cases less attractive to lawyers, while the changes to the recoverability rules may make lower value cases less attractive to clients.
- 3.38 Secondly, the Jackson proposals on third party funding could provide a growing source of funding for certain types of civil proceedings. Traditionally, third-party funding has tended to focus on cases that offer a one-off strong return on investment, ie, high value commercial claims with good chances of success. The third party funding market is still relatively new, and not without risks. Concerns exist over whether the current proposals sufficiently regulate the role of intermediaries, and control what is, from the funder perspective, essentially an investment activity (see, eg, Harris, 2012). The impact of third party funding will depend on the market creating funding models that may make a wider range of cases attractive to funders. There are some indicators that such approaches are already being considered, eg, models spreading risk by enabling investment in a portfolio of cases; there is also interest in the potential for third party funding to play a role in complex group litigation.
- 3.39 Thirdly, the introduction of Ontario-style damages-based agreements (DBAs - contingency fee arrangements with percentage fees based on damages) may increase the attractiveness of cases with relatively low cost to value (damages) ratios. DBAs could also provide law firms with a vehicle to compete directly with third party litigation funders. DBAs were only introduced in April 2013, and consequently their precise implications are yet to be realised.
- 3.40 Lastly, the introduction of lower fixed payments for personal injury cases through the road traffic accident portal is also likely to have an adverse impact on the viability of this area of personal injury work.
- 3.41 Combined with the growing use of 'claimant capture' technologies by insurance companies, which encourage potential claimants to settle directly with insurers, these various changes threaten to transform personal injury work, which has, until recently, been a growth area for law firms. Indications that a growing number of firms operating in the high volume end of the market may collapse highlight the vulnerability of many legal businesses to external forces, with significant implications for the workforce involved.

The changing regulatory landscape

3.42 This Review is taking place in the wake of major regulatory reforms in the legal services market. The LSA 2007 itself provides a key context for the Review. The Act created the new regulatory regime, and sought to marry modern market liberalism to the core social values of professionalism. These are recognised in the LSA 2007 regulatory objectives, the statement of professional principles contained in the Act itself, and in the ethical principles of the individual professions. They have also been mentioned often in the stakeholder contributions to the research team and in qualitative material. For example:

But then for barristers whose overriding and first duty is to the court and to the administration of justice and then to their lay client: actually, society itself is very much the consumer. ... If barristers screw up or misbehave then fundamentally the justice system is undermined. That is not in our interests or anybody else's. So those regulatory objectives around access to justice and rule of law, I mean at one level, they are clearly important for all lawyers, but they are especially important for barristers because so much of what they do is in terms of the interaction of the court. So that's actually very important.

Barrister

3.43 In exploring the regulatory context, this section focuses on three aspects:

- outcomes-focused regulation;
- title-based, activity and entity regulation;
- regulatory reach.

Each of these is outlined here and will be considered further in subsequent chapters.

The move to principles-based regulation and OFR

3.44 Legal services regulation is moving towards risk-based regulation.¹⁶ This appears to be a consequence of both regulatory steering by the LSB, and a growing professionalisation of legal services regulation itself, a process which sees the sector drawing its influences at least as much from commercial and financial services regulation as from the regulation of professions.

3.45 Outcomes-focused regulation (OFR) is an important element of risk-based regulation. Risk-based approaches to regulation tend to be aligned to a strong consumer/service provider orientation. Rather than focusing on rules, the regulator identifies the risks that need to be managed in respect of certain activities, and designates the outcomes that must be achieved in order to manage or vitiate those risks.¹⁷ These outcomes are then constructed as 'targets' for the regulated community. OFR is a move away from traditional, more directive, conduct standards. It has also received 'in principle' support from respondents as a less bureaucratic and more enabling framework.¹⁸

¹⁶ Risk-based regulation can be defined as the adoption of regulatory strategies that are based on 'an evidence-based means of targeting the use of resources and of prioritizing attention to the highest risks in accordance with a transparent, systematic, and defensible framework.' (Black and Baldwin, 2010:181)

¹⁷ OFR Outcomes are also derived at the highest level from general principles of good regulation and the eight 'regulatory objectives', specified by s.1, LSA 2007 (discussed at some length in Chapter 2 of the Literature Review). These apply to all aspects of the regulatory work of the Legal Services Board and each of the frontline regulators. They are a significant innovation of the LSA 2007 and a key recommendation of the Clementi Review (2004).

¹⁸ In a recent survey by the SRA (2013), two-thirds of the 1,000 firms surveyed said complying with outcomes-focused regulation was more time-consuming, although reasons given for this included one-off actions, such as time spent learning about the new system, and many felt compliance was also too expensive. However, half of the firms surveyed had a favourable attitude to OFR, compared to only 36% in favour before its introduction. See <http://www.sra.org.uk/sra/how-we-work/reports.page>. See also Law Society (2012a): <http://www.lawsociety.org.uk/representation/research-trends/research-publications/regulatory-performance-survey-findings-2012/>

- 3.46 The outcomes-focused approach has important implications for education and training. The Smedley Report,¹⁹ which contributed to the body of evidence suggesting that regulatory change was required prior to the LSA 2007, emphasised the importance of culture change, requiring an adjustment from ‘investigation, scrutiny and punishment’ to ‘education, information, training, expert advice and promotion of standards’ (2009:22). Boon has argued that OFR introduces ‘situational ethics’ which will require different education and training to a ‘rules-based’ system (Boon, 2010:223). The move to OFR may also necessitate some development of particular management skills and processes in organisations and entities in order to cope with risk-based regulation.²⁰

The emphasis on title-based, activity and entity regulation

- 3.47 Prior to the LSA 2007, individual professional lawyers were regulated by their professional bodies and regulations allowed certain activities (the ‘reserved activities’) to be carried out by certain of the professions. Conveyancing for example could only be carried out by licensed conveyancers, notaries and solicitors, whereas advocacy in the higher courts could only be carried out by barristers and solicitor-advocates and, in specialist proceedings, costs lawyers and IP attorneys.²¹ Qualification as a barrister, notary or solicitor brought entitlement to undertake other reserved activities. Each professional body regulated the individual professional practitioners who were its members.
- 3.48 The LSA 2007 has created a complex regulatory framework in which activities may be regulated rather than the professionals who are licensed to carry out such activities. It has also warranted moves to regulate entities (law firms, limited partnerships or ABSs) who supervise professionals and activities rather than the individual professionals themselves.
- 3.49 Reserved legal activities are an important though problematic part of the Act, for a number of reasons, because:
- They lack coherent justification. Mayson suggests in his work for the LSB (Legal Services Institute, 2010), that the reserved activities are largely the product of historical accident and political settlement, lacking a clear public interest rationale.
 - The LSA 2007 has not broken the link between titles and reserved activities. *All* activities undertaken under a title are in practice regulated, whether reserved or not. Consequently transactional lawyers and law firms that do little or no reserved activity are, as Mayson (2010:6) observes, ‘at risk of competition from people who do things totally differently and not in a regulated way’, and must still bear the full costs of regulation (albeit in exchange for the benefits of a protected title).
 - The LSA 2007 has also retained overlapping regulatory jurisdictions over the reserved activities while at the same time extending jurisdiction over reserved activities to previously excluded occupations. This is not necessarily problematic in itself, but it does raise questions about comparability of regulatory requirements across an activity.
 - The Act also potentially creates a division between the protected title (barrister, solicitor, etc) and authorisation to practise a reserved activity. In the context of the LETR, this has generated debate about the scope or need to move away from regulation by title and towards regulation by activity, an idea that has raised concerns among a number of professional stakeholders, but received strong support from the LSCP²² and some others (see, eg, Legal Services Institute, 2012).

¹⁹ Smedley, see eg, <http://www.lawgazette.co.uk/news/corporate-firms-need-regulatory-group-says-smedley>

²⁰ Particularly financial and risk management. It is notable that nearly 60% of firms surveyed by the SRA had made changes to their risk management as a result of using OFR, and a fifth were in the process of improving risk management at their firm, or had identified a need to improve (SRA, 2013).

²¹ For costs lawyers, see Legal Services Consultative Panel (2004). The history of IP attorneys’ rights of audience is set out in IPReg (2011).

²² See, eg, the LSCP’s Response to Discussion Paper 01/2012.

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- 3.50 Entity regulation, as introduced by the LSA 2007, encourages competition and innovation by allowing the development of business structures with multi-disciplinary and external ownership in contrast to the traditional law firm partnership model.²³ Such alternative business structures (ABSs) are licensed only in respect of specified reserved activities. They cannot undertake reserved work beyond those limits, but this does not preclude them from also providing general (ie, unreserved) legal advice - thus, for example, an ABS with probate and reserved instrument licences, could potentially offer an entire property and estate management service, including providing (currently unregulated) will-writing services, conveyancing, probate, tax and estate administration.
- 3.51 At present both the SRA and the CLC are licensed as entity regulators and IPReg permits registered bodies to be entered into the registers (IPReg, n.d.). The BSB is also proposing to develop its role in respect of barrister entities providing advocacy and litigation services. The Institute of Chartered Accountants (ICAEW) is also seeking authorisation as a regulator of reserved probate activities, including licensing ABSs. The licensing regime permits the SRA to license all of the reserved activities to an ABS, except notarial activities which are expressly reserved to qualified notaries. The CLC can only license reserved instrument activities (essentially conveyancing), probate and the administration of oaths, but has explored extending its reserved activities to include the conduct of litigation and the exercise of a limited right of audience as well.
- 3.52 A number of the frontline regulators are developing entity regulation more generally as a regulatory tool. This is most apparent in the SRA's activities: the designation of senior compliance roles²⁴ has been extended to all regulated practices, and a significantly more rigorous authorisation process for 'traditional' law firm start-ups has also been introduced in the wake of the ABS application process. The publication in 2012 of Equality and Diversity Rules that imposes obligations on chambers is a first step for the BSB, (BSB, 2012), and it is now consulting on the mechanics of entity authorisation. IPS is seeking authorisation for legal executive entities, which would be fundamental to redefining Chartered Legal Executives as independent legal practitioners.
- 3.53 Entity regulation is thus an area of considerable regulatory activity, and the LETR research reveals it to be of some concern to stakeholders who worry that standards of professionalism are being compromised by these developments - this point is illustrated further later in the chapter.

Regulatory reach and supervision

- 3.54 The extent of regulation or 'regulatory reach' is an important issue for the review, not least because decisions to regulate or increase regulation carry costs and therefore have market effects for both regulators and the regulated. The scope, burden and proportionality of regulation are all of significance.
- 3.55 A number of responses to the LETR research focused on the perceived risks posed by those outside existing regulation, working in completely unregulated entities (discussed below). A greater proportion, however, focused on risks from unregulated groups working within or alongside regulated entities. A significant concern for the LETR is the impact of these developments on the competence and quality of the workforce. Views have been particularly expressed about the negative impact of before the event (BTE) insurers and

²³ The SRA has provided examples 'such as a firm with more than 25 per cent non-lawyer managers, or a company taken over by a non-lawyer enterprise, or a company floated on the stock exchange, or a firm which provides both solicitor services and non-legal services': <http://www.sra.org.uk/sra/legal-services-act/lsa-glossary.page>

²⁴ The compliance officer for legal practice (COLP) and compliance officer for finance and administration (COFA).

claims management companies (CMCs) on professionalism and quality of service in personal injury work, particularly as the level of referral fees has been pushed up, and margins on that work have narrowed for law firms:²⁵

The lawyer should be a trusted advisor and the person of affairs to whom the ordinary client can turn, with complete trust in their competence, skills and ethics. By climbing into the sewer with the claims management companies the part of our profession with which most of the public has some form of involvement spreads their ordure onto ourselves. Conveyancers who buy work from estate agents are in exactly the same sewer.
Solicitor (online survey)

- 3.56 Alongside the interest in professionalism and conflicts of interest, supervision of paralegals within regulated entities was frequently raised as a further issue. The scale of paralegal use at the high volume end of the market was said to be ‘staggering’ by some, with respondents querying ratios of qualified staff to paralegals, and the quality and efficacy of supervision under these conditions, with suggestions about the need to regulate supervision.

[S]ome firms are running a very clear pyramid structure with only a few qualified people allegedly supervising this bottom rump of the pyramid who are paralegals, [who] may not even have any legal qualification at all and they do the case really at a low unit cost and therefore they make a profit on these high volume cases.

Solicitor

There's supposed to be about eight paralegals per solicitor in terms of monitoring but that's always honoured in the breach ... to our mind it makes a bit of a mockery about the whole talk about standards and quality of service to the client when potentially half of your fee earners - they've got no training at all and no-one seems to care.

Solicitor

The implications for LSET

- 3.57 The core functions of regulation of education and training survive the LSA 2007. A central purpose of any regulatory system for professions must be to maintain the competence of the workforce. Competence is both an end in itself and a means by which the regulators advance consumer and public interest objectives. The maintenance of competence may be supported by a range of regulatory activities - setting outcomes and standards, evaluating compliance, and enforcement. Outcomes are a critical first step. A focus on competence requires the regulators to identify the core competencies necessary to deliver an effective workforce, and to ensure that LSET systems, so far as practicable, achieve such competency standards in practice. This, arguably,²⁶ places the achievement of learning outcomes at the centre of the regulatory function, as the UK Inter-Professional Group (2000:4) has noted:

²⁵ The quantitative impact of the abolition of referral fees is uncertain. The Ministry of Justice is expecting there to be a large number of CMCs exiting the market, though there are also expectations that ABS structures will be used vertically to integrate claims handling with the legal function.

²⁶ See further Chapter 4.

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*The emphasis on competence ensures that a professional body looks upon education and training provision from a particular perspective. Whilst it is interested in seeing best educational practice, attractive learning environments, imaginative teaching, social inclusion etc, it is **absolutely concerned** with learning outcomes. Those outcomes are not just narrowly defined lists of current factual knowledge, although they embrace a thorough understanding of the 'first principles' that underpin the science as well as their applications, but include the personal and professional development necessary to inculcate high ethical standards and professional attitudes and values. (Emphasis in the original.)*

- 3.58 The move to a system of OFR creates an obvious synergy with outcomes-led approaches to education and training.²⁷
- 3.59 In other respects the creation of this new regulatory complex has major implications for education and training:
- activity-based regulation opens up the scope for radical re-design of qualifications and pathways. This was highlighted, for example, in the 2009 Hunt Review of Regulation for the Law Society, which suggested that the award of the solicitor's title could be separated from authorisation to undertake reserved activities, which could then be separately accredited;
 - it raises questions as to the level at which competence is set. This may be complicated in a multi-regulator environment such as the legal services sector. Should it be open to each regulator to determine their own level(s), or should there be a common minimum standard across the board?
 - the focus on activities, similarly, raises questions about the necessity and means of ensuring comparability of standards, and the risks and benefits of permitting competition around standards;
 - outcomes-focused regulation will necessitate achievement of a proper balance between the regulatory requirements placed on entities and individuals, and raises questions as to whether greater responsibility for quality assurance should be given to those involved in training. Regulators will need to focus their attention on ensuring that necessary standards of competence are being achieved through LSET but in a manner that is proportionate to the risks.

Other structural changes

- 3.60 This section considers 'structure' in the sense of the business and 'internal' organisation of legal entities. A recent survey of managing partners/CEOs of 45 leading UK law firms highlighted that two-thirds of firms see innovation as a key means for developing competitive advantage (Winmark, 2012). This section will focus therefore on three closely related themes:
- new business structures;
 - new business processes;
 - impact of information and communication technologies.

²⁷ Though this should not be taken as an indication that the structure of regulation itself should necessarily dictate the form or nature of educational outcomes and standards.

ABSs and new business structures

- 3.61 The LETR research has explored attitudes to ABSs, the opportunities and threats that accompany the development of ABSs, and their implications for training needs. The timing of the LETR research has meant that the data collected are limited: the establishment of a sizeable and identifiable ABS segment of the market is taking longer than many assumed and this combined with delays to the launch of the first ABSs by the SRA,²⁸ and the complexity and length of the authorisation process, has limited access to in-depth data, particularly on the likely impact of new business structures on training needs. Early ABS adopters have also been somewhat reluctant to discuss the details of their education and training approach, considering these to be an important competitive element in their business.
- 3.62 Further waves of ABS applications are likely to change the understanding of this new feature of the market. By the end of 2013, there should be a clearer picture of who the key early adopters are, how they are using ABS status, and what the actual (rather than hypothetical) risks may be. On the basis of the process so far a number of trends (or 'non-trends') are emerging.
- 3.63 There is no such thing at this stage as a 'standard' ABS. Although the 'big brand' entrant and private-equity focused law firm ABS exist, so far they are in the minority; new entrants to the market have also been in the minority.²⁹ Those entities that have come forward include existing solicitors' firms that simply want to use the ABS as a vehicle to bring non-lawyer employees into the partnership,³⁰ as well as those who are interested in accessing external finance. Other motivations include converting unregulated businesses into regulated entities involving legal service providers and other professionals,³¹ and businesses looking to diversify by delivering 'white label' services, which disguise the actual service deliverer, to other suppliers.³²
- 3.64 Significant ABS activity has so far come from the property/estate management and litigation segments of the market (particularly personal injury).³³ A broader range of activities, and types of provider, is emerging as the number of ABSs grows. A significant development in 2013 is likely to be the emergence of more 'big brand' ABSs, following the interest shown by the likes of the AA, British Telecom, and Direct Line. There are also indications of heightened interest among top tier law firms (Bindman, 2012).
- 3.65 There is limited evidence that new business structures may be of increasing interest to the in-house and local government sectors. These entities are not only under pressure to minimise (external) legal spend, but to identify ways of converting the in-house function from a cost to a profit centre. So far most activity has been in the local government sector. LETR focus groups thus discussed the possibility of using the ABS structure to provide services to groups of local authorities.³⁴ The potential for local authorities to use ProcureCos was also highlighted. Responses from in-house counsel to the idea of converting to ABSs, however, were more mixed, as the following exchange illustrates:

28 Licensure by the CLC preceded that by the SRA.

29 Of the ABS applications received by the SRA by October 2012, only 30% had come from new entrants (communication from the SRA to the research team).

30 For example, Accident Advice Solicitors; Amelans; Lawbridge Solicitors, and Mulderrigs Solicitors.

31 Parchment Law Group LLP was formerly an unregulated will-writing organisation, but, by bringing a solicitor into the practice it achieved SRA authorisation as an ABS; Northwood Banks & Co has similarly been regulated as an ABS by the CLC.

32 Premier Property Lawyers do this under their 'MyHomeMove' brand. Irwin Mitchell also provides a range of generalist legal advice on a white label basis, in addition to its own branded personal injury work.

33 Since the ABS provides a vehicle enabling solicitors' firms and referral sources (notably claims managers) to operate within a shared business structure which is not dependent on referral fees to succeed.

34 For example, Kent County Council's in-house lawyers already provide services to a range of districts; the department is now reported to be investigating the scope for becoming a specialist public law practice.

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A: The point about the in-house counsel is that he understands the business. And has that judgment and then sensibly outsources what can be outsourced where it's cost-effective and so on. So you could see that happen but you'd have conflicts issues and confidentiality ...

B: I can see it being an answer to a legal department that is told that its writing's on the wall. And it needs to go somewhere else. There have been a number of firms setting up to service local government in just that situation. Where local authorities have said 'Oh we can't afford all these lawyers sitting around eating their hats off' and then of course they go off, start a firm and sell those services back again!
Employed barristers

- 3.66 By contrast, responses from the self-employed Bar in particular, highlighted considerable doubts about the need for, and any advantage to be derived from, large scale organisational changes, though there were indications that current changes were encouraging chambers to think more about operational structures and needs:

I think perhaps in ten or twenty years' time that may happen - sets will be bought out, but I can't see it at the moment. ... I think we need more skilful managers to run the business side, sorting out rent and rates and how much we pay our staff and that requires slightly more skills. ... That does make it more difficult for us to think we're going to actually take on the role of the solicitors. We realise that that would mean our overheads and profits would move in the opposite direction.
Barrister

- 3.67 There was, however, also a smaller number of barristers who saw market advantages in being able to develop some form of multidisciplinary practice (MDP) structure.
- 3.68 Lastly, there is some evidence to support the view that ABSs are a factor in driving innovation within 'conventional' business structures. Though it is still early days, new business models such as Riverview Law and Stobart Barristers stand out. In the in-house sector, Carillion, though less well known, is also an interesting example.³⁵
- 3.69 In education and training terms, ABSs and other new business structures may thus present opportunities as well as threats. Economies of scope and scale enable larger entities to develop more sophisticated training environments than smaller 'high street' competitors. Irwin Mitchell's IMU Law & Business School, and Co-operative Legal Services (CLS) training partnership with Manchester Metropolitan University are examples of this.
- 3.70 There are some, at this stage limited, indications that the new forms of business organisation are leading to some re-thinking of skills and functions.³⁶ This is most evident in terms of the skills sets required by those in client-facing roles, who may be intermediaries between the consumer and the lawyer or legal team that would ultimately be responsible for the matter. These intermediaries may undertake 'sifting' or initial 'diagnosis' (to use the hospital analogy, 'triage') functions which require some basic legal skills and knowledge as well as more conventional initial client handling, with a need for good communication and sometimes sales skills. The chief operating officer of one new entrant to the market describes the process thus:

³⁵ Carillion Legal provides in-house functions to the group and delivers telephonic housing and debt advice under a legal aid contract through Carillion Advice Services (CAS), a team of 60 paralegals based in Newcastle. CAS also provides paralegal support to the in-house team, and to external panel firms when acting for the company.

³⁶ These ideas have emerged thematically from the qualitative data but are less amenable to capture as a set of indicative short quotations.

The low level stuff from small businesses and anything else is coming into our sales team who've got very limited legal background and pass it over to a free telephone call with one of our solicitors' team. They are fairly newly qualified, 1-5 years PQE but decent experience from decent firms and [understand] a cross section of the work [we do].

ABS

- 3.71 At a higher level, fee-earners may have opportunities to take on client relationship management functions as an extension of their legal work. Opportunities for internal moves and wider skills development may be greater than in traditional entities. CLS, for example, thus emphasises its need to develop more modular, outcomes focused, and tailored training to support the changes to the sector (Briefing Paper 4/2012).
- 3.72 New business models may also transform aspects of traditional legal work and workflow. Organisations like Riverview Law, for example, are changing the way in which barristers are used as an early part of an advisory team - akin in many ways to the advanced triage and problem-solving role performed by general counsel. This example leads the discussion more generally into the question of changing legal processes.

New business processes

- 3.73 The emergence of these new challenges and new players has been accompanied by significant changes to business and working processes. Process change and innovation are increasingly seen across many parts of the sector as a necessity rather than a luxury, though data suggest this is maybe less true of the Bar and notarial professions than other regulated providers.
- 3.74 Changes explored in both the literature and LETR research data include:
- increased use of legal process outsourcing not just to reduce back office and some front office costs, including direct labour costs, but to increase efficiency and flexibility of response;
 - developing flexible project delivery models, often utilising a mix of in-house and external human resources - eg, where virtual law firms contract-in lawyers purely on a project-based footing rather than as permanent salaried staff;
 - decomposing and commoditising legal transactions so that more of the work may be undertaken by non-qualified, paralegal or other professional staff;
 - bundling legal services with other complementary services in a multi-disciplinary practice or 'one-stop-shop';
 - leveraging the opportunities created by multi-professional teams to add value to the offering;³⁷
 - using technology to enhance communication, information access, data management, and workflow, particularly in conjunction with outsourcing and commoditised practices (this will be discussed further, in the section below).

³⁷ Respondents discussed the competitive advantages of being able to draw on a range of expertise both for the business, and as a 'one stop shop' for the client. Eg,

Being an ABS enables us to fully integrate individuals from a range of professional backgrounds (finance, business management, human resources, etc) into our senior management structure - being able to draw on this wealth of expertise is advantageous in ensuring we have a leadership team with the breadth of expertise to continue to drive the growth of our business

Law firm ABS

ABSs are certainly going to make a huge difference ... about the integration of the various professional skills. I just invented something, my patent attorney, now involved in accountancy can actually advise me on the architecture of building my factory and all that sort of stuff. So I think yes, that's certainly there ...

IP attorney representative.

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- 3.75 It may be observed that most of these are not 'new' processes as such, though neither the extent nor the range of their use is really known.³⁸ In the context of the LETR, the issue is not so much the quantitative one of how much these are used (though that is not wholly irrelevant), but how they are changing the 'ethos' and structure of practice in ways that will impact on LSET.
- 3.76 Although some participants focused on the continuing need for 'traditional' or 'elite' practice, other participants described a range of variations to the archetypal (solicitor/legal executive) practice. These conversations tended to focus on the use of outsourcing (overseas and within the UK) and on the development of volume commoditised work in the private sector, and in competition with conventional practice.
- 3.77 Outsourcing in this context incorporates a range of functions. Activities that are outsourced by firms include: back office, due diligence, typing, e-disclosure, major pieces of research, multi-jurisdictional reports, payroll, and IT services. To a considerable extent, the diversion downwards and outwards of some legal services is facilitated by IT: case management systems enabling greater systematisation of routine work; video conferencing with legal process outsourcers (LPO) or 'near-sourced' departments within the UK, and online subscription services (possibly within the brand of the host firm). The outsourcing of both these back office functions and (generally) lower-level client work is largely driven by client demands for cost and efficiency.
- 3.78 In the commercial sphere, several groups of in-house lawyers confirmed the perception that they had yet to fully exploit their power as purchasers, and were actively pursuing cost savings, value added,³⁹ and/or alternative suppliers. For local and central government lawyers, however, work previously outsourced was being brought back in-house for reasons of both cost and quality; one participant in the private sector also questioned whether large scale outsourcing was sustainable in the long term. While there is evidence that outsourcing is actually less widespread than assumed,⁴⁰ there is also recognition that, in some areas of work, it has become a given:

But ABS plus client power is pushing it and even clients are saying, 'Well, who's your LPO provider?' So you can't even avoid the question and all the pitches are: how are you going to do the cheaper stuff?
Solicitor

- 3.79 The other side of this expectation, with clear implications for LSET, is that commercial clients are also becoming less tolerant of paying for trainee or junior lawyers within the firm to carry out work that could be outsourced more cheaply (cp Mayson, 2012; Susskind, 2012).
- 3.80 As a referral profession, outsourcing was generally thought of as less relevant to the Bar although the Advocacy Training Council suggested:

... Outsourcing should prove no real threat. In fact over the next few years as direct access work increases it is likely that clients will instruct the Bar first and ask the Bar (through its administration) to procure other services needed to enable the advocate to do his/her job. This might mean that the Bar will instruct solicitors or paralegals to support them.

³⁸ Pleasance et al (2012) make the point specifically that '[t]he systemisation and commodification of practice is both proselytised and deprecated but there is very little information on the extent to which it has taken place in the legal services market already'.

³⁹ What Susskind (2012) describes as the 'more for less' problem. This links also to changing definitions of quality and Mayson's point (2010) that quality is not just technical quality; that there is a growing emphasis on *service* and *utility* dimensions.

⁴⁰ Legal Services Board (n.d.).

- 3.81 Turning to commoditisation, this is observable in a range of legal work for both commercial and personal plight clients: volume personal injury, debt recovery and 'run of the mill' small crime have all become more routinised and, in some cases, fully commoditised. Conveyancing is another area where process tools have facilitated commoditisation. This area of work, of course, also involves another group of regulated professionals - licensed conveyancers - alongside notaries, CILEx members and solicitors.
- 3.82 Discussions of commoditisation highlighted, perhaps more than any other issue, the very broad range of understandings and variety of positions taken on the future direction of consumer legal services, the risks involved and the manner in which they should be managed. For some, commoditisation is a proper and necessary means of providing what consumers want at a price they can afford, without the trappings of more traditional legal practice, and without the need for costly professional training:

[The current LSET system for solicitors] was designed for a practice model in which the solicitor was 1 a generalist and 2 owner (=controller) of his or her practice. That model of practice is unlikely to survive for much longer, for two reasons. 1 Legal services can be delivered less expensively and more speedily if they are delivered through a few large standardised producers rather than a myriad of tiny independent producers. 2 legal work can be, is and should be largely commodified, so that it can be performed largely by expert computer systems, with human involvement increasingly limited to data entry. The skills that large producers will pay for are a pleasantly-pushy telephone manner and accurate data entry. These skills are widely available and command only minimum wage.

Other interested person (online survey)

- 3.83 For others, commoditisation places consumers in the hands of organisations, dominated by un- or under-qualified staff, possibly with insufficient supervision:

Most of my work now involves people instructing me who have no legal training whatsoever. Large firms of lawyers with up to 300 people in them with two or three lawyers. They are not governed by the standards I am expected to be judged by. The staggering incompetence of many hard working and decent young people entrusted with the public's legal problems is breathtaking. They are under so much pressure and have no support. It is not their fault.

Barrister (online survey)

Speaking from personal experience of conveyancing transactions dealing with large non-solicitor companies the quality of legal knowledge of staff is poor particularly where matters do not fit a 'norm'. Whilst many elements of conveyancing may seem repetitive and routine it is almost indispensable to have a working knowledge of trusts law, matrimonial law as well as occasionally bankruptcy, probate and other areas of law. Sadly one often finds that the people one deals with do not actually even know land law let alone these more diverse areas so cannot be giving their clients good advice.

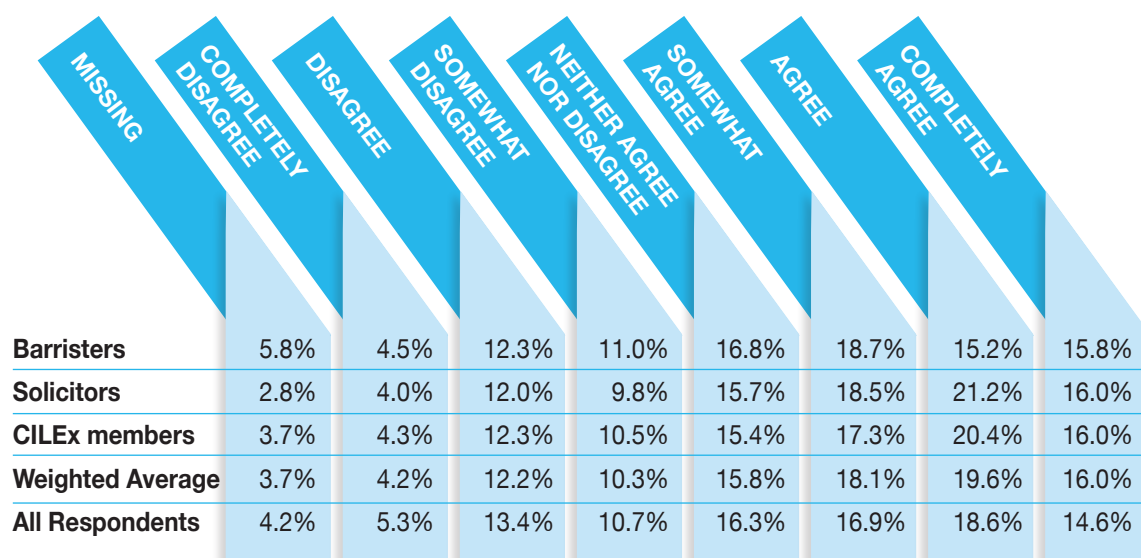
Notary (online survey)

- 3.84 For some stakeholders the development of ABSs will only exacerbate this trend. This was a view that was widely reflected in responses to the online survey, both generally and specifically among members of the three larger professions (Table 3.3).

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Table 3.3: Competition from Alternative Business Structures is a threat to overall competence levels in the legal sector (Q4.5)

Weighted (barristers, solicitors, CILEx members, and weighted average) and unweighted (all respondents).



3.85 This highlights, again, the perceived importance to the LETR of two linked questions: whether the requirement of supervision by itself is ever enough, and whether there is a need to prescribe and regulate minimum levels of competence for any technical role, including paralegal roles? The issue of competence is addressed more fully in Chapter 4.

Information and communications technology (ICT)

3.86 'In thinking about the future, discussion will at some stage gravitate towards information technology' (Susskind, 2012:6). The likelihood that technology will radically change the ways in which at least some legal services are delivered is beyond dispute. Technology, particularly through increasingly sophisticated forms of blended and e-learning also has the potential to transform⁴¹ the delivery of LSET. One of the questions for the LETR is therefore, how might these technologies connect? In other words, what can those who are planning LSET learn from the use of technology in practice?

3.87 Richard Susskind (2012:6) and the 'Young Lawyers Forum' (YLF) convened at the end of the LETR research phase both recognise the continuing relevance of Marshall McLuhan's insight that 'the medium' is indeed 'the message', and that technology does not just automate 'old' ways of working. When the innovative potential of ICT is harnessed, it actively changes the ways of working, and, often, what is delivered.

3.88 Much of the discussion of ICT in LETR focus groups demonstrated lawyers' greater familiarity with automation rather than innovation. The capacity of technology to enable things to be done differently rather than just more quickly, easily and/or thoroughly appears to be underestimated by respondents.

⁴¹ See Literature Review Chapter 8.

- 3.89 In terms of understanding the impact of ICT in practice, focus groups highlighted a number of recent developments that were thought to be significant, including, notably, e-disclosure and the growing use of a range of technologies in and around the courtroom such as telephone hearings and live video links. The need for an awareness of online dispute resolution was also highlighted as being an important element in future training.⁴²
- 3.90 In the context of trends and developments in the sector, another relevant aspect of technological transformation is its capacity to change the marketplace and consumer behaviour. Key factors here are likely to include:

The market impact of ICT companies

- 3.91 Specialist legal ICT firms, and online publishers could have significant impact by investing in creating markets that are grounded on a commitment to technological innovation. Behind these the ICT industry's continuing capacity for rapid innovation makes technology a relatively high impact and high uncertainty driver. Generic developments which push at existing data and processing capacities, such as cloud computing, and, longer term, quantum computing (which promises to overcome the physical processing limitations of existing digital technologies) mean that the limits of what ICT can achieve are yet to be reached.

Advances in online legal service delivery.

- 3.92 A high proportion of lower-level legal problems can be resolved by information alone. Technologies that enable legal knowledge and expertise to be made available online, rather than relying on face-to-face (f2f) delivery potentially have a significant role to play in legal service delivery.
- 3.93 Technology in this sense may be a double-edged sword for legal service providers. On the one hand it can play a critical public legal service function, and may also direct consumers to legal services providers. DAS's 'Law on the Web' illustrates this function: it educates, provides free resources and acts as a referral mechanism to legal professionals.⁴³ As Susskind (2010:20) notes, 'these websites have not displaced lawyers, rather they have offered legal insight and help to many people who otherwise would not generally have sought formal legal help'. This sits fairly well with a presumption, apparent in the LETR research data, that f2f will remain not just the preferred option but the norm across the legal services sector. For example:

The law firms... haven't seen how technology can help them apart from sending an email with the advice ...I think there's a lot of work being done by a bunch of lawyers that actually can be digitalised if you like. So that means less (sic) lawyers. ...This sort of need for face to face and advisory will always be there. I think because that's what people want from us, trusted advice. They'll only go so far in technology based but it can be so much more efficient.

Solicitor (our emphasis)

The impact of established technologies should not be discounted. The LSCP Tracker study thus indicates that, overall, only about 42% of legal services were delivered f2f in 2011-12, whereas another 40% were supplied by telephone or email/internet (LSCP, 2012).

⁴² This will be the case in a variety of contexts. See, eg, the proposed EU regulation for ODR in consumer disputes and UNCITRAL proposals.

⁴³ DAS Legal Expenses Insurance Company Limited. See <http://www.lawontheweb.co.uk/>

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- 3.94 The emergence of new online providers, like LegalZoom and Rocket Lawyer, albeit supported by a human interface, is already indicative of the ways in which the market may be moving. Such online providers may increasingly challenge and substitute for traditional f2f providers, particularly as the technology moves from 'search engines' to far more powerful and intuitive 'discovery platforms'.⁴⁴
- 3.95 It is thus quite possible to foresee, particularly in lower value consumer transactions, that the interplay between cost, technology and accessibility leads to the prevalence of online delivery for some services. Face to face advice may become a luxury for which there would be a premium. As one member of the YLF said:

[S]ome things will benefit from personal service but it will be a two tier market - those who can pay for personal face to face service will get it.

- 3.96 Technology therefore has longer term implications for the type of legal roles in the marketplace and may contribute to a reduction in the number of traditional lawyers. Some of this number may be absorbed into the kinds of new roles Susskind (2010, 2012) describes for legal information technologists, knowledge managers and legal process analysts. Such roles would also require new technical skills, and a greater understanding of the potential for ICT to innovate, not just automate.

Stratification and specialisation: breadth or depth?

- 3.97 One major theme that emerges from the data described in Chapter 2 is the extent to which the stratification and commoditisation of large areas of legal work raises what might be categorised as a 'depth or breadth' question. This seems to have ramifications at virtually all levels of work and training - for newly qualifieds, for post-qualification specialisation, and for what might be called 'hybrid' and paralegal functions.
- 3.98 'Stratification' is a term used to describe the extent to which legal service providers have become differentiated in response to the increased segmentation of the legal services market. It is not a new phenomenon, but can be seen as the product of various trends since the 1980s, including greater legal complexity, the growth of the profession, the increased gap between corporate and private client services, the commoditisation of services, and the expectations of purchasers and consumers in this increasingly competitive environment. One consequence of stratification is increased specialisation. This was seen by the majority of those commenting upon it as a defining feature of the modern legal services market:

[T]here is a trend that has been going on for some time where experienced lawyers become more specialised and more niche and more in a little box.

CILEx member

The reality is that the profession is splintering out so there will be more and more specialist firms.

Solicitor

- 3.99 Such changes raise fundamental questions about the role of broad 'portmanteau' qualifications and the stage at which specialisation should begin.

⁴⁴ Like existing search engines these provide a 'portal' from which to discover content from a large number of sources. However they provide far more powerful searching, using algorithms that, for example, could draw on a pre-set user profile, user-defined preferences, automated content analysis, and other users' social recommendations/ratings of content.

3.100 Specialisation is an issue that will be returned to in Chapter 4 as it goes to the heart of the discussion about defining and demonstrating competence within the regulated professions. The nature of specialisation also arises as an issue in the context of new roles that are emerging out of the legal services landscape, and particularly, as has been described, in the development and potential expansion of paralegal functions.

Paralegals and new roles in the regulated sector

3.101 A critical issue is how the changes in structure and process might be reflected in the roles performed by lawyers, and hence in the competencies required. Data from the LETR research point to the emergence of a variety of new ‘non-legal’, hybrid and ‘technician’ roles that are being developed within both conventional and alternative business structures. The specific implications of these roles for LSET will be discussed in Chapter 6, so the aim of this section is to discuss more broadly the developments on the ground, starting with the paralegal function.

3.102 Paralegal roles are by no means a new feature of the legal services sector, but there has been a growing interest in their development. Cowley (2004) concluded that, despite a lack of identity and co-ordination, limited training and a lack of recognised qualifications, the paralegal function in England and Australia has become integral to the delivery of legal services. This conclusion is, to a large degree, supported by the LETR research data.

3.103 When talking about paralegals, problems of definition abound. A range of job titles was mentioned when respondents talked about paralegals, with different organisations creating their own to suit their business and delivery structures,

We call ours legal assistants, the three of them we have are all law graduates, one is doing ILEX and the other is doing the LPC.
ABS

3.104 However, a broad distinction can be drawn between:

- paralegals as subordinate professionals - which is, in practice, the dominant model in the UK and the USA;
- paralegals as independent regulated legal service providers - the ‘Ontario model’;⁴⁵
- paralegals as unregulated independent legal service providers, of which there is evidence in the UK.

3.105 Some respondents were also unclear about the boundaries between CILEx qualified lawyers and paralegals, but there was also a sense from a range of employers that CILEx is a growing and reliable brand.

CILEx, the profile is increasing and increasing, and if you were going to say to me ‘What are you going to have in place accreditation wise?’ it would be CILEx.
ABS

⁴⁵ Paralegals in Ontario have been required to obtain a licence to practise since 2007. Licensure is based on college training, separate assessment, fitness to practise and continuing CPD requirements. Paralegals, once qualified, primarily provide advice and representation across a range of tribunals, small claims, and inferior criminal courts.

3. Trends and developments in the legal services market

- 3.106 CILEx level 2 and 3 qualifications play an important role in training the paralegal sector, though precise numbers are difficult to assess because of the flexibility of the CILEx training system, and the fact that individuals can move in and out of training at different stages of their career. The relative complexity of the paralegal training 'system' was noted in Discussion Paper 02/2012. Paralegal qualifications are also offered by the National Association of Licensed Paralegals (NALP), the Institute of Paralegals' (IoP) accreditation scheme, and by a number of universities. Of these only the CILEx qualifications are linked to authorised practice under the LSA 2007. In terms of quality assurance, both CILEx and NALP courses have Ofqual approval, though CILEx courses are, of course also primarily overseen by IPS. Those awards validated by HEIs are subject to normal QAA processes. CILEx,⁴⁶ NALP and IoP memberships all carry commitments to CPD.
- 3.107 As indicated earlier there is little hard information about the scale of the paralegal workforce. Respondents were, on balance, of the view that numbers of paralegals are growing, perhaps significantly. Anecdotally, there appears to be much variation in workforce strategies: some firms are increasing the number of paralegals, others are not, so that different firms may be operating quite differently, even within the same segment of the market. The emergence of more commoditised legal services was identified as a key area of recruitment for paralegals.
- 3.108 The permanence of any change to levels of paralegal staffing is not clear. Higher paralegal employment in the regulated sector may reflect either a permanent substitution effect, as more expensive fully qualified fee earners are replaced, or a short-term fix, to deal with specific workflow demands such as an increase in less complex, low value work. Some evidence for both explanations is apparent in the data.
- 3.109 Outside private practice there is some indication of increased demand for paralegals in-house as businesses seek to reduce costs and relieve the pressure on their legal departments, often as a consequence of keeping more work in-house. The glut of graduates without training contracts and pupillages has meant that in-house providers have had no shortage of individuals willing to take on short-term positions as a means of getting some work experience (see Winmark, 2012). In the public sector the picture seems bleak. This is the only part of the sector that the Warwick Institute of Employment Research (IER) data identify as having declining numbers in employment. The Crown Prosecution Service (CPS) in particular, the largest single employer of paralegals, is believed to be reducing its numbers substantially as part of its drive to meet cost-cutting targets.
- 3.110 The arrival of ABSs in the legal market was seen by respondents as providing more opportunities for paralegals, but with possible knock-on effects for existing firms and training contracts.

ABSs broaden the possibilities for paralegals with the introduction of high street companies offering legal services - they will require the services of paralegals. Also means that sole paralegal practitioners or paralegal firms could apply for ABS licences from the SRA.
Paralegal representative

... with the advent of ABSs I see that there will be fewer training contracts because they will have less of a necessity for qualified solicitors. There'll be higher use of paralegals in that context ...
Solicitor

⁴⁶ From associate member level.

3.111 Respondents reported a range of routes into paralegal roles, both in the regulated and unregulated legal services sectors. Three appear relatively common: graduate or post-LPC/BPTC entry; transition from a legal secretarial or administrative role, and entry as a school leaver. The perceived, significant, growth in graduate paralegals, as a consequence of oversupply from the BVC/BPTC and LPC deserves some mention here, as in some respects this has the potential to transform (indeed is already transforming) the paralegal workforce in many organisations. For the employer it provides, with limited training, a relatively high skill set at significantly below the cost of a conventional trainee. This is attractive to employers, not least because it improves the ‘gearing’ or leverage on profitability. It may be less attractive for those performing the role, and concerns about lack of training and exploitation were raised in focus groups and discussions:

A: Where I work now I'm doing a job, but there's not necessarily formal training. If I were a trainee [solicitor], I'd be trained more specifically... Maybe the paralegal market could be regulated a bit better ... The paralegal market's not really regulated. You're just there....

B: I work in-house I do more contracts than [name] some of the time. Sorry, he's the Head of [Department]. ...sometimes it's not just about not receiving that formal training but it's actually not even being recognised for the actual expertise that you [have].
Paralegals

3.112 There was also some suggestion in the research data that these more ephemeral groups of paralegals are also not the whole solution. They usefully provide a plentiful stock of well-qualified, relatively low-cost labour, but turnover can be high and they are not necessarily a long-term solution for particular businesses. Firms also need, as one solicitor respondent stated, ‘permanent paralegals who have no ambition’, or

[T]echnicians who are prepared to do something 100 times over and over again and are happy to be really good at that for 50 years.
Barrister

3.113 The term ‘legal technician’ may accurately describe what some of these lower level paralegal roles involve.⁴⁷ By contrast, other paralegals are clearly working at an equivalent standard to members of the regulated professions. The legal workforce is thus developing into an extended set of roles, with potentially smaller numbers of ‘full service’ professionals (barristers, CILEx members, solicitors, etc.) at one end of the scale, with specialist technicians at the other end, undertaking very specific tasks as part of a commoditised service. Additionally, as noted already, there are other individuals performing a first point of legal contact (‘triage’) role. This diversity leads to a number of general points about training for specific roles.

Training for the role

3.114 Segmentation and specialisation thus links to another critical issue for the LETR - a growing tendency for more specific and specialised training. This is particularly relevant to paralegal roles, but is also highlighted in other parts of the sector:

⁴⁷ The concept of legal technician is also developed further in Chapter 6.

And there's probably about 20 people like me there. We couldn't afford to have 300 lawyers. So in effect, we train people to different skill sets. Some of them become licensed conveyancers; some get CILEx, so it's just we've already developed the model. So from a consumer perspective they're being ultimately supervised by a solicitor, a legal executive, licensed [conveyancer] at the top of the pyramid, but we already recognise that. In fairness, we're not unique.

Licensed conveyancer representative

- 3.115 The move to more bespoke training through tailored LPC provision is seen by those commercial firms that have adopted it as part of this pattern, though it does not go far enough for some:

[W]e would rather take graduates (any degree from a decent university) without any of the (pointless and extremely poor quality) legal qualifications (GDL/LPC) and train them ourselves to meet the precise requirements of our clients.

Solicitor (online survey)

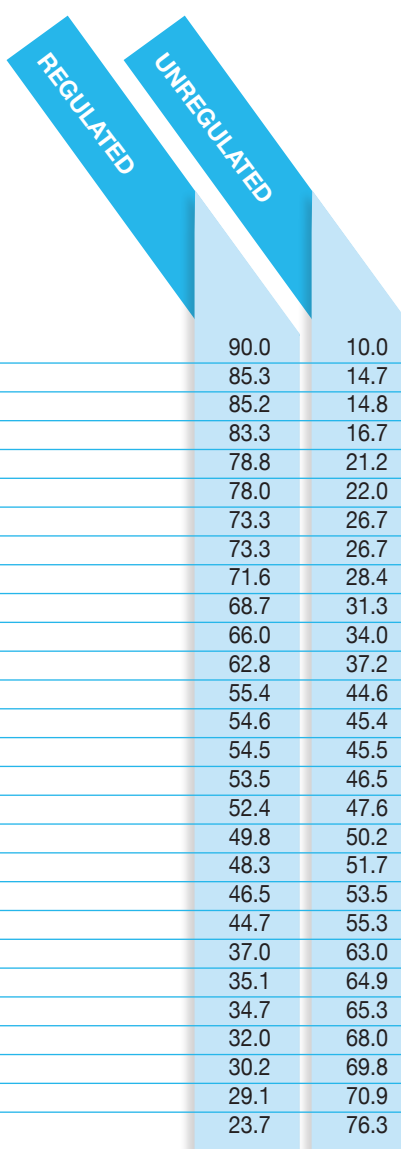
- 3.116 At the same time a number of respondents identified concerns with such a limited approach to training. There might be issues with the transferability of the roles and skills sets developed, and - for paralegals particularly - possibly the 'qualifications' achieved. Concerns about the availability or adequacy of professional oversight and quality assurance for such workers were also expressed.
- 3.117 In summary then, aside from questions of post-qualification specialisation, stratification has led to a growing tendency to specialisation across the range of occupations and settings, from those, like patent attorneys or licensed conveyancers, which are inherently specialist, to increasingly tailored provision on the LPC. This raises a number of contradictory pressures, in terms of training for breadth or depth, some of which were discussed in Chapter 2. The trend towards specialisation finds some support from trainees, who may see parts of the general training regime as irrelevant, employers, who do not want to invest resources in areas that are not required for the business, and consumers who expect experts, not 'jacks of all trades'. However, respondents also perceive the dangers of too narrow a field of training, both for competence and career development.
- 3.118 The development of more specialist paralegal 'technician' roles could assist the development of a new workforce not needing the current breadth of education. The potential for offering a more accessible and cost-effective way of developing access to justice in respect of many routine matters is clear, though it also comes with risks of over-specialisation and insufficient supervision.

The unregulated sector

- 3.119 Finally this section briefly examines the unregulated legal services sector, and highlights some of the challenges.
- 3.120 A feature of the modern legal services sector is the extent to which services may be provided by those without individual authorisation or an entity licence under the LSA 2007. For the purposes of this report the unregulated sector is defined as those entities and individuals undertaking any legal activities (as defined by s.8, LSA 2007) in the course of a business or within the activities of a not for profit organisation, other than legal activities that are regulated within the legal services sector or indirectly regulated under a 'non-legal' professional title (eg, as an accountant, surveyor, etc).

- 3.121 The scale of activity so defined is difficult to estimate. Reserved activities represent only about a fifth of all legal services provided in England and Wales (Legal Services Board, 2012). Thus, the majority of work conducted across the sector is unreserved, even though it may be conducted by authorised and regulated providers. Indeed, BDR data indicate that solicitors' firms (a term which here should be interpreted to include CILEx members and supervised paralegals) remain by far the single largest frontline source of legal advice. However, as measured by individuals' most recent advice-seeking activity, they account for less than half of that activity (44%). What is striking therefore is the very wide range of sources that exist for what consumers themselves consider legal advice. In terms of assuring standards and quality, this may be a significant challenge in seeking to identify and regulate general legal advice and assistance.
- 3.122 The breadth of activity is also reflected in the recent BDR consumer data (Table 3.4). Taking consumers' use of advice providers across a representative range of 28 justiciable problems, the research found that, in over a third of those problem areas, 50% or more of respondents relied on unregulated providers. These included areas where service users are likely to be vulnerable, including mental health (over 76%), homelessness (72%) and domestic violence (65%).

Table 3.4 Use of regulated and unregulated advice providers (from BDR data)



	REGULATED	UNREGULATED
Divorce	90.0	10.0
Bought/sold a house	85.3	14.7
Been Arrested	85.2	14.8
Dealt with estate	83.3	16.7
Clinical negligence	78.8	21.2
Immigration	78.0	22.0
Been treated badly by the police	73.3	26.7
Made a will	73.3	26.7
Relationship breakdown	71.6	28.4
Home repossessed/faced eviction	68.7	31.3
Other personal injury	66.0	34.0
Other problems with property I own	62.8	37.2
Tenant/squatters	55.4	44.6
Problem with employer	54.6	45.4
Problems with a landlord	54.5	45.5
Injured at work	53.5	46.5
Re-mortgaged	52.4	47.6
Road traffic accident	49.8	50.2
Children	48.3	51.7
Debt/money problems	46.5	53.5
Welfare benefits, tax benefits	44.7	55.3
Discrimination	37.0	63.0
Domestic violence	35.1	64.9
Consumer problem	34.7	65.3
Disputes with neighbours	32.0	68.0
Planning application	30.2	69.8
Homelessness	29.1	70.9
Mental health	23.7	76.3

3. Trends and developments in the legal services market

3.123 The 'unregulated' market is complex, since it potentially incorporates any 'legal activity' that is not a reserved activity, or is otherwise regulated (such as immigration advice). Three areas of activity examined by the research team illustrate this complexity.

- Advocacy and litigation are essentially reserved areas of activity, yet there are elements of unregulated activity within that, notably through (i) the 'loophole' created by the Courts and Legal Services Act 1990 prior to the LSA 2007 which permitted solicitors to be represented by agency clerks in certain proceedings, and (ii) the inherent discretion of the courts to permit litigants in person to receive support and advice from a litigation assistant or 'McKenzie Friend'.⁴⁸ This has led to the emergence not only of a range of support from *pro bono* groups, charities and not for profit (NfP) agencies, but to a more controversial class of 'professional' litigation assistants who provide support in return for out-of-pocket 'expenses'.
- Will-writing is provided by a wide range of organisations outside the current regulated providers: banks, independent financial advisers, charities, will-writers and will-writing companies, as well as providers of DIY will 'kits'. Much of the work on the LETR research was undertaken in the shadow of the LSB's investigation into will-writing, and its recommendation that the activity should be brought within the LSA 2007 regulatory system,⁴⁹ but the field was retained as part of this study, not least on the basis that existing research provided a useful benchmark for likely quality issues and risks. Most of the attention in the will-writing debate has been focused on independent will-writing businesses, as these were seen as a high-risk activity in the light of a number of cases of cross-selling, high pressure sales, and over-charging. The research into will-writing however has not demonstrated a significant difference in the quality of wills produced by regulated and unregulated providers, but rather there is evidence (albeit based on a limited sample) that a similar (high) proportion of wills by authorised and unregulated providers is unsatisfactory.⁵⁰ As this report was being written, the government announced its rejection of the proposal to reserve will-writing for the present, despite the weight of evidence in favour of regulation. Data from the LETR survey of will-writers (who were all members of their relevant membership bodies) also pointed, despite concerns about the possible cost of regulation, to a commitment among the majority to maintaining or strengthening standards of professionalism within the industry. This was reflected, for example, by positive attitudes both to the principle of regulation, and to the need for CPD enhancement (66.7% of respondents felt their CPD hours should be increased).
- Employment advice and representation, which has been a growth area of legal activity (LSB, 2012) represents another area where there appears to be substantial unregulated activity. Training within unregulated employment advice organisations was examined as an element of this research. The largest unregulated providers are substantial businesses, focusing on advising and representing corporates and SMEs on a range of employment and sometimes other regulatory matters. Some have a number of senior staff with professional legal qualifications, a number of whom have moved from regulated practice, and who exercise oversight of a team of 'paralegal' advisers. The latter tend to be LPC or BVC/BPTC or CIPD qualified. Systems of oversight and training tended to be at least comparable with paralegal training in practice settings, and opportunities for external training existed in some. Opportunities for career progression and internal mobility were clearly set out in the larger organisations. The largest providers use their

⁴⁸ This is in addition to advocates such as local government officers and trading standards officers authorised under statutes other than the LSA 2007.

⁴⁹ The Ministry of Justice rejected the recommendation on 14 May 2013.

⁵⁰ More than one in three of all assessments in a wills shadow shopping exercise (T = 102 wills) was thus scored poor or very poor (Legal Services Consumer Panel (LSCP), 2010).

own trained advisers for representation. Others used external ‘representatives’ or ‘consultants’, including in one organisation practising solicitors, highlighting an interesting link between the regulated and unregulated sectors.

- 3.124 As the employment advice sector shows, it is not just the consumer side that relies on unregulated service providers. Commercial organisations will also use a range of unregulated providers. These might include in-house people, with or without legal qualifications, providing legal advice to their employer on contracts, employment, and other general areas of activity. Volume debt recovery, including representation in small claims is another common area of unregulated activity. One example from the research data includes a builders’ merchant employing:

a team of seven guys and one woman and they are in court constantly on debt recovery. The guy I was dealing with, he’s done over 800 court cases. It’s all much the same thing ... He hasn’t even got a law degree.
Paralegal representative

- 3.125 The research also uncovered a small number of organisations operating as ‘paralegal firms’. These were operated by a variety of persons ranging from struck-off solicitors, to recent LPC/BPTC graduates, to those with no readily apparent formal legal qualifications, but with legal or quasi-legal experience. The emergence of such firms was also picked up in the qualitative research, as one interviewee observed:

[W]e get youngsters ring us up saying, ‘I don’t want to be a solicitor, I want to advise people, can I set up my own paralegal law firm?’ Frightening. The worst ones are the ones who have just graduated, can’t get a training contract and set up their own law firm. But it is happening. It really is.
Paralegal representative

- 3.126 There are no precise figures as to the scale of such operations and further research needs to be undertaken to try and assess the extent to which such firms are being created and are actually operating, and to identify key skills and knowledge gaps among those operating them. At the very least there should be more public information for consumers thinking of using such legal service providers, but this issue is beyond the scope of the current research.
- 3.127 The work undertaken in paralegal and unregulated services as part of the LETR research highlights the complexity of the unregulated market, the potential for wide variations in quality of service, and how little research has been undertaken into unregulated legal advice. Particularly with the cuts in legal aid, alternative providers may well be at the cutting edge of consumer-facing legal services in the near future. It is submitted that there is a strong case for further, independent, research into both the paralegal workforce, and developments in the unregulated sector.

Workforce projections and implications

- 3.128 It is important to understand the combined impact of the current economic environment and the longer term market changes discussed above on the size and composition of the legal services workforce in the future. Predicting employment trends is seldom straightforward, but the current combination of recession, market liberalisation and reform to legal aid and litigation funding undoubtedly add to the complexity. Consequently, this is a topic on which there are no straightforward answers, but some plausible directions of travel.

3. Trends and developments in the legal services market

- 3.129 The historic strength of the sector has been reflected in significant and long-term employment growth. The solicitors' profession overall has grown by over 206% between 1981 and 2011 to a total of 121,933 solicitors with practising certificates (Fletcher, 2012). The picture at the Bar has been more complex, but the results have been, essentially, as dramatic. The Bar grew rapidly in the 1970s⁵¹ fuelled largely by access to publicly-funded legal work. That growth rate more than halved in the 1980s, as pass rates on the old Bar Finals and the prospects for tenancy both declined (Abel, 1988:70), before picking up again following the reform of vocational training in the early 90s. As a consequence, the Bar had nearly trebled in size in the years between 1960 and 1990, and then virtually doubled again between 1990 and 2004 (Department of Constitutional Affairs, 2005). By the beginning of 2012, there were 15,581 barristers holding practising certificates (Bar Council/BSB, 2012), over 12,000 of those in independent practice.⁵² For the future, the Law Society forecasts that after the dip of 2012 legal services will return to 'modest' economic growth in 2013, with longer-term growth predicted to be over 4.2% from 2015 (Law Society, 2012a).
- 3.130 The relative success of the legal services sector, with a range of performance in the last four years (see 3.5 and 3.6 above) has made for an interesting recruitment environment. The credit crunch led both to a reduction in trainee numbers in law firms, and, initially, a significant fall in retention rates. For example, in firms surveyed by Chambers and Partners (2012), retention fell from around 82% in 2008 to below 75% in 2009. Signs are that recruitment and retention rates are slowly recovering, but that the market is still volatile. In 2010 roughly 75% of trainees stayed on at the firm that trained them, with the figure rising to 80% of qualifiers in selected firms in 2011 (Chambers and Partners, 2012). This is, however, in the context of a significantly reduced intake of trainees (a total of 2,251 trainees qualified at surveyed firms in 2011, over 400 fewer than in 2010). This pattern is reflected also in the global number of admissions to the Roll, which have recorded a fall in numbers for the last two years for which data are available (Fletcher, 2012). Data at the Bar also show, overall, a continuing decline in the number of new pupillages offered between 2005-06 and 2010-11, from 515 to 446 per annum (Bar Council/BSB 2012:42). Negative growth of 3.1% was recorded in tenancies and new starter positions at the employed Bar over the period 2005-6 to 2009-10 (Sauboorah, 2011).
- 3.131 Signs of recovery started to emerge in 2011, but the outlook remains fragile. The decline in tenancies and new positions at the employed Bar was reversed in 2010/11 by an almost 16% increase (Bar Council/BSB 2012:26), and was accompanied by relatively 'upbeat' recruitment by City law firms (High Fliers Research, 2013:11). However, the recent removal of legal aid in respect of a substantial proportion of the work of the family Bar and the reduction in remuneration for advocates in the criminal courts suggest that the numbers of the independent Bar may reduce, rather than increase, over the next few years at least. Furthermore, leading employers across a range of sectors, including law, subsequently downgraded graduate recruitment targets in the course of 2012 (High Fliers Research, 2013:10-11). Forty-five out of the Times top 100 employers ultimately reduced their graduate intake in 2012 from 2011. The law firms surveyed have reported plans to increase graduate recruitment again in 2013, but only by 1.3% (High Fliers Research, 2013:13).
- 3.132 These trends are not necessarily reflected in all parts of the sector: indications are that the overall number of legal executives (Chartered, or equivalent, and trainee) has been relatively static over the last seven to eight years, at around 22,000.⁵³ By contrast, the number of notaries appears to have declined over the last decade, from about 1,300 in 2000 (Shaw, 2000) to around 900 in 2012.⁵⁴

51 Annualised growth of 8.2% between 1969 and 1978 (see Abel, 1988:69).

52 As discussed, there is a lack of longer-term, accurate, statistics in respect of other authorised providers.

53 Based on figures published in Department of Constitutional Affairs (2005) and reported by CILEx to the research team.

54 Data derived from the register of practising notaries held online by the Faculty Office at <http://www.facultyoffice.org.uk/Notaries1.html>

- 3.133 A set of sector-wide employment projections was developed for the LETR research phase by Warwick Institute of Employment Research (IER) (see Wilson, 2012). This focuses on the general trends in the UK economy and their likely impact on the demand for employment in the legal services sector in England and Wales, providing quantitative projections of numbers employed, looking forward to 2020.⁵⁵ These data are reported here in the context of other available sector-specific sources, in order to provide, so far as possible, a rounded picture of trends.
- 3.134 In official data, employment by sector is defined using the Standard Industrial Classification (SIC). Official data sets suggest that in 2010 employment in the legal services sector as a whole was just under three-quarters of a million people. Compared with 2000, numbers in the sector as a whole had grown by over 120,000, a 20% increase. Within the legal services sector, about 400,000 people worked in the more narrowly defined legal activities category in 2010. It is this *legal activities* group that is the primary focus for the LETR.⁵⁶
- 3.135 Within the sector the jobs people do are classified according to the Standard Occupational Classification (SOC). In 2010, based on the official statistics there were around 20,000 barristers and judges and 100,000 solicitors. This compares quite closely with the figures produced by the professions from their own membership data (above).
- 3.136 Looking at emerging trends, the IER analysis projects an overall expansion (of approximately 14%) in total workforce numbers in the legal activities sector between 2010 and 2020, requiring an additional 58,000 workers. Added to this is a further and larger figure representing replacement needs over the given period. Replacement demand reflects permanent loss from employment due to retirement and similar factors. For most occupations annual replacement demand is about 2.5% of the existing labour force.⁵⁷ Over a longer (eg, 10 year) period, however, replacement needs are cumulative and thus an extremely significant change factor. Thus, in respect of legal activities between 2010 and 2020 there is a projected need to replace nearly 39% of the workforce, or 157,000 jobs, thus giving a total projection of 215,000 job openings between 2010 and 2020.
- 3.137 Female full-time employees are the largest single group in the legal services labour market (36% of the whole in 2010) and, despite a small loss of share of available jobs,⁵⁸ they will continue to be the dominant group in 2020. Part-time female employee numbers are also significant (20% of the workforce in 2010) and women are expected to marginally increase their share of available jobs by 2020. Meaningful projections based on ethnicity cannot be produced as the numbers for most ethnic groups are too small to be statistically robust for this purpose.⁵⁹

⁵⁵ The Institute for Employment Research (IER) at the University of Warwick has been a major provider of comprehensive whole-economy and sector-based workforce forecasts for many years. The latest set of national projections was produced for the UK Commission for Employment and Skills towards the end of 2011. These projections are based on the latest Cambridge Econometrics macroeconomic projections, and upon changing employment patterns within and between sectors. These forecasts are therefore not simple time series extrapolations based on past trends but take into account the changing demand for legal services from business, consumers and the state. The main official data source used is the Labour Force Survey (LFS). This is a quarterly survey of households covering the UK, reporting on both those in employment and self-employed. The other key source is the Business Register and Employment Survey (BRES), formally the Annual Business Inquiry (ABI). This is a survey of employers and workplaces. It tends to provide a lower workforce estimate, partly because it does not collect data relating to self-employment.

⁵⁶ 'Legal activities' is the category used in the SIC (2003 and 2007) system that includes the majority of activities within the sector delivered by legal and paralegal occupations. It excludes the activities of court staff, public security, law and order activities and some support staff activities.

⁵⁷ These rates are based on IER analysis of Labour Force Survey (LFS) data. For barristers and solicitors some additional data on the age structure of the current workforce were available from the data provided by the Bar Council and Law Society. These enabled a basic check on the loss rates assumed.

⁵⁸ This is consistent with, but not wholly explained by, a predicted decline in the number of legal secretaries over the period.

⁵⁹ Ethnicity data are published by the Law Society and Bar Council; the data for both from 2005/2006 to 2010/11 are usefully summarised in the Legal Services Board's Baseline Report (2012b:31-33). Law Society data thus show that, relative to the BME population, BME solicitors have been slightly over-represented since 2007/08. Data from the Bar indicate a small reverse trend, whereby the BME proportion of the Bar has remained essentially static against a growing BME population. Unpublished data from CILEx show a snapshot in 2011/12 of 12% of Fellows and 29% of students from BME backgrounds.

Trends by occupation

- 3.138 Trends can be examined reliably for barristers, solicitors and on the basis of an amalgam of other occupational groups. The small numbers involved in the smaller professions mean that comparable data for individual trends for each of these are not available.
- 3.139 Law Society data show that the rate of annual employment growth for solicitors between 2008 and 2011 fell significantly below the historic average of around 4% (Fletcher, 2012). Looking forward, IER projections indicate a relatively slow recovery: 2008 levels of employment are unlikely to be regained much before 2018, and the average annual growth rate in the solicitors' profession 2010/20 is predicted at around 2.6%, ie, some two-thirds the average rate of the last ten years. Nonetheless, this equates to approximately an additional 18,000 jobs between 2010 and 2020.
- 3.140 The projections developed by IER assume common growth prospects for men and women. However, based on historic data, that assumption could prove to be incorrect. Between 2000 and 2010 the proportion of women on the (solicitors') Roll increased by over 8% and those with practising certificates by almost 10%. The proportion of women at the Bar increased by 5% over 2000 to 2009. If these kinds of historic trends continued, the gap would, of course, continue to narrow, and women might be expected to constitute the majority in the solicitors' profession by 2020.
- 3.141 Published statistics for the Bar between 2007 and 2011 indicate annual growth of 0.9% (Bar Council/BSB, 2012:9). The IER projections for 2010 to 20 indicate cumulative growth of 7.5 per cent, ie, continuing at slightly below the current average level. If correct, this would see another 2,000 barristers in the marketplace in 2020.⁶⁰
- 3.142 The SOC classification does not clearly differentiate between other occupational groups within the legal activities sector and so data cannot be disaggregated at these levels. The classification does distinguish two categories, 'associate legal professionals' and the residual 'legal professionals not elsewhere classified'. The former group, comprising around 34,000 workers in 2010, expressly includes legal executives and law costs draftsmen with a range of paralegal roles, while the latter includes a broad cross-section of other specialist legal functions.⁶¹ The IER projection suggests growth in the 'associate legal professionals' category of 19.6% between 2010 and 2020, which is below the predicted growth of the solicitors' profession. This nonetheless translates to an extra 7,000 jobs between 2010 and 2020. By contrast only 4.6% growth is predicted for 'legal professionals n.e.c.' over that period, resulting in around 2,000 new jobs.

Implications

- 3.143 These data have three important implications.
- 3.144 First, they suggest that, as one might expect, growth will continue to be slow until at least 2015, but, other things being equal, underlying demand for employment is reasonably robust, with replacement demand in particular generating significant employment opportunities across the sector over the period to 2020.
- 3.145 Secondly, the projections indicate that pick-up in recruitment is likely to be slow, even on a best case scenario, within the context of a fairly unpredictable job market. Consequently, with continuing high levels of recruitment and graduation by university law schools, unless students begin to self-select options other than professional training at levels above the

⁶⁰ Bar Council response to Discussion Paper 02/2012.

⁶¹ Including notaries, parliamentary draftsmen, justices' clerks, legal advisers and consultants, and in-house lawyers not classified as solicitors, etc.

historic norm, the traditional professions are likely to experience continuing bottlenecks at the point of entry into workplace training.⁶²

- 3.146 Thirdly, the projections offer little indication of a substantial substitution effect from traditional fee-earner to paralegal roles. In this respect the data are somewhat counter-intuitive, since there is a widespread view, reflected in the trade press, and to an extent in the LETR qualitative data, that such a process is underway.⁶³ It is possible that there is such a trend, but it is still too recent to be clearly reflected in government employment statistics, or may be masked by a lack of granularity in SOC categories. Whilst a substitution effect might not significantly impact the global projection for numbers across the sector, it would make a difference to the distribution of the workforce between solicitors, CILEx members - including those who are part-qualified - and (other) paralegals.
- 3.147 A recent small scale survey of 50 employers by Welsh and Aitchison (2012) offers some evidence to support the idea of faster growth in the paralegal sector. This predicts an 18% growth in paralegal employment over the next five years, ie, an annualised figure of 3.6% growth. This is markedly above the IER projections for solicitors, and for the sector as a whole. While this appears to fit the paralegal expansion thesis, the figures do need to be treated with some caution; sampling for this survey was non-random and respondents tended to be employers who already had a history of employing paralegals. If such an effect could be more reliably established, it might suggest a need to re-assess the demand/need for paralegal training and regulation, but the position is not clear and therefore more monitoring is necessary.
- 3.148 This leads to a further observation. It follows that, whilst these projections offer a best estimate of trends, based on sophisticated microeconomic models, they cannot account for the impact of (micro or macro) structural events that may re-shape the market in ways that are still unpredictable. For example the extent of the impact of the new legal aid reforms and changes to remuneration of criminal advocates, cannot be anticipated in these projections, nor can the fallout from large scale political changes, such as a weakening of the European Union in the wake of the Eurozone crisis. To that extent, these projections may be better regarded as falling nearer the upper end of a range of likely outcomes.

Conclusions

- 3.149 This chapter explores a range of quite diverse trends and perceptions concerning the development of a legal services market operating under conditions of considerable complexity.
- 3.150 It has sought to do two things: to identify those factors that will shape the size and distribution of the legal services sector, and to highlight those trends that may have an impact on the training required by the legal services sector.

⁶² The graduate market is still primarily focused on the traditional professions. Hardee (2012) notes that about 79% of entering law students and over 60% of final-year students still see a career as a solicitor or barrister as their preferred choice. Very few positively select alternative careers as a positive choice at this stage. The growing popularity of the CILEx graduate fast-track should be noted, though it is likely, in the face of Hardee's data that this is more a response to market conditions than the result of an expressed preference for the CILEx career path. The impact of the rising cost of university particularly for students living in England, and the development of non-graduate pathways such as apprenticeships remains to be seen.

⁶³ For example, the references to firms developing extended training pathways in Chapter 2, building on internships and/or periods of paralegal employment. One ABS respondent also specifically referred to the likelihood that the market will require firms 'to have greater gearing going forward' ['gearing' refers to the ratio of fee-earners who are not profit-sharing partners to profit-sharing partners; higher gearing should indicate higher profitability].

The size and distribution of the sector

- 3.151 Viewed over the long term, the legal services sector has experienced a long period of steady growth, until the impact of the financial crisis began to be felt in 2008. The period since 2008 has been unstable in both economic growth and recruitment terms. As the Winmark Report (2012) concludes, the legal services market has entered a new phase. For many providers 2008-10 was about dealing with the immediate impact of recession; 2011-15 is much more about adaptation to a radically different environment.
- 3.152 The headline findings from the IER study present a mixed set of messages to the sector, and to the Review. Despite the depth of recession, there is no evidence historically or in the projections, taking the sector as a whole, of sustained negative growth. On that basis, the Law Society's 'Bleak House' scenario may not appear to be the most likely outcome at this time, but there is little solid evidence on which we might rule out any of the other three.
- 3.153 The overall need for trainees will continue to be reasonably robust, fuelled by some growth but primarily by replacement demand, particularly in the commercial sphere. This overall picture is likely to disguise significant disparities beneath the surface. In the short term, diversification, market consolidation and inward investment through ABSs may all help sustain growth, but it is not possible to rule out that the market has already moved to a position where smaller numbers of trainees will become the norm, particularly in the private client sphere. Public funding cuts, commoditisation, outsourcing and technology could all play a part in shrinking demand for trainees. Continuing oversupply of LPC/BPTC graduates is likely also to have knock-on effects, including heightened competition in the traditionally non-graduate professions and paralegal pathways.
- 3.154 From the student perspective, competition generally for recruitment is likely to remain fierce for the remainder of the decade, possibly easing a little after 2018. For employers it is likely to remain a buyer's market in the short-to-medium term, at least for those in the larger firms and in chambers generally, though inter-professional competition for those traditionally perceived to be the 'best' candidates is likely to continue to be strong, particularly in the commercial sphere.
- 3.155 The consequences of the decline in legal aid and changes to civil litigation funding will be felt across the professions; the question is, how deeply? Historically much of the Bar's growth was supported by public funding, and there is a risk that, proportionately, the Bar will feel the greatest impact as legal aid continues to decline. Market consolidation and restructuring are likely to work for some of the larger legal businesses in the private client field, though size of itself may be no defence, as some recent high profile collapses indicate. To that extent, the future shape and scale of high street legal services remains uncertain.
- 3.156 The potential for further market stratification is likely to mean that the disparity of opportunities and rewards between the City and the high street will continue. The risk of advice deserts and, longer term, skills shortages must be taken seriously, particularly given the economic pressures faced by the NfP sector. The implications of this for the diversity of the traditional professions needs also to be considered (see further, Chapter 4).
- 3.157 The scale of replacement demand highlights the amount of experience and expertise that is lost routinely from the sector. Replacement opportunities to the end of the decade outnumber new jobs by a ratio of nearly 3:1. In the LETR context, this serves as a useful reminder of the importance of developing the skills of those who are moving into more senior roles, and assuring the right quality of starters now; as a solicitor from one City law firm observed:

If we make mistakes or we accept anything less than the very best now, again it won't hurt us now, but in five, six, seven, certainly in 10 years time it will kill us.

Market trends and changing training needs

- 3.158 Indicative evidence has been gathered of some of the ways in which both new and conventional businesses are disrupting the traditional ways of working associated with particular titles or functions and, by opening up new roles, are creating opportunities for individuals to develop careers both vertically and laterally, bringing a broader range of competencies into play.
- 3.159 This is not to suggest that titles become irrelevant; they are likely to remain a feature for the foreseeable future, but it is increasingly likely that distinctions within the legal workforce will, in the future, reflect less the individual's professional title, than their role in an organisation and, at least in the earlier stages of a career, the nature and level of supervision provided. This is already evident to some extent in the in-house and local/central government sectors. The extent to which regulation should move to formalise that, and develop perhaps a stronger focus on activity-based education and authorisation is an important question emerging from the work of this phase.
- 3.160 While the rise of ABSs may enable legal businesses to buy-in and reward additional specialist management and support functions, the assumption that new models will necessarily increase separation between technical legal and other - including managerial - roles, and therefore actually reduce the need for lawyers to have management or other complementary skills, remains largely unproven. The work highlighted in this chapter also points to the emergence of a number of new roles, and challenges for existing roles, created by the new regulatory and market environment. It particularly highlights the development of 'triage' functions and of narrow, paralegal, 'technical' specialisations. There are also some indications that new technologies and work processes are developing a need for the kind of hybrid functions proposed by Richard Susskind (2010): legal project managers, process analysts, risk managers, knowledge engineers, and so on. This adds both confirmation and a number of additional skills and knowledge gaps to the analysis begun in Chapter 2, with highlighted issues including:
- additional emphasis on the importance of ethics and the need to consider enhancing both content and delivery of ethics education and training consequent on the development of OFR;
 - additional emphasis on client-facing and complementary skills, particularly for paralegal employees;
 - substantive needs to understand the new practice and regulatory environment, and the different roles and professional obligations that new forms of business organisation may entail;
 - some emerging evidence of the importance of developing a range of management competencies in the context of client relationship management, project management, and risk management, as well as the higher organisational management skills needed to provide leadership in a rapidly changing environment (this is developed further in discussions around CPD and continuing learning in the later chapters).
- 3.161 In relation to the structure of the market this chapter has highlighted the extent to which the trajectories of the corporate and private client spheres are continuing to diverge. This must bring into question the appropriateness of maintaining a 'one size fits all' training regime. The anticipated growth of multi-disciplinary practice, and the degree to which the LPC and BPTC are becoming, de facto, expensive paralegal training courses, also raise important challenges for the LETR. On the basis of these trends and developments, it is suggested that there are three issues that can be regarded as central emerging themes for the review:

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- the need to develop and redefine the notion of core legal competence;
- the need to address the LSET implications of increased stratification in the legal services market;
- the need to ensure that the LSET system is capable of responding flexibly and robustly to continuing uncertainty and a rapidly changing environment.

3.162 These insights will be taken forward into following chapters in order to define the nature of the issues the LETR needs to address, and begin identifying some potential solutions.

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Introduction

- 4.1 Assuring the competence of legal services providers is, axiomatically, a core function of LSET. Whilst new technologies, new ways of working and greater competition all have the potential to bring benefits to consumers, the pace of change, pressures on funding, and risks of de-professionalisation also potentially threaten standards. The sector needs to ensure it has sensible and robust standards in place to counter those risks.
- 4.2 Competence must be demonstrably *identified, attained, signalled* and *assured*. This chapter focuses on the ways in which competence may be identified and attained through a system of competencies and standards, which prescribe outcomes and processes of learning. Chapter 5 goes on to address how competence is signalled to consumers and others through titles and systems of accreditation, and assured through quality assurance mechanisms applied to institutions offering LSET in the classroom, and to legal services providers educating in the workplace.

Defining competence

- 4.3 Competence can be seen as:
 - An overarching *attribute of professionalism*: 'the skilful application of specialised education, training and experience ... accompanied by a sense of responsibility and an acceptance of recognised standards' (Hayes Committee, 1972). In this sense of the term, competence is a desired consequence of an education and training system.
 - A *practice standard of performance*,¹ ie, the benchmark against which a practitioner is judged. Competence in this sense is often regarded as a minimum - a level of performance that is not negligent or otherwise sufficiently poor to merit disciplinary sanction (Cooper, 1991). It is common in this context to distinguish a requirement for initial competence, usually signified by having completed the formal obligations of a qualification system, from any need for higher or continuing competence.
 - A *statement of (expected or actual) learning attainment*. In educational practice these statements are often referred to as learning outcomes.²
- 4.4 McKee and Eraut's (2012:3) concise definition of competence as the ability 'to perform the tasks and roles required to the expected standard' demonstrates that it has two key dimensions: the specification of a range of tasks or capabilities (the *competencies* or *outcomes* required) and the expected *standard* of performance. The linkage between these is critical; without a specified standard, an outcome or competence statement is merely a descriptor of what someone can or should be able to do, there is nothing to denote the quality with which it is done.
- 4.5 There is considerable variation in the way terms like outcomes, competences, competencies, and standards are used within LSET. Thus, for example, satisfactory completion of pupillage is defined by reference to 'standards and competencies' (BSB, 2012c) whilst qualification as a solicitor is determined by reference to a range of 'practice skills standards' for the training contract, or task-based 'outcomes' for the QLTS (SRA, 2008; 2013). To some extent terminology may be determined by context, so that what is described as a 'learning outcome' in the classroom may be identical to an achievement described by an employer or professional body as a 'competence' in the workplace.³

¹ The term 'practice standard' is used widely here to incorporate all standards that are set as a matter of law, or as a consequence of practice norms, standards or outcomes, whether legally enforceable or not.

² Though there is some unresolved inconsistency in the use of terms. Some writers treat 'learning outcomes' and 'competences' as effectively synonymous, the former being classroom-focused and the latter workplace-focused. Others treat learning outcomes as a sub-set, specifying what it is that the student will need to know or be able to do in order to demonstrate the desired competence (see, eg, Kennedy, Hyland and Ryan, 2009:12).

³ See also the list of definitions of learning outcomes taken from a range of sources in Kennedy, Hyland and Ryan (2012:4).

4. Evidencing Competence and Quality

4.6 For clarity and consistency, this report therefore adopts the terminology set out in Table 4.1

Table 4.1: Terminology for ‘competence’, ‘competencies’ and ‘outcomes’

TERM	DEFINITION
COMPETENCE (GENERIC TERM)	An ability to perform the tasks and roles required of a lawyer to (at least) a minimum standard of effectiveness.
A ‘COMPETENCE’ OR ‘COMPETENCY’ (SPECIFIC TERM)	A sub-category or component of competence, defined in terms of a task to be performed or attribute to be demonstrated. These may be defined at a comparatively high level of abstraction (see <i>tables 4.2 and 4.3</i> below, the ‘broad view’) or with a considerable degree of task-based detail (see, eg, the National Occupational Standards (NOS) for legal services, the ‘narrow view’).
A ‘LEARNING OUTCOME’ OR ‘OUTCOME’	The expected result of a learning process defined in terms of scope (what is to be known, understood and/or demonstrated). This will often be attached to an NQF level or other ‘marker’ describing the expected level of performance.
A ‘STANDARD’	A means of assuring or measuring the level of performance in a component of competence. This may involve a statement of measurement against predetermined criteria or by reference to, eg, a collaborative process (such as that used in medical assessment) which determines the characteristics of a ‘good enough’ performance.

Competence and outcomes in professional education

4.7 Formal competencies are commonly adopted in both educational and workplace environments to set out what a professional should be able to understand and to do. These set the standard of initial competence to practise, and may be used for:

- setting the outcomes of educational programmes;
- accrediting prior experience and/or certificated learning, and
- benchmarking continuing professional development.

4.8 Internationally, competency- or outcomes-based approaches to education and training have been adopted by a range of professions and occupations, including medicine and accountancy,⁴ and have been developed for legal education and training in a number of other predominantly common law jurisdictions,⁵ notably Australia, Canada and Scotland.⁶ It is also at an early stage of development in the USA.

⁴ The educational literature on outcomes-based education and training (OBE) in accounting is significantly less developed than for medicine but was considered as part of the general review of the literature relevant to this chapter. For an overview of the accounting literature, see, eg, Boritz and Carnaghan (2003); Gammie and Joyce (2009).

⁵ The work of the Tuning Project, which forms part of the co-ordination activity in the European Higher Education Area, should also be acknowledged.

⁶ Although Scotland is technically a ‘mixed’ legal system, its system of legal services education and training more closely follows the common law tradition and hence is considered here.

Competence and outcomes in medical and accountancy education

- 4.9 Within professional education, the most highly developed competency- and outcomes-based approaches are in the health and social care sector, where the risks from incompetent practice are particularly high. Interest in competency-based approaches to medical education can be traced back to at least the late 1960s/early 1970s (see McGaghie et al, 1978). Peak regulatory bodies such as the General Medical Council (2009), the Royal College of Physicians and Surgeons of Canada and the Australian Medical Council have prepared outcomes-based standards for medical school accreditation, and, in some instances there have also been moves to outcomes-based approaches for postgraduate training.⁷
- 4.10 The motivations for adopting, in short hand terms, OBET - outcomes-based education and training - in medical education have included a mix of educational and policy objectives, including the need to:
- develop training beyond the limits of content-based curricula - particularly to avoid the risks of curriculum overload in the context of ever-expanding medical knowledge - and to address the historic failure to ensure sufficient learning in areas of patient safety and professionalism (Davis, 2003; Scicluna et al, 2012);
 - achieve and demonstrate better alignment between education and training and health care quality objectives (Swing, 2007; General Medical Council, 2010);
 - enable education and training systems to respond more readily to future changes in the practice environment (Spencer and Jordan, 2001; Burge, 2003);
 - develop a foundation for international standards and the 'meta-recognition' of institutions and programmes ('accrediting the accreditors') (Karle, 2006; Stern et al, 2010).
- 4.11 Over the years that medical education has been developing competency- and outcomes-based approaches there has been a gradual but significant shift in emphasis. First, there has been a growing recognition that effective medical education must be more than a scientific education, one that also develops the doctor's capacity to understand and respond to the clinical, ethical, personal and social dimensions of illness and disease (Callahan, 1998; Harden et al, 1999). Second, that medical education needs to focus more on the doctor's accountability to and partnership with patients and the wider profession (Frank and Danoff, 2007; Stern et al, 2010; General Medical Council, 2009). In responding to these changes, competence has become redefined to emphasise its complex, dynamic, developmental, and context-dependent nature (Epstein and Hundert, 2002; Frank et al, 2010).

⁷ Eg, the Canadian CanMEDS initiative (Frank and Danoff, 2007), and the US ACGME outcome project (Swing, 2007; Stuckey et al, 2007:47-8).

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Table 4.2: Professional competencies in medicine (Epstein and Hundert, 2002)

DIMENSION	ATTRIBUTE
COGNITIVE	<ul style="list-style-type: none"> Core knowledge Basic communication skills Information management Applying knowledge to real world situations Using tacit knowledge and personal knowledge Abstract problem-solving Self-directed acquisition of new knowledge Recognising gaps in knowledge Generating questions Using resources Learning from experience
TECHNICAL	<ul style="list-style-type: none"> Physical examination skills Surgical/procedural skills
INTEGRATIVE	<ul style="list-style-type: none"> Interpreting scientific, clinical and humanistic judgements Using clinical reasoning strategies appropriately Linking basic and clinical knowledge across disciplines Managing uncertainty
CONTEXT	<ul style="list-style-type: none"> Clinical setting Use of time
RELATIONSHIP	<ul style="list-style-type: none"> Communication skills Handling conflict Teamwork Teaching others
AFFECTIVE/MORAL	<ul style="list-style-type: none"> Tolerance of ambiguity and anxiety Emotional intelligence Respect for patients Responsiveness to patients and society Caring
HABITS OF MIND	<ul style="list-style-type: none"> Observation of one's own thinking, emotions and techniques Attentiveness Critical curiosity Recognition of and responsive to cognitive and affective biases Willingness to acknowledge and correct errors

4.12 Epstein and Hundert's (2002) multi-dimensional model shown in Table 4.2 illustrates this multi-faceted understanding of competence.⁸ Based on a meta-review of research into *professional* competencies in medicine, the table shows competence as built on a foundation of medical knowledge, clinical skills and moral development. Following Schön (1984), the authors assert that professional competence is particularly defined by 'the ability to manage ambiguous problems, tolerate uncertainty, and make decisions with limited information' (2002:227).

⁸ This model has been selected because it is one of the most highly cited pieces within the literature on medical competencies, and professional competence more broadly (269 citations on JAMA; over 1300 on Google Scholar). Similar frameworks exist for other professions, such as the International Accounting Standards Board IES 3 description of Initial Professional Development - Professional Skills (2012).

- 4.13 This richer conception of competence is reflected in the range of knowledge, skills and attributes incorporated in a growing range of modern competence frameworks. However, there is still a tendency within some, particularly more task-based, competence frameworks to focus on a relatively narrow range of cognitive competencies, leaving the development of soft skills and meta-competencies⁹ implicit. This may mean that insufficient attention is given to those skills and meta-competencies in the education and training process.
- 4.14 The focus on competence, and the broadening of objectives to include training around soft skills and professionalism, has also supported innovation in medical education (see, eg, Cavenagh et al, 2011). Elements of problem-based and case-based learning, simulation, independent learning, small group work, clinical skills sessions, ward-based teaching, sessions in general practice, and computer-based learning are all commonly used, and can be 'bundled' in ways that support students' differing learning styles and preferences. Capacities for critical evaluation, reflection, communication and teamwork are assessed alongside more conventional knowledge-based requirements, using a variety of assessment tools, including OSCEs¹⁰ and learning portfolios. There is some evidence that those degree programmes that are most strongly outcomes-based may be more effective at delivering interns who are training-ready (Davis, 2003; Scicluna et al, 2012).
- 4.15 At the same time, there is a sense that medical education and training could do more, especially to bridge the gap between knowledge-led and experiential learning, and to prepare students for community-based practice. These challenges tend to be seen as evidence of a need to strengthen the outcomes of medical education, rather than failure of an outcomes-led approach. Thus, in the USA, the recent Carnegie Foundation report on medical education (Clarke et al, 2010) called for a range of reforms to US medical education, including further standardisation around competencies. The independent Lancet Commission on the Education of Health Professionals for the 21st Century (2011) has similarly called for the adoption of competency-based curricula globally.
- 4.16 Accountancy education has also moved towards competence-led approaches since the mid-1990s. This can be seen in a number of initiatives, including work by the International Federation of Accountants (IFAC, 1994; 1996), the American Institute of Certified Public Accountants (AICPA, 1998; 2012), and two influential reports by Kelly et al (1999), examining accounting education in Australia, New Zealand and the UK, and by Albrecht and Sack (2000) in the USA. These criticised existing education systems for failing properly to equip students for modern business and social needs.
- 4.17 The arguments mustered in support of a move towards competency-led approaches in accountancy demonstrate important parallels with the debate about LSET. Developments in information technology, economic globalisation and investor concentration, in 'knowledge forces' - the expansion and greater accessibility of (new) knowledge - and the shifting demographics of the profession have been identified as key drivers for change in the training of accountants (eg, Siegel and Sorenson, 1999; Albrecht and Sack, 2000; Forristal, 2002). To deal with this environment, accountants need to possess better analytical, critical and 'non-technical' skills such as teamwork and communication (Albrecht and Sack, 2000; Forristal, 2002; Hassall et al, 2005), commercial and technological awareness (Siegel and Sorenson, 1999; AICPA, 2012) and the capacity for lifelong learning (AICPA, 1999).

⁹ Meta-competencies are commonly described as 'higher level' abilities that enhance other competencies, or pull competence together (Cheetham and Chivers, 1996:24). Capacities such as 'learning to learn'; managing uncertainty, monitoring and evaluating one's own cognitive processes (Winterton et al, 2005:16); emotional self-regulation (Bogo et al, 2013); and Gardner's personal, creative and emotional 'intelligences' (Harden et al, 1999) are all regarded as aspects of meta-competency.

¹⁰ Objective structured clinical examination, a form of practical, usually simulation-based, assessment used primarily in medical education, but increasingly in other fields of professional education, including the QLTS.

- 4.18 As with medical education, competency and outcomes-based approaches are thought to provide a framework for delivering those benefits. They are also said to offer a number of other advantages over curriculum and knowledge-led approaches, including: better communication among stakeholders; increased transparency in the qualification process; better and more varied assessment methods, and a framework that can be more readily revised and updated to keep pace with the changes in the market (Forristal, 2002; Boritz and Carnaghan, 2003:35; Bolt-Lee and Foster, 2003).
- 4.19 The evidence from both of these professional fields thus tends to support the move to outcome-based competency models on a number of practical grounds. But it also highlights the risk of producing overly detailed and unmanageable frameworks that are unusable and unsupported by stakeholders. Design therefore is everything and the majority expert view tends to favour less detailed, more holistic, frameworks than heavily task-based competencies when addressing professional as opposed to technical education.

Outcomes in legal services education and training

- 4.20 The development of OBET in LSET is generally at an earlier stage than either medicine or accountancy. Stuckey et al (2007:45-47) thus describe 'a transition from content-focused to outcomes-focused instruction ... underway in legal education'. This process has been most marked in the development of vocational programmes in Australasia and the UK since the 1980s,¹¹ though significant attempts to define outcomes for academic legal education also exist, and there are recent initiatives in Canada, Australia, Scotland and the USA. These initiatives are now discussed in more detail.

Canada

- 4.21 Historically, each provincial law society has its own standards for bar admission courses, and, although subject-based requirements for law degrees in Ontario were agreed in 1957 and reviewed in 1969, no national competence framework existed until recently.
- 4.22 Between 2007 and 2009, the Federation of Law Societies of Canada (FLSC) undertook a review of the requirements for recognition of a Canadian common law degree. The review was said to be driven by four needs (Federation of Law Societies of Canada, 2009:3):
- to ensure that admission processes for domestic and internationally trained applicants are transparent, objective, impartial and fair;
 - to articulate what law societies regard as the essential features of a lawyer's academic preparation in the context of increasing numbers of internationally trained applicants for entry to bar admission programmes;
 - to set standards for recognition of law degrees in the context of proposals for the first new Canadian law schools in over 25 years;
 - to respond to questions about the variation in admission requirements between law societies arising in the context of federal and provincial governments' commitments to national labour mobility and harmonised standards.

¹¹ See Annex I for a comparison of the approaches taken by the existing frontline regulators in England and Wales.

- 4.23 The resulting Task Force report made a total of 20 recommendations. At the centre of these is the development of a set of competencies which form the basis of a 'national requirement' for common law degrees, including a compulsory course on ethics and professionalism. The report also proposes a set of input measures in respect of programme design and resources, including requirements for pre-law admission, length of courses, staffing, facilities, information technology, and law library, and sets out approval, compliance and reporting processes. The proposed scheme comes fully into operation in 2015, with the period from 2012 regarded as transitional.
- 4.24 The Canadian Common Law Degree statement highlights the need to develop competencies in ethics and professionalism, skills, and substantive legal knowledge. The skills and knowledge areas are defined¹² as:
- Skills competencies;
 - problem-solving;
 - legal research;
 - oral and written legal communication;
 - Substantive legal knowledge;
 - foundations of law;
 - public law of Canada;
 - private law principles.
- 4.25 The specification for the skills components is essentially task-based, but the specification of knowledge areas is relatively broad - more so than the Australian 'Priestley 11' discussed below. There are no indications as to credit loading or level for any of the required elements, though the knowledge component as a whole must comprise 'a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge'.
- 4.26 In addition to the Common Law Degree Task Force, in October 2009, the Council of the Federation approved a plan for a further project to develop national standards for admission to the legal profession in Canada (see Federation of the Law Societies of Canada 2012a, 2012b). These standards incorporate the work of the Common Law Degree Task Force (albeit in a rather different format), and also indicate the minimum outcomes expected of the bar admission programmes, thus representing what might be regarded as a set of 'day one outcomes' for Canadian lawyers.
- 4.27 The resulting standards (see Annex II) combine generic professional service skills with a list of 'general tasks' that applicants must be able to perform. These include a client interview, an opinion letter, the production of specific documents, and simple advocacy. They also extend the knowledge-base into procedural and adjectival law (not required as part of the LLB or JD), and into additional substantive law areas: family law, and wills and estates.¹³
- 4.28 There has been relatively little published debate about these initiatives. Some doubts have been expressed from within the law schools about both the processes adopted by the Task Force, and the necessity for regulation, and these are discussed later in this section.

¹² In the full standard each is further defined by specific activities or components of knowledge.

¹³ From the commentary in the Phase One Report it appears that the requirement for 'corporate and commercial law' in the National Standards is regarded as equivalent to the 'legal and fiduciary concepts in commercial relationships' in the law degree competencies.

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Australia

- 4.29 Moves to develop competencies began with work in professional training in individual states in the 1980s, influenced by earlier innovations in British Columbia (Jones, 1994). These competencies were developed into a national framework for professional legal training (PLT) in 2000 by the Australasian Professional Legal Education Council (see APLEC, 2002). This framework is still in place and expresses competencies for a range of skills areas (lawyers' skills; problem-solving; work management and business skills, and trust and office accounting), key practice areas (defined by transactional steps/tasks) and 'ethics and professional responsibility'. The framework relies predominantly on outcomes, though there are a small number of input requirements (eg, prescribing that PLT courses should be at graduate level, and setting minimum hours). APLEC commenced a review of the framework in 2012. A discussion paper published in June 2012 invited views on a number of propositions, but it does not indicate any intention to move away from a predominantly outcomes-based approach (APLEC, 2012).
- 4.30 Requirements for the academic stage were consolidated across all Australian jurisdictions in 1991 so that satisfaction of the academic stage of training requires the equivalent of at least three years' full-time study of law, including the so-called 'Priestley 11' prescribed areas of knowledge.¹⁴
- 4.31 In 2009 the Council of Australian Law Deans (CALD) supplemented the Priestley 11 with a set of 'soft law' standards for Australian law schools. Modelled on the American Bar Association's (ABA) standards, these are a combination of threshold and aspirational input and outcome statements (Australian Learning and Teaching Council, 2010:12).
- 4.32 In December 2010, a set of six threshold learning outcomes (TLOs) were endorsed by CALD and are now being mapped by law schools against their own undergraduate curricula.¹⁵ The TLOs are (ALTC, 2010:10):

TLO 1: Knowledge

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

TLO 2: Ethics and professional responsibility

Graduates of the Bachelor of Laws will demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise professional judgement

¹⁴ These are: criminal law and procedure; torts; contracts; property; equity (including trusts); company law; administrative law; federal and state constitutional law; civil procedure; evidence; ethics and professional responsibility.

¹⁵ A further set of six TLOs have been drafted and approved by CALD (March 2012) for the new Australian graduate law degree, the Juris Doctor (JD). These are closely based on the undergraduate outcomes, but with recognition that the JD is a postgraduate award and therefore that students should be performing to Masters' level.

TLO 3: Thinking skills

Graduates of the Bachelor of Laws will be able to:

- (a) identify and articulate legal issues,
- (b) apply legal reasoning and research to generate appropriate responses to legal issues,
- (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
- (d) think creatively in approaching legal issues and generating appropriate responses.

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and
- (b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- (a) learn and work independently, and
- (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

- 4.33 The TLOs were drafted to encompass the Priestley 11 (by reference) into TLO 1, and in the light of the CALD Standards. They draw on a range of national and international influences, including the generic level indicators for undergraduate work in the Australian Qualifications Framework (akin to the Higher Education Qualifications Framework in England and Wales), ABA Standards, the Scottish Accreditation Framework, the Tuning Framework, and the Joint Statement and QAA Law Benchmark in England and Wales. The influence of the QAA Benchmark is particularly apparent in the framing of TLOs 1, 3, 4 and, to a more limited extent, 5 and 6. The TLOs are also supported by quite extensive notes which provide 'non-prescriptive guidance' on interpretation (ALTC, 2010:11). It is also suggested that, through CALD, the guidance should evolve and develop, thus strengthening ownership and legitimacy of the outcomes within the academic community.

Scotland

- 4.34 The primary training pathway in Scotland for over thirty years has been a law degree followed by a Diploma in Legal Practice, which constitutes the first stage of professional training for both solicitors and advocates. The law degree in this model was required to deliver a substantial core of substantive law courses, while the Diploma similarly originated as a curriculum-led course, structured around eight compulsory subjects and an option.¹⁶ In the late 1990s the Diploma was reviewed in the light of growing dissatisfaction with the course among employers, trainees and students. This led to some significant redesign work, which saw professional legal skills and ethics integrated far more with the delivery of the knowledge areas (see, eg, Maharg, 2004).

¹⁶ Civil court practice; criminal court practice; financial services and accountancy; private client; professional ethics; conveyancing; practice management, and one of company and commercial practice, or public administration.

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- 4.35 In 2006, the Law Society of Scotland commenced a further complete review of its provision for undergraduate legal education and professional training. Following extensive consultation and analysis of responses, proposals for a revised scheme of 'Professional Education and Training' (PEAT) were approved in 2009 and came into effect in 2011. These reforms have generally sought to increase both flexibility within and continuity between the stages of education and training, with PEAT 1 (the revised Diploma) performing a particularly critical 'bridge' function between the academic study of law and practice (Maharg, 2013: 125).
- 4.36 The underlying basis for the changes lay in the specification of a new set of learning outcomes for each of the stages of education and training. For the Foundation ('exempting' degree¹⁷) stage, the required outcomes are divided into the triumvirate of knowledge, skills, and values and attitudes (see Law Society of Scotland, 2010). The knowledge areas have been somewhat reduced, though they remain wider in scope than the Anglo-Welsh equivalent. In broad terms they are defined as:
- legal systems and institutions affecting Scotland;
 - persons;
 - property;
 - obligations;
 - commerce;
 - crime.
- 4.37 Each of these areas is then further defined in the specific outcomes statement. These areas together with the general transferable and personal skills and the values components of the course (which are described as pervasive) should comprise 180 credits of the minimum 240 credits of legal subjects required.¹⁸ The outcomes must be achieved at Ordinary degree level (level 7 or 8 on the Scottish Credit and Qualifications Framework (SCQF), equivalent to levels 4 or 5 in the Anglo-Welsh system), but there is no requirement as to the level at which any specific outcomes are achieved, and no requirement that any of the outcomes are achieved at final-year (Honours) level.
- 4.38 Following on from the Foundation course, the new process comprises PEAT 1 (the Diploma in Professional Legal Practice) and PEAT 2 which prescribes specific outcomes for the Scottish training contract. The new Diploma programme is organised around a set of 'mandatory' and 'core' outcomes which should normally comprise 60, and no more than 80, credits at level 10 (ie, Master's level) out of a total of 120 credits for the programme (see Law Society of Scotland, 2009). The remaining credits are made up of electives designed and specified by each provider. The mandatory outcomes are specified for six areas of work: private client, conveyancing, litigation, business, financial and practice awareness, and tax (with tax to be taught pervasively).¹⁹ The core outcomes are defined as professionalism, professional communication, and professional ethics and standards.
- 4.39 The statement of professionalism is a distinctive feature of PEAT 1 and is designed to be at the core of the course and assessed pervasively. The professionalism outcomes require students to demonstrate understanding of the importance of:
- the interests of justice and democracy in society;
 - effective and competent legal services on behalf of a client;
 - continuing professional education and personal development;

¹⁷ In Scotland the term 'exempting' degree is used to describe a degree that satisfies the Law Society of Scotland's requirements for the academic stage of training. It is therefore not the same as an exempting degree in England and Wales which is a programme combining the QLD and the vocational stage for barristers or solicitors.

¹⁸ That is, the Foundation outcomes comprise less than half of the typical four-year Scottish degree (480 credits).

¹⁹ Conveyancing, private client, and litigation are reserved areas of work as defined in the Solicitors (Scotland) Act 1980.

- diversity and public service;
 - trust, respect and personal integrity.
- 4.40 Providers are given guidance on appropriate modes of assessment for the different areas, with the guidance placing a strong emphasis on the need to develop realistic assessment tasks. However, there is little by way of formal specification.
- 4.41 A further major change resulting from the reforms is the introduction of outcomes for PEAT 2. None of these is substantively law-based. Unlike England and Wales, there are no prescribed ‘seats’ for trainee solicitors, so outcomes are defined in relation to professionalism; professional ethics and standards; professional communication, and business, commercial, financial and practice awareness (Law Society of Scotland, n.d.), which can be demonstrated in the context of any appropriate area of work. These are cross-cutting outcomes which thus link PEAT 1 and PEAT 2 to construct the Diploma and training contract more deliberately as a three-year process.
- 4.42 An individual’s progress towards achieving the PEAT 2 outcomes is assured by a requirement of quarterly performance reviews over the two years, which assess development needs against the outcomes, and an online training record, including a reflective log, which must be completed by the trainee.²⁰

USA

- 4.43 It is notable that the US system has been slow to adopt any kind of co-ordinated outcomes-based approach, though a number of individual institutions and teachers have developed or experimented with OBET, including some significant early attempts at identifying lawyer competencies (notably Cort and Sammons, 1980). This position has changed following the publication of the Carnegie Foundation (Sullivan et al, 2007) and Best Practices (Stuckey et al, 2007) reports on legal education, both of which recommended outcome measures.
- 4.44 In direct response the ABA created a ‘Special Committee on Outcome Measures’ (the Outcome Sub-committee) in 2008 which sought views and undertook a review of the literature on outcomes in legal education and other professional fields. It recommended reframing the ABA accreditation standards ‘to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures’ (ABA, 2008:1). Responding to the Outcome Sub-committee’s report, the ABA Standards Review Committee has proposed new approval criteria that would require law schools to articulate the outcomes they intend their students to achieve, to assess student learning through a range of methods, to give students meaningful feedback, and demonstrate that they (the law schools) are achieving their student learning outcome goals (ABA, 2012).
- 4.45 Revised Standard 302 is at the heart of the change from a curriculum-led to outcomes-led approach. Its most recent draft version requires law schools to include learning outcomes ‘as entry level practitioners’ in respect of:
- (1) knowledge and understanding of substantive law, legal theory and procedure;
 - (2) the professional skills of:
 - (i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context; and
 - (ii) the exercise of professional judgment consistent with the values of the legal profession and professional duties to society, including recognizing and resolving ethical and other professional dilemmas.

²⁰ Trainees are also required to complete a minimum of 60 hours of ‘trainee CPD’ (TCPD).

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- (3) a depth in and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession;
- (4) knowledge, understanding and appreciation of the following values:
 - (i) ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
 - (ii) the legal profession's values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity and respect for the rule of law; and
 - (iii) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.

The process of reformulating the Standards is continuing, and the draft Standards are therefore not considered in greater detail in this section.

The critique of competence

4.46 Before moving on to evaluate these developments, it is important to recognise that, despite their growing ubiquity, competency approaches have also been heavily criticised, particularly as to the value that competencies bring to the *learning* process, as opposed to quality assurance and accreditation. The basis of contention goes to the roots of OBET in competency-based models of training. Competency approaches have drawn heavily on behaviourist theories of learning that have been widely criticised for a reductionist approach to learning. It has thus been argued that they risk:

- fragmenting and over-simplifying activities by focusing on the narrower tasks which comprise elements of that activity's performance;
- focusing too much on observable skills rather than underlying knowledge, values, and motivations;
- reducing the intellectual challenge of learning;
- reducing scope for innovation in teaching and assessment (if over-specified);
- leading to an assessment-driven curriculum;
- reducing teachers' sense of ownership of education and training through centralisation of standards.

(See, eg, Jones, 1994; Wolf, 1995, 2001; C. Maughan et al, 1995; Boritz and Carnaghan, 2003; Leung, 2002).

4.47 The early competency approaches were developed in the context of technical training - typified in Britain by the National Vocational Qualifications (NVQs or, in Scotland, SVQs) of the 1980s and early 90s. As such they undoubtedly provided a relatively poor fit with professional work, particularly as the latter tends to build on a far greater foundation of substantive knowledge and theory. However, as Wolf (2001:466) has observed, it is important to recognise that the NVQ approach was but one version of competency-based education, and a more 'enlightened model may have a benign rather than a malign effect on practice'. There have been various attempts to supplement or develop competencies into something much more useful for professional education. These include 'capability' approaches, which place greater emphasis on the need to understand and reflect on the cognitive processes and personal attributes that underpin professional action, and from which future competence is inferred (eg, Eraut and Cole, 1993; M. Maughan, 1996), and 'integrated' or 'holistic' approaches that take account of a wider range of attributes and

meta-competencies (eg, Hager et al, 1994; Harden et al, 1999).²¹ This shift is reflected in the tendency in some modern educational practice to distinguish at the level of terminology outcomes-based from competency-based education.

Implications for England and Wales

- 4.48 A number of lessons for the development of LSET in England and Wales can be drawn from this comparative analysis.
- 4.49 First, it can be seen that there has been significant increase in activity in developing and maintaining outcomes-based systems across medicine, common law legal education, and to a lesser extent accountancy. This is not to disregard the critical debate on the limits of OBET, but in terms of comparability with other LSET systems, any move away from outcomes-based approaches at this stage would run counter to perceived best practice (cf Sullivan et al, 2007; Stuckey et al, 2007).
- 4.50 Secondly, the move to more holistic approaches is said to address the main risks of reductionism in learning, though, evidentially-speaking, it is difficult to be certain that this is the case. Nonetheless, a number of the medical and accountancy studies cited above indicate that a move to OBET appears to improve the ability of trainees to apply knowledge to work situations and encourages experimentation with curricula and delivery methods. It may improve reliability of assessment techniques, rather than the reverse.²² Moreover, from a regulatory perspective, OBET also has the potential to:
- increase transparency of the qualification process;
 - improve standardisation and better alignment of LSET to the professions' quality objectives;
 - increase accountability of the profession for meeting relevant training standards;
 - create a more readily adaptable LSET framework.
- 4.51 Thirdly, the foregoing analysis demonstrates that, although legal knowledge, skills and attributes may be differently described, there is a high level of consistency regarding the core skills and areas of knowledge required by LSET. The extent of their specification, however, varies considerably, from the ABA's very broad specification of requirements to the detailed, task-based, specification of the Canadian competencies, and few show the multi-dimensional breadth of the more sophisticated medical models.
- 4.52 Fourthly, wider functions are performed by standards such as those adopted by the ABA and Canadian Task Force. These tend to go beyond the identification of threshold learning outcomes (eg, the ALTC and, in England and Wales, QAA Benchmark approaches), to address inputs, resource requirements and other elements that may contribute to the quality of provision. The importance of such standards is discussed further, below.
- 4.53 Fifthly, there is also marked variation in the extent to which outcomes are developed as an exercise in mapping the full process of professional formation, or in prescribing a discrete stage of training. This is apparent even in medicine, where postgraduate standards in some systems are less well developed than for medical school. It is notable that the majority of exemplars in LSET are stage-based, often reflecting the different interests and regulatory fiefdoms governing those stages. Whilst attempts to coordinate and over-specify outcomes across the piece risks limiting flexibility and the need for specialisation, a stage-based approach also risks leaving important gaps and discontinuities in the training framework. As

²¹ Considered in Briefing Paper 1/2012.

²² This is considered further in the section on assessment, below

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Devlin et al (2009) observed, one of the problems with the Canadian Task Force's exclusive focus on the degree stage is that it fails thereby to provide an 'integrated analysis which understands the achievement and maintenance of competency as a life-long learning process'.

- 4.54 Finally, it can be seen that the outcomes in LSET have largely been developed through copying existing models, often drawing on exemplars from other jurisdictions, rather than on reliable evidence as to the effectiveness of OBET. In fact there has been limited specific research on or testing of legal OBET models, either before or after their introduction. This means that there is a thin evidence-base from which to draw conclusions about the impact of different models.
- 4.55 The opportunity now exists through the LETR to refine and develop an outcomes approach for England and Wales that will ensure that regulation is appropriately focused and targeted, and delivers flexibility as well as the necessary assurance of quality.
- 4.56 To develop an effective outcomes approach it is necessary (i) to identify the appropriate starting point for any outcome specification process; (ii) to identify the range of knowledge, skills and attributes that might need to be addressed (drawing on LETR research data from Chapters 2 and 3, and the comparative data identified in this chapter), and (iii) to set standards that will provide clear principles for maintaining the quality and consistency of learning. These steps are considered in the remainder of this chapter.

A way ahead - a needs-led approach?

- 4.57 LSET does not exist in a vacuum, it serves a purpose. As regards professional education and training, that purpose is, primarily, to ensure a standard of work performance that will assure consumers that those they employ are competent and professional in their approach. This is reflected in the focus of the LSA 2007 regulatory objectives, not just on the public and consumer interest, but in the professional commitments to the rule of law, access to justice and the professional principles.
- 4.58 It is proposed that these priorities point to what might be called a 'needs-led' approach to competency or OBET (see Gruppen et al, 2010; cf Redmond and Roper, 2001:67-8), in which social needs, not the curriculum, determine the outcomes of learning (Figure 4.1). Such an approach treats preparing trainees for effective practice in the public interest as the primary function of professional education. The strong focus on social needs/interests distinguishes it from public or liberal higher education which may properly place a greater emphasis on the acquisition of knowledge for its own sake, and on the personal interests and development of the learner, over and above the social and economic benefits that accrue from such education.²³

Figure 4.1: OBET as a needs-led approach



²³ This is reflected in the distinction this report has consistently sought to make between LSET and public legal education, or liberal higher legal education.

- 4.59 In terms of process, a needs-led approach suggests that the starting point must be to define initial 'day one' competence. It is this that provides 'the minimum level of competence the public is entitled to expect from a person licensed to carry out professional activities' (LSI, 2012:3). A set of 'day one outcomes', specifying the standard required at the point of qualification for a title or activity, could provide both an appropriate threshold and a basis for reverse engineering outcomes for earlier stages of training.²⁴ 'Day One outcomes' have been produced as part of the Law Society's Training Framework Review. These were commended and used by Stuckey et al (2007:53-5) in developing outcome statements as part of the US *Best Practices* project, and, in a revised form, they now provide the basis for assessment in the SRA's QLTS.²⁵ These provide a useful example but were derived by consultation rather than occupational analysis or empirical evaluation, and are drawn more widely than the more flexible, pluralistic, approach advocated by this report. A move to risk-based regulation would warrant some greater degree of empirical validation, with more research on the actual work of the legal services providers concerned.²⁶

The ingredients of legal competence

- 4.60 In describing the range of legal competencies, this section draws on the review of competence frameworks and academic literature in Briefing Paper 1/2012, the LETR data on knowledge and skills gaps, discussed in Chapter 2, and the comparative work already undertaken in this chapter. It also draws on a number of other published sources discussing the range of attributes that underpin competence, and that may be required of a lawyer. So far as possible the attributes identified are generic rather than role-specific. They are mapped against the various 'dimensions' identified by Epstein and Hundert²⁷ in order to provide both a reasonably thick description of competence, and a basic template for the scope of statements of competence in LSET and in legal practice itself.
- 4.61 The primary focus of the LETR research phase has been on systems and structures rather than content. It is not the function of this report to create a set of outcome specifications. Nonetheless, the data gathered have presented a broad picture of knowledge and skills gaps, and some indications of where and how these gaps might be addressed. These gaps will be considered within this section, but they need also to be tested empirically to ensure the appropriateness of the specified outcomes.

Cognitive dimension

- 4.62 Key legal attributes under this heading are often referred to as 'thinking like a lawyer',²⁸ a loosely-defined developmental concept that encompasses acquisition of core legal knowledge and legal reasoning skills, often in an academic environment, before (or sometimes alongside) becoming focused on 'practical problem-solving' in the vocational training/practice setting. The range of necessary 'core knowledge' has been a recurrent topic for LSET, particularly as regards the scope of the academic Foundation subjects. For ease of reference, this is considered separately at the end of this section.

²⁴ Eg, in an assessment-only scheme, like the QLTS. Note however that there was only limited support for the idea that an assessment-only scheme should become the norm for entry to legal practice.

²⁵ A similar set of day one competencies now appears in the CILEx Competency Framework to be used from June 2013 to determine Chartered status, and as a result of the Wood Review, a competency framework now exists for pupillage.

²⁶ Cf the Solicitors and their Skills work carried out for the LETR research phase, reported in Chapter 2. Also the exercise undertaken in evaluating the Canadian national standards: see Federation of Law Societies of Canada (2012c). This involved testing the range of standards with a large, statistically reliable, cross-section of the profession, though it should be noted that, by itself, this does not capture consumer perceptions of risk.

²⁷ With the exception of the 'technical' category which appears to have no obvious equivalent within the legal services context.

²⁸ Eg, *Whatever the subsequent career paths of the graduates, the CLLS wants the QLD/GDL to start the students down the path of 'thinking like lawyers', a process which many courses do well. From the perspective of City firms we need lawyers who can handle intellectually demanding work and who can offer clients ethically sound and legally effective solutions.*

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- 4.63 Research data for the LETR suggest that the underlying cognitive ability of trainees is not a major concern; they are generally regarded as bright and possessing the level of understanding required for the work (cf also Baron, 2011).
- 4.64 However, there are areas of cognitive expertise that are not adequately captured by conventional legal notions of the core. Key examples are professional ethics and values and 'commercial awareness'. Gaps in oral and written communication skills and drafting are, as noted in Chapter 2, a recurrent concern, and are also highlighted by Baron (2011).

Ethics, values and professionalism

- 4.65 This was rated the most important knowledge area in the LETR online survey, a result which echoed the demand for a greater emphasis on professional ethics and conduct across the qualitative data and stakeholder responses to Discussion Papers. It is also an area that bridges the affective/moral domain and 'habits of mind', as well as the cognitive dimension.
- 4.66 An increased emphasis on ethics and legal values in LSET would be consistent with the focus of the LSA 2007 regulatory objectives, and the need to develop a more thoughtful and contextual approach to professional obligations, particularly where those are expressed via principles-based regulation or OFR rather than detailed rules. It is suggested that all approved regulators review the treatment of ethics and professionalism within their education and training regimes to ensure that the subject is addressed with the prominence and in the depth appropriate to the public profession of law.
- 4.67 A majority of respondents took the view that ethics and professionalism need to be developed throughout the continuum of education and training. This view is accepted and underpins a number of the final recommendations in this report. The approach taken in Scotland which seeks to develop professionalism as a distinct foundation for both the professional training (PEAT 1) and work-based (PEAT 2) stages of training is also commended, not least for its capacity to link commitments to personal integrity, continuing improvement, public service and diversity to the legal role.²⁹

Commercial and social awareness

- 4.68 LETR research data, discussed in Chapter 2, highlighted the significance of commercial awareness to clients and suggested that this includes:
- awareness of the sector and the clients' business; having an interest in the sector so as to be able to communicate with clients;
 - an ability to recognise clients' commercial objectives rather than proposing 'pure law' solutions;
 - wider knowledge of commercial and financial subjects: understanding relevant financial products; corporate structures; markets and sectors;
 - numeracy and ability to interpret financial data;
 - understanding of law as a business: that firms (etc) are profit-making entities; marketing and networking; how law firms and chambers are run.

²⁹ The importance of developing and monitoring student professionalism before qualification is potentially highlighted by a study in the USA of more than 60,000 doctors over a ten-year period from 1990–2000. This found that doctors disciplined by state boards were more likely to have demonstrated unprofessional behaviour in medical school. The association was strong enough to suggest at least some link between (unprofessional) behaviour as a student and later difficulties in practice (Papadakis et al, 2008).

- 4.69 There is a clear case for making commercial awareness a more explicit feature of training at the LPC stage, particularly for those who are following a corporate and commercial pathway. Although highly valued by commercial law firms, commercial and business awareness was not rated as a priority by legal service providers across the board. It would not be appropriate therefore to make this a formal requirement at the academic stage as such, though it does serve to highlight the importance of transferable knowledge and skills at this stage, notably knowledge of the social, political and economic context of law, and of current world affairs, critical thinking skills and basic numeracy and financial literacy.³⁰ There was also some limited evidence of an equivalent need for 'social awareness' for those operating in high street and particularly legal aid settings, though that may in part be a cipher for communication skills and empathy.
- 4.70 There is also a case for including a greater understanding of the transformative potential of information technology under this heading. It is not sufficient to ensure that trainees or prospective trainees understand how technology is used to facilitate current work tasks without also helping them to understand how it can radically change, and is changing, their business models and the way clients may access and use legal information. In this context Richard Susskind's (2012) suggestion that law schools should include an optional course on developments in legal services deserves to be taken seriously.³¹
- 4.71 CILEx might also wish to consider, particularly as it does more to prepare members for management and leadership roles in the sector, whether its qualifications, particularly at level 6, though providing a strong grounding in doctrinal law, do enough to highlight the social and commercial environment within which law operates to align with the business awareness component of the CILEx Competency Framework.

Communication skills

- 4.72 The existence of gaps in communication skills, and the importance of including learning outcomes relating to communication has been highlighted across a range of professional settings (see, eg, Jackling and De Lange, 2009; also the work of the UK Council of Clinical Communication in Undergraduate Medical Education (UKCCC)).³² Consistent with this, a considerable emphasis was placed by LETR research respondents on the importance of communication skills, and the need for communication skills to be taught throughout the training process. As noted in Chapter 2, concerns were expressed about the development of generic written skills at the undergraduate stage, and whether students were gaining sufficient experience of writing for a range of purposes and audiences. Doubts were also expressed about the quality of writing and drafting training on the LPC, and to a lesser extent on courses provided through CILEx. In the latter case the evidence seemed to suggest that at least some of the concern was due to a perceived gap between techniques and styles taught in the classroom and those used in practice.³³ Variations between 'house styles' of drafting and opinion writing and the styles adopted by the LPC and BPTC were also highlighted, on the basis that the transition to practice required some unlearning and re-learning of those skills.

30 Numeracy is already included within the QAA Benchmark, though it is not clear how widely or consistently it is addressed in the formal curriculum.

31 A growing number of such courses are being developed in the US in response to the growing student pressures to provide more relevant education and enhance employability. Few law schools in the UK have followed suit, though two interesting examples stand out. LLM students at University College London may participate in the international 'Law Without Walls' programme, sponsored by the University of Miami. Students explore innovations in global legal education and practice with students from other participating law schools through weekly virtual classes and collaborative research. "The topics are interdisciplinary and wide-ranging, looking to the future in their anticipation of changes to legal practice and education within a virtual landscape" - <http://www.ucl.ac.uk/laws/prospective/llm/index.shtml?lwow>. Academics at Sheffield Hallam University are seeking to replicate this kind of approach at a local level through 'LawSync' which will enable students "to work on projects aimed at real-world legal services problems. They will develop viable, innovative products and services, taking advantage of technological, regulatory, and market developments" - <http://www.lawsync.com/for-academics/>. At this point the Sheffield module has yet to run, however.

32 See <http://www.ukccc.org.uk/>

33 For example, where skills-based activities might be used to assess legal knowledge, there was a risk that this might introduce a degree of artificiality; one trainee legal executive thus provided an example of being asked to write a letter of advice at college, and being criticised for not including references to cases, whereas at work s/he would have been (rightly) criticised for including them.

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4.73 Apart from advocacy (discussed separately below), providers and employers were largely in favour of the development of oral communication skills at the undergraduate level. Consumer data point to the need for lawyers, particularly those working in private plight settings, to enhance their client communication skills. A number of comments involved views that communication skills required development and refreshing throughout the legal career. The issue is not necessarily that these skills are not taught, but that they may not be taught well enough. Brown (2006:218) has made the point that, unlike a number of other professional domains, communication skills training has tended to draw heavily on lawyers' 'craft knowledge',³⁴ with insufficient awareness of communication research. Brown also notes that there are no evidence-based studies of the efficacy of current communication skills training in law.

Legal research

4.74 There is evidence of variability in the development of research skills and digital literacy at the LLB, GDL and LPC stages.³⁵ The intensity of the GDL course in particular has been seen to constrain the development of research skills, particularly if students do not have the opportunity to produce a long essay or project in the field. In reviewing outcomes for legal research, consideration should be given to the BIALL legal literacy and SCONUL outcomes statements noted in Chapter 2.

Advocacy

4.75 Longstanding concerns about the variability of the quality of advocacy quality have already led to the development of the Quality Assurance Scheme for Advocates (QASA). It is also acknowledged that there have been significant advances in the development of advocacy on the BVC and BPTC, and through the Bar's New Practitioners' Programme,³⁶ which have made a significant difference to the level of initial advocacy training. The quality of advocacy training was strongly endorsed by pupils and first year tenants surveyed by the Bell Working Party in 2004, and this finding was largely replicated by the student survey undertaken for the Wood Review (BSB, 2008), though this indicated that the standard of criminal advocacy teaching was generally rated more highly than that for civil advocacy. By contrast, the quality of advocacy training for LPC students and trainees has not been so highly regarded by either the students or third parties. This problem is exacerbated by doubts as to the quality of the advocacy training on the Professional Skills Course taken during the training contract. As the JLD³⁷ and others have observed, advocacy should be reinforced on the LPC, or within the training contract. The move to a more modular LPC would make it possible to develop a substantial module, which might be better integrated with practical experience on the training contract.

Integrative

4.76 Expertise is characterised by practitioners' increasing ability to 'initiate a process of problem solving from minimal information and use subsequent information to refine their understanding of the problem' (Epstein and Hundert, 2002:228). It is characterised by the

³⁴ 'Craft knowledge' is not defined by Brown, but the term is used widely, particularly in educational studies, to describe the tacit and personal knowledge developed by a professional through daily practice. On the one hand it captures the 'wisdom' of practice, but on the other it constitutes knowledge that tends to be localised, uncodified and untested.

³⁵ Legal research training on the BVC achieved poor ratings relative to other areas of the course in the student survey conducted for the Wood Review in 2008, largely because of the perceived artificiality of assessing it as a separate subject. The Wood Report consequently recommended its deletion as an examinable subject, whilst stressing the continued importance of training in practical legal research. The LETR research phase has not obtained substantial data on the impact of this change on student perceptions.

³⁶ Thanks are due to the Advocacy Training Council for responding to a range of questions regarding the structures and processes of advocacy training.

³⁷ Response to Discussion Paper 02/2012.

capacity to use problem-solving skills appropriate to the situation, to synthesise domain knowledge and to possess an understanding of the operational context and parameters of the problem. It draws on a range of meta- and composite competencies. For example, Economides and Smallcombe (1991) identify a skill of 'break-in' - the capacity to read one's way into a new legal topic, brief, or case file, quickly and absorb the necessary information - as an important composite of information-handling and problem-solving skills. At its upper end it is likely to be reflected in the ability to deliver 'cutting-edge thinking' (Financial Times/Managing Partners' Forum, 2011) rather than pre-packaged solutions, an attribute highly prized by clients. These skills are often encapsulated in broad concepts like critical or creative thinking, but these are not necessarily well understood within LSET, and some respondents suggested they could be better addressed in the education and training of law undergraduates³⁸ and CILEx trainees.³⁹

- 4.77 Integrative capacity also draws on other dimensions such as the ability of lawyers to manage (cognitive and affective) uncertainty for both themselves, and their clients (cf Flood, 1991), and on their capacity to reflect on their own reasoning strategies.

Context

- 4.78 'Clinical skills' in Table 4.2 can be equated with a general familiarity in law with professional legal processes and office skills, and imply a broader understanding of the professional context within which a task is located. It is notable that a number of comments within the qualitative data, particularly from CILEx members and paralegals, highlight the extent to which trainee solicitors enter the work environment with often a very limited sense of real legal work in an office environment.
- 4.79 Competence frameworks commonly include the ability to manage and organise files effectively, and the ability to 'manage personal time' (see also APLEC, 2002) to plan and deliver work efficiently and ensure punctuality. From the consumer perspective the key competence is the ability to deliver a service efficiently (Vanilla Research, 2010).

Relationship

- 4.80 The importance of interpersonal communication skills is widely recognised in competence frameworks, and was highlighted in the LETR careers advisers' survey as the skill most valued by legal employers, as well as one often deficient in potential recruits. Teamwork and collaboration are also highlighted in competence frameworks and valued by employers, according to the LETR careers advisers' survey, and also by trainees (Baron, 2011).
- 4.81 The ability to deal with 'difficult' clients and others is also relevant to legal work. In studies of the experiences of pupil barristers and junior tenants, nearly 20% of junior tenants acknowledged encountering difficulties in their relationship with clients in the year following completion of pupillage (Shapland and Sorsby, 1995). 36% also reported difficult relations with chambers' clerks during their second six months pupillage (Shapland et al, 1995), a figure that fell only marginally in the first year of tenancy (Shapland and Sorsby, 1995). The ability to deal with difficult people was also highlighted in the LETR career advisers' survey and in the online survey, particularly by CILEx members (Chapter 2, Table 2.8).

³⁸ See, eg, Kent Law School's response to Discussion Paper 02/2012.

³⁹ Eg, *How does the CILEx education system accommodate aspects such as 'critical reasoning' or 'values and ethics'?*

I would say that it doesn't, really – it's quite subject focused and seems to concentrate on the absorption and regurgitation of facts
CILEx member.

4.82 The ability to teach others is important for in-house education, mentoring and supervision (including the ability to supervise support staff), which may need to be acquired earlier, and more widely than the focus on 'teaching skills' might imply. Smith and Tam (1997) highlighted supervision as a specific skills gap in the NfP legal sector. The LETR research, summarised in Briefing Paper 1/2012, suggests that there is a greater awareness of the importance of quality of supervision and it is raised as a concern in the qualitative data.⁴⁰

Affective/moral

4.83 The affective and moral dimensions are critical to professional practice, and aspects of them are widely captured in competence frameworks - aside from the purely cognitive dimension of professional ethics and regulation. Independence and integrity are particularly valued in Briefing Paper 1/2012 and 'honesty and integrity' was also a highly-ranked attribute in the LETR online survey (Chapter 2, Table 2.8). Respect for clients and co-workers is also commonly identified, though consumer data suggest that respect for, and empathy with, clients are areas where there are still significant gaps between expectation and reality (eg, Vanilla Research, 2010; YouGov, 2011).

4.84 Resilience (see Cooper and Dwyer, 2011; Vines 2011), which links to both emotional intelligence and the ability to deal with ambiguity and uncertainty (see College of Law, New Zealand, n.d.), is also perceived to be increasingly relevant within legal practice.

4.85 There is some literature on 'comforting' and 'caring' skills in legal practice (eg, Dryden Henningsen and Cionea, 2007; Bartlett and Aitken, 2009), though empathy is a more widely used, and perhaps more recognisable, term in the legal context.

4.86 Social responsibility needs to be interpreted in the light of the LSA 2007's regulatory objectives, which, addressed as they are to the approved regulators, must shape the context within and principles by which all legal services providers operate:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of the citizen's legal rights and duties;
- promoting and maintaining adherence to the professional principles.

Each of these includes clear elements of social responsibility.

Habits of mind

4.87 Understanding the limits of one's own competence is identified in many of the frameworks evaluated in Briefing Paper 1/2012, and is a critical component of personal risk management (see, eg, APLEC, 2002). It is sometimes referred to as a defining element of professionalism - 'knowing what you don't know'. Reflection in learning theory is a commitment and first step to learning from experience.

⁴⁰ Discussed later in this chapter and in Chapter 6.

- 4.88 However, these skills were not particularly emphasised in the research data. Regulation too currently adopts a rather patchwork approach to self-management and reflection. In the work environment the self-evaluation process will often be formalised at entity level through appraisal and peer review; it may be supported by CPD, but the dominance of input approaches to CPD (discussed further in Chapter 6) and the risk that CPD is often driven by current needs rather than future plans may limit its role in that regard (cf Lindsay, 2012).
- 4.89 In the context of the vocational course (which may take place in parallel with supervised practice), intending registered trade mark attorneys are required to achieve an outcome related to reflective learning. A commitment to reflective learning appears in the SRA and IPS work-based learning frameworks as well as in the requirements for independent learning in the BSB pupillage framework. However there is no necessary scaffolding of those skills in earlier stages. The QAA Benchmark for the QLD does refer to the need for reflection, but this is not included in Schedule One to the Joint Statement. LPC outcomes similarly require students to reflect on their learning and identify learning needs, but there is no expectation that this will be explicitly assessed, and no consistent way of identifying whether such reflection has taken place. Similarly the BPTC Handbook permits providers to use personal development portfolios, but these are not in any way obligatory. It is notable that earlier attempts at getting LPC students to use e-portfolios suffered from low engagement, given the voluntary nature of the activity (Polding, 2010).
- 4.90 This rather ad hoc approach is not satisfactory. An emphasis on self-evaluation and self-management skills can help counteract the artificial perception that competence is 'acquired' in a relatively linear, additive, fashion and then done. Rather, as Eraut (2007) demonstrates, professional practice is characterised by 'discontinuities of learning' so that at any specific point:
- explicit progress is being made on several of the trajectories or competencies that constitute lifelong learning;
 - implicit progress can be identified on some other trajectories; while
 - progress on others is stalled, or even regressing because of changing priorities and lack of use.
- 4.91 In medical education, where the use of personal development plans and training records is obligatory and far more integrated, using portable online tools, students develop the habit of reflection, and experience a consistent expectation of self-evaluation through the later stages of training and into practice. 'Practical experience portfolios' have also recently been introduced by the Chartered Institute for Public Finance and Accountancy (CIPFA) as a replacement for their trainee Initial Professional Development Scheme.⁴¹ Trainee accountants studying through the Association of Chartered Certified Accountants (ACCA) route, architects and surveyors are all required to submit online training logs or diaries as part of their required work experience. For example, the Royal Institute of British Architects (RIBA) Examination in Professional Practice and Management (Part 3), the final examination of an architectural student's training, requires submission of completed Professional Education and Development Record (PEDR) sheets covering a minimum of 24 months' experience.⁴² The ACCA, RIBA and Royal Institution of Chartered Surveyors (RICS) training logs are not currently carried through into professional practice, however. The use of portfolios and training logs is discussed further below, in the context of assessment.

41 See further <http://www.cipfa.org/Training-and-Qualifications/Current-students/PEP>

42 See <http://www.pedr.co.uk/>

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- 4.92 Other habits of mind that are emphasised by employers include conscientiousness and an eye for detail (the latter was the most significant weakness in recruits reported by the careers advisers' survey), and the willingness to 'go the extra mile' for clients (see Baron, 2011). The willingness to acknowledge and address errors is an area where complaints data suggest some gap between lawyer behaviour and client expectations (see, eg, Legal Ombudsman, 2012).⁴³ These personality attributes/habits of mind that help to make up 'professionalism' also figure in a number of the medical and legal competence frameworks reviewed as part of this research, reinforcing their relevance.
- 4.93 Taking these comparisons into account, Table 4.3 presents a re-working of Table 4.2 for the dimensions of legal competence and provides a basis from which to attain, signal and assure competence.
- 4.94 There will be numerous issues for learning and assessment, in the workplace and classroom, and for regulation. Some of these attributes may be difficult to convert into outcomes; others (eg, tacit knowledge) will be difficult to surface and capture in ways that enable allied learning and assessment; and many raise significant questions regarding appropriate assessment methodologies. As the University of Law has observed in response to the deficiencies identified in the careers advisers' survey:

What is significant about all of the attributes... is that they do not lend themselves to assessment through the conventional means of assessment regarded as the norm by the regulators.

University of Law response to Discussion Paper 02/2012

This is an important consideration, and is returned to in the final section of this chapter.

⁴³ <http://www.legalombudsman.org.uk/downloads/documents/publications/Part-A-First-Tier-complaints-YouGov-180912-Final.pdf>

**Table 4.3: Professional competencies in legal services
(derived from Epstein and Hundert, 2002)**

DIMENSION	ATTRIBUTE
COGNITIVE	<ul style="list-style-type: none"> Core knowledge Basic communication skills Information management Abstract problem-solving Applying knowledge to real world situations Using tacit knowledge and personal knowledge Self-directed acquisition of new knowledge Recognising gaps in knowledge Generating questions Using resources and digital literacy Learning from experience
INTEGRATIVE	<ul style="list-style-type: none"> Using legal reasoning strategies appropriately Linking legal knowledge and operational understanding of problems Managing uncertainty
CONTEXT	<ul style="list-style-type: none"> Understanding the professional work setting and professional work Office skills Efficiency
RELATIONSHIP	<ul style="list-style-type: none"> Interpersonal communication skills Handling conflict Teamwork and collaboration Supervision
AFFECTIVE/MORAL	<ul style="list-style-type: none"> Integrity Independence Emotional intelligence Respect for Clients Resilience Empathy Social Responsibility
HABITS OF MIND	<ul style="list-style-type: none"> Attention to detail Awareness of limits of own competence Reflection on one's own abilities, thinking, emotions and techniques Willingness to acknowledge and correct errors

'Knowledge' at the academic stage

- 4.95 Before leaving this section it is necessary to say something about the scope of regulation regarding the academic stage. A move to outcomes involves addressing the Foundation subjects, as proposed in both Discussion Papers 01/2012 and 02/2012.

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- 4.96 The academic stage has played a foundational role in professional formation for barristers and solicitors and also influences the breadth of training available to CILEx members. LETR research data indicate little appetite, amongst either academics or the professions, for changes in regulation of the academic stage,⁴⁴ whether by creating a national assessment framework for entry to the professional schools, or by strengthening the role of the professional schools as gatekeepers to the profession.⁴⁵ Further regulation could reduce innovation and narrow the focus of university legal education if it forced the academic law schools to focus more specifically on preparation for vocational requirements, especially if the imposition of standardised entry testing, or an equivalent to the US Bar Examinations, created pressure on law schools to ‘teach to the test’.⁴⁶ It might also have an undesirable impact on access and diversity if it created a secondary market in ‘cram’ courses preparing students for access to professional school.
- 4.97 LETR research data also demonstrate that the academic stage is valued where it develops a strong foundation of substantive legal knowledge, and understanding of the social context within which law operates, as well as for the broad intellectual and critical capacities that are the hallmark of degree level education. These are all seen as pre-requisites to professional competence.
- 4.98 Discussion Paper 01/2012 raised the question whether regulation should continue to focus on prescribed knowledge areas or attempt some other formulation, for example based on cognitive and other skills. This would enable providers to make space in the curriculum to develop those skills in a wider range of relevant contexts. Whether a move to skills-based outcomes would significantly change the ‘core’ content of the degree may in any event be moot. A set of foundation subjects, whether the civilian division between persons, property and things, or a common law variant centred on public law, property and obligations,⁴⁷ seems to be a common feature of all legal education systems. As Table 4.4 demonstrates from a cross-section of common law jurisdictions, the existing Foundation subjects do form close to a common core.⁴⁸ This was also widely reflected in the LETR research data by respondents who saw the existing Foundation subjects as a reasonable basis for further training. Indeed, there was, if anything, a tendency amongst respondents to want to add to the Foundation subjects. Ethics and some element of company or business organisations law were the most common additional suggestions, but beyond these a wide range of other subjects were proposed.

44 See generally responses to Discussion Paper 01/2012.

45 In the sense that changes to entry requirements and expectations for the BPTC or LPC can act as indirect or informal regulation of the academic stage.

46 Society of Legal Scholars, response to Discussion Paper 01/2012.

47 See the Association of Law Teachers response to Discussion Paper 02/2012.

48 Note also that the comparator degrees here tend in practice to be a minimum of four years, with the exception of Canada which has a three-year postgraduate degree. Extending the normal LLB to four years, or making it a postgraduate award has not been pursued in this investigation because of the extra costs of the further degree. This would make a large impact on uptake and would be problematic on grounds of diversity. There was also very little interest shown in this approach in the survey, and other than from a small number of respondents, by most involved in the interviews and focus groups.

Table 4.4: Mandatory subjects in common law degrees

ENGLAND AND WALES	SCOTLAND	AUSTRALIA	INDIA	CANADA
Contract	Obligations [includes civil evidence]	Contract	Contract 1/Contract II	Contract, tort and land
Tort		Tort	Tort and consumer protection	
Land	Property [real and personal]	Land	Land law including transfer/land law	
Constitutional/HR	Legal system and institutions [includes EU institutions; HR pervasive]	Administrative law Federal and state constitutional law	Constitutional law Administrative law	Constitutional law Administrative law
Crime	Crime [includes criminal evidence]	Criminal law and procedure	Criminal law	Criminal law
	Commerce	Company law	Company law	Commercial law
Equity and trusts	Persons [trusts, succession and family]	Equity		Common law and equity Application of Canadian law
EU		N/A	N/A	N/A
		Civil procedure	Civil procedure and limitation	
		Ethics		Ethics and professionalism
		Evidence	Evidence	
			Statutory interpretation	Statutory interpretation
			Arbitration and ADR	
			Family Law I/ Family Law II	
			Criminal procedure, youth justice and probation	
			Employment law	
			Environmental law	
			Human rights and international law	
			Jurisprudence	
			Legal writing and language, English	

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- 4.99 The results of the online survey, as noted in Chapter 2, showed that contract, tort, equity and business (or company) law were rated as more important than public law and criminal law, but the question did not ask whether all or any of these should be Foundation subjects on the QLD. However, a clear majority of responses to Discussion Paper 02/2012, including respondents from both academia and the professions, took the view that the current Foundation subjects are 'about right'. As discussed in Chapter 3, respondents in focus groups in Wales suggested that at least an awareness of devolution issues should be embedded at the academic stage, or its equivalent, for students across England and Wales.
- 4.100 There is little rational basis on which to propose change as regards the range of subjects. The Foundation subjects should be precisely that; a minimum *common* grounding for professional training. At the same time, it must be recognised that the QLD outcomes at present are only broadly stated through a combination of the QAA Benchmark and the Joint Statement. This is not entirely satisfactory. In its present form the learning outcomes for knowledge and general transferable skills specified in Schedule One of the Joint Statement (see Annex III to this chapter) overlap substantially with those in the QAA Benchmark. They do not entirely replicate the Benchmark, nor are they simply 'additional knowledge/skills' as para. 2.vii of the Statement asserts, since they add a specific gloss in some contexts, and appear substantially narrower in others. At the very least, it is suggested that the relationship between the two statements would benefit from clarification and simplification.
- 4.101 Furthermore, neither provides a meaningful set of outcomes in respect of the Foundations of Legal Knowledge. The Benchmark tends to highlight skills development with only a very generic specification of knowledge, whereas the knowledge component of the Joint Statement is a loose articulation that barely functions as an aim or objective, let alone a set of outcomes.
- 4.102 This results in three related risks for the LSET system:
- Absence or loss of comparability and transparency: if it is asserted that certain knowledge and skills outcomes are 'core' to the academic stage, then it is appropriate that achievement of those outcomes is comparable across the sector,⁴⁹ and demonstrably so. Transparency matters for both students and employers. The continuing importance of comparability has also been acknowledged recently across the higher education sector by the development of the Higher Education Achievement Report (HEAR) - an extended diploma transcript that will give students and employers greater standardised information about an individual's qualification, course components, and assessment (Universities UK/GuildHE, 2012).
 - Limits on flexibility and mobility: a clearer prescription of outcomes, and less emphasis on prescribing inputs, should help mobility as decisions on access and transfer (both domestic and international) can be justified more clearly by reference to the outcomes rather than vague(r) notions of 'graduateness' or qualification equivalence.
 - Diversity: there is a risk, highlighted by the Law Society in its response to Discussion Paper 02/2012 that employers tend to focus on 'known brands' (in terms of perceived high status law degrees and GDL students who are also graduates of high status institutions) partly because of uncertainties about comparability and consistency of awards. This is considered, in part, in the next section of this chapter.

⁴⁹ Increasing comparability and the available public information on programmes were key reasons for the Dearing Committee requiring universities to move to an outcomes-led approach in the first place (see Dearing Report, 1997, Rec. 21).

- 4.103 Consequently the range of Foundation subjects and level of guidance in the *JASB Handbook* should be reviewed, with a view generally to reducing the quantity and complexity of the standards contained therein, though some further, albeit limited, prescription, of the Foundations, akin to the level of content description provided by the ‘Priestley 11’ would seem desirable.
- 4.104 It should be noted that, despite the general emphasis placed on legal ethics and professional values, there was no majority support for the introduction of professional ethics as a further Foundation subject for the QLD/GDL. This does not preclude the academic stage from providing an important basis for the study of professional ethics. Hence it is proposed that the QLD/GDL should include outcomes that advance an awareness and understanding of the values embedded in law, legal processes and solutions, and the role of lawyers in advancing those values. Further, it is recommended that some understanding of underlying legal values should be incorporated in the education and training of any authorised person.⁵⁰
- 4.105 At the same time, institutions should not be required to devote more than the existing 180 credits to any prescribed Foundation subjects. This fits with comparable approaches internationally.⁵¹ It is important to acknowledge that the traditional professions are now a minority career destination for law graduates, and university law schools also have their own legitimate and distinctive objectives for the degree (see, eg, Legal Services Institute 2010, 2012; cf Devlin et al, 2009), which should be respected.⁵²

Consistent and shared standards

- 4.106 Although the move to an outcomes-led approach offers a basis for some greater consistency and harmonisation, this is unlikely to be enough. Outcomes are simply descriptors. By themselves they say nothing about the standard against which such outcomes are measured or the level of proficiency required.
- 4.107 Standards are therefore a necessary adjunct to outcomes, and need to be designed in conjunction with the outcomes. Standards in this context perform two key functions (i) providing guidance and direction regarding inputs and learning processes that are considered essential if the outcomes are to be achieved consistently across a range of providers,⁵³ and (ii) assuring or measuring the level of performance by standardising assessment.
- 4.108 Drawing on effective practice,⁵⁴ standards in this first sense should address a range of areas or domains relevant to enhancing the consistency and quality of the learning experience and its outcomes: curriculum design and delivery; assessment strategy and processes; the management of teaching, learning and assessment; and the definition of each competence area and its learning outcomes. In addition to specifying broad criteria for each domain, it may be useful to highlight to providers the kind of evidence expected to demonstrate, or be indicative of, delivering the standard.
- 4.109 Standardisation of assessment is a more radical suggestion for LSET, though a long-established practice in medical education (see, eg, Newble et al, 1994).

50 Insofar as a deeper understanding of the professional principles, and of commitments to the rule of law or to act in the public interest, where these are cascaded down to authorised persons, will be developed from an awareness of the underlying values involved.

51 Notably in Australia and Scotland; as noted above Canada has not set a minimum or maximum amount of credit, leaving it for the law schools to determine what is sufficient to meet the criterion.

52 This argument may hold less true for the GDL, as a specific entry route to the solicitors’ and barristers’ professions.

53 This function will be less relevant if there is only a single training provider, though the provision of standards still adds clarity and transparency in respect of the regulator’s expectations of the provider.

54 Sources consulted in this process include the General Medical Council (2009); the International Accounting Education Standard Board (IAESB) International Education Standards (various dates), Lilley and Harden (2003). See also the discussion in the Literature Review, Chapter 4, and sources cited there.

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- 4.110 A standard in this context is a statement about whether an examination performance is good enough for a specific purpose, eg, progression to a next level or stage of education and training, or signing-off as 'day-one competent'. 'Ultimately, all standards are policy decisions' (George et al, 2006): consequently the critical first question is not so much what the standard is but how it is derived.
- 4.111 The issue of derivation goes to the heart of the consistency problem. Existing assessment strategies tend to focus on conformity as a proxy for consistency: a common pass mark, common outcomes, and (relatively) comparable assessment tasks. Despite the considerable effort and resources put into external examining, there is a developing weight of evidence suggesting that it does not adequately bridge the differences in institutional learning and assessment cultures (Newstead, 2002; Rust et al, 2005; Bone et al, 2009). Assessment standards often remain 'difficult to articulate and require active participation over time to develop deep understanding' (Price et al, 2008).
- 4.112 The proposed solution is to ensure that standards are constructed by the community to whom they apply. This recognises that assessment is largely dependent upon professional judgement and confidence in such judgement requires the establishment of appropriate forums for the development and sharing of standards and effective practices across the relevant academic and professional communities (cf Van Der Vleuten and Schuwirth, 2005).
- 4.113 This work should be progressed as a method for developing both outcomes and standards for professional training.⁵⁵ As such it would support the development of both a socially robust system of standards, and encourage a sense of ownership of those standards within the LSET community.
- 4.114 Turning to the question of level of achievement, competencies or outcomes can, as the NOS demonstrate, be met by qualifications at different levels; it is the level that determines the depth of understanding, complexity of problems that can be solved, etc, and that marks out a competent performance. The setting of levels needs to be considered as part of the overall task of standard setting, but there is also value in ensuring that qualifications rest within established qualification frameworks. Discussion Paper 02/2012 proposed that 'at least some part of the terminal qualification' for the unsupervised practice of reserved activities should be set at a minimum of level 6 (NQF). This view was accepted by the majority of respondents and forms part of the recommendations of this report. It also requires some clarification.
- 4.115 First this statement does not tie the sector to an arbitrary level of achievement, but to one that seeks to recognise, against NQF descriptors, the need to ensure that unsupervised persons are capable of dealing with work of a reasonably high degree of complexity.
- 4.116 Secondly, it recognises the national and international importance of graduate-level qualifications/capabilities within the legal services sector, without requiring all unsupervised providers to be graduates.
- 4.117 Thirdly, it sets level 6 as the minimum, not the norm, otherwise there is a risk that this could be read as proposing to lower the level of achievement for some occupations. That is not the intention. It is acknowledged that the BPTC and LPC are set at or closer to level 7, as are the qualifications for notaries and registered trade mark attorneys.⁵⁶

⁵⁵ Attempts to develop a similar approach across the university system have not so far taken off. It would be difficult, but not impossible, for a single discipline to take such an initiative forward in respect of degree-level education (and the UKCLE was engaged in such a project before its closure). An academic standard-setting project could form part of the Legal Education Laboratory, discussed in Chapter 6, potentially in conjunction with Centres of Legal Education in England and Wales and elsewhere.

⁵⁶ Qualifications for patent attorneys do not ascribe an NQF level but, as they are postgraduate in time, may also be at level 7.

- 4.118 The 'level' of learning in any period of supervised practice is also a potentially troublesome issue. Whether supervised practice is intended primarily as contextualisation or consolidation of knowledge and skills already developed in (or being developed in tandem with) the classroom, or whether it is intended to take learning to a higher level, or to demonstrate new competencies is not always clear. Realistically, it is probably a combination of these things. This is not to suggest that supervised practice outcomes must all be set at a 'high' level, nor necessarily benchmarked against the NQF. For some tasks, such as basic office skills, for example, it would be unrealistic to require that these are set at level 6 or 7, but the level (equivalency) should at least be considered in setting standards for supervised practice, and will certainly need to be addressed in the context of higher apprenticeships (Chapter 6).
- 4.119 Key issues to be considered by the regulators in relation to this recommendation include:
- the need to develop a method of working, whether through collaborative workshops, or using methods such as the Delphi technique,⁵⁷ that ensures effective community engagement in the standard- and outcome-setting process;
 - the need to ensure that outcomes are well-connected to risk as a means of avoiding over-specification (see LSCP response to Discussion Paper 02/2012);
 - the provision of transparent mechanisms for accreditation of prior experience, and/or learning - AP(E)L - for entrants and transferees;
 - the need to achieve agreement as regards threshold qualification levels for entry and/or transfer to a reserved or protected title.
- 4.120 In order to ensure a comparable set of competencies across the sector, it is further proposed that the frontline regulators commence work on articulating a common outcomes framework for the legal services sector as a whole. This is a substantial piece of work, complicated by the number and range of frontline regulators, but it would provide a significant foundation for assuring competence and delivering mobility across the sector as a whole.
- 4.121 The developing National Occupational Standards (NOS) for the legal services sector (or their successors) could provide a useful comparator or foundation though, as noted above, articulation in that form may prove unwieldy; care needs to be taken that the system does not lead to overly bureaucratic distinctions that may restrict consumer choice.⁵⁸ Either way, the outcomes would at a minimum require mapping against NOS to assure consistency.

⁵⁷ In a Delphi survey, proposals are evaluated by experts in a series of iterative rounds, in order to create a reasoned consensus. For a recent example of use of the Delphi technique to identify attributes of competence in medicine, see Lambe and Bristow (2010).

⁵⁸ The point is made by the Advocacy Training Council thus:

there is a substantial risk that the wrong kind of regulation will affect consumer choice. The QASA proposed regulation will require advocates to apply for a specific level assessment. Clients will be restricted to choosing advocates within a specific case level complimentary to the level of the advocate.

This of course also highlights the importance of risk, as one basis for limiting consumer choice may be because the risk of detriment is particularly high under existing market conditions.

Robust learning and assessment approaches

- 4.122 Effective instructional design needs close alignment between outcomes, learning approaches and assessment. Assessment in particular serves to demonstrate that student or trainee learning outcomes have been achieved. Assessment judgments provide the primary means of ensuring competence to progress to the next stage of training, or achievement of the standard expected of a newly qualified lawyer, and hence perform an important public protection function. However there are risks that over-prescription in setting assessment methods, and teaching and learning processes can stifle innovation, and limit opportunities for quality enhancement.⁵⁹ In this section the primary focus is on assessment, recognising that effective assessment should also contribute to learning.
- 4.123 There is a legitimate regulatory interest in ensuring that assessment is robust. It must be capable of assessing that which it sets out to assess (valid); it must produce consistent and replicable results (reliable); and it must assess against the syllabus and learning outcomes that have been set out (fair) (Bone, 1999; Stuckey et al, 2007:235-6). The proposal for greater use of standardisation for high stakes assessment in the previous section responds to that need. A process of standardisation improves the quality of assessment by increasing confidence in its reliability and validity. This can be achieved by extending the number of credible judgments in respect of a task, and by ensuring that those judgments are collected and evaluated systematically. Vocational training courses should be encouraged to adopt such approaches for at least a proportion of high stakes assessment tasks. Standardisation can also be used to move away from fixed pass marks, which tend to assume a high degree of inter-test reliability (ie, that two tests created at entirely different times with different questions can reliably be marked to the same pass mark).⁶⁰
- 4.124 The remainder of this section focuses on a number of specific assessment issues and approaches, chiefly in respect of ensuring validity of assessment, and developing both the range of outcomes assessed, and the range of appropriate assessment tools used.

Practice validity

- 4.125 A number of comments in respect of the LPC, BPTC and CILEx qualifications identify dissonance between classroom-based activity and what happens in practice. For example, one barrister respondent emphasised the difference between a 'real' particulars of claim drafted in chambers and 'a bar school particulars of claim'. This has a number of undesirable consequences. It creates a burden of unlearning and re-learning once in the practice environment, and reduces the value of the training in the eyes of the profession, and quite possibly the student. The extent to which this is a significant problem is, however, difficult to gauge from the data gathered. It is raised often enough by trainees and practitioners alike to suggest the problem is not isolated to one institution or one set of skills or transactions, but it is also not clear to what extent differences are permissible variations in style, an inevitable consequence of the fragmentation or simplification of a practice task for teaching purposes, or genuinely poor simulation of effective practice.

⁵⁹ The regulation of e-learning provides a case in point. Online learning may clash with quality assurance standards that assume norms based on face-to-face learning and the need for physical 'plant' such as teaching space, library holdings, and specific staff-student ratios. As demand for online learning has increased, accrediting agencies have tended to respond by treating it as a 'special case' that requires additional or specific justification. These special case attitudes are seen to be delaying the entry and development of online learning in the educational marketplace: see, eg, Garrett et al (2005). It is notable that in the US there are constraints on the number of credits the Bar permits law graduates to obtain by distance learning, and that California is the only jurisdiction which permits graduates of online programmes to qualify for the Bar. The problem may not just be the volume of prescription, but particularly a failure to align requirements with the range of outcomes desired. For example, in Canada, the final chartered accountancy examinations were recognised as focusing academics' and students' attention on information retention and a relatively narrow range of technical detail. This led the Canadian Institute of Chartered Accountants to reform their external final assessments, moving away from the use of multiple choice and single subject questions to more sophisticated open book, case-based assessments that tested not just technical knowledge but critical thinking and business skills - see Forristal (2002).

⁶⁰ A number of recognised standard-setting approaches are employed in medical education. The Angoff method has been adopted for the QLTS. A panel of experts evaluates each component and estimates the proportion of candidates who would 'pass' it at a level of minimal competence. Individual members' estimates are then averaged to provide a 'cut score' representing minimum competence in that component. In the Ebel method, the panel rates each component not only for difficulty but also for relevance so that components can be weighted by reference to their importance. See further Cizek and Bunch (2006). An example of the use of such methods on medical performance outside the classroom is provided by Hess et al (2011).

4.126 The difficulties of getting a range of practitioners involved in training are well known, at least anecdotally, nonetheless there may be a case for involving practitioners more closely with materials design, moderating assessments and setting assessment standards. Moves towards more integrated training (discussed in the next section) may also facilitate more authentic training experiences.

Centralised assessment: validity vs consistency?

4.127 The BPTC, CILEx and CLC qualifications all make use of centralised assessment.⁶¹ This is seen by those involved in their delivery as ensuring consistency and rigour in assessment, and may limit risks of declining standards in a highly competitive market.⁶² It may also, as two of the academic respondents observed, better meet public assumptions about professional qualifications than local assessment.

4.128 However, the suggestion of centralised assessment for the LPC divided opinion:

We would approve of centralised examinations, not for the academic stage of legal education, but for the LPC.... The vocational stage of education for solicitors is currently characterised by varying standards of provision across those institutions that offer the programme. While the providers are currently 'policed' by SRA external examiners, LPC assessments are nevertheless of variable standard and content. This can be confusing for employers and students.

Kaplan response to Discussion Paper 02/2012

The reasons why the centrally-set Solicitors Final Examination was replaced by the LPC remain as valid now as when the change was made some 20 years ago. The curriculum was driven by the requirements of a centrally set examination, thus teachers felt no ownership of it. This led to unimaginative teaching and rote learning. A return to that system would remove the flexibility that enables LPC programmes to be tailored to the needs of individual firms or types of legal practice. A centrally set examination cannot cater for the assessment of practical skills. A major criticism of the former Final Examination, and of the programmes leading to it, was that trainees entered employment with wholly inadequate skills. To the extent that the Final Examination addressed skills at all, it was by expecting students to write about them, rather than to demonstrate their possession.

There are no benefits to the re-adoption of such a system, and significant risks to the quality and relevance of the LPC.

University of Law response to Discussion Paper 02/2012

4.129 Both arguments have merits. Differences in assessment methods (eg, between open-book and closed-book assessment) may also result in a marked difference in pass rates between different institutions and weaken the 'face validity'⁶³ of the assessment process as a whole. A move to centralised assessments, however, may also *increase* risks to assessment validity and fairness. By definition, it tends to separate the assessment from the learning, and, unless the curriculum is very tightly defined, there tends to be a higher risk that some element of the test might not meet the reasonable expectations of either teacher or learner. This is also likely negatively to impact perceptions of the fairness and face validity

⁶¹ Other smaller professions, with a single educational provider, use centralised assessment by default.

⁶² Though in fact there is no specific evidence to point to a marked decline in entry standards, and a number of providers are known to have left places vacant rather than recruit significantly weaker students to the course.

⁶³ 'Face validity' is used to describe the most basic and common standard of validity applied to educational assessments (among other things). It is a qualitative standard that reflects the social expectations of the key stakeholders in a test, eg, the setter, moderator and subject. The closer the views or expectations of these persons are aligned with regard to the appropriateness of the assessment, and the fairness and accuracy of its results, the better its face validity.

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of the assessment. In the end the choice may be both needs- and cost-based, between consistency and flexibility. The move to more flexible, bespoke, provision may limit face validity problems, provided trainees and employers are satisfied with the standard. Validity problems with centralised assessment may also be reduced by more rigorous monitoring processes which raise the standard of validity to be met.⁶⁴ This does not resolve the lack of ownership problem identified above, but it would tend to reduce doubts about the fairness of any resulting assessment.

Validity in assessing communication and client-facing skills

- 4.130 Client communication forms a large part of the work of legal services providers. The primacy of client communication and related skills should be better recognised in mainstream assessment practices within LSET. Some current courses use trained actors in summative client interviewing or client conferencing assessments. It is also necessary to assess the trainee's capacity to get inside the client's world and the client's experience.
- 4.131 The use of actor-clients contrasts with the recent development of 'standardised clients'. Standardised clients (SCs) are lay people who are trained to do two things well: role-play a client in an interview or client conference, and assess the client-facing skills of the learner. It is important to recognise from the outset that SCs do not assess the legal competence of lawyers or law students or the quality of their advice; but they are uniquely placed as a role-playing client to comment upon the communications skills and relational attitudes of lawyers and law students in front of them, and, as Fry et al (2012:145) point out, prioritise the consumer experience within the training and assessment process.
- 4.132 The SC model is drawn from medical education. The use of standardised patients has been extensively researched and documented over the last half century in the health sciences. Following a literature review, and with assistance from the Clinical Skills Unit of the Medical Faculty at the University of Dundee and Ninewells Hospital, a correlative research project was designed and implemented by Barton et al (2006) on Strathclyde Law School's professional programme, the (then) Diploma in Legal Practice. It proved that the use of properly trained SCs to assess interviewing skills was as reliable and valid as practitioner-tutor assessments of the interviews. At Strathclyde now, SCs assess student interviewing skills and values: tutors are used only to second-mark what the SCs grade as not yet competent or borderline competent. Their decisions are rarely overturned.
- 4.133 In the six years since this original study, SCs have been tested in the simulation of business clients for niche accreditation programmes for solicitors (Writers of the Signet Society, Edinburgh), in a CPD programme for experienced solicitors (Law Society, Ireland), in professional legal education in the USA (New Hampshire) and Australia (Australian National University and Adelaide University), and in undergraduate legal education at Northumbria Law School, as part of preparation for mandatory clinical modules. They are also a key component of the QLTS assessment. Formal evaluations of many of these initiatives are at an early stage, but early indicators suggest that the approach has been successful in improving standards (see Fry et al, 2012; Garvey, 2010).

⁶⁴ One such approach developed by Lawshe (1975) involves subjecting assessment questions to a panel of subject matter experts (SMEs) for evaluation against a three-point scale where 3 = 'essential'; 2 = 'useful, but not essential' and 1 = 'not necessary' or 'inessential'. If more than half the panellists agree that an item is essential, then that item has at least some content validity. Lawshe defines this relationship as the content validity ratio (CVR), which can be expressed thus:

$$CVR = \frac{n_e - N/2}{N/2}$$

Where: n_e equals the number of SMEs rating an item as 'essential' and N equals the total number of SMEs providing ratings.

The test works by setting a reliability threshold called the critical value. Questions which do not achieve a CVR above the critical value should be rejected. A re-calculated table of critical values for the CVR, calculated at the 95% probability level is published by Wilson et al (2012). Statistically reliable content validity ratios can be calculated for any panel size from eight to 40 persons. It should be observed that, beneath the statistics, this still expresses a fundamentally qualitative measure of validity.

4.134 Three points should be noted regarding the training and use of SCs:

- SCs do not act in the normal sense of the word: they enact the situation of a person, according to standardised criteria, and with as full an understanding of the person's situation as they require. This involves improvisation, but it also involves knowing the difference between what can be said or not said, according to legal points that may be at issue, and exploring the emotional range that can be enacted.
- The training of SCs includes standardisation of the act of assessment. This means that not only do SCs need to understand thoroughly and memorise the basic assessment criteria, but they also need to be able to apply the criteria in a consistent way across the range of persons they are assessing; and each SC performance has to be standardised to a specific set of standards. This process of standardisation is what makes the simulation both a powerful tool for learning through formative assessment, and a precise tool for the assessment of person-centred skills, values and attitudes. This is particularly important because such skills are not easy to assess robustly.
- The medical literature refers to the power of standardised patients to change the behaviour of medical staff in a fundamental way. This is one reason why simulation is used so extensively in the primary training and education of doctors and health workers, and why it is used in the national Doctors in Difficulty programme. More recently it has also been developed for the National Skills Academy in Social Care, where it was piloted with registered managers of care homes. In this aspect of its use, the approach can blend what might be termed technical professional practice with ethical practice, based upon client-centred activities. To that extent it also has the potential to link the ethical and client communication outcomes of LSET.

4.135 The use of SCs requires more preparation time for staff and SCs than actors, and a larger financial investment in assessment, though the experience at Strathclyde indicates that this can be achieved in a legal services education setting.⁶⁵

Assessing the range of outcomes

4.136 Not all outcomes of an education or training module need to be assessed, though 'key' outcomes and a representative range should be. This is particularly true of the academic stage, where there is considerable flexibility regarding the teaching and assessment of the Benchmark skills. Competence in IT skills or in writing, for example, is often integrated within predominantly knowledge-based assessments, rather than as a free-standing skill, and may be inferred from the completion of a task - eg, word-processing competence may be inferred from submitting an essay in word-processed form, without direct assessment of word-processing ability. This approach means that some important skills may never be subject to an assessment in their own right.

4.137 In thinking about the robustness of the range of assessments, in the context of the knowledge and skills gaps identified above, it is proposed:

⁶⁵ There may be a difference in the use of SCs in medical and legal education. Standardised patients typically had certain symptoms to show (or at least report). It was likely that they would therefore be, or have been, actual patients with the actual problems on which they report. This would make a difference to the verisimilitude of their performance and ability to assess the doctors they met in relation to the problems or diseases from which they suffered. In LSET it is arguable how useful or necessary it is to have standardised clients who have or could have suffered the problems which they evince in interview. Cf for example use of 'model clients' in the 'Quality and Cost' research (Moorhead et al, 2001).

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- First, that legal values should be assessed in (some combination of) Foundation subjects at the academic stage. If adopted, 'professionalism' outcomes, akin to those used for PEAT 1 and 2, would similarly ensure that professionalism provides a critical context within which other knowledge and skills are developed as part of vocational or professional training. Accordingly professionalism should be assessed pervasively rather than as a discrete subject. (See Maharg, 2013:122-3; Stronach et al, 2002).
- Secondly, there should be a discrete terminal assessment of legal writing and critical thinking skills, at least at level 5 of the academic stage. Academic stage providers should retain discretion in setting the context and parameters of the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.
- Thirdly, reflection should be developed and assessed through a portfolio or personal development plan.

4.138 The use of portfolios may require additional justification. Portfolio-based assessment of knowledge and skills is developing in undergraduate (legal) education, and, with the consent of the SRA, is being tested by the University of Law as an assessment tool for the LPC. Portfolio assessment has also been piloted in the SRA work-based learning scheme and forms one of the tools used in the IPS work-based learning scheme for periods of supervised practice. In a meta-analysis of the 'higher quality' research studies, chiefly in medical education, Buckley et al (2009) identify improvements in knowledge and understanding, increased self-awareness and engagement in reflection and improved student-tutor relationships as the main benefits arising from portfolios. Whilst portfolios encourage students to engage in reflection, Buckley et al also found that the quality of those reflections cannot be assumed and the time commitment required for portfolio completion may impact on other learning, or deter students from engaging with the process unless they are required to do so by the demands of assessment. These challenges are consistent with those reported in legal education (eg, Webb, 2002; Polding, 2010). Consequently, if portfolios are to be effective, they must be properly embedded in both learning and assessment processes.

4.139 Nonetheless, the assessment of reflection can be challenging and is controversial in its own right, given the personal and developmental function that such reflection often performs (see, eg, Maughan and Webb, 1996; Moon, 2004: 149-57). It may therefore need time to develop in each course and providers should have the option initially to experiment with either formally assessing or simply signing-off the portfolio without grading it.

Extending assessment

4.140 The examples included here offer some indications of ways in which more or different assessment should contribute to the development of professional competence. It serves also to point up the relatively narrow base of assessment methods in use, and the fairly limited range of potential competencies that are being assessed, particularly outside the cognitive domain. Much that falls in the affective/moral domain or habits of mind may not be widely assessed or evaluated, for example: independence, emotional intelligence, respect for clients, or attention to detail; similarly, relationship matters such as teamwork and handling conflict may be addressed in the workplace, but not as part of some consistent professional standard.⁶⁶ As Epstein and Hundert (2002:233) conclude: 'educators, professional societies, and licensing boards should view professional competence more comprehensively to improve the process of assessment'.

⁶⁶ Drawing on Epstein and Hundert (2002) once more.

Conclusions

- 4.141 This chapter has sought to demonstrate the ways in which baseline quality should be identified and subsequently attained through a system of competencies and standards, backed-up by a rigorous, standardised assessment regime. In particular, the chapter has highlighted a number of persistent and in some cases fundamental challenges for the LETR:
- reliance on relatively shallow, vague or narrow conceptions of competence;
 - a failure generally to adopt robust methods for deriving outcomes;
 - the widespread absence of standardised assessment processes;
 - reliance on assessment practices that possess conformity rather than practice validity.
- 4.142 A future-orientated LSET system will be defined more by competency-based standards. These will be reflected in 'day one outcomes' for particular qualifications or pathways which are derived from a needs-led analysis of the practitioner's role.
- 4.143 Outcomes will reflect the knowledge, skills and understanding required of a practitioner. Aside from the need for domain knowledge, the outcomes must place sufficient emphasis on ethics and professionalism, core communication skills (oral and written communication and, in appropriate contexts, advocacy), business and social awareness, equality and diversity issues, and legal research. This approach highlights the need for a reasonable degree of transparency in knowledge outcomes and therefore for some increase in the specification of the Foundations of Legal Knowledge.
- 4.144 This chapter also calls on the regulators to work with their communities to develop shared standards. Longer-term development on setting sector-wide outcomes and standards should also be considered as part of a move to a more harmonised LSET system.
- 4.145 Assessment is at the heart of LSET since it provides the key means of demonstrating that outcomes have been met. LSET requires more robust and more creative approaches to assessment. The report therefore makes recommendations to ensure that legal values are assessed pervasively, and legal writing and critical thinking assessed discretely at the academic stage (or its equivalent). It proposes ways in which client communication skills could be assessed more realistically; it also suggests that the greater integration of classroom and workplace learning would increase the reliability and practice validity of the assessment of professional skills.

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Annex I Use of learning outcomes, competencies and standards in LSET for the regulated professions

NB: some of the higher level statements allow accredited providers to set more specific learning outcomes beneath them, or provide guidance or assessment criteria. In other cases there is a single provider and as far as publicly available, that provider's learning outcomes are stated. Some outcomes relating to ethics include equality and diversity issues, whilst others treat this as a separate topic.

PREQUALIFICATION PROGRAMME	USE OF OUTCOMES ETC	NQF LEVEL	EXAMPLE: LEGAL ETHICS (OR NEAREST EQUIVALENT)
QLD/GDL JASB	Yes at a broad level (individual institutions provide more detail and assessment criteria)	NQF 4-6 (6 for GDL)	Students should have acquired: ...The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas
QLD/GDL QAA	Yes at a broad level (individual institutions provide more detail and assessment criteria)	NQF 4-6 (6 for GDL)	A student should demonstrate a basic knowledge and understanding of the principal features of the legal system(s) studied. They should be able to: ...demonstrate knowledge of a substantial range of major concepts, values, principles and rules of that system
BPTC	Yes, prescribed by regulator	NQF 6-7	By the end of this unit the student will be able to: <ol style="list-style-type: none"> 1. understand and appreciate the core professional values which underpin practice at the Bar of England and Wales, particularly the additional moral responsibilities held by the profession (over and above the population in general) due to decision-making roles, functions and authority which are key to practice at the Bar 2. correctly identify issues of professional ethics and conduct which appear in given situations as likely to arise in a barrister's practice (eg conflict of interest) 3. demonstrate a sound working knowledge of the provisions of the Code of Conduct of the Bar of England and Wales, including the equality and diversity rules, and demonstrate existing and future adherence to that Code 4. demonstrate the capacity to provide a professional and responsible approach to clients who place trust in the profession on the basis that the service provided will be of benefit 5. display a professional and responsible approach to the course, staff and other students, and to observe the Code of Practice in order to prevent exploitation of clients and preserve the integrity of the profession, maintaining the public's trust and ensuring continuance of the provision of service
CILEx level 3	Yes, mapped to NOS	NQF 3	The learner will: <ol style="list-style-type: none"> 1 Understand the professional requirements of a client care interview 2 Understand the relevant professional requirements of client care communications 3 Understand the relevant issues and rules governing the relationship with the client [more detailed assessment criteria are then provided]
CILEx level 6	Yes, mapped to NOS	NQF 6	The learner will: ... <ol style="list-style-type: none"> 3 Understand professional conduct issues arising in practice 4 Understand the importance of client care within legal practice [more detailed assessment criteria are then provided]

4. Evidencing Competence and Quality

PREQUALIFICATION PROGRAMME	USE OF OUTCOMES ETC	NQF LEVEL	EXAMPLE: LEGAL ETHICS (OR NEAREST EQUIVALENT)
ACL modular course (costs lawyers, accredited by CLSB)	Yes, both generically for the programme and for each module	Not stated	At the conclusion of this section you will understand the importance of acting ethically in practice, complying with fiduciary duties, dealing with complaints and be able to act professionally the standards required of a Costs Lawyer. You will be able to apply the ethics and standards learned in the work that you do.
CLC foundation and final level	Yes	4-6	No specific outcome but positive certification required on completion of practical training
UCL Notarial Practice Course (accredited by Master of the Faculties)	Yes	NQF 7	Students should have a knowledge and understanding of: - the Notaries Practice Rules and other rules and regulations, ... - the notary's function in preventing money laundering.
Joint Examination Board for Patent Attorney foundation and advanced level	Yes (described both in terms of knowledge and understanding required and as 'competencies tested') Themes and success criteria are stated.	Not stated	Not publicly stated.
Queen Mary Certificate in Trade Mark Law and Practice	Yes	NQF 7	N/A.
NTU Professional Diploma in Trade Mark Law and practice	Yes	NQF 6-7	Exercise appropriate professional management, conduct and ethics skills with responsibility and with independence and accountability.
LPC	Yes, prescribed by regulator	NQF 6-7 (may vary by institution)	On completion of Stage 1 students should be able to identify and act in accordance with the core duties of professional conduct and professional ethics which are relevant to the course. [specific sub-outcomes are then set out for the principles, the code of conduct, money laundering, financial services and solicitor's accounts]

PREQUALIFICATION PROGRAMME	USE OF OUTCOMES ETC	NQF LEVEL	EXAMPLE: LEGAL ETHICS (OR NEAREST EQUIVALENT)
Pupillage	Standards prescribed by regulator	Not stated	<p>A Code of Conduct and fitness to practise</p> <ol style="list-style-type: none"> 1. have detailed working knowledge and understanding of the code of conduct and the written standards for the conduct of professional work. 2. demonstrate the skills and competencies as appropriate to holders of the practising certificate in terms of the Code of Conduct; apply the Code of Conduct to self 3. be deemed competent in terms of fitness to practise, by demonstrating that he/she is fit to do so in terms of the Code of Conduct, and able to represent clients and members of the public 4. recognise reputational risk in behaviour outside professional work/life and behave accordingly 5. have detailed knowledge and understanding of what action to take and what consequences may arise if a complaint is made or a barrister is asked to give a witness statement, provide evidence, or withdraw etc <p>B Ethics</p> <ol style="list-style-type: none"> 1. have knowledge and understanding of ethical values (including duty to the client and to the court) 2. have a systematic understanding of relevant knowledge and ethical principles in law and practice, together with a full understanding of techniques applicable to practice at the Bar of England and Wales 3. be honest and straightforward in professional dealings, including with the court and all parties 4. must demonstrate (and implement) an understanding of equality, diversity and cultural issues
CILEx qualifying employment (current model)	N/A	Not stated	N/a
CILEx qualifying employment (from 2013)	Yes, outcomes prescribed by regulator	Not stated	<p>By the end of the period of qualifying employment you must be able to:</p> <ol style="list-style-type: none"> 6.1 Apply the rules of professional conduct appropriately to relevant situations 6.2 Provide appropriate information to clients and service users 6.3 Understand the need to avoid discrimination and promote equality and diversity
CLSB qualifying employment	Not publicly stated	Not stated	
CLC practical training	Not publicly stated, although a checklist of activities is used	Not stated	No specific outcome but positive certification required on completion of practical training
Notarial practice under supervision	A number of mandatory courses (which may be tested) are prescribed by regulator	Not stated	The supervisor has a particular obligation to 'ensure (so far as he is able) that the supervised notary is aware of, and complies with, all Rules and Orders made by the Master under section 57 of the Courts and Legal Services Act 1990, and conducts himself in a manner calculated to maintain the reputation of the office and profession of a public notary'
Patent and registered trade mark attorneys	Not publicly stated although checklist of activities may be available.	Not stated	

4. Evidencing Competence and Quality

PREQUALIFICATION PROGRAMME	USE OF OUTCOMES ETC	NQF LEVEL	EXAMPLE: LEGAL ETHICS (OR NEAREST EQUIVALENT)
Training Contract	Practice skills standards prescribed by regulator	Not stated	<p>No separate standard relating to professional code or to ethics. Some references in other topics, such as:</p> <ul style="list-style-type: none"> • The importance of keeping clients regularly informed of the progress of a matter and the client care procedures in Rule 15 should be emphasised to trainees. • They should be given work that helps them understand the need to ...establish a professional relationship with the client,
SRA WBL pilot	Yes, outcomes prescribed by regulator	Not stated	<p>... a successful candidate should be able to</p> <p>8.1 interpret any situation in the light of solicitors' core duties and any other relevant professional conduct requirements, and act accordingly</p> <p>8.2 exercise effective judgement in relation to ethical dilemmas and professional conduct requirements.</p>
QLTS	Yes, 'day one outcomes' prescribed by regulator	Not stated	<p>A3 Knowledge of the rules of professional conduct, including the SRA Accounts Rules</p> <p>F1 Knowledge of the values and principles upon which the rules of professional conduct have been developed</p> <p>F2 Ability to behave professionally and with integrity</p> <p>F3 Ability to identify issues of culture, disability and diversity</p> <p>F4 Ability to respond appropriately and effectively to the above issues in dealings with clients, colleagues and others from a range of social, economic and ethnic backgrounds</p> <p>F5 Ability to recognise and resolve ethical dilemmas</p>

NB: 'outcomes' are here to be contrasted with 'outputs' in CPD terms.

EXAMPLES OF USE OF OUTCOMES IN SPECIALIST ACCREDITATIONS	USE OF OUTCOMES ETC	EXAMPLE: LEGAL ETHICS (OR NEAREST EQUIVALENT)
APIL certificate in personal injury law	Publicly stated as content coverage for each module	Not publicly stated
BSB Public Access courses	Yes	<p>Upon completion of training, barristers will be able to:</p> <ul style="list-style-type: none"> • Understand the circumstances in which a client's best interests would be served by the instruction of a solicitor; • Understand when it would be in a client's best interests to refuse instructions or withdraw from a case; • Interact appropriately and effectively with lay clients in: <ul style="list-style-type: none"> • Making initial contact and establishing a relationship; • Discussing, explaining and agreeing fees; • Explaining the role of a barrister and discussing whether it might be in the client's best interests to instruct a solicitor; • Understand the relevant considerations for instructions from intermediaries; • Write appropriate letters and manage systems for keeping files; and • Apply and adhere to the Proceeds of Crime Act 2002 and the Money Laundering Regulation 2007.
SRA Higher Rights of Audience competence standards	Yes	<p>Advocates must be able to</p> <ol style="list-style-type: none"> 1. advise the client on suitable representation at court including the possibility of instructing a barrister or a solicitor higher court advocate not from his/her own firm or practice, 2. resolve issues arising from unintentional or inadvertent disclosure of confidential or privileged information, 3. resolve potential and actual conflicts including conflicts arising between the advocate's duty owed to the client and the advocate's duty to the Court, 4. advise on potential conflicts between acting as an advocate for a client and becoming a potential witness for that client, 5. recognise when an advocate may become professionally embarrassed and have to withdraw from a case, 6. advise the client of the advocate's need to maintain professional independence and the associated need to draw any unfavourable law of which the advocate is aware to the attention of the court, 7. comply with courtroom etiquette.
SRA Standards of Competence for solicitors and representatives advising at the police station	Yes (includes underpinning knowledge and skills as well as standards of performance)	<p>The solicitor or representative must be able to demonstrate a practical understanding of</p> <ol style="list-style-type: none"> 1.1.1. ethical rules and principles relevant to advising and assisting a client at the police station ... 2.3.7. deal with any ethical problems which may arise when advising the client <p>The solicitor or representative must act in accordance with relevant ethical rules and principles at all times.</p>
Law Society Criminal Litigation Accreditation Scheme	Stated as 'standards of competence'	<p>Ethical and contractual rules Criminal Procedure Rules 2010 (and any successor rules) Law Society Practice Notes</p>
Draft QASA Handbook (July 2012)	Statement of standards with separate performance indicators at each level	<p>Standard 5: Was professional at all times and sensitive to equality and diversity principles</p> <ol style="list-style-type: none"> 5.1 Established professional relationships in court 5.2 Observed professional etiquette and ethics in relation to client/third parties 5.3 Was professional at all times 5.4 Observed professional duties 5.5 Observed duty to act with independence 5.6 Advised the court of adverse authorities and, where they arise, procedural irregularities 5.7 Assisted the court with the proper administration of justice [standard then includes additional E & D requirements]

Annex II National Lawyer Competency Standard (Canada)

NATIONAL ENTRY TO PRACTICE COMPETENCY PROFILE FOR LAWYERS AND QUEBEC NOTARIES

1. SUBSTANTIVE LEGAL KNOWLEDGE

All applicants are required to demonstrate a general understanding of the core legal concepts applicable to the practice of law in Canada in the following areas:

1.1. Canadian Legal System

- (a) The constitutional law of Canada, including federalism and the distribution of legislative powers
- (b) The Charter of Rights and Freedoms
- (c) Human rights principles and the rights of Aboriginal peoples of Canada and in addition for candidates in Quebec, the Quebec Charter of Human Rights and Freedoms
- (d) For candidates in Canadian common law jurisdictions, key principles of common law and equity. For candidates in Quebec, key principles of civil law
- (e) Administration of the law in Canada, including the organization of the courts, tribunals, appeal processes and non-court dispute resolution systems
- (f) Legislative and regulatory system
- (g) Statutory construction and interpretation

1.2 Canadian Substantive Law

- (a) Contracts and in addition for candidates in Quebec: obligations and sureties
- (b) Property
- (c) Torts
- (d) Family, and in addition for lawyers and notaries in Quebec, the law of persons
- (e) Corporate and commercial
- (f) Wills and estates
- (g) Criminal, except for Quebec notary candidates
- (h) Administrative
- (i) Evidence (for Quebec notaries, only as applicable to uncontested proceedings)
- (j) Rules of procedure
 - i. Civil
 - ii. Criminal, except for Quebec notary candidates
 - iii. Administrative
 - iv. Alternative dispute resolution processes

1.3 Ethics and Professionalism

- (a) Principles of ethics and professionalism applying to the practice of law in Canada

1.4 Practice Management

- (a) Client development
- (b) Time management
- (c) Task management

2. SKILLS

All applicants are required to demonstrate that they possess the following skills:

2.1 Ethics and Professionalism Skills

- (a) Identifying ethical issues and problems
- (b) Engaging in critical thinking about ethical issues
- (c) Making informed and reasoned decisions about ethical issues

2.2 Oral and Written Communication Skills

- (a) Communicating clearly in the English or French language, and in addition for candidates in Quebec, the ability to communicate in French as prescribed by law
- (b) Identifying the purpose of the proposed communication
- (c) Using correct grammar and spelling
- (d) Using language suitable to the purpose of the communication and the intended audience
- (e) Eliciting information from clients and others
- (f) Explaining the law in language appropriate to audience
- (g) Obtaining instructions
- (h) Effectively formulating and presenting well-reasoned and accurate legal argument, analysis, advice or submissions
- (i) Advocating in a manner appropriate to the legal and factual context. This item does not apply to applicants to the Chambre des notaires du Québec
- (j) Negotiating in a manner appropriate to the legal and factual context

2.3 Analytical Skills

- (a) Identifying client's goals and objectives
- (b) Identifying relevant facts, and legal, ethical, and practical issues
- (c) Analyzing the results of research
- (d) Identifying due diligence required
- (e) Applying the law to the legal and factual context
- (f) Assessing possible courses of action and range of likely outcomes
- (g) Identifying and evaluating the appropriateness of alternatives for resolution of the issue or dispute

2.4 Research Skills

- (a) Conducting factual research
- (b) Conducting legal research including:
 - i. Identifying legal issues
 - ii. Selecting relevant sources and methods
 - iii. Using techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues
 - iv. Identifying, interpreting and applying results of research
 - v. Effectively communicating the results of research
- (c) Conducting research on procedural issues

2.5 Client Relationship Management Skills

- (a) Managing client relationships (including establishing and maintaining client confidence and managing client expectations throughout the retainer)
- (b) Developing legal strategy and advising client in light of client's circumstances (for example, diversity, age, language, disability, socioeconomic, and cultural context)
- (c) Advising client in light of client's circumstances (for example, diversity, age, language, disability, socioeconomic, and cultural context)
- (d) Maintaining client communications
- (e) Documenting advice given to and instructions received from client

2.6 Practice Management Skills

- (a) Managing time (including prioritizing and managing tasks, tracking deadlines)
- (b) Delegating tasks and providing appropriate supervision
- (c) Managing files (including opening/closing files, checklist development, file storage/destruction)
- (d) Managing finances (including trust accounting)
- (e) Managing professional responsibilities (including ethical, licensing, and other professional responsibilities)

3. TASKS

All applicants are required to demonstrate that they can perform the following tasks:

3.1 GENERAL TASKS

3.1.1 Ethics, professionalism and practice management

- (a) Identify and resolve ethical issues
- (b) Use client conflict management systems
- (c) Identify need for independent legal advice
- (d) Use time tracking, limitation reminder, and bring forward systems
- (e) Use systems for trust accounting
- (f) Use systems for general accounting

- (g) Use systems for client records and files
- (h) Use practice checklists
- (i) Use billing and collection systems

3.1.2 Establishing client relationship

- (a) Interview potential client
- (b) Confirm who is being represented
- (c) Confirm client's identity pursuant to applicable standards/rules
- (d) Assess client's capacity and fitness
- (e) Confirm who will be providing instructions
- (f) Draft retainer/engagement letter
- (g) Document client consent/instructions
- (h) Discuss and set fees and retainer

3.1.3 Conducting matter

- (a) Gather facts through interviews, searches and other methods
- (b) Identify applicable areas of law
- (c) Seek additional expertise when necessary
- (d) Conduct legal research and analysis
- (e) Develop case strategy
- (f) Identify mode of dispute resolution
- (g) Conduct due diligence (including ensuring all relevant information has been obtained and reviewed)
- (h) Draft opinion letter
- (i) Draft demand letter
- (j) Draft affidavit/statutory declaration
- (k) Draft written submission
- (l) Draft simple contract/agreement
- (m) Draft legal accounting (for example, statement of adjustment, marital financial statement, estate division, bill of costs)
- (n) Impose, accept, or refuse trust condition or undertaking
- (o) Negotiate resolution of dispute or legal problem
- (p) Draft release
- (q) Review financial statements and income tax returns

3.1.4 Concluding Retainer

- (a) Address outstanding client concerns
- (b) Draft exit/reporting letter

3.2 ADJUDICATION/ALTERNATIVE DISPUTE RESOLUTION

3.2.1. All applicants, except for applicants for admission to the Chambre des notaires du Québec, are required to demonstrate that they can perform the following tasks:

- (a) Draft pleading
- (b) Draft court order
- (c) Prepare or respond to motion or application (civil or criminal)
- (d) Interview and brief witness
- (e) Conduct simple hearing or trial before an adjudicative body

3.2.2 All applicants are required to demonstrate that they can perform the following tasks:

- (a) Prepare list of documents or an affidavit of documents
- (b) Request and produce/disclose documents
- (c) Draft brief

3.3. TRANSACTIONAL/ADVISORY MATTERS

3.3.1 Applicants for admission to the Chambre des notaires du Québec are required to demonstrate that they can perform the following tasks:

- (a) Conduct basic commercial transaction
- (b) Conduct basic real property transaction
- (c) Incorporate company
- (d) Register partnership
- (e) Draft corporate resolution
- (f) Maintain corporate records
- (g) Draft basic will
- (h) Draft personal care directive
- (i) Draft powers of attorney

Annex III Comparison of QAA Benchmark and JASB Statement for the QLD

The blue, underlined, text in Annex III identifies points where the Schedule is introducing a clearly different standard or scope of outcome from the Benchmark. The blue, italicised, text highlights points that appear problematic or uncertain and which are noted in the comments column.

BENCHMARK	SCHEDULE ONE	COMMENTS
<p>Knowledge</p> <p>6.1 A student should demonstrate a basic knowledge and understanding of the principal features of the legal system(s) studied. They should be able to:</p> <ul style="list-style-type: none"> demonstrate knowledge of a substantial range of major concepts, values, principles and rules of that system explain the main legal institutions and procedures of that system demonstrate the study in depth and in context of some substantive areas of the legal system. <p>Application and problem solving</p> <p>6.2 A student should demonstrate a basic ability to apply their knowledge to a situation of limited complexity in order to provide arguable conclusions for concrete problems (actual or hypothetical).</p> <p>Sources and research</p> <p>6.3 A student should demonstrate a basic ability to:</p> <ul style="list-style-type: none"> identify accurately the issue(s) which require researching identify and retrieve up-to-date legal information, using paper and electronic sources use primary and secondary legal sources relevant to the topic under study. 	<p>a. Knowledge</p> <p>Students should have acquired:</p> <p>i. Knowledge and understanding of the <u>fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge</u>;</p> <p>ii. A basic knowledge of the sources of <u>that law</u>, and how it is made and developed; of the institutions within which <u>that law</u> is administered and the <u>personnel who practise law</u>;</p> <p>iii. The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to <i>explain the relationship between them</i> in a number of particular areas;</p> <p>iv. The <i>intellectual and practical skills needed to research and analyse</i> the law from primary resources on specific matters; and to <i>apply the findings</i> of such work to the <i>solution</i> of legal problems; and</p> <p>v. The ability to communicate these, both orally and in writing, appropriately to the needs of a <u>variety</u> of audiences.</p>	<p>Schedule One emphasises law of E+W but more narrowly? (Major vs fundamental)</p> <p>Emphasis on a particular form of understanding</p> <p>Badly formed outcome which combines too many elements – research skills, analysis and (legal) problem solving. Emphasises primary sources, but not clear what this otherwise adds to 6.2, 6.3</p>

4. Evidencing Competence and Quality

BENCHMARK	SCHEDULE ONE	COMMENTS
<p><i>Analysis, synthesis, critical judgement and evaluation</i></p> <p>7.1 A student should demonstrate a basic ability to:</p> <ul style="list-style-type: none"> recognise and rank items and issues in terms of relevance and importance bring together information and materials from a variety of different sources produce a synthesis of relevant doctrinal and policy issues in relation to a topic make a critical judgement of the merits of particular arguments present and make a reasoned choice between alternative solutions. <p><i>Autonomy and ability to learn</i></p> <p>7.2 A student should demonstrate a basic ability, with limited guidance, to:</p> <ul style="list-style-type: none"> act independently in planning and undertaking tasks in areas of law which they have already studied be able to undertake independent research in areas of law which they have not previously studied starting from standard legal information sources reflect on their own learning, and to seek and make use of feedback. 	<p>b. General transferable skills</p> <p>Students should be able:</p> <ol style="list-style-type: none"> To apply knowledge to <u>complex</u> situations; <i>To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them;</i> <i>To select key relevant issues for research and to formulate them with clarity;</i> To use standard paper and electronic resources to produce <u>up-to-date</u> information; To make a <i>personal</i> and reasoned judgement based on an informed understanding of standard arguments in the area of law in question; To use the English language and legal terminology with <i>care and accuracy</i>; 	<p>This section of Schedule One combines elements from both cognitive and key skills</p> <p>Is (i) meant to raise the standard above the Benchmark in 6.2?</p> <p>This focuses on a narrower set of competencies than 7.1.</p> <p>How is this different from 6.3 'identify accurately the issue(s) which require researching' and the 7.2 planning outcome?</p> <p>Presumably this is meant to close a gap in 7.1 (and not covered in 7.2) which might mean that critical/reasoned judgements are derivative</p> <p>How is this different from the standard in 8.1?</p>

BENCHMARK	SCHEDULE ONE	COMMENTS
<p>8 Key skills</p> <p><i>Communication and literacy</i></p> <p>8.1 Both orally and in writing, a student should demonstrate a basic ability to:</p> <ul style="list-style-type: none"> • understand and use the English language (or, where appropriate, Welsh language) proficiently in relation to legal matters • present knowledge or an argument in a way which is comprehensible to others and which is directed at their concerns • read and discuss legal materials which are written in technical and complex language. <p><i>Numeracy, information technology and teamwork</i></p> <p>8.2 A student should demonstrate a basic ability:</p> <ul style="list-style-type: none"> • where relevant and as the basis for an argument, to use, present and evaluate information provided in numerical or statistical form • to produce a word-processed essay or other text and to present such work in an appropriate form • to use the internet and email • to use some electronic information retrieval systems • to work in groups as a participant who contributes effectively to the group's task. 	<p>vii. To conduct efficient searches of websites to locate relevant information; to <i>exchange documents by email and manage information exchanges by email</i>;</p> <p>viii. <i>To produce word-processed text and to present it in an appropriate form.</i></p>	<p>Note the absence of any reference to numeracy or teamwork from Schedule One</p> <p>Use of file transfer protocol and cloud-based applications? The danger of specifying technologies is that they date. Why nothing in either set of standards about understanding basic data security?</p> <p>Why does (viii) repeat the Benchmark formulation but exclude the reference to 'essay or other text'?</p>

Introduction

- 5.1 This chapter explores a range of structural changes that could be made to assure LSET is fit for the future. It considers the role of regulated titles and how title-based regulation may be supported or supplanted by more entity- or activity-based approaches. It looks at ways to increase the flexibility of routes to qualification, and the possibility of more common or integrated training between the different legal professions. It also considers the relative roles of CPD and re-accreditation in assuring continuing competence. The chapter concludes by discussing the contribution of quality assurance processes to maintaining competent performance.

Demonstrating competence

- 5.2 Regulation has sought to signal competence, primarily to end-users, through regulated titles; and the impacts of the LSA 2007 on this system are discussed. International recognition is also considered, as it too provides important signals about standards.

Regulation by title, activity and entity

- 5.3 As noted in Chapter 3, the majority of legal services providers have conventionally been regulated by title (barrister, Chartered Legal Executive, licensed conveyancer, solicitor, etc). Titles, however, are double-edged. Regulated titles involve an element of occupational closure: by definition they restrict access to a field of work and thus potentially restrict competition; at the same time occupational closure (with its attendant reliance on titles) may also serve to set and maintain standards of work (cf Friedson, 2001:201-4). Titles in theory can thus provide value by offering some assurance of quality. However, this is not guaranteed; without appropriate quality tools, titles by themselves may be a limited proxy for competence, as suggested by the poor quality of will writing across regulated and unregulated providers (LSCP, 2011). The risk associated with a reliance on titles is that they may create a perception, for consumers, regulators and professionals, that standards are assured when in fact assurance mechanisms are relatively weak:

[O]ur research shows that consumers assume lawyers are technically competent, [and] the truth is that regulators make similar assumptions since they are only now beginning to deploy tools, such as mystery shopping, to enable competence assessments in individual practice areas.

LSCP submission

[R]egulating by title, although helpful - barrister, solicitor, registered trade mark attorney and so on - can produce a sense of security... which actually is false.

IP attorney representative

- 5.4 This concern does not necessarily require a move away from the use of titles. As Black (2012) has observed, 'regulation by activity and regulation by title are not antithetical alternatives'. Different approaches to regulation can be combined and disaggregated in various ways, according to the objectives to be achieved.
- 5.5 Critically, the LSA 2007 has shifted the emphasis of regulation so that it is no longer concerned solely with the regulation of a particular title, but also addresses the regulation of 'entities' (recognised bodies and alternative business structures), and opens up the entitlement to undertake reserved legal activities. The implications of developing both activity and entity-based regulation for LSET need to be considered. This section therefore explores the competence issues raised by each of them in turn.

Activity-based authorisation

- 5.6 The work of some authorised persons is already defined, wholly or largely, by reference to an activity-based specialisation. IP attorneys are a good example, while the core work of licensed conveyancers and notaries is delineated by the relevant reserved legal activities. The CILEx qualification structure also comes close to an activity-based qualification route, by building a degree of specialisation on top of a relatively broad-based foundation. Another approach is illustrated by QASA, which requires advocates to demonstrate, post-qualification, specific competencies in the field of criminal advocacy. A number of parts of the legal sector are also voluntarily committing to additional specialist, activity-based, training, as seen in accreditation schemes run by the Law Society or specialist bodies like the Association of Personal Injury Lawyers (APIL).
- 5.7 In principle, activity-based authorisation offers a number of potential benefits to consumers, regulators and trainees including:
- ensuring authorisation is linked more closely to demonstrable competence in a field of practice;
 - aligning authorisation decisions more closely with an evidence-based analysis of risks to consumers, and with the regulatory objectives;
 - aligning training more closely to the needs of employers and consumers;
 - better ensuring that training or work supervision is conducted by a competent person (assuming the supervisor is also required to have a qualification or 'endorsement' in respect of the activity);
 - providing practitioners with a demonstrable basis for claiming specialisation in an activity;
 - providing a way for regulators to group and target risks that require similar regulatory oversight or intervention.
- 5.8 Although these can be identified as potential benefits, the actual risks and benefits of activity-based authorisation ultimately depend on the nature and range of activities so defined.¹ If a broad legal qualification is not a sufficient condition for authorisation, where should the line be drawn? As Moorhead (2012) succinctly puts it:

A key question will always be: how many activities? There will come a point quite quickly when someone will urge the regulator: go on then, count them up. The LSCP is aware of the problem... but the solution to the problem is less clear.

It should also be recognised that a wholesale shift to activity-based authorisation across the sector would involve a major step-change in regulation and training. This was considered by research participants to be a disproportionate response to risks of incompetence as well as creating a plethora of regulators with clashing responsibilities.

- 5.9 The LSCP itself acknowledged in its submission, 'the difficult balance to get right is to tailor the competency requirements to the risks without creating a confusing and bureaucratic mess'.

¹ Stakeholder attitudes regarding a move to greater activity-based authorisation were tested by the research team in both the June 2012 Consultation Steering Panel meeting, and in workshops at the LETR Symposium in July 2012. The exercise was based on three simplified 'dummy' models or scenarios of how a modified regulatory structure might work: one that remains fundamentally title-based, one that moves substantially to activity-based authorisation, and an intermediate hybrid. In broad terms, preferences tended to favour either (in the majority of cases) a modified title-based system or (in the minority) an activity-based system. The hybrid was widely rejected on grounds of its likely complexity. A summary of perceived risks and benefits was published as an Appendix to Discussion Paper 02/2012; the symposium discussions are also outlined in Briefing Paper 4/2012.

5. Legal Services Education and Training: Fit for the future?

- 5.10 There are also important boundary questions regarding the necessary scope of an ‘activity’. ‘Activity-based’ authorisation, though a useful shorthand, needs to be considered more as a ‘field of competence’.² This is because the competencies required will often extend beyond the immediate (apparent) bounds of the activity. This is evident with will writing, for example. A simple will may require quite limited knowledge and skills, but for those with sophisticated financial arrangements, or complex family ties and responsibilities, competent will writing becomes a far more sophisticated task, requiring a good understanding of quite specialised elements of land law, trusts, tax and family law. If it is to be meaningful in providing protection to consumers, authorisation may need to reflect different ‘levels’ of competence, which may add to the complexity as those levels need to be clearly task- or outcome-defined.³
- 5.11 If a wholesale move to activity-based authorisation is potentially over-complex, two more limited options offer themselves. The first would be to limit activity-based authorisation to the reserved legal activities; the second would be to take a purely risk-based approach, requiring activity-based authorisation only in those areas where there is a clear and discernible risk of consumer detriment.
- 5.12 The reserved activities are reserved by law to certain occupations, and currently provide the legal basis for authorisation. They are reasonably clearly defined⁴ and understood, and, as noted already, are closely aligned to a number of occupational groups in the sector.
- 5.13 However, they do raise a particular challenge for LSET, notably in the context of the solicitors’ profession, as well as the developing work of barristers.⁵ The reserved activities tend to constitute only a limited part of the work actually undertaken by many members of the profession. They are marginal to the work of a majority of transactional lawyers - and trainees - working in the City and commercial practice more generally. This dissonance between the reserved activities and the work of trainee-recruiting firms has led to tensions in the LPC, where the share of teaching and assessment dedicated to certain of the reserved activities - notably advocacy and wills and probate - is such as to raise significant doubts about its adequacy.⁶
- 5.14 The LSI (2010, 2012) has made a compelling case for the separation of the reserved activities from the common core of vocational training for solicitors, arguing:

the training and qualification process should be focused on the legal activities undertaken by the majority of solicitors, with additional training covering specialist roles, and post-qualification endorsement to the practising certificate being required for any reserved legal activity.⁷

Legal Services Institute (2010:11)

² Thanks are due to Alan Kershaw of IPS for this phrase.

³ The system of regulation for immigration advice adopted by the Office of the Immigration Services Commissioner (OISC) thus distinguishes between different levels of adviser by reference to the complexity of the work they are authorised to undertake.

⁴ See LSA 2007, Schedule 2.

⁵ The move to specific authorisation for reserved activities could also have implications (in theory at least) for the Bar, since all barristers with practising certificates are automatically authorised thereby to undertake reserved instrument and probate activities, despite the fact that they may have received no education or training in these areas. Although the Bar has long provided specialist advice and drafting in these areas, the development of public access, and particularly the move to creating escrow facilities to enable barristers to hold client monies, could potentially pave the way for barristers and barrister-led entities to compete directly in these markets.

⁶ On advocacy, see the discussion in Chapters 2 and 4; the criticism of wills and probate flows primarily from the LSCP evidence (2011), noted above.

⁷ The paper (rightly it is submitted) distinguishes the reserved activity of administering oaths on the basis that this is not an area of technical difficulty, and there is no evidence to suggest it should not continue to be available on first qualification.

- 5.15 A logical outcome of this would be to create additional flexibility within the LPC curriculum. It would be possible, as the University of Law has proposed,⁸ to remove much of the distinction between core and optional content, enabling training providers to go further in creating modular programmes geared to the needs of specific employers and consumers. This could benefit not just the commercial sector, but also those undertaking private client work, and particularly legal aid, who feel that the existing structure fails sufficiently to meet their needs.⁹
- 5.16 The University of Law proposals would also have implications for the training contract, since the ‘three seat’ requirement also exists, in part, to satisfy authorisation. This causes difficulty in some transactional firms in delivering or simulating a litigation and advocacy seat, and in some niche litigation firms. It also causes difficulty for the CPS who have to send trainees into private practice to get experience of reserved, non-contentious work that they will never encounter within the CPS. Similar difficulties have impacted attempts to liberalise the training structure. The SRA work-based learning pilot reports noted the experiences of some trainees in satisfying the need for both contentious and non-contentious work and the particular challenges for some trainees of finding advocacy opportunities:

[M]any organisations taking part found their day-to-day activities did not offer the candidates opportunities to demonstrate their competency in key areas (eg, advocacy). In several instances tutors and employers worked with the SRA to identify how competencies could be made more flexible to enable candidates to demonstrate their competence.
BMG Research (2012:38)

- 5.17 A move to a more activity-based authorisation could permit training to be more focused on the needs of the activities of the firm and its clients.
- 5.18 The third alternative, as the LSCP suggests in its submission, lies in identifying those activities where there are high risks to the consumer. In terms of regulatory policy, the case for activity-based authorisation is strongest where there are demonstrable risks to clients and consumers. These risks may reflect innate features of the market - such as high information asymmetry between lawyers and clients, and the potential severity of harm, including harm to clients in vulnerable circumstances. There are many areas, particularly of transactional work, where there is little evidence of risk to clients who are knowledgeable, or where the risks are mediated by knowledgeable intermediaries, such as in-house counsel.
- 5.19 Defining areas of high risk may not be straightforward and could depend on changing market conditions, which would not be appropriate determinant for regulatory intervention. More obvious risk areas include those where liberty is at stake (crime, immigration), perhaps where there is a significant risk of distress purchasing (crime, immigration, divorce, (public) child care, domestic abuse, repossession) or where services relate to proportionately high value items in terms of most consumers’ net worth (wills, conveyancing¹⁰). However, this does not address the extent to which complexity and risk may vary within an activity.¹¹

8 University of Law response to Discussion Paper 02/2012.

9 This was a commonly expressed concern amongst legal aid lawyers within the LETR qualitative research, for example:

[I] believe that the ‘basics’ (ethics, solicitors’ accounts, tax etc.) are beneficial but huge swathes of the compulsory modules (Business Law and Practice /Property as examples) could be significantly condensed or the most part removed from the course in entirety because I will never use it. I would have preferred to do another module in an area of law, which I may go on to practise in or to have the course reduced in length.

10 Though it should be noted that the recent thematic review of conveyancing by the LSB concludes that there is little evidence of consumer detriment in the current functioning of the conveyancing market (LSB, 2012).

11 Client characteristics in particular will be a significant variable, which might affect decisions as to the proportionality of activity-based requirements. At a relatively broad level, this could mean that, eg, separate authorisation of domestic conveyancing would be more proportionate than separate authorisation of commercial conveyancing, even though the latter may involve much higher value transactions.

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- 5.20 A move to activity-based authorisation would raise other important considerations, including:
- Co-ordination of standards/competencies: the public should be entitled to expect a consistent threshold level of competence. Consequently, if qualifications awarded by different approved regulators entitle individuals to practise the same activity, then logically the baseline standard of competence for each activity should be common. This does not mean that learning processes must be identical, but they must have at least an equivalent outcome. It would not preclude an awarding body from setting the actual standard above the threshold, eg, as a quality mark,¹² but it would add, at least in the short term, to the complexity of assuring standards across the sector.
 - Activity-based authorisation may force early specialisation, at a point at which it may be difficult for prospective trainees to make fully informed choices about career pathways.¹³
 - If the costs of changing direction mid-career increased significantly they would be likely to impact more on women than men.
 - How to determine the basis on which established practitioners may be passported onto activity-based authorisation.
 - A need to limit the impact on consumers, by controlling the complexity of any final scheme, and providing clear information on the nature and effect of limited authorisation. Excessive narrowing of training or over-specialisation could have negative consequences for competence, and cause reputational damage to UK law.¹⁴
- 5.21 While these factors should not override public interest grounds for moving to activity-based authorisation, any public interest benefits may be outweighed by detriments and could be achieved by other mechanisms, such as a strengthened system of CPD and/or specialisation.
- 5.22 It is also difficult to ignore the cultural weight associated with professional titles. A 'title' conveys a strong sense of professional identity and professional ethics. The LSA 2007 has preserved a position whereby authorisation and award of title remain largely synonymous. Evidence from both the focus groups and the LETR symposium indicates significant ideological support for titles,¹⁵ and resistance to activity-based authorisation, including from regulators who might see such a move as infringing their regulatory autonomy under the LSA 2007.
- 5.23 The available evidence does not make a strong case for an across the board move to activity-based authorisation, though certain areas of activity such as advocacy, will writing and probate, where there is evidence of variable standards and clear potential for consumer detriment, may benefit from this approach. There is no published research on the use of activity-based authorisation in legal settings, or in the financial services market where the model is becoming quite well-developed. The health professions, which through their systems of specialisation perhaps come close to an activity-based approach, operate in a differently constructed training and practice environment, and the general practice qualification for doctors still precedes different areas and levels of specialisation.

¹² It might be pointed out that this argument has some force even outside an activity-based system; at present the system relies on each regulator to benchmark quality for its own regulatees.

¹³ This raises a variant of the depth vs breadth question discussed in earlier chapters; opinions from the qualitative research were widely divided on the risks/benefits of early specialisation.

¹⁴ See, for example the Council of the Inns of Court response to Discussion Paper 02/2012.

¹⁵ This sentiment was least likely to be expressed by government or in-house lawyers. As one government lawyer observed, regulators should 'regulate the role, not the title', though even here views were mixed so that, while some saw regulation by title as unhelpful in their sector, others saw titles as necessary and desirable, and worried that activity-based regulation would be a hindrance in a small local authority or in-house team, where people needed to be able to do a wide range of work.

Entity regulation

- 5.24 The CLC and SRA have moved to a system of regulating ‘entities’ - firms, ABSs or other organisations - as well as individuals, and other regulators intend to move in the same direction. Under ss. 184 and 185, LSA 2007, IPReg also includes registered bodies on the patent and registered trade mark attorney registers (IPReg, n.d.). Entity regulation changes the balance of regulatory responsibility from individuals to their employing organisations and also changes the relationship between individual professionals and their regulator.
- 5.25 ‘Entity regulation’ is relatively untested and little data have emerged on its potential role. There was some confusion among respondents as to the nature of entity regulation: whether it implied ‘light touch’ regulation, and a concern that entity regulation implied a lighter touch to regulating ABSs than to recognised bodies such as firms of solicitors.¹⁶
- 5.26 Entity regulation fits well in the current environment. New technologies, sub-contracting to providers in other jurisdictions, splitting of services¹⁷ and more than one lawyer handling each matter all mean that clients are likely to experience their legal services as emanating from an entity rather than a specific individual. With a growing ratio of non-admitted to admitted fee earners, in some areas of work frontline contact is increasingly likely to be delegated to paralegal and support staff, rather than to an authorised person.
- 5.27 Entity regulation acknowledges that organisational infrastructures, processes and cultures are significant in influencing the competent and ethical behaviour of employees or members (see, eg, Scott, 2001; Chambliss, 2004; Moorhead et al, 2012). Entities are responsible for ensuring the continuing competence of their workforce under the SRA¹⁸ and CLC¹⁹ codes of conduct and, as ‘regulated persons’, under the IPReg rules of conduct.²⁰
- 5.28 Entity regulation also acknowledges that regulated entities should have a high degree of freedom to recruit and train a workforce that meets their needs and those of their clients.
- 5.29 Regulators delegating to regulated entities could result in a particular impact on four key areas of training:
- the oversight of outcomes for initial workplace training of authorised persons (discussed in Chapter 4);
 - quality assurance of training for the entity’s workforce as a whole (considered below);
 - the determination of CPD standards and outcomes for authorised persons (considered below), and
 - standard-setting for the training and development of paralegals (if appropriate - see further Chapter 6).

¹⁶ Eg:

Whether the SRA will be effectively able to regulate these bodies is a major concern. The suspicion will be – it’s big business, reputational, there’ll be a lighter touch applied when really what’s required is a very intensive look at what they’re doing. As we’ve seen with banks it doesn’t work – you need effective scrutinisation to make sure it works.

Solicitor

¹⁷ As noted in Chapter 3 and Discussion Paper 02/2012.

¹⁸ See SRA outcomes O(7.6) ‘you train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility’; O(7.7) ‘you comply with the statutory requirements for the direction and supervision of reserved legal activities and immigration work’, and O(7.8) ‘you have a system for supervising clients’ matters, to include the regular checking of the quality of work by suitably competent and experienced people’. There is also an overarching obligation to ensure that all members of the firm are familiar, so far as their job requires, with the provisions of the SRA Handbook (SRA, 2013).

¹⁹ See ‘Overriding Principle 2. Maintain high standards of work’ in the CLC Code, which includes the following principles: ‘c) You ensure all individuals within the entity are competent to do their work; d) You supervise and regularly check the quality of work in Client matters. g) You promote ethical practice and compliance with regulatory requirements’ (CLC, 2011b).

²⁰ ‘Regulated persons’ including both a registered body and the manager of a registered body, must ‘carry out their professional work with due skill, care and diligence and with proper regard for the technical standards expected of them. A regulated person should only undertake work within his expertise or competence’ (IPReg, 2012b).

Summary

5.30 The novelty of the regulatory changes enacted by the LSA 2007 makes it difficult to draw conclusions about the value of title, entity and activity-based regulation as means of signalling competence in the new regulatory regime. However, it is clear that the connection between LSET and authorisation signals competence, and plays a role in assuring competence. Title-based authorisation, where the connection between title and activity is too loose or too remote, may not fulfil that assurance function. It is still questionable whether activity- or entity-based approaches can better perform that purpose, though the potential role of entities is certainly worthy of greater exploration. There are risks that the complexity of the current regulatory structure, in which different regulators:

- have a high degree of autonomy over their own LSET and authorisation systems; and
- share overlapping jurisdiction over reserved activities,

may also create challenges to co-ordination and progress.²¹

International qualifications

5.31 England and Wales are both importers and exporters of legal talent, reflecting their significance in international and global legal practice. It matters both that foreign-trained lawyers working within the jurisdiction are at an appropriate level of competence and that domestic qualifications are of a standard to compete internationally. This section looks at each of these in turn.

Assuring the quality of entrants²²

5.32 Entry to the barristers' and solicitors' professions for those otherwise professionally qualified is controlled by formal transfer tests: the BTT and the QLTS: SRA, 2013b. Both of these courses enable overseas lawyers to demonstrate competence equivalent to a QLD or GDL/CPE and the BPTC or LPC respectively.²³ Both are assessment rather than training-led. There are no required training courses for the QLTS, though three organisations currently provide preparation courses: BPP, Central Law Training, and QLTS School. The BTT has one required training element, which is a three-day intensive advocacy training programme delivered by BPP. BPP also offers the only preparation course for the BTT. Both the BTT and QLTS take an outcomes-focused approach to assessment. The QLTS in particular is distinctive in introducing practical assessment tasks with standardised clients²⁴ into a high stakes, qualifying assessment process (see Fry et al, 2012; Barton et al, 2006).

5.33 Each course has been subject to recent review. A BSB Working Party was convened in 2012 to review the regulations, procedures and guidance related to the BTT.²⁵ Following its report a further paper was published in June 2012, for consultation. The outcomes of that consultation are pending. The QLTS was introduced following a critical assessment of the former Qualified Lawyers Transfer Test (QLTT) in the Global Competitiveness Report. This called for a more flexible system that allowed lawyers holding overseas qualifications to have access to proportionate and reasonable transfer arrangements. The general perception of the QLTS is that it is a more demanding assessment than the QLTT. Recent research into

²¹ The lengthy process of implementing QASA for criminal advocacy is seen by critics as an example of the problems created by the existing regulatory settlement. On QASA see <http://www.qasa.org.uk/index.html>

²² This section thus focuses on overseas lawyers seeking re-qualification, rather than practice under home title as a Registered European (REL) or Registered foreign lawyer (RFL), or as paralegals.

²³ As the QLTS assesses the day one outcomes, it also involves competence equivalent to the completion of the training contract.

²⁴ Standardised clients have developed from the practice of using trained simulated 'patients' in assessed clinical examinations (OSCEs) to provide an objectively consistent presentation of symptoms.

²⁵ The content had already been revised in 2008. For current criteria, see BSB, (2011).

the QLTS conducted for the SRA has also pointed to the robust and innovative assessment approach, (ICF GHK, 2012).

- 5.34 The QLTS does not require candidates subsequently to undertake a period of supervised practice, and so to that extent does not mirror requirements for domestic trainees.²⁶ The suggestion that this might weaken the case for retaining a period of workplace training for such trainees was expressly rejected by the CLLS:

Our support for that requalification route is not at odds with our support for the continued retention of a period of work based learning for domestic entrants to the profession. The design of the QLTS assessments is based on the assumption that the applicants will need to have had prior practical experience.

CLLS first submission

- 5.35 That ‘assumption’ may be less well-founded than assumed, since some foreign qualifications do not involve any prior experience, and no additional experience is required to do the QLTS.²⁷
- 5.36 Both tests appear proportionate in terms of ensuring that those transferring have knowledge and skills equivalent to those attained by candidates through the domestic pathways.

US legal education and the New York State Bar Examination

- 5.37 The United States is widely recognised as the primary competitor to England and Wales in the global legal services market. It is perhaps unsurprising therefore that the structures of legal professional education in the USA were mentioned during the research in a number of contexts. The international trends to adopt US-style ‘JD’ postgraduate law degrees in jurisdictions as diverse as Australia and Japan raised important issues about quality, and the status of undergraduate Anglo-Welsh legal education, but also concerns about cost barriers implicit in any move to make law wholly postgraduate. For others, the impact of the New York State Bar Examination (NYBE) as an ‘international’ or competing qualification was significant. For a third group, the fact that qualification in the USA does not require a period of initial supervised practice provided an example of a possible solution to the bottleneck created by the requirement for a training contract or pupillage.
- 5.38 The US JD system, with its strong ‘signature pedagogy’ of the case method is acknowledged for building strong analytical skills. At the same time it has been roundly criticised for its failure to integrate practical skills with doctrinal courses, for a continuing failure to contribute significantly to professional integrity and responsibility, and a growing gap between the worlds of academia and practice (Sullivan et al, 2007; see also Grossman, 2010). Because the US system does not formalise vocational training or periods of supervised practice, the debate about the appropriate place of practical, skills based or clinical material in LSET is more polarised in the US context (see Lande, 2013). The American Bar Association Task Force on Legal Education (2012), which mirrors much of the LETR research remit, suggested in December 2012 that ‘The legal education community should recognize, at a minimum, two models for law schools: (a) a research-oriented law school, which makes significant investment in faculty research; and (b) a practice-oriented law school, which makes less investment in faculty research’.

²⁶ BTT graduates may be exempted from all or part of pupillage.

²⁷ Conversely one respondent also observed that

I was a qualified barrister and solicitor in New Zealand and I worked there for 4 years and then I came over here, did the transfer exam and I don't know if there was enough recognition of the experience that I had had ...

Solicitor

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- 5.39 High tuition fees, low employment rates and a growing student debt problem have exacerbated debate about the US system's 'fitness for purpose' (see, eg, Tamanaha, 2012).²⁸ Suggestions have thus been made for substantial restructuring of the JD, including reduction from three to two years (eg Estreicher, 2012). A number of law firms are also reportedly using the downturn to 'reverse-engineer' more supervision and training into the start of practice (Furlong, 2010; Westfahl, 2010). In this context, Flood's (2011) conclusion that 'the undergraduate legal degree combined with apprenticeship is losing attraction in the world' should not necessarily be read as a prediction of the Anglo-Welsh model's demise or unsuitability.
- 5.40 Chapter 2 noted the concerns of some City and other firms of solicitors involved in international practice that a US LLM and the NYBE is the preferred method for many foreign lawyers to re-qualify for the international market:

That's a huge competitive disadvantage to UK PLC and to the profession as a whole and to our ability to practise, to grow our firm around the world because, you know, once those people have gone to America and trained as American lawyers they either may stay with American firms or some of them may join us but a lot of them will go home and for the rest of their careers, for another thirty years, their bias will be to the American system, American law firms, American way of doing things. And so each one of those that happens is a tiny little, you know, loss to the UK and English law.
Solicitor

- 5.41 Although Silver (2011), in an analysis of German and Chinese LLM students in the US, found that law firms did not significantly differentiate between US or UK LLMs in terms of quality, they were aware of the opportunity for US LLM students to take the NYBE whereas the English LLM did not provide access to professional qualifications in the same way. Existing structures and visa requirements for a further year of practice undoubtedly make it difficult for the UK to compete directly in this market.²⁹
- 5.42 Numbers of foreign lawyers taking the NYBE increased from under 1,000 at the start of the last decade to 4,500 in 2009 (Flood, 2011) but had declined to 2,988 in July 2012.³⁰ The recession has led to pressure for regulatory reform with the New York Court of Appeals introducing stricter requirements for foreign students taking LLMs, which came into force for the 2012-13 Bar Examination year. The changes increase the credit hours required; limit the extent to which (international) summer programmes can count and require all course work to be completed within two years. Although the American Bar Association does not regulate the LLM directly as it does the JD, it has begun to take a greater interest in ways of setting conditions or prescription that could make the US LLM a less attractive option in the future, eg by requiring more training in core US law, thereby reducing the number of commercial and international courses that can be taken (see Flood, 2011).
- 5.43 On the other hand, the virtues of the English system were also extolled in the LETR research. It was pointed out that the QLTS means that:

²⁸ The Special Committee on the Impact of Law School Debt of the Illinois Bar identified a number of specific problems: the inability of small firms to recruit at a salary level enabling entrants to service their debts; a decrease in those able to work in the public interest sector; an inability to service poor and middle class clients; an increase in (risky) sole practice and reductions in pro bono work, servicing of rural areas and in diversity in the profession, as well as the pressure of debt leading to an increase in ethics violations (Illinois State Bar Association, 2013).

²⁹ Whilst the Foundation subjects can be studied via a senior status degree at Master's level, this requires a two year programme and does not exempt from the LPC or BPTC. The extent of the core makes that generally unattractive, relative to the more flexible US LLM, to international students seeking the prestige of a UK professional qualification to enhance their position in their home jurisdiction, rather than necessarily to practise in the UK.

³⁰ BOLE, (2012). BOLE's figures do not disaggregate the foreign educated candidates by home jurisdiction but, in 2012, 44% of foreign-educated first-time candidates passed compared to 82% of ABA graduates.

It is not necessary, as in New York, to obtain an LLM prior to taking the exams and there is no formal training course. It is possible, through previous practice experience and textbook learning, to show the necessary skills and knowledge. In this way it is arguable that it is less expensive and more accessible to re-qualify here, than via the New York Bar.

Law Society response to Discussion Paper 01/2012

- 5.44 In summary it is fair to say that systems for ensuring the competence of non-UK entrants are robust, and that, while the UK may be losing ground against the US in quantitative terms, there is no clear evidence that this reflects a quality judgment against LSET in England and Wales. Concerns about the impact of the NYBE were not widely reflected in responses even from the commercial sector, and it was not of significance to many respondents. Nonetheless, there may certainly be a case for developing the information resources which are recommended in the next chapter to include fuller information to overseas lawyers on UK training options and their comparators.³¹

Competence and flexibility

- 5.45 Calls for greater flexibility in the design and delivery of LSET are not new. In shaping its proposals for legal education and training ACLEC (1996:22) asserted that ‘the growing variety of practice settings, the need to respond to rapid changes and to take opportunities as they arise... suggest that a pluralistic approach should be encouraged, with providers of legal education and training having greater discretion than they are currently allowed’. This was reflected in ACLEC’s proposals for further liberalisation of the academic stage, which came to be reflected in the current version of the Joint Statement. Flexibility was also central to the Committee’s thinking in proposing an element of common training at the vocational stage for solicitors and barristers. The theme of flexibility was taken up again by the Law Society’s Training Framework Review (TFR) in 2001. The Training Framework Review Group wanted a move to ‘day one’ outcomes; to open up alternatives to the training contract, and they refused (by a majority) to sanction the LPC as a required stage of training. This ran into opposition primarily from the larger firms, the LETG, and LPC providers. Consequently, the impact of the TFR has been less radical than its designers intended.
- 5.46 The Neuberger Report on Entry to the Bar supported in principle the expansion of part-time and flexible learning pathways for the (then) BVC, ‘provided that quality and standards are not detrimentally affected’ (Bar Council, 2007:50), but the issue of increased flexibility has not arisen to the same degree in respect of other professional training regimes, for a variety of reasons: because there is already an inherent flexibility in the training (CILEx qualifications), or because there has been little demand, or limited scale and scope for change.
- 5.47 A number of the themes from these earlier reviews are picked up again in this section. However, it should first be acknowledged that there is already considerable flexibility in parts of the system, though much is ‘vertical’ rather than ‘lateral’. Examples include flexible modes of study and awards that combine multiple stages of training, such as an exempting LLB, CILEx graduate fast track, or Northumbria University’s MLaw pilot, which took a student/trainee from LLB entry to the point of qualification as a solicitor. Whether this kind of flexibility meets the needs of an increasingly dynamic labour market is moot.
- 5.48 There are three distinct but connected areas where there is potential to enhance the flexibility of LSET. It is not assumed that flexibility is necessarily (or only) a good in itself. Flexibility here is used as an instrumental value in the sense that it will forward other ends

³¹ This might also include information for domestic entrants on the extent to which, if at all, the NYBE in particular is a viable means of bypassing the training contract bottleneck for domestic practice.

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for the LETR, notably enhanced competence or quality for consumers, greater diversity, and where possible reduced cost and other burdens on employers and trainees.

Multiple routes to qualification

- 5.49 There are already a number of pathways into the regulated legal services sector. In practice, however, it is dominated by the well-beaten trails of graduate entry to the Bar and solicitors' profession, and the predominantly non-graduate routes via CILEx, and, to a numerically lesser extent, the CLC.
- 5.50 The existing training model for solicitors in particular is expensive and potentially risky,³² requiring a significant up-front investment in recruitment and training, maybe two years, or more, ahead of the trainee actually entering the organisation. The need for this level of commitment in current economic conditions, and the inflexibility of the linear route to training is being questioned:

...I think that a much more flexible diverse number of routes whereby people can achieve qualified status would be very desirable.... It is good to have more of an opportunity for somebody to look at a firm like us, look at law as a career, and for us to have a good look at them and decide whether we think they match up. And you know give people more of an opportunity to do some stuff on the job before we each enter into a commitment. And it's not easy to do that... in the traditional structures we've got at the moment.
Solicitor

- 5.51 Discussion papers issued during the research, and particularly Discussion Paper 02/2012, laid out as a general principle the development of a more or less market-led 'mixed economy' approach to training. This would work from a presumption that new, flexible approaches should be encouraged, and that the burden should be on the regulator, adopting a risk-based approach, to identify why a pathway should not be permitted, rather than on proponents to make the case for change. The advantages and risks of such an approach, and some of the safeguards that might be required, are well-expressed by the Law Society in its response to Discussion Paper 02/2012:

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.
Law Society response to Discussion Paper 02/2012

³² Though the system was not designed with that intent, one can argue that the Bar currently manages the same risks by recruiting and investing (via Inns awards and scholarships) very selectively from a proportionately larger pool of qualified applicants.

5.52 The CLLS also saw potential in the approach:

To facilitate this, we envisage the future training continuum being made up of a range of interlinked regulated training pathways for all members of the legal workforce. Each pathway must require participants to undergo suitable training and assessment to ensure quality standards are maintained at each step. Furthermore, while those pathways need to be designed so that they give training for the specific area of activity, they also must be designed to allow transfers between sectors.

CLLS response to Discussion Paper 02/2012

5.53 Such an approach does not necessarily imply a fusion of existing training, titles or regulators. It is evolutionary and recognises the centrality of outcomes, not courses or time served, as the building blocks for development. It does not take anything away from the contribution of liberal legal education, but recognises that LSET has its own vocational priorities, which may be addressed in other ways. It also acknowledges that pressures on costs and time must not be allowed to reduce standards or 'dumb down' training, particularly where strong intellectual and technical skills underpin the role.

Common professional training

5.54 Common training has been a matter of debate since before the publication of the ACLEC Report. The discussion has tended to focus on some element of fused training for barristers and solicitors. In this context common training can be distinguished from both complementary or inter-professional pre-qualification training and common CPD.

5.55 In some respects the question has become more challenging since the ACLEC Report. Reforms to the BPTC in particular, but also to the LPC, have tended to increase the divergence rather than convergence of training. Though the gap between what (some) solicitors and barristers do has narrowed by virtue of higher court rights and public access, these changes do not necessarily affect what needs to be learned at the vocational stage; nor does the call for greater convergence necessarily sit well with the increased stratification within these professions. LETR research data, not surprisingly, reflects this complexity and uncertainty:

The proposal for an initial training course for both solicitors and barristers has attractions - for example, it could result in a paralegal qualification and it may help students to manage the risk and cost attached to pursuing a legal career by providing a recognised exit point and postponing choice of profession. However, we think that there is currently too little overlap between the content of solicitors' and barristers' training... to justify the proposal.

Kaplan response to Discussion Paper 02/2012

... the Law Society recognises that with increasing overlap in the responsibilities of the professions ... 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. 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 and entry to the professions.

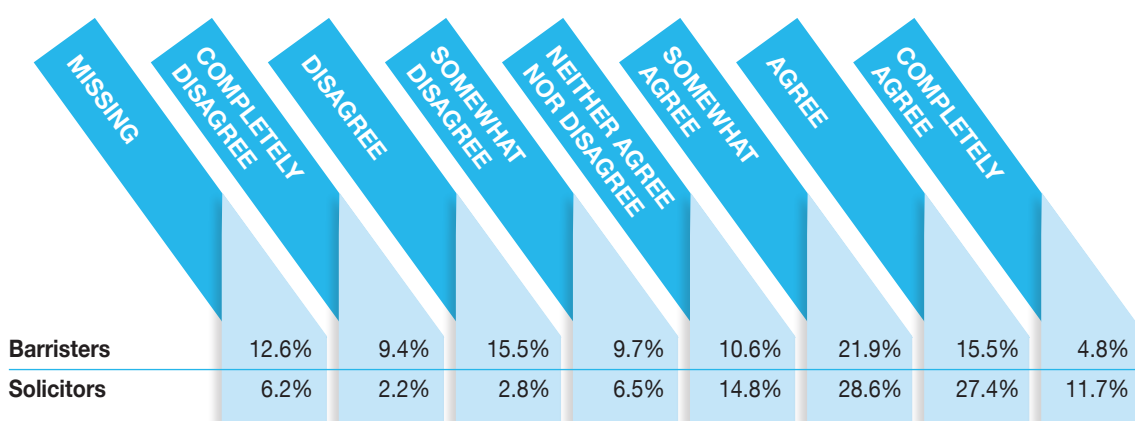
Law Society response to Discussion Paper 02/2012

5. Legal Services Education and Training: Fit for the future?

- 5.56 It was also apparent from the LETR research data that there is even quite a high level of resistance in some quarters to complementary or inter-professional training (which at its crudest might involve module-sharing). Slightly over 40% of barristers offered some support for 'greater common training across the LPC/BPTC', as compared with nearly 70% of solicitors (Table 5.1). This, of course, is not the same as fused common professional training.
- 5.57 A range of approaches to common training could be envisaged, and were explored during the research. Those most commonly highlighted in discussions were:
- fully integrated (shorter) vocational course followed by separate workplace learning and initial professional development;
 - fully integrated vocational course followed by further specialist training for the Bar (the Scottish model);
 - integrated stage 1 course followed by separate stage 2 (the 'Hong Kong' model³³).
- 5.58 However, while common training might create some limited economies of scale or scope, it is not clear that it would significantly reduce the cost of training across the board, and could lengthen it for some (depending on the model adopted). It could help enhance quality in some areas (eg, advocacy training for solicitors), but it does also risk some loss of specialisation/reduction to a common core in others, particularly for the Bar, unless something like the Scottish model is adopted. It offers flexibility for those who are uncertain about their career paths, but it is not clear what others would gain. The critical question is what benefits are there for the system, and the answer seems equivocal at best.

Table 5.1: Support of solicitors and barristers for 'greater' common professional training
Weighted data.

There is scope for greater common training across the LPC and Bar Professional Training Course (BPTC).



- 5.59 Interestingly, a more radical approach was offered by the Bar Association for Commerce, Finance and Industry (BACFI), which proposed common training as part of a more fundamentally integrated process, more akin to what we may see developing around the apprenticeship model (see Chapter 6):

³³ In the Postgraduate Certificate in Laws (PCLL), the first stage is taught in common, and the second stage then splits to reflect barrister and solicitor streams.

Recognising that on the job learning is a crucial part of the making of a lawyer, we propose that the professional qualification be obtained at the end of a period of blended learning which incorporates technical, practical and academic learning in the same programme. We would envisage that this period would last between 2 to 4 years, during which period the student could undertake part time, shared or day or block release programmes devised for his/her needs and the needs of his sponsoring firm, department or chambers.

The training and education at this stage would be common to all lawyers and would avoid premature career choices, whilst giving the trainee a high degree of control over his own learning package.

We do not propose the fusion of the various branches of the profession. There is client demand for a choice of legal specialists and we do not see this reducing. We do propose that the solicitors' and barristers' training contracts, as presently organised, should be replaced by this combined and common period of supervised practice and blended learning.

- 5.60 Restructuring classroom and workplace training to this degree would likely create significant resource and training challenges for the independent Bar, particularly in finding capacity to train what would initially be (in terms of skill level, if not in name) a paralegal workforce. Some lesser degree of integration may be more practicable.

Integrating classroom and workplace learning

- 5.61 Within the legal services sector, the professions - primarily barristers and solicitors - which take a sequential approach to classroom and workplace learning are in a minority, though their members constitute a majority of the regulated professionals. All other professional groups require, or predominantly experience,³⁴ concurrent or integrated training.³⁵ There appeared to be a growing stakeholder interest in this topic during the research, reflecting both recognition of the perceived efficacy of the CILEx approach which permits trainees to 'earn while they learn', and interest in the launch of an integrated approach to the LPC stage 2/training contract by Eversheds.³⁶
- 5.62 The research identified a range of benefits/risks of integration of classroom and workplace learning which are summarised below:³⁷

Advantages of integration

- Improves quality/nature of learning;³⁸
- Spreads cost of LPC/BPTC;
- Possible basis for a move to more flexible/modular training;
- Potential to 'bridge the gap'/give trainees a head start between the vocational course and workplace training;
- Better control of numbers (if learning and training are fully integrated).

³⁴ It is still possible for CILEx trainees to study full-time in a number of locations, though distance learning has become the predominant mode of study.

³⁵ The distinction between (merely) concurrent and integrated training was raised in Chapter 2. A bespoke LPC in which there is considerable liaison between the educational provider and the law firm, may integrate classroom activity with the practice of that firm comparatively seamlessly by using the firm's precedents etc, even through the sequence of study is linear. See fn 32 in Chapter 4 for an example of practice-based and classroom learning conducted concurrently with substantial lack of integration between them.

³⁶ Conventional part-time LPC and BPTC courses also more readily permit students to work and learn than the full-time alternatives; solicitors' firms have a discretion under 'time to count' provisions to reduce time served under the training contract by up to six months where the trainee has relevant prior legal experience; the BSB Qualifications Committee can also exercise its discretion to reduce time served under pupillage.

³⁷ The following draws on responses to Qu. 6 in Discussion Paper 02/2012 and other comments within the focus group and interview data.

³⁸ Although this point was made by a number of respondents, another pointed out (rightly) that there appears to be little formal evidence on any differences in outcome between the sequential and blended use of classroom and workplace learning.

Risks/challenges of integration:

- Practical difficulties for/financial burden on firms/chambers releasing trainees from work;
- Risk of unrealistic workload on trainees;
- Fragmentation or disruption of learning;
- Possible reduction in number of pupillages if integration imposes too great a burden on the supervisor or chambers' infrastructure;
- Difficulties of assuring quality of training consistently at the practice stage;
- Difficulties in assuring consistency and 'integration' between practice and the classroom;
- Consequences for course diversity from employer selection of trainees.

5.63 Views on the way forward were divided across the occupational groups. A number of stakeholders were supportive, or at least cautiously so,³⁹ others were concerned that the changes would not be viable for, or beneficial to, training in their part of the sector.⁴⁰ On balance, a majority of responses seemed at least open to the Discussion Paper's proposal for the continuing development of a 'mixed economy' of approaches. Taken together with the considerable evidence of integrated approaches in other professions, further experimentation, including fully integrated day- or block-release models, is recommended, though preliminary analysis of the specific regulatory risks and costs of any such approaches should be considered carefully before piloting. Any such proposals should, as the Law Society suggests, also be accompanied by a commitment to proper evaluation.

Recognition of qualifications for entry, exemption and transfer

5.64 Benefits may attach to greater flexibility and movement between, not just within, regulated occupations; this may have important advantages for access and career progression, ensuring that individuals with the skills and abilities to succeed are not held back by artificial barriers. At the same time, too much flexibility may create risks for employers and consumers. Qualifications for entry, exemption and transfer purposes serve in this context a protective function, and offer some indication that the possessor has an adequate level of competence and range of skills for the function prescribed. To balance the protective and facilitative functions of qualifications, the LSET system must provide a minimum level of consistency facilitated by co-ordination of standard-setting for the purposes of entry, exemption and transfer.

Entry and aptitude

5.65 The academic calibre of entrants, particularly to the traditional legal professions, is high and there is no appreciable evidence that existing entry standards across the sector constitute a substantial risk to consumers. Nonetheless, in the context of a highly competitive training market, there is some concern that the current Anglo-Welsh system does little to assess the actual aptitude of entrants for law, in marked contrast to the US system, for example. The case for aptitude testing has been made in respect of entry both to read law at university and to vocational training for the BPTC or LPC. These courses are, of course, potentially testing for different aptitudes. Aptitude for the academic study of law does not necessarily translate to a high aptitude for its practice, and aptitude for the Bar may turn on rather different capabilities to those required for being a solicitor, though each of these are likely to share important common features.

³⁹ Including the Association of Law Teachers, BACFI, the Chancery Bar Association, the Law Society, LETG and Young Barristers' Committee (note: based on the latter's response to Discussion Paper 01/2012).

⁴⁰ Including the Bar Council, Council of the Inns of Court, Junior Lawyers' Division, LawNet and the University of Huddersfield.

- 5.66 The ability of the universities to identify accurately and fairly those who are most likely to succeed at law school. This has both quality and diversity implications, as Moorhead observed in response to Discussion Paper 01/2012:

It is also worth saying that work conducted by the Sutton Trust suggests that the recruitment criteria of universities, particularly elite law schools, is likely to favour students from public school over State school backgrounds because of the bump in performance public schools give, some of which (about two A-level grades worth across three subjects) is not reflected in their future performance at universities. In other words, University admission is not geared towards those with the greatest aptitude for undergraduate education but to those with the highest grades at the end of their schooling. Given the concentration of elite law schools at the very upper end of A-level grades, this is likely to have a very significant effect on who succeeds in gaining entry to the better law schools and, therefore, to the best (or at least the most remunerative and highest status) jobs. It also diminishes the quality of those entering the profession.

- 5.67 Whether an aptitude test would necessarily enhance cohort entry standards is uncertain. A recent UK study of the potential value of the general SAT reasoning test concluded that it has some predictive power, in the absence of other attainment data, but that it did not add significantly to the predictive power of GCSEs and A-levels (Kirkup et al. 2010). The national admission test for law or LNAT, run by Pearson VUE, has not gained significantly in popularity or use amongst UK university law schools, with only eight institutions (albeit from the Russell Group of research intensive universities) currently requiring LNAT scores.
- 5.68 Aside from questions of predictive value, the consequences of aptitude testing on equality and diversity are also important issues. Whilst reliance on A-levels is not neutral in diversity terms, LNAT's own unpublished data analysis for 2008-09 suggests some evidence of differential results according to ethnicity and social class, but no indication whether those differences are statistically significant.⁴¹ Research for the LSB also indicates that, if an LNAT score of 17 was used to define admission to law schools using the test, then 51% of white candidates would be admitted, 30% of Black African candidates and 27% of Indian and Pakistani candidates (Dewberry, 2011:32). Differences are likely to be attributable to a number of factors, including access to additional coaching prior to taking the LNAT. Bursaries covering the test fee are available to UK and EU applicants in receipt of certain welfare benefits, but no financial support is available for coaching for the test.
- 5.69 The difficulty of distinguishing, at the point of selection for vocational education, between growing numbers of graduates, has also led to a debate about whether an aptitude test should be used to select for this stage of training. The BSB (2008) took the view that a 2:2 degree was not adequate by itself to distinguish those likely to succeed on the BPTC, while some LPC providers have also expressed concern regarding the level of ability represented by a 2:2 degree (Baron, 2011). So far, however, the BSB is the only body to have made aptitude testing a condition of admission to vocational training.⁴²

⁴¹ See <http://www.lnat.ac.uk/analysis-of-lnat-results-n10142-s11.aspx> There is no indication whether those differences are statistically significant.

⁴² Though the Law Society commissioned its own report on aptitude testing in 2010, it has indicated that it has put the matter on hold during the LETR. An aptitude test may be used as an alternative to GCSE/A-level qualifications in the costs lawyer qualification system (CLSB, 2013).

5. Legal Services Education and Training: Fit for the future?

- 5.70 The BSB's consultation document on the BPTC admission test (BCAT) reveals that the BSB has attempted to align the assessment criteria of the aptitude test to the BPTC, in order to ensure its predictive power in identifying weak candidates. However, proper assessment of the BCAT's predictive value obviously cannot take place until a reasonable cohort of data is available, though pilot work has shown that the test appears to have incremental validity beyond students' prior educational attainments (ie, it does not just reflect prior performance) (BSB, n.d.).
- 5.71 Attitudes within the sector to the use of aptitude tests have been extremely varied. Support was perhaps marginally stronger among junior lawyers and junior lawyer groups.⁴³ This suggests that an objective assessment of capability would be a 'kindness' to weaker applicants, especially in a context where course providers had a strong financial interest in filling places. However, concerns about the predictive value of tests and their impact on diversity were common across groups who expressed reservations. The Black Solicitors' Network (BSN) thus asserted:

[A]ptitude testing would be a further barrier to progression in an area where there are already significant challenges and obstacles. The use of standardised testing would favour those taught or equipped with so called 'soft skills'. Unless there is a mechanism to eradicate unconscious bias such tests are likely to favour certain sections of society [and] lead to a more socially exclusive profession.

- 5.72 The BSB Equality Impact Assessment acknowledged that some minority groups would be affected by the BCAT test (though not necessarily adversely), and proposed that the 'cut score' would be set low to minimise the impact. It has in fact been set to catch only the bottom 10% of applicants, who are considered those most likely to fail the BPTC. On the basis of 2010/11 figures, that would suggest an outcome of around 300 test failures out of 3100 applicants (see Bar Council/BSB, 2012). The impact on numbers enrolled, on these figures, would likely be relatively small. Even if one assumed a proportionate effect, it might reduce numbers by no more than 170 students. Given that applications have exceeded enrolments by between 800 and 1400 over the last three years, the reduction could be less. The actual impact on cohort competence and the student experience, of course, remains to be seen.
- 5.73 At present therefore, there is not a strong evidence base upon which any firm recommendations for the greater use of aptitude tests could be made.

Exemption and transfer

- 5.74 Exemption and transfer arrangements between different professional frameworks in the legal services sector are complex and often difficult to ascertain. Annex I sets out details of all transfer routes available on the basis of public information about them. Exemption and transfer rules do not map neatly across the range of regulated occupations, can lack transparency,⁴⁴ and, in some cases, currency.⁴⁵ The rationale for accreditation or refusal of accreditation for a particular qualification is not always clear. Issues have arisen with respect to four pathways which are illustrative of such problems.

43 The Young Barristers' Committee thus responded: 'The YBC welcomes endeavours to ensure that only the best candidates with a real aptitude for the work of a barrister should be allowed to commence (and incur the cost of) the BPTC. In this respect, the BSB's proposals to introduce an entrance test are to be welcomed' (YBC response to Discussion Paper 01/2012). Solicitor groups were rather more ambivalent; see in particular the very divergent responses in the Junior Lawyers' Division response to Discussion Paper 02/2011 (Qu's.3 and 17). The Young Legal Aid Lawyers (YLAL) reported that 62% of members responding to a survey they conducted were in favour of an aptitude test for the LPC, and only 22% against it: YLAL response to Discussion Paper 02/2011 (Qu.3).

44 Thus, the 2011 CLSB training regulations treated transfer as a matter of discretion, with little indication of how that discretion would be exercised. Revised regulations which came into force on 1 January 2013 show a marked increase in clarity as regards the exemptions that are available to law graduates although it is not yet clear how GDL graduates will be treated.

45 Eg, where exemption is given for qualifications that no longer exist, such as the Law Society's Finals course and do not explicitly refer to their replacements.

- 5.75 **Between CILEx Fellowship and solicitors or barristers:** the pathway between the CILEx Fellowship and qualification as a solicitor is well established, and reasonably transparent. However, there are still perceived barriers/complexities to the transfer process:
- the need to satisfy the 'Foundation subjects' requirements;
 - the exclusion from the right to transfer for those who have studied the LPC before doing CILEx qualifications;⁴⁶
 - the significant cost of the LPC acts as a major disincentive to some;
 - the absence of recognition of prior experience for mature entrants (AP(E)L) was also raised, for example:

I am a mature student who has worked in the legal field for over 15 years and I have vast working experience. This could be taken into account for fast tracking past some of this extra study.
CILEx member

- 5.76 The absence of an equivalent pathway between CILEx Fellowship and the BPTC was also mentioned. The criteria for admission to the BPTC require applicants to be graduates, as distinct from persons educated to a graduate-equivalent level.⁴⁷ Since the CILEx higher diploma is accredited (like the GDL) at NQF level 6, and can address the range of Foundation subjects, the rationale for excluding those who have satisfied these requirements from the BPTC is not clear.
- 5.77 **Between barristers and solicitors:** Bar respondents view the limitation of access to the QLTS to those who have completed pupillage as a restrictive practice:

The change in the Law Society's rules means that people who have spent £16,000 on the Bar Course and don't get pupillage have a choice of giving up the law or working in a legal position with no hope of qualification without further potentially expensive re-training, whereas previously they could cross-qualify.
Barrister (online survey)

- 5.78 **Between IP attorneys and solicitors:** solicitors are able to take a fast track course to qualify as a registered trade mark attorney on demonstrating two years IP practice but otherwise there is little cross recognition.⁴⁸ Conversely attorneys must 'go back to square one' and complete a full GDL/LPC in order to qualify as solicitors. There is thus significant disparity between the pathways.
- 5.79 **Costs lawyers** are both specialist and non graduate, creating particular problems for transfer into other legal professions. Dual qualification is permitted with CILEx, but there are no reciprocal routes into the solicitor/barrister professions.
- 5.80 There is some evidence of developing interest in fast track courses designed specifically to accommodate transferees beyond the established GDL, QLTS and BTT. A short-form LPC for BPTC graduates and an intensive course for intending registered trade mark attorneys have recently become available.

⁴⁶ This restriction was seen by some as simply a barrier imposed by the SRA; on the other hand the existence of the route was also said to demonstrate ambivalence about its own status by CILEx/IPS.

⁴⁷ Although there is a discretion to exempt, on a case-by-case basis, from the academic stage of training (BSB, 2012a).

⁴⁸ To cross-qualify as a patent attorney, the solicitor would need to have a sufficient background in science and to complete the patent attorney examinations.

- 5.81 More generally, the extent of demand for greater transfer and/or exemption rights is difficult to assess, but the level of complexity highlights the challenges of co-ordinating regulatory activity across the sector. This is picked up again in the final part of Chapter 6.

Continuing competence - CPD and accreditation

- 5.82 There is significant disagreement as to how continuing competence, beyond initial qualification, needs to be assured. This issue is considered further in this section, which explores the need for 'core' CPD, and specialist accreditation, and considers re-accreditation as a distinct strategy for ensuring continuing competence.

The importance of 'continuing competence'

- 5.83 In order properly to assure competence, greater attention should be given, and a greater proportion of regulatory resource allocated, to LSET at the post-qualification stage.
- 5.84 There is widespread acceptance of the principle of continuing competence, as being at the core of professionalism. The debate is whether continuing competence must be signalled and assured by some form of mandated CPD scheme or by a system of re-accreditation.
- 5.85 Resistance remains to prescribed CPD. Mandated schemes are seen by some members of the Bar⁴⁹ and others as infantilising. Professionals do not need to be told to do CPD; learning and researching are integral to the role, they argue. Taking CPD out of the job, and treating it as something different, can be seen as both diminishing its role, and marginalising continuing learning, so that it becomes something you (only) have to do for a number of hours a year:

What's the purpose of CPD again? ...It's a serious question because I'm not sure. I can't remember whether it's to learn something or to show you've spent 16 hours a year pretending to learn something to satisfy the sort of thing that you ought to be doing.
Solicitor

- 5.86 This is a serious question, not least because the removal of a regulatory requirement for CPD is not a realistic option, as a number of stakeholders point out:

The Bar Council records its view that any proposal to reduce or dispense with CPD would not be acceptable to clients or the public.

Bar Council response to Discussion Paper 01/2012

The public expect lawyers to be re-assessed on a regular basis to verify their competence, but of course there is no regulatory requirement relating to ongoing competence beyond the completion of a minimum number of CPD hours.

LSCP submission

- 5.87 It is assumed that there will need to be a system of CPD, and this should assure competence.

⁴⁹ For example:

You learn it as you go along which is inevitable as the law changes with great irregularity in all fields. Such learning should be undertaken by the professional's own research and being spoon-fed by CPD should not be compulsory. I would therefore abolish CPD for barristers as it is a patronising irrelevance.
Barrister (online survey)

CPD - setting the range

- 5.88 Regulators currently prescribe elements of mandatory training in some areas,⁵⁰ but there is little consistency across the legal services sector as regards CPD requirements, or whether there are continuing 'core competencies' which should be part of CPD.
- 5.89 CPD needs to be both more flexible (according to both the SRA and BSB reviews) and more structured and useful for each individual. Flexibility and utility appear to drive the redesign of the IPS scheme for CILEx members. Care needs to be taken in setting the content of CPD, since this can reduce flexibility. If prescription is to be introduced it should be proportionate in scope and effect. This is highlighted in a number of contributions in the LETR research data:

It ought not to be possible for anyone practising as a legal professional not to possess a basic level of taught competence in their field of specialisation, and in core subjects such as ethics, accounts rules, procedure and professional conduct, and continuing training should be mandatory in these areas to a greater extent than it already is, to ensure that no professional can slip through the cracks

Solicitor (online survey)

While we favour flexibility in how solicitors can continue to develop themselves, no doubt there may be suggestions that some prescribed training be included in the scheme. If so, we would advocate limiting this to some form of ethics training (whether annually for all or some lesser obligation) and/or management training including financial management training (improving the current compulsory course for mid-level associates and on top of the training for those holding management roles in the new ABS world).

CLLS first submission

- 5.90 The review of CPD commissioned by the SRA recommends consulting the profession more widely on the need for any compulsory CPD components, and a number of significant areas are highlighted by the LETR research. It is recommended that the following areas be considered by the approved regulators for inclusion as mandatory elements of any CPD scheme. The precise extent and form of prescription are a matter for each regulator, and may depend on whether the scheme retains hours of study or, like the new scheme for CILEx members, adopts a more cyclical or 'benefits' approach.⁵¹

Professional ethics, conduct and governance

- 5.91 There is a public interest (and a competitive interest) for regulated lawyers in demonstrating and maintaining the integrity and high ethical standards of legal services provision. This is already reflected in some aspects of LSET. Both the PSC for trainee solicitors and the Bar New Practitioners Programme include ethics. IPS mandates coverage of ethics in the new CPD scheme for CILEx members; the SRA has been invited to consider whether it should do so (Henderson et al, 2012); and the BSB encourages practitioners to undertake CPD on ethics (BSB, 2013). IPReg (2012a) also proposes training in the professional code for entrants and for those moving from in-house to private practice. Other regulators do not demand a mandatory ethics component in their CPD schemes. Internationally, as described in Chapter 5 of the Literature Review, practice varies, though professional ethics and regulation are a significant element in the New South Wales scheme which offers a useful example of limited prescription (Mark, 2012).

⁵⁰ For example, the Bar training for pupil supervisors and selection committees; the requirement in the SRA Handbook (2013) that trainee supervisors should be 'adequately trained'; the requirement by some regulators for advocates to undertake specific CPD; the Management Course Stage 1 and so on.

⁵¹ The form that CPD schemes might take is discussed in Chapter 6.

Management skills

- 5.92 'Commercial awareness' has been highlighted already, and the development of business and management skills, is widely acknowledged as important, but not embedded across formal LSET structures. Though it may be argued that the better solution is to buy-in business expertise rather than turn lawyers into managers or entrepreneurs, this may not be an option for smaller entities. Lawyers will still have to perform leadership and management roles (eg, managing teams or departments within a firm, ABS, local authority or corporate entity). Lawyers may find themselves running a commercial enterprise despite having no prior training for this role.⁵²
- 5.93 Recent high profile failures,⁵³ and concerns that the sector is on the brink of a wave of collapses, emphasise the importance of business and management skills, though it is of course acknowledged that even well-trained managers can fail. Rules on interventions and insolvencies create some protection for consumers but not for staff or partners.
- 5.94 The evidence from the LETR research data particularly highlights doubts about the timing and adequacy of the Management Course Stage 1 for solicitors. Although a standardised course has benefits in terms of cost and economies of scale, the added value and appropriateness of this course need to be reconsidered, and evaluated against the benefits of a more flexible CPD requirement.⁵⁴ CILEx participants raised concerns about their preparedness for independent practice (see also IPS, 2012, which identified this as a gap in current provision) and the Bar Council and Inns of Court have also acknowledged a need to keep under review the adequacy of CPD in this area.⁵⁵ The extent of CPD support for management roles in other regulated professions is either limited or just not explicit.⁵⁶
- 5.95 The potential scope of management training is extremely wide. LETR research data point to the importance of client relationship management, project management, and risk management, as well as the higher organisational management skills needed to provide leadership in a rapidly changing environment. However, training needs are likely to be quite individual and entity-specific, and the specification of detailed outcomes and requirements may consequently not be the best way forward. Entity-based regulation, supported by conduct principles and guidance from the regulator may well provide a more flexible and proportionate response in this area.

Supervisory skills

- 5.96 If workplace learning is to add value rather than simply time served, much depends on the quality of supervision. Qualitative evidence continues to point to failures in the adequate supervision of paralegals (see Chapter 3) and trainees. Comments in the qualitative data include:

Any solicitor who intends to take on a trainee should be required to undertake specific training for supervisors. Currently, there are extremely poor examples. This should be required as mandatory under the CPD regime.
Solicitor (online survey)

⁵² MBAs for legal practice have been available since the early 1990s but there is some regulatory difficulty in providing specialist MBAs which are recognised by, eg, the Association of MBAs (AMBA).

⁵³ For example, Dewey and LeBoeuf in the US, Cobbetts in the UK.

⁵⁴ This was heavily criticised for being too early, too superficial, and failing to accommodate those in in-house practice.

⁵⁵ See the Bar Council's response to Discussion Paper 01/2012. COIC also observed that:

As ABSs increase in number... ethics and business management training may be required, and the Inns will look to adapting their training accordingly to cater for any such demand. In addition, training and education within skills such as accountancy and numeracy may improve the ability to move within legal sectors and might also usefully be included within any reform of continuing professional development.

COIC response to Discussion Paper 01/2012

⁵⁶ See Annex III in Chapter 2 which sets out the CPD requirements for all professions. See also the Literature Review, Chapter 5.

- 5.97 Standards are in place in a number of the regulated professions; for example, the BSB provides a pupillage 'checklist' (BSB, 2012b) and there is a specific short course for pupillage supervisors. The SRA requires trainee supervisors to be 'adequately trained', but this is not supported by a requirement for any particular training regime. Prescription may well be a proportionate response if the value of workplace learning is to be enhanced.

Equality and diversity training

- 5.98 Responses to Discussion Paper 02/2011 highlighted support for further action in this area:

Diversity training should be compulsory at all levels in order that the issue of diversity is embedded. The tendency for practitioners is to see diversity and equality of opportunity as an unnecessary burden imposed by regulators.

Black Solicitors Network response to Discussion Paper 02/2011 (qu. 25)

We recommend that diversity training, in particular unconscious bias training, should take place at several career points including the LPC and BPTC/BVC stages and for qualified lawyers (as CPD). In addition, we recommend approved regulators require diversity training (as part of CPD), for senior staff in firms/chambers to ensure diversity principles are embedded in organisations.

Freshfields' response to Discussion Paper 02/2011 (qu. 25)

- 5.99 There are already elements of regulatory intervention relating to training in this area (see also LSB, 2010). The SRA includes 'providing *employees* and *managers* with training and information about complying with equality and diversity requirements' within the indicative behaviours attached to Chapter 2 of its Handbook (SRA, 2013) and therefore part of the new Code of Conduct. The BSB Equality and Diversity Rules (BSB, 2012c) demand that, from January 2013, at least the lead in any selection panel for 'members of chambers; pupils, clerks or assessed mini-pupils' must have received recent training in fair selection procedures.
- 5.100 The Bar Council offers an Equality and Diversity Training Programme (Bar Council, n.d.) and a wide range of other initiatives are underway (eg Harris, 2011; Commercial Bar Association, n.d.). The Law Society supports equality and diversity training in the context of its Diversity and Inclusion Charter. It reports (2012a:40) that, of its 2012 cohort of 177 firms:⁵⁷

In 2011, 30 large firms (22.4%) and 15 small firms (62.5%) delivered a range of equality and diversity training and information to staff in their practice. This has only increased to 45 large firms (31.7%) and 18 small firms (51.4%) - an overall fall in the proportion of small firms taking action on this.

- 5.101 In addition, the Law Society in its Careers Barriers Action Plan (2013a) supports using LEXCEL to promote best practice and is considering development of an equality and diversity accreditation scheme. CILEx has adopted commitments which include (CILEx, 2012b) an action plan to 2015 including diversity training for its staff. A number of initiatives for IP attorneys were reported in 2012 (Taddia, 2012).

⁵⁷ Comprising 35 'small firms' with 25 or fewer employees, the remaining 142 being 'large firms'.

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5.102 There is, therefore, a considerable groundswell to indicate support for appropriate equality and diversity training, and an extensive literature on interventions intended to promote fair behaviour to colleagues and clients (see for recent examples Bezrukova, Jehn and Spell, 2012; King, Gulik and Averyl, 2012; Celik, et al, 2012). There is also some caution about the risks of over-prescription and the effectiveness of some forms of mandatory diversity training (Pendry, et al, 2007; Paluck and Green, 2009). While it is recognised that care needs to be taken in the way in which this important matter is progressed, regulators should, where they have not already done so, consider including a greater element of diversity training at key stages of training and CPD, to include unconscious bias training and, where appropriate, training in equality and diversity in recruitment.

Other emerging needs

5.103 Continuing doubts about the quality of communication skills within the legal services sector led the research team to consider whether client communication skills should also be included as mandatory areas for CPD. There is no doubt that there are individual practitioners who would benefit from CPD in this area, but consumer satisfaction data do not suggest that the problem is so widespread as to require prescription. This is also an area where consumers can make valid judgements about the quality of services received. Entities should be able to identify members of the organisation that require support and development from their own complaints and client satisfaction data; if they do not, increasing competition and consumer redress mechanisms will play their part. The development of choice tools such as rating systems and comparison sites that would enable consumers to select on service as well as price criteria would also provide a more powerful inducement to improve quality in this area than additional CPD requirements.

5.104 Discussion of the effect of potential divergence between Welsh law and English law was reported in Research Update 12/02. There was overall a wide range of views, but a core consensus amongst respondents that:

- a competent lawyer practising anywhere in the country needs to be aware that law and practice in Wales are now not necessarily identical to that of England;
- it would be incompetent for a lawyer to trespass into matters of distinct Welsh law and practice without appropriate preparation.

5.105 The LETR research data were collected before the Welsh Government rejected, for the time being, a separate jurisdiction for Wales. At this stage, then, while the degree of divergence is comparatively small, it is not recommended that compulsory practical training or activity-based authorisation for practice in Wales are appropriate. For practising lawyers, the details and practical implications of practice in Wales are most usefully dealt with as required through appropriately targeted CPD.

Form as well as content

5.106 The key issue for CPD, however, is setting an appropriate structure for continuing learning. As noted in Chapter 2, the focus of compliance on satisfying the relevant number of 'points' or hours rather than on the usefulness of what is learnt raises serious concerns. Much of the CPD system, as currently formulated, is built around 'inputs' rather than 'outputs'. (Madden and Mitchell, 1993). The extent to which CPD 'works' may in fact be in spite of rather than because of the current system, particularly where it fails to give proper credit for significant self-directed or informal learning, or to encourage forms of learning and reflection that are central to the development of expertise. The question of the appropriate form for CPD schemes is addressed in setting out the requirements for future regulation in Chapter 6.

Re-accreditation

5.107 By contrast with the system of CPD, concepts of 'revalidation', as seen in the GMC system, do encourage a greater sense of reflection in learning.⁵⁸ The case for continuing accreditation or re-accreditation tends to turn on calls for greater professional accountability (Davies, 2007) and/or the belief that it provides the public with the reassurance that professionals maintain fitness to practise (LSCP, 2010; George Street Research, 2010). The call for formal re-accreditation of legal professionals has thus been advanced by the LSCP (LSCP, 2010) largely on grounds of consumer interest and expectation:

The nature of regulatory activity is out-of-step with what the public expects. Participants in the panel's research expected competence to be continually monitored. When given a list of options for ensuring quality, they strongly preferred 'harder' regulator-led mechanisms such as regular competence reviews or exams.
LSCP (2010:13)

5.108 Re-accreditation⁵⁹ is the evaluation of a professional's continuing competence, authorisation or licence to practise, normally on a fixed periodic cycle. It may or may not be distinct from the retention of a professional title. Re-accreditation may be made up of a range of different processes and does not necessarily involve formal re-examination. Although in the online survey the term 'revalidation' was used, this chapter will use 're-accreditation' as a generic term to avoid over identification with specific processes now being used in the medical professions.

5.109 The issue of re-accreditation was discussed in focus groups, and raised in Discussion Paper 01/2012. Views on the perceived reliability of re-accreditation were obtained from the online survey and the CSP received a presentation from Sara Kovach Clark⁶⁰ at the November 2012 meeting.

5.110 National and international research and developments in re-accreditation have also been considered in order to decide whether there is a sufficient case at this stage to introduce re-accreditation as part of the continuing training requirements for regulated legal services providers.

The wider professional context

5.111 Other than voluntary schemes (such as Law Society voluntary schemes and APIL) and the ongoing development of QASA, there has been limited experience of re-accreditation in the UK or other major legal professions.⁶¹ Until recently re-accreditation has been little adopted by UK professions in general, though this is changing.

5.112 North America has taken the lead in requiring professional and occupational re-accreditation. Teacher re-accreditation has been in place in over 40 US states since the mid-1980s, and is now widespread in medicine. The Ontario medical system adopted a system of peer review and physician evaluation in the late 1980s, while the US Federation of State Medical Boards adopted a policy in 2004 requiring individual states to ensure that physicians seeking re-licensing were competent (Davies, 2007:332). Systems of re-accreditation have also become more common for professions allied to medicine and paramedics. Physician

⁵⁸ Some further discussion of the GMC, GDC and other medical schemes appears in the Literature Review, Chapter 5.

⁵⁹ Terms like revalidation, recertification or re-licensing are also widely used, sometimes interchangeably, or sometimes to distinguish separate re-accreditation processes, or parts of the same process, eg, the US medical professions commonly distinguish relicensure, the underlying requirement to maintain a licence to practise, from recertification of a given specialism, such as internal medicine or obstetrics.

⁶⁰ Director of Regulatory Development, Registration and Revalidation Directorate, General Medical Council.

⁶¹ The introduction of specialist (activity-based) accreditation has recently been recommended for Ontario paralegals (Morris, 2012), but it is not clear whether this is intended to imply a requirement for re-accreditation.

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Assistants in most US states are thus required to undergo a recertification examination every six years. In the UK, 'revalidation' is now being gradually implemented across the health care sector following recommendations in the 2007 White Paper, *Trust, Assurance and Safety - The Regulation of Health Professionals in the 21st Century* (for progress, see Council for Healthcare Regulatory Excellence, 2012). Two new schemes that are of some note, given that they involve well-established, relatively 'traditional' professions, are those under development by the General Medical Council (GMC) and General Dental Council (GDC). Each has its own distinguishing features, and the GDC version in particular may be of interest given that dentistry functions in a manner closer to the primary organisational model of legal practice than medicine - see Annex II for an overview of each scheme.

- 5.113 Both the GMC and GDC schemes are universal schemes. There is no attempt within those sectors to focus particularly on high risk activity, except insofar as the standards themselves may reflect risk-based requirements. Both are shaped by trends in modern re-accreditation practice: they are appraisal- rather than examination-based, they rely substantially on CPD over a five-year cycle, and include patient feedback. The evidential requirements of the GDC scheme appear to be lighter-touch than the GMC, but the aim in both schemes is to draw on data sources that are, for the most part, already required for other purposes, thereby seeking to limit additional time and information burdens on those being accredited. A number of UK NHS Ambulance Trusts have also introduced employment-based (ie, non-statutory) recertification for paramedics (HPC, 2008).

Attitudes to re-accreditation: introducing the LETR research data

- 5.114 Attitudes to re-accreditation were explored largely through the online survey, but also in some focus groups. The research demonstrates doubt about the need for re-accreditation, and about what re-accreditation might entail. There is a risk that such doubts might be fuelled by misunderstanding. A number of respondents equated re-accreditation with (as one solicitor put it) 're-taking your driving test' - some kind of formalised test of knowledge and skills, or simply an examination, possibly of 'day one' competence:

[A]ctual periodic testing is not a good idea due to a variety of reasons - it runs the risk of putting undue stress on lawyers, and different people react differently to 'exam' situations, which could lead to a biased system of assessment.
CILEx member (online survey)

- 5.115 Others clearly did appreciate that re-accreditation might involve different mechanisms from a formal test of competence, though a small number of comments suggested that formal assessment was both necessary and fair. These variations should be kept in mind in interpreting the data which follow.

Does re-accreditation support competence - is it reliable?

- 5.116 The LSCP suggests there is a strong expectation among consumers that lawyers are re-accredited, and that this offers some guarantee of competence. The LETR online survey provided a mixed picture.⁶² 57.3% of respondents considered re-accreditation to be a reliable mechanism for assuring professional competence. However, 'revalidation' was ranked as the least reliable of four mechanisms highlighted by the survey (Table 5.2), coming below more targeted remedial (disciplinary) training, the use of specialist accreditation

⁶² It should be noted that the survey defined revalidation as 'regularly scheduled examinations or other tests to confirm that legal professionals are aware of recent developments in their field of practice, and remain capable of working to the expected standards' without explicit reference to appraisal-based schemes.

schemes, and CPD. These scores may reflect a real assessment of reliability, but the generally higher support for CPD may also reflect the greater comfort and familiarity the professions have with that mechanism.⁶³ The high degree of faith placed in on the job learning is also a notable feature of the data.

Table 5.2: Perceived reliability of revalidation vs other mechanisms of assuring competence
Unweighted data.

	RELIABLE	NO EFFECT	UNRELIABLE	MISSING
Revalidation	58.4%	15.7%	24.4%	1.6%
Targeted remedial training	72.4%	8.0%	13.9%	5.7%
Accreditation schemes	81.0%	5.7%	12.2%	1.1%
CPD	85.8%	5.4%	8.8%	0.1%
On-the-job learning	95.6%	1.6%	2.4%	0.3%

Respondent groups differed widely in their views concerning the reliability of revalidation as a means of ensuring competence (Table 5.3). Over 75% of law students responding, but just over a third of barrister respondents, perceived revalidation to be reliable. The relatively large barrister sample goes some way to explain the large divergence of views between the groups. Though the Bar generally displayed greater scepticism than other professions across the range of activities, nowhere was this more marked than in the context of revalidation.⁶⁴ The responses of other professional groups are largely consistent.

5.117 There is limited evidence of actual impact or reliability of re-accreditation. Such evidence is primarily from medical practice and appears to support the view that re-accreditation has at least some positive impact. A systematic review of 29 studies reported in 11 articles showed statistically significant positive correlations between re-accreditation and better patient outcomes in 16 of those studies (Sharp et al, 2002). A number of subsequent 'well conducted studies' have also concluded that re-accreditation correlates with higher quality care (see Sutherland and Leatherman, 2006).

⁶³ From other comments received from Bar representative bodies, it may also be that respondents, particularly at the Bar, were concerned that the research team was intending to use reliability as a proxy measure of support for that mechanism. As will hopefully be apparent from this discussion, that was not the intention.

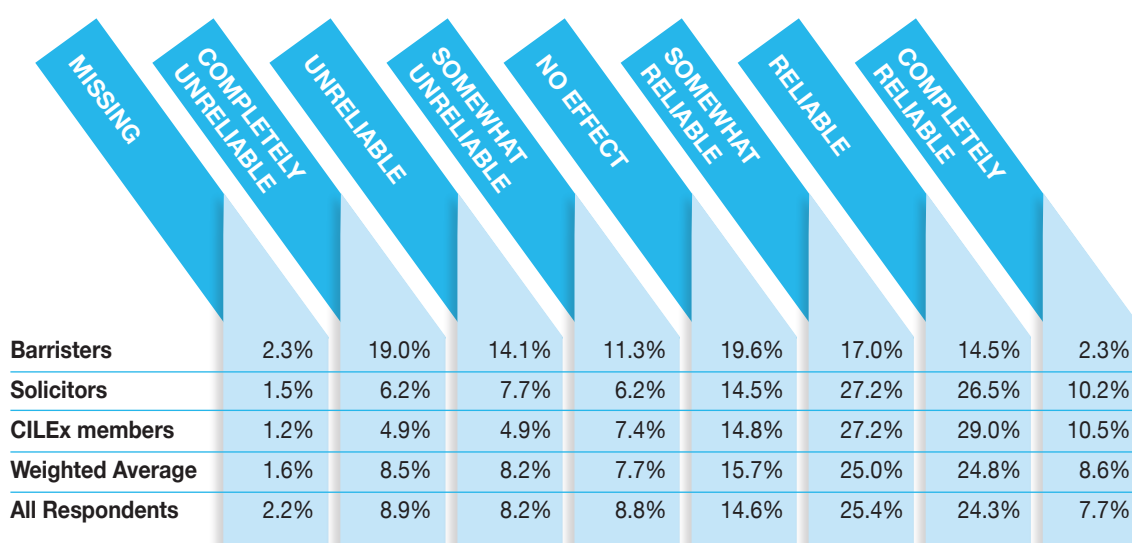
⁶⁴ By contrast 68.5% of barristers considered CPD at least somewhat reliable, as compared with 88.9% of solicitors and 92.6% of CILEx members.

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Table 5.3: Perceived reliability of revalidation in ensuring competence

Weighted (Barristers, Solicitors, CILEx members, and Weighted Average) and unweighted (All Respondents).

Revalidation: regularly scheduled examinations or other tests to confirm that legal professionals are aware of recent developments in their field of practice, and remain capable of working to the expected standards



Analysis and conclusion

5.118 CPD and re-accreditation offer two ways of achieving similar ends. Both are mechanisms for assuring a degree of continuing competence in the legal services workforce. CPD requires monitoring, either at an individual or entity level, but does not require an assessment of competence - continuing competence is inferred from the performance of activity. It may or may not be mandated against specific competencies or outcomes. Re-accreditation does require some evaluation or assessment of each individual practitioner. It tends to be competence-based, reflecting the range of actual work activities undertaken. It is therefore more direct, intensive, and demanding of resources.

5.119 CPD has a reasonably long but not entirely happy history in the legal services sector. It has been rather overlooked in terms of the LSET system as a whole and the consequences of that neglect have been outlined. Re-accreditation remains largely untested in a market-led professional environment. CPD has a level of acceptance in most of the professional groups; whereas re-accreditation is not necessarily well-understood and is a source of concern. As approaches to assuring competence, the evidence for both has its limits, and the necessity of either will depend on other elements of the LSET system, and the strength of the market itself as an arbiter of competence. The development of CPD or re-accreditation will need the support of the regulated community to succeed. At this stage, the research team does not consider that a strong case has been made out for a move to a universal re-accreditation scheme, for the following reasons:

- Any further development towards re-accreditation needs to be considered in the context of other recommendations in this report, particularly the need to reform CPD. It is notable that CPD is a key component of most modern professional revalidation schemes, and therefore a logical pre- (or at least co-)requisite to any move to re-accreditation.⁶⁵ Key components, such as systems of personal development planning need to be put in place; there are also risk issues around the use of tools like critical incident reports, which would not be privileged, and might therefore be vulnerable to exposure in litigation for professional negligence.
- A number of proportionality issues need to be considered. First, there appears to have been little formal analysis in the public domain of the (additional) cost burden re-accreditation may impose on professionals operating in a market-based environment. Secondly in a sector like law, where there is a significant proportion of sole practitioners, there are practical challenges in creating an appraisal-based model. Unless self-appraisal is permitted, some form of external system would need to be developed.⁶⁶ Thirdly, unlike medicine which operates in a quasi-market, a proportionate risk-based approach needs to take account of the extent to which market mechanisms, in at least some parts of the sector, may limit or obviate the need for additional measures. This may point to the need, as the LSCP acknowledges, to develop a more nuanced activity-based approach to accreditation rather than a universal scheme.
- Consequently, in the absence of a move to a universal scheme, additional work also needs to be undertaken to assess areas of risk where re-accreditation might be appropriate and proportionate.⁶⁷ That would seem to be better progressed in conjunction with any work on activity-based authorisation.

Competence and specialisation

5.120 Education and training for solicitors and barristers have been based on establishing a broad foundation of knowledge, with opportunities to specialise subsequently often on the basis of post-qualification experience. Some of the newer occupations, such as licensed conveyancer and costs lawyer, start from a narrow field of competence. Paralegals may specialise as workers in particular fields and there is a perceived pressure on junior solicitors in particular to specialise earlier in their careers. In addition, stratification of work, unbundling of legal services and outsourcing of certain types of work have brought issues of specialisation to the fore.

5.121 As the 1996 ACLEC Report acknowledged, specialisation highlights a dilemma for legal education and training:

If the profession is to compete successfully across all the different sectors of the legal market, it will need to show that it can offer a higher quality, more customised service to its various consumers... [but] [t]he drive toward specialisation can have damaging effects both for individuals, who may be pressured into inappropriate career choice at very early stages in their education, and for the content of legal education and training in general.

ACLEC (1996:1.9-1.10)

⁶⁵ Note that whilst there is research in medicine demonstrating that CPD improves patient outcomes, there appears to be no research demonstrating that a certification scheme independently adds to the quality of outcomes over and above the value-added of any CPD component. This may simply be because isolating such effects would be extremely difficult in methodological terms, but it is nonetheless a gap in the data.

⁶⁶ It should be noted that the use of external appraisal is being explored by the GDC.

⁶⁷ It has also been noted that reliable data on the cost-effectiveness of either CPD or recertification is largely absent from the research literature (Mercur et al, 2008). This is not a straightforward question to research, but it would be a useful gap in the evidence-base to close before investing in further developments.

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- 5.122 There is also some concern that the conflict between what works for legal education and the individual professional, and what best meets the needs of consumers, is becoming more stark:

The system is failing because it tries to train the typical lawyer, when in reality there is no such thing.

LSCP response to Discussion Paper01/2012

- 5.123 This section considers what the LETR research has produced in understanding perceptions of specialisation and the necessary scope of competence, focusing particularly on vocational and post-qualification specialisation.

Breadth vs depth

- 5.124 For some specialist groups a broad base of study is seen as largely irrelevant,⁶⁸ and that is reflected in training structures that are relatively instrumental and focused from the outset. For solicitors and barristers, the tensions between breadth and depth tend to develop around the stage of vocational, or level 6/7, education.
- 5.125 The BPTC's focus on core skills over domain content in some respects delays or diffuses the issue of specialisation, and the majority of qualified respondents felt that was appropriate. Students and pupils were more inclined to argue that the course was not specialist enough,⁶⁹ and might be better if the civil and criminal sides were separated.
- 5.126 Within the solicitors' profession this debate often arises as a division between corporate and high street practice. This is also institutionalised in the split between bespoke and more general LPCs. In the LPCs organised by particular firms, the employers tend to be happy with the level of alignment with and preparation for their own specialist practice, and welcome further tailoring of the course to their needs. This was less apparent from the high street, where the generic LPC was felt to have placed too much emphasis on commercial practice, and largely overlooked areas of, for example, welfare law. This might be seen as a need to continue to recognise - or to enhance - different specialist versions of the LPC. But the underlying question remains whether the design of the LPC privileges too much breadth over depth, and whether it sufficiently reflects modern practice:

I think the components within the framework need reviewing in the light of what law firms do nowadays. It is not necessary to be able to do solicitors' accounts or have to do a compulsory module in wills and probate and have to do a compulsory module in selling insurance products or whatever, which I've already forgotten about. It is more about being a legal business. It is more about relationships and dealing with clients and all those elements that we've talked about. So I would suggest that some things come out, and other things go in, that are more representative of the modern legal business.

Solicitor

The history of professional education in this country has ...major failings. One is the notion that you can put ever more in and never take anything out. So it's led to an LPC that is wafer thin on loads of topics when it should be going into depth.... [The other is] that those in the decision taking role, whoever they may be, educational, regulatory, can actually tell where the market's going and plan for it.

Solicitor

⁶⁸ See for example the Institute of Professional Willwriters' response to Discussion Paper 02/2012.

⁶⁹ At the more extreme end of the scale, one respondent put this in terms of spending £13,000 primarily to do an elective in family law and procedure.

5.127 Would the electives allow sufficient tailoring:

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.

Law Society response to Discussion Paper 02/2012

5.128 The concern that electives were not sufficiently in depth to support specialisation suggests the electives are not sufficient for specialisation, and the disaggregation of electives and core in the LPC has not freed up choice to the extent envisaged by the Training Framework Review Group.

5.129 Doubts about the added-value provided by electives or options were also echoed in a number of comments regarding the BPTC:

There was concern on the BPTC that the electives are so limited that it is hard to achieve relevant specialised training. This meant that any general grounding was undermined by the fact that it was not focussed enough to be sufficient.

YLAL response to Discussion Paper 02/2012

5.130 These views may be countered by the importance of pupillage as the first stage of specialisation for barristers, (as is the training contract for solicitors) and this seems to be clearly reflected in practice. Although pupillage can cover a number of areas, it tends to be relatively focused and no significant concerns were conveyed about it under this head.

5.131 The issue of specialisation in workplace training arose also in the context of the training contract, where there is a tendency again for views to divide:

You learn different skills in different seats and I think the danger with specialising too early is that some people think oh I want to be an employment lawyer or I want to be a commercial lawyer. Once you actually get to practising that area of law you might then go 'this is completely not for me'.

Trainee solicitor

... I think the great change from when I did articles was the requirement to know before you start what you want to do because that's what we're really saying to them. Don't come here to find out what you want to do, we haven't got the capacity for that. If you want to be a criminal lawyer, fine, come and be a criminal lawyer. If you want to be a family lawyer, come and be a family lawyer. But we can't do all this mucking about, offering you choices here, there and everywhere.

Solicitor

5.132 It was also recognised that breadth of training was not just a matter of capacity for firms, but a function of structural change and stratification. This, it was pointed out, had implications not just in terms of the work available for trainees to do, but raised important longer-term policy and economic questions about how the cost of training was borne across the profession:

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If we have to put the burden on specialist firms to provide generalist training, taking trainees doesn't become an appealing prospect any more. That then puts the burden on firms like ours to train people and hope we retain them or actually train them for the good of the profession and they then leave. And that's the commercial conundrum that we have.

Solicitor

Specialisation 'post qualification'

5.133 Post-qualification specialisation in the legal services sector for the larger professions is substantially less integrated into a formal structured programme than it is in medicine or accountancy. Where there is a formal structure it involves the 'badging' of an individual or entity as having a specific competence, or meeting a level of service standard, or higher level of competence than non-specialist providers.⁷⁰ In theory specialist accreditation may be:

- individual;
- entity-based (eg, LEXCEL);⁷¹
- voluntary;
- compulsory (ie, where it controls access to a market segment).

5.134 In its broadest sense then a title giving access to reserved legal activities is a form of specialisation; but the primary concern is with specialist accreditation within or across titles, such as the 'Conveyancing Quality' schemes of both the Law Society and the Society of Licensed Conveyancers, and QASA.

5.135 Distinctions also need to be made between three different forms of specialist accreditation: an affinity or interest group, which may support training and development, but plays no direct role in evaluating or assuring quality; those groups or organisations where accreditation does perform an initial quality assurance function; and those where it performs both an initial and continuing quality assurance function. The focus here is on the latter two categories which assess or assure quality.

5.136 The majority of these 'specialist' schemes across the legal services sector are voluntary. They should be distinguished from mandatory schemes, which can also provide consumers with information, tools for choosing providers, and some evidence of enhanced standards. They are not a substitute for minimum standards of competence (LSCP, 2011:4).

5.137 There was generally a groundswell of support for specialist schemes amongst solicitors:

Competence in areas of specialisation should be paramount. If a lawyer holds themselves out as having a particular skill then it should be backed up by a professional accreditation/diploma.

Solicitor (online survey)

5.138 There is a tendency to distinguish specialist (voluntary) accreditation from general accreditation, which might imply complete re-licensure:

Accreditation following qualification should be only for extensions from the 'norm' of practice and certainly should not be required, for instance, in advocacy at Magistrates Courts nor in relation to Conveyancing or general Commercial work. Those are the bedrock of training and the very basic rights of a Lawyer are linked to them.

Solicitor (online survey)

⁷⁰ Where a field of competence is shared between a number of regulated professions (eg conveyancing, advocacy, work in costs and intellectual property), there is a question whether such badging is intended to be equivalent to, or higher than, that of a specialist profession.

⁷¹ Some concern was expressed in the data as to the ability of entities to claim, and market themselves as specialists on the basis of individual accreditations.

5.139 There was very little interest in such schemes amongst the Bar, aside from QASA, which received support in terms of the underlying principles, despite more detailed concerns about scope or implementation. This largely reflects the extent to which barristers, and members of the other, smaller, professions are fundamentally specialist, and might see little scope or value in further definition of a sub-specialism. A number of existing schemes are open to both solicitors and CILEx members. Most of these schemes are individual rather than entity-based.

5.140 It is recognised that accreditation has the potential to be extremely valuable for consumers:

Accreditation by its very nature promotes high standards in legal service provision and ensures that consumers are easily able to identify legal practitioners with proven competency in given areas of law and therefore protects the public interest.
Central Law Training response to Discussion Paper 01/2012

5.141 The review of the Specialist Accreditation Program of the New South Wales Law Society (Armytage et al, 1995), which was built on a competence-based assessment strategy, indicated that such assessment generated positive outcomes for both the firms and consumers. Sixty-two per cent of successful candidates in the programme (including a high of 79% of those in Wills and Estates practice) reported the accreditation process had influenced their practice in a variety of ways, including developing new office procedures, increased awareness of precedents, and better understanding of the law and practice in their area. Focus groups with consumers highlighted the effect of the scheme in both raising client expectations, and increasing their perceived level of satisfaction with the service received. By contrast, however, the extent to which accreditations are actually understood by English and Welsh consumers is at best doubtful (LSB, 2012; LSCP, 2011).

5.142 Under the right conditions it seems that accreditation can achieve positive outcomes for consumers and professionals alike, but it can also appear to offer assurances of quality where the evidence is limited. There are risks where schemes are owned by the groups they are assuring, that tensions may arise between public awareness, marketing, and quality assurance functions.

5.143 A substantial number of specialist schemes are run by the Law Society (see Annex II). These were reviewed in 2010/2011. The current framework was updated in March 2013. Each scheme has its own particular features, though there is a generic set of criteria, which includes the statement 'Members of each scheme will have demonstrated, through an assessment process, that they are competent to undertake work in a particular area of law'. The assessment process is described thus (Law Society, 2013h):

Your application will be sent to a Law Society appointed assessor, who will mark your application against the relevant scheme competence criteria. The assessor will produce a report for the Law Society giving a recommendation based on the mark you have achieved.

If the assessor considers that any or some of your answers given in response to any questions are contradicted by any other answers or materials provided, they may refer your application back to you for clarification.

If the assessor identifies answers which are fundamentally wrong in law and/or practice, or which raise ethical and conduct issues, a decision to refuse your application may be taken irrespective of the overall mark obtained.

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5.144 There can be an interview (ie, a viva) and second marking (all fails are second marked). Membership is specifically that of the individual not the entity. CPD requirements can be imposed as a condition of a scheme and membership is normally for 2-5 years. Assessment ranges from essay, to case reports and records of experience, to skills assessment. There appears to be a common requirement for some form of statement of competence or competence standard but the articulation of the standard and level of detail varies substantially between the different schemes:

There is no consistency of approach and no real understanding of what each of the accreditation schemes is trying to achieve. For some accreditation schemes there are no common assessments with each assessment organisation setting its own standards and little or no monitoring of how those standards are implemented. The current approach to re-accreditation is in disarray. For immigration work this is by re-examination of legal knowledge, yet for criminal lawyers the proposal (currently being consulted upon) is for attendance at a CPD course - given that 5,000 criminal lawyers were passported into the current regime and have never had their skills tested - how is attendance at a course accreditation of an individual's skills in representation at the police station or advocacy? For other specialist accreditation areas a portfolio of work has to be produced, for another attendance at the three-day non-assessed course is part of the criteria.

Other interested person (online survey) ⁷²

5.145 The LSCP study of 13 quality schemes concluded:

There are few practical checks on technical competence, little lay input into the design and operation of schemes and minimal collection and use of consumer feedback. Moreover, schemes are not validated and so offer no proof that they are delivering on their quality claims

LSCP (2011:1)

5.146 There appears to be considerable scope to develop and exploit specialisation in a more coherent and developmental way, for example:

We would envisage that the specialisms we have referred to ... would be developed under the aegis of specialist 'faculties' as in other professions such as Medicine, Engineering and Accountancy. ... There is a role for the Regulator in prescribing the content and learning methods for specialist faculty admission ...

BACFI submission

5.147 In conclusion the extent to which post-qualification accreditations currently provide a clear or consistent basis for enhanced competence is questionable. Specialisation can perform different functions and can be developed at different stages of the training and quality assurance process. The market-driven moves towards specialisation, and the recognition of specialisation, currently extends through the earlier stages of qualification and into post-qualification. This is most marked with the solicitors' profession, the broadest-based of the legal services professions. It is possible that the future may lie with more modularised qualifications and accreditations. It is therefore proposed that suitably robust specialist accreditation should be encouraged, and form a substantial part of any revised CPD framework.

⁷² Note that these comments were made before the revisions to the schemes were finalised. The key points made appear to have continuing relevance.

Quality assurance

5.148 Sitting behind all of these processes must be some element of quality assurance. Quality assurance (QA) of LSET occurs in two distinct settings in the legal services sector: as 'institutional' QA through the formal stages of classroom-based education and training, and as 'workplace' systems for assuring continuing competence or assurance of specialisation. The systems in place are described, and the critical issues for each setting are identified and discussed.

Institutional QA

5.149 This section addresses degree level qualifications, vocational qualifications, and other legal professional qualifications consecutively. A more detailed analysis of existing regulation is provided in the Literature Review, Chapter 6.

Degree-level

5.150 QA for the QLD and GDL relies primarily on a dual system of regulation by the state agency - the QAA - and the relevant approved regulators (the SRA and the BSB). Additional requirements may be made for institutions in Wales (for example, facilitating study in the Welsh language).

5.151 Programme accreditation in this context is different from on-going quality assurance. Accreditation is itself a quality assessment. All programmes require initial approval and some element of on-going (usually quinquennial⁷³) review. Approval is dependent on programmes satisfying appropriate quality indicators (eg, satisfaction of basic regulatory requirements regarding the Foundation subjects, assessment and credit, sufficiency of faculty, learning resources and facilities) and satisfactory engagement with broader indicators of quality regarding curriculum design, teaching and learning and assessment strategies, and staff development. These issues are relevant at programme review and re-validation, where student progression and performance data, external examiners' reports, and employability data may also add to the range of indicators.

5.152 Within this framework continuing QA and quality enhancement are a matter for internal, institutional processes. Programmes are expected to produce annual reports incorporating analysis and reporting at module and programme level. Student input into these processes is the norm (eg, through the operation of staff-student liaison groups or committees, and student representation on programme committees). Progression and performance data, external examiners' reports, and employability data are also used as indicators in the QA conducted within institutions.

5.153 In the public sector these internal processes are themselves subject to quality audit by the QAA. A brief summary of the system of QAA audit is contained in Chapter 6 of the Literature Review. QAA oversight will also apply to the non-law degrees of GDL graduates and to the non-law degrees of IP attorneys and some notaries.

5.154 Standards (which form the basis for quality assessments) are set at subject level. For law these standards are an amalgam of QAA requirements for all honours degrees in law (qualifying and non-qualifying) and professional requirements set down by the relevant approved regulators (the BSB and the SRA). As noted in Chapter 4, the professions' standards and guidance are consolidated in the *JASB Handbook*.

⁷³ The period of review may be varied, eg, on first validation a degree may be given approval for three or four years to enable an early re-assessment where the validation panel has reservations about some aspect of provision or delivery, but which are not sufficiently serious to refuse approval.

Vocational education for barristers, CILEx members and solicitors

- 5.155 QA for vocational education is a function of each approved regulator, and QA procedures for the LPC and BPTC have been recently reviewed. The underlying QA processes are similar. Institutions intending to offer the LPC or BPTC must be validated and must satisfy the regulator that rigorous quality assurance systems are in place. Both courses also require the appointment of external examiners, annual reporting and monitoring.
- 5.156 The LPC has, since 2010, moved to a new system of authorisation and validation based on paper exercises. Except where a provider has not previously been validated, there is no requirement for an institutional visit.⁷⁴ Continuing quality assurance on the LPC is achieved primarily via an 'enhanced' external examiner system. Externals are appointed as independent assessors by the SRA, with the function specifically to advise the SRA on the standards set by the provider. A lead external examiner is also appointed to have oversight of processes at each institutional provider. This is intended to strengthen the independence of oversight.
- 5.157 External examiners are also appointed on a subject-basis at each BPTC provider. They have responsibility for verifying standards of assessment and ensuring consistency between providers, and play a part in monitoring the quality of courses and provision of resources. An additional layer of external moderators was introduced in 2007-08. Moderators scrutinise subject assessment across all providers, and thus also support the objective of assuring consistency. Each examiner visits the institution at least twice during the academic year, and is required to produce both an interim and a final report.
- 5.158 Periodic monitoring is required for the BPTC, with provision in the regulations for both 'regular' monitoring visits and 'triggered' visits where the BSB has identified a cause for concern such as declining standards or over-recruitment. The Wood Report (BSB, 2008) noted the frequency with which monitoring visits mentioned the general good quality of teaching, student support and facilities. The continuing utility of the visits themselves seems largely to have been assumed from the value of the evidence produced.⁷⁵ Similar 'triggered' visits are operated by the SRA who may institute a monitoring visit if significant concerns are raised about a provider, but routine monitoring visits are no longer conducted. It is too soon properly to assess the impact on quality of this change, if any.
- 5.159 CILEx qualifications are offered in 72 colleges across England and Wales, with 69 offering face-to-face tuition and three by distance learning, with the CILEx Law School as the largest distance learning provider. They have also been embedded in a number of degrees. QA of those centres is the responsibility of CILEx, and the QA process used is designed to comply with Ofqual's General Conditions of Recognition (2012) as well as being subject to IPS oversight. Accreditation of a centre for CILEx, described in more detail in the Literature Review, Chapter 6, includes requirements as to examinations, professional skills, prevention and investigation of malpractice and maladministration by the centre and withdrawal of centre accreditation. Accreditation is normally for a five-year period.

⁷⁴ Though internal validation and review processes will continue.

⁷⁵ 'We are sure that the BSB will wish to continue the monitoring system which seems to have been successful to date' (BSB, 2008:57).

QA and the smaller regulators

- 5.160 The size of the training communities for the smaller regulators allows a closer degree of control and supervision over the training process. Some deliver and/or assess and quality assure their own qualifications. In other cases the provision may be through a single accredited institution, so that QA procedures for courses have been individually negotiated. Insofar as information is publicly available, it is summarised in the table following and described more fully in the Literature Review, Chapter 6.
- 5.161 Licensed conveyancer, notary and registered trade mark attorney qualifications have some element of dual assurance by virtue of delivery by universities and colleges. It is notable that no LSA 2007-approved regulator has adopted an approach that accredits only the assessment process, not the training.⁷⁶
- 5.162 Given the scale of the smaller operations, to require providers to be, for example, Ofqual assured could be disproportionate at the present time, though such a move would facilitate transfer and exemption. Where Ofqual or similar external assurance are not feasible, steps should be taken by the regulators themselves to increase public information about internal quality assurance processes and their outcomes.

⁷⁶ Though this is the approach adopted by the Office of the Immigration Service Commissioner in accrediting regulated immigration advisers. The qualification framework for patent attorneys also adds a supervised practice component to its assessment structure.

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Table 5.4: QA processes of the smaller regulators

OCCUPATION	COURSES AND QUALIFICATIONS
Costs lawyers	Modular programme delivered by ACL Training Ltd, and authorised by the CLSB.
Licensed conveyancers	Centralised assessments. CLC literature suggests that Bradford College, the Manchester College and the Manchester College of Higher Education and Media Technology are currently accredited to provide at least some of the CLC courses. Distance Learning provision is through CLC.
Notaries	<p>'8. Practical Qualifications</p> <p>8.1 Any person wishing to be admitted as a general notary under rule 5 shall have followed and attained a satisfactory standard in a course or courses of studies covering all of the subjects listed in schedule 2.</p> <p>8.2 Whether a particular course of studies satisfies the requirements of these rules and whether a person has obtained a satisfactory standard in that course shall be determined by the Master after seeking the advice of the Board.</p> <p>8.3 The Master after seeking the advice of the Board may by order direct that the award of a particular qualification meets the requirements of these rules as to some or all of the subjects listed in schedule 2.</p> <p>8.4 The Master may as a condition of making a direction under rule 8.3 require the body by which the qualification is awarded to issue those pursuing a course of studies leading to that qualification with such information about the notarial profession, these rules and other rules made by the Master and the Company as the Master may specify.</p> <p>8.5 The Master may by Order add any subjects to the list in schedule 2 or remove any subjects from that list or alter any of the provisions of that schedule but before doing so he shall consult the Board.'</p> <p>The UCL Notarial Practice course is currently accredited for this purpose.</p>
Patent Attorneys	<p>The European Qualifying Examination is organised and conducted by a Supervisory Board, an Examination Board, Examination Committees and an Examination Secretariat of the European Patent Office. There is no required preliminary training but courses are offered by CEIPI (Centre d'Etudes Internationales de la Propriété Intellectuelle) and the European Patent Institute (EPI) and reference is made to HEI and other pre-existing courses in European patent law. The assessment itself is closely prescribed by a European Patent Office regulation (EPO, 2011).</p> <p>Domestic qualifications at foundation and final level are organised and assessed by the Joint Examination Board of CIPA and ITMA. The Bournemouth, Brunel, Queen Mary and Manchester Universities are accredited examination agencies for the foundation level.</p>
Patent administrators	CIPA Certificate in Patent Administration delivered and administered by professional body
Registered trade mark attorneys (new model)	Bournemouth, Brunel, Queen Mary, and Manchester universities are accredited examination agencies for foundation level activity in the relevant regulations. Nottingham Trent University is an examination agency at both foundation and final level. In practice, the diet of courses is delivered through the Queen Mary Certificate in Trade Mark Law and Practice followed by the NTU Professional Certificate in Trade Mark Law and Practice.
Trade mark administrators body	ITMA Trade Mark Administrators Course delivered and administered by professional
Legal services apprenticeships	Competencies set by reference to NOS. Formal education and activity and supervised practice are blended in accordance with the relevant apprenticeship framework. An Apprenticeship Quality Statement (2012) sets out the standards the National Apprenticeship Service expects for the delivery of apprenticeships by employers and training providers. Award bearing knowledge- and competence-based units are formally accredited by CILEx.

Critical issues

- 5.163 It should be noted that relatively little evidence was received regarding QA systems and processes as such during the research phase. As noted in Chapter 2, a number of respondents raised concerns about the variability of standards on undergraduate programmes and, to a lesser extent, the LPC. Little by way of comment was received in respect of other courses. It is not always clear on what basis inconsistency is being alleged.
- 5.164 Considerable resources are allocated across institutions to achieving consistency within and between programmes and institutions. Assessment criteria are widely used, papers are double marked, and moderated by trained external examiners. Some evidence exists of a broad consensus between externals as to grading standards; nevertheless cross-institutional variations may occur. These may be accounted for by various factors. For example, differences in programme design have been highlighted during the research, specifically in relation to the LLB. Other factors accounting for divergence may include:⁷⁷
- the ‘fuzziness’ and complexity of assessment judgments, which may inhibit standardisation;
 - use of a different range of assessment tools between courses and institutions, and variations in the range of outcomes assessed;
 - permitted differences in assessment regulations determining how classifications are awarded (averaging, weighted averaging, etc);
 - inevitability, given current assessment models, of some relative marking within institutional cohorts;
 - increased numbers of students and institutions.
- 5.165 These would ‘legitimately’ explain some of the variance, but less excusable factors could also be involved such as inadequate training in assessment, the allocation of insufficient time and resources to marking and moderation, and breach of assessment practices. Even those variances that are regarded as more or less legitimate might be reduced if greater use were made of statistical tools to check for error variation, and assessors were more aware of the ‘principles of measurement’ on which gradings should be based.⁷⁸ The extent of these problems is, inevitably, hidden, though discussion of these can be found in the general educational literature.
- 5.166 These are not localised problems to law, but reflect, in part, the wider challenge of delivering, assessing and grading the complex learning achievements required, as well as the impact of a culture of institutional autonomy in higher education in the UK and in similar systems, such as the USA and Australia (Yorke et al, 2008).
- 5.167 The law degree exhibits three trends which complicate these otherwise more general issues. Numbers on law degrees have grown faster than the traditional legal professions; consequently the proportion of law graduates able to enter those professions has shrunk - thus, as noted in Chapter 2, law graduates now constitute less than 50% of newly admitted solicitors.⁷⁹ At the same time, recruitment trends, aside from the currently low level of activity, highlight a long-term change in the pattern of recruitment, as numbers of GDL students,

77 See generally Hanlon et al, 2004; Yorke, 2008, Yorke et al, 2008.

78 On this last point, particularly, note Elton and Johnston (2002:29):

[It is] important to remember that class boundaries were settled a long time ago when virtually all assessment was based on finals papers. To take them over into schemes where a substantial part of the assessment is by other means is quite indefensible (rather like keeping the marks on a thermometer the same, but change from mercury to alcohol). In particular, it is well known that on average course work assessment leads to higher average marks and smaller spreads of marks. It is very likely that the apparent grade inflation over the past twenty years is due largely to examiners’ ignorance of simple principles of measurement and is not a reflection of either improved learning or greater lenience in marking.

79 Though there is, as noted, some concomitant evidence of greater graduate recruitment into the newer professions, some of which may not require the same breadth of prior learning.

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and of direct entrants from other occupations or jurisdictions increase.⁸⁰ Finally market and regulatory changes accelerated by the LSA 2007 could see recruitment, and students, moving away from the traditional professions. In combination these changes are all likely to explain why a declining proportion of law graduates progress into the traditional professions.

- 5.168 As the Legal Services Institute argues (2010, 2012) this situation certainly diminishes the authority (*de facto* if not *de jure*) of the professional bodies over the academic law schools and places in doubt the extent to which it is appropriate to impose additional requirements.
- 5.169 It can also be argued that a combination of other strategies could be harnessed to deliver change:
- a more rigorous approach to standard-setting;
 - market competition;
 - information;
 - re-focusing existing regulation.
- 5.170 **A more rigorous approach to standard-setting:** the problem of disjunction between standards within individual institutions and the standards associated with the discipline or profession is widely acknowledged, and one which the external examiner system struggles to address. A solution to this is, as proposed in Chapter 4, to adopt a significantly different and more formalised approach to setting and using standards. As described in Chapter 4, this is seen as a key means of enhancing QA at the institutional level. It may be supported, to some degree, by the following.
- 5.171 **Market competition:** as the sector develops we are seeing greater variation in courses and approaches. Examples include the professional practice-oriented law degrees launched by BPP and the University of Law; the various exempting degrees offered by Glamorgan, Huddersfield, Northumbria, Nottingham Trent, and Westminster Universities; and the development of a problem-based curriculum at York Law School. Market responses to innovation, informed by more transparent information about providers, can be used to motivate change, though too great a reliance on competition may also undermine attempts to build greater collaboration in standard-setting.
- 5.172 **Information:** There is a growing requirement for the university sector to publish output measures relevant to student choice and QA (broadly defined), including degree classifications awarded, class contact, employability, student satisfaction and other data. A number of such indicators are now published officially as 'Key Information Sets' for each degree, including all QLDs. This moves university education closer to market-based incentives for maintaining and enhancing quality. However, the relationship between factors, such as contact hours and quality can be contested, and such innovations may cause perverse incentives.
- 5.173 **Re-purposing and refining existing regulation and required processes:** Other approaches should be explored, such as ensuring institutions are putting a proper level of resources into the student learning experience; enhancing assessment - discussed in Chapter 4; encouraging collaboration rather than imposing 'command and control' regulation; and the provision of guidance as to best assessment practices (eg, on the use of statistical tools) (see also Brown, 2009).
- 5.174 Within the vocational context too, greater consistency might be facilitated by external assessment (see the BPTC), though large centralised assessments can be as problematic as localised ones, unless appropriate resources are put into training question-setters

⁸⁰ This is marked in the solicitors' profession - see the analysis by the LSI (2010:22-24).

and assessors, and moderation. Separating teaching from assessment may also create additional challenges in terms of assuring fairness, consistency and authenticity of assessment. A more lateral approach to dealing with inconsistencies of institutional coverage might involve providing e-learning resources to refresh or fill gaps in substantive knowledge, for example.

QA for learning in the workplace⁸¹

5.175 There are examples of existing good practice in assuring quality in workplace learning in the sector, and also considerable variation in practices.⁸² Entity regulation will increase the responsibility of firms and other entities to quality assure their training. This includes periods of required supervised practice such as the training contract. Additional standards and accreditations may extend to specific training obligations, such as those requiring chambers' selection panels to have training⁸³ in 'fair recruitment and selection processes' (BSB, 2012c). Other entity-related accreditations, such as the Law Society's LEXCEL standard,⁸⁴ impose positive training and audit or monitoring obligations, but they do not necessarily link clearly to maintenance of competence:

And LEXCEL doesn't do it. You know we're LEXCEL accredited but LEXCEL makes sure that you've got great systems in place but actually when it comes down to the nitty-gritty of the quality of advice I don't think LEXCEL really gets to it.
Solicitor

Regulatory monitoring of workplace-based learning

- 5.176 Regulatory monitoring varies between the different professions. It may be of performance at entity level, as part of an entity-based scheme, inherent in individual accreditation, or attached to the provision of periods of supervised practice. Requirements for the periods of supervised practice in all professions are described in the Literature Review, Chapter 6.
- 5.177 Monitoring of initial training is seen as critical to assuring that it is converting technical knowledge into practical know-how. Supervision, and potentially the monitoring of supervision, may be considered critical to that transition. Monitoring of pupillage is in the course of further development but is likely to involve random or triggered visits, confidential questionnaires and interviews for pupils (BSB, 2012b:61). There is similarly provision for training establishments with trainee solicitors to be visited for monitoring either by random selection or following a trigger (SRA, 2006) although there was some doubt about the extent and effectiveness of such monitoring (see below).
- 5.178 Variation in the quality of learning and supervision in training contracts has been a long-standing issue (see, eg Goriely and Williams, 1996). Within the LETR research data, although some respondents (68% of the LawNet respondents, for example) felt the training contract in particular was sufficiently regulated to assure quality, others were more doubtful:

⁸¹ The quality assurance requirements demanded of approved training providers have been explored at some length in Chapter 6 of the Literature Review. An overview of periods of supervised practice including supervisor requirements, their prescribed content and method of sign off or assessment appears in Chapter 2, Annex II.

⁸² This includes, for example, in-house academies; effective appraisal and mentoring schemes and support for CPD and qualifications such as the Oxford IP Diploma.

⁸³ Which may involve classroom or online sessions, private study or formal CPD on the topic.

⁸⁴ Eg, for LEXCEL requirements see Law Society (n.d. a:8). Note that insurers may also have an interest in quality and risk management of performance. See for example, the Aon 'Quality Assurance Risk Management portal' at <http://www.aonrm.com/>

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I would change the training contract, having received virtually no training from a firm which believed in trainees 'learning by their mistakes'. I would make it more prescriptive about the level of training and supervision received. Some firms are excellent and others are appalling. The appalling ones then complete the assessment forms for the qualifying solicitor so that it appears that all the steps have been taken.

Solicitor (online survey)

Whilst I had a very broad training contract not once did the [SRA] knock actually on our door and say 'Let's have a look at the training [logs]'. And I did have that and I did keep my training logs. I remember frantically trying to get them all up to scratch for qualifying. They never once even looked.

Solicitor (recently qualified)

- 5.179 Whether this is actually problematic is difficult to assess. Firms need their trainees and qualifiers to perform well for the firm, so the incentive for proper training and supervision tends to be assumed. But there is little public information on the scale of monitoring activities. While it is clear there is very high quality training that is valued by both trainees and employers, there is also a risk that, without effective internal or external oversight, the value of workplace learning may be seriously undermined. This has even been seen as a potential justification for abolishing the training contract (see, eg, LSI, 2010).
- 5.180 The relative absence of monitoring continuing workplace learning (including CPD) has been noted. This is also an area where entity-based regulation could play a significant role in providing a proportionate quality assurance system. New South Wales and Queensland in particular have substantial experience of using 'practice reviews' or 'self-assessment audits' to require incorporated legal practices to self-assess and report on their implementation of appropriate management systems (Briton and McLean, 2008; Mark and Gordon, 2009; Briton, 2011).⁸⁵ These are distinct from compliance audits, which may have formal regulatory consequences. Rather, they form part of what in New South Wales has been called an 'education towards compliance' strategy (Parker et al, 2010) since they are designed to facilitate firms identifying where their systems are non- or only partially compliant with regulation, and help identify steps that will enable firms to develop fuller compliance. This would seem to offer a proportionate approach to monitoring, since it places the onus on the entity to manage and report rather than impose a high level of external supervision and monitoring on the process.

⁸⁵ The two jurisdictions between them have conducted over 1,000 such reviews – see Parker et al, 2010; Briton, 2011.

Conclusions

- 5.181 This chapter has sought to demonstrate the ways in which baseline quality is, and needs to be, signalled (and assured) through initial regulation, CPD and accreditation processes and specialisation, and evidenced through quality assurance mechanisms.
- 5.182 The chapter highlights the traditional reliance placed on regulation by title, and contrasts that with the growing interest in activity-based authorisation. It cautions that the risk of adding further layers of cost and complexity through activity-based authorisation may well outweigh the benefits to consumers. It notes that the impact of such regulatory changes would go well beyond LSET, and highlights the absence of substantive evidence regarding the actual benefits and risks of activity-based approaches. The chapter therefore calls for further investigation and research into the operation and implementation of activity-based approaches before further development along this road are undertaken. Alternative approaches to increasing competence are explored such as including pre- and post-qualification specialisation and enhanced CPD, and the chapter also considers the growing use of entity-based approaches to regulation in line with moves to OFR. Entity based regulation is supported at a number of points in this report, particularly as regards CPD monitoring and workplace quality assurance.
- 5.183 Flexibility in LSET is critical to future workforce development: it supports innovation and diversity, and should assist in sustaining a competitive, good quality, legal services market. Regulators are encouraged to experiment with a more permissive approach to alternative training models and pathways. In the context of a market-led 'mixed economy' approach, the report does not propose pushing change towards common training or necessarily greater blending between classroom and workplace, though it encourages experimentation in both directions. It also highlights the need for greater coordination of, and transparency in, setting transfer and exemption criteria between regulated occupations.
- 5.184 The discussion of CPD, specialisation and re-accreditation explores both content and structural issues. The need for CPD, even within a re-accreditation framework, is taken as given, and a number of areas of core activity are highlighted: ethics and regulation; management skills; supervision; and diversity training. The case for re-accreditation at this stage is regarded as not proven, particularly in the light of substantial reforms that could be made to enhance the effectiveness of CPD. The development of more rigorous and consistent approaches to specialist accreditation is encouraged as part of this enhanced approach to CPD.
- 5.185 The final section on quality assurance processes explores existing pre- and post-qualification mechanisms. It highlights both the extent and the limits of institutional QA, and, in line with Chapter 4, particularly stresses the need for greater coordination and standardisation of assessment activity. It notes the relative lack of regulatory emphasis on workplace QA, and makes the case for an entity-based approach to QA in the workplace built around developmental audit.
- 5.186 Chapter 6 will build on this chapter to consider the remaining substantive issues not so far addressed by this report: the regulation of fair access; the role of regulation in creating a more responsive CPD system; the reach of regulation into paralegal work; and the importance of better information provision across the sector.

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Annex I

Patterns of entry, accreditation and exemption (updated from LETR Research Update 12/2)

In order to show this information clearly, some level of simplification has been required. In particular, exemption may relate only to qualifications obtained within a limited time period and there may be other age, English language or employment status thresholds. Further, this table does not distinguish between organisations which offer blanket exemption and those which offer exemption in principle within a category but in fact make case-by-case assessments within it. Any errors or over-simplifications are those of the research team.

Failure to represent a possible variable indicates not that it is necessarily impossible, but that it has not been possible from publicly available information to locate a formal accreditation or exemption mechanism for it. It may involve no exemption at all, or, alternatively, fall under a general discretionary waiver.

5. Legal Services Education and Training: Fit for the future?

FROM THIS ⁸⁶	NQF LEVEL ⁸⁷	YOU CAN
GCSE/A level/equivalent	1-3	<p>Enter the costs lawyer modular route (subject to fitness criteria) (CLSB, 2013)</p> <p>Enter the CILEx route (some exemptions for eg A level law)</p> <p>Enter the licensed conveyancer foundation stage (CLC, n.d.)</p> <p>Enter a law degree (from level 3) (LLB/foundation)</p> <p>Enter a legal apprenticeship</p>
From CILEx level 3 (CILEx, 2012a)	3	<p>Enter the licensed conveyancer foundation stage with one exemption</p> <p>Enter the costs lawyer modular route (exemption may be considered)⁸⁸</p>
From a qualifying law degree ⁸⁹ /GDL	4-6 ⁹⁰	<p>Enter the costs lawyer modular route (exemption may be considered)</p> <p>Enter the BPTC (with at least a 2:2)</p> <p>Enter the CILEx graduate fast track route⁹¹</p> <p>Enter the patent attorney route (with some exemptions at foundation level especially if an IP option)⁹²</p> <p>Acquire six months' experience and enter licensed conveyancer route at final stage (some exemptions from foundation stage apply only to degree and not to CPE/GDL)⁹³</p> <p>Enter the registered trade mark attorney route (with some exemptions especially if an IP option) followed by academic course and full vocational course</p> <p>Enter OISC assessment structure.⁹⁴</p> <p>Enter the LPC</p> <p>Acquire five years' experience and enter STEP Qualified Practitioner fast track course</p> <p>Some systems (eg qualification as a notary) use possession of a degree (sometimes any degree) as a basic entry criterion. It would also clearly be possible for someone with a degree, possessing the other relevant characteristics, to enter by any of the mature entrant routes described separately.</p>
From BPTC	6-7	<p>Enter the costs lawyer modular route (exemption may be considered)⁹⁵</p> <p>Enter pupillage</p> <p>Attain CILEx graduate member status</p> <p>Enter the patent attorney route⁹⁶</p> <p>Enter the 'short form' LPC</p>

86 These are stated as minima, so each stage necessarily encompasses all previous stages.

87 As periods of supervised practice are not generally allocated a level, this column may represent the level of the most recent formal qualification only.

88 The reference (CLSB, 2013) is to 'ILEX qualifications'.

89 Occasionally only 'law degree' is stipulated. We have found no cases of exemption being contingent on a particular subject having been studied at a particular level within levels 4-6 or (with the exception of the notaries route) explicit requirements as to content within the subject.

90 Which stage a particular subject has been studied at will vary between institutions and degree programmes although some legal study must take place in the final year (at level 6). The CPE/GDL is, by definition, entirely at what is now level 6.

91 Exemption is from the level 3 qualification and some aspects of the level 6 qualification.

92 In practice, however, patent attorneys will have a first degree and often a doctorate in a science subject as regulations governing admission of representatives before the European Patent Office require candidates to 'possess a university-level scientific or technical qualification, or [be] able to satisfy the Secretariat that they possess an equivalent level of scientific or technical knowledge' (European Patent Office, 2011:11).

93 In the opposite direction, licensed conveyancers may be allowed exemption from the land law subjects of a qualifying law degree.

94 Some exemption for equivalent SRA caseworker accreditations.

95 The reference is to the BVC only, it is assumed that the BPTC is included.

96 The relevant regulations give power to exempt for the 'Bar Final Examination' (assumed to include both BVC and BPTC).

FROM THIS ⁹⁷	NQF LEVEL ⁹⁸	YOU CAN
From CILEx/CILEx level 6 ⁹⁹ (CILEx, 2012a)	6	Enter the costs lawyer modular route (exemption may be considered) Enter licensed conveyancer route at final stage with some exemptions (some of which are contingent on 50% plus grade) Enter the LPC (complete PSC but usually exempt from training contract)
From LPC	6-7 ¹⁰⁰	Enter the costs lawyer modular route (exemption may be considered) Enter the patent attorney route ¹⁰¹ Attain CILEx graduate member status Enter licensed conveyancer route at final stage with some exemptions (not CLC accounts and one paper exempt only if a commercial elective ¹⁰² has been taken on LPC) Enter the training contract (complete PSC) ¹⁰³ Qualify elsewhere in the world and enter QLTS (with partial exemption). No training contract then required.
From qualification as a patent attorney (CIPA/ITMA, 1991, 2010; IPReg 2011)		Possible dual qualification as a registered trade mark attorney
From qualification as a registered trade mark attorney (ITMA, 2012; IPReg 2011)	6-7 ¹⁰⁴	Possible dual qualification as a patent attorney
From qualification as a barrister (including pupillage) ¹⁰⁵	6-7	With two years' IP experience, enter registered trade mark attorney route (with some exemption for IP subjects and a fast track vocational course) (ITMA, 2012) Enter the Notarial Practice Course Enter the QLTS (no training contract required) Acquire two years' experience and enter STEP Qualified Practitioner fast track course
From qualification as a solicitor	6-7	Enter the BTT (possible reduction in pupillage) With two years' IP experience, enter registered trade mark attorney route (with some exemption for IP subjects and a fast track vocational course) (ITMA, 2012) Enter the Notarial Practice Course (Master of the Faculties, 1998)
Acquire two years' experience and enter STEP Qualified Practitioner fast track course As a mature entrant/prior legal experience/no prior qualifications/prior qualifications or experience not otherwise accredited		Enter via ACL aptitude test Possible entry to the BTT (possible reduction in pupillage) Some waiver/exemption may be made in patent/registered trade mark attorney scheme Non-graduate may obtain entrance to CPE/GDL Possible reduction in training contract (which might include work as, say a licensed conveyancer or paralegal)

97 These are stated as minima, so each stage necessarily encompasses all previous stages.

98 As periods of supervised practice are not generally allocated a level, this column may represent the level of the most recent formal qualification only.

99 If they have achieved the CILEx level 6 qualifications in all the Foundations and have three years' practice they may be exempt from the CPE/GDL.

100 Practice will vary.

101 The relevant regulations give power to exempt for the 'Final Examination of the Law Society' (assumed to include the LPC).

102 An elective may well be at level 7 even if other aspects of an institution's LPC are at level 6.

103 The SRA work-based learning scheme including LPC graduate paralegals without training contracts was a pilot and new entry is currently closed.

104 The new vocational course straddles levels 6 and 7.

105 Where regulations state that there is exemption for 'barristers' we have assumed that this means a barrister having completed pupillage.

Annex II

Examples of Law Society and other specialist accreditations

Law Society schemes

Children Law Accreditation Scheme

(Law Society, 2013b)

This scheme is available to solicitors and to CILEx Fellows holding the 'Matrimonial Proceedings Certificate' (sic) (or if working for a local authority, having rights of audience under s. 223, Local Government Act 1972). All applicants must have completed a compulsory course prior to application. Membership, which is for five years followed by re-accreditation is in a number of categories:

- Private practitioner children representative;
- Private practitioner adult representative;
- Local authority membership (for employees of local authorities).

The threshold experience requirements are stated slightly differently for each category. Submission is by case summary (full case reports for reaccreditation). If a member subsequently changes field (eg, from local authority to private practice or from child to adult representative), there is provision for membership to be transferred or converted. At least six hours of relevant CPD is required annually. Standards are stated in terms of knowledge as well as with reference to skills (which, other than advocacy, are not specified)

Civil and Commercial Mediation

(Law Society, 2013c)

This scheme is available to solicitors and FILEx and has general and practitioner membership. General membership (on completion of a Law Society compulsory training course) is allowed once only for a non-extendable period of two years, and is a transition to practitioner membership. Practitioner membership is for five years followed by reaccreditation. There are two routes:

- a development route for general members involving 90 hours of experience in mediation over a two year period together with four hours of 'self reflection' which can be achieved by at least 16 hours relevant CPD, courses, writing, reading, or promoting mediation;
- a direct route which is identical to the development route except that the applicant has not previously been a general member.

Application for practitioner membership is by case reports and a reflective account.

Clinical Negligence

(Law Society, 2013d)

This scheme is available to solicitors and CILEx Fellows acting for claimants in clinical negligence work. Membership is for five years followed by re-accreditation. The application threshold is at least three years' clinical negligence work defined both in quantity and in complexity (ie having gone at least to case management conferences). First-time applicants must have undertaken at least 30 hours relevant CPD in the three years prior to application and members are required to do at least 10 hours relevant CPD annually. Standards of competence are defined solely in term of knowledge of law and other material (such as the professional rules of the medical professions).

Conveyancing Quality Scheme

(Law Society, n.d.b)

This involves the accreditation of a practice, rather than of individuals. The entity signs up to client service, conveyancing protocol and practice management standards and undertakes to put its staff on such training as the Law Society might require. The agreement can be terminated for breach or bringing the quality mark into disrepute. The agreement provides for 'monitoring/audit/

assessment as required on a risk-based or random assessment or following concerns raised with the Law Society'. A programme of audits was announced in 2012 because the Law Society needs to be able demonstrate that as a group, members of CQS are complying with the standards of membership. There is a series of mandatory training activities delivered online with assessment questions.

Criminal Litigation

(Law Society, 2013e)

There has recently been consultation on a re-accreditation provision for this scheme, which appears still to be unresolved. The scheme, open to solicitors, CILEx Fellows and European Lawyers working under the directive, is designed to allow members to apply to be duty solicitors. Membership is for five years followed by reaccreditation in five-year increments. Applicants must complete the police station qualification (assessed by portfolio and critical incidents' audio test), the magistrates' court qualification (assessed by portfolio, interviewing assessment and advocacy assessment) and a fitness and propriety standard. At least six hours of relevant CPD are required annually. Statements of competence are given in terms of knowledge of law and procedure, ethics and professional skills.¹⁰⁶

Family Law/Family Law Advanced

(Law Society, 2013f)

The initial scheme is open to solicitors and CILEx Fellows who have carried out a minimum threshold of work in the field. Case reports are required for re-accreditation as is a minimum of six hours of relevant CPD annually. Standards of competence are stated in terms of knowledge of specified areas of law only.

At advanced level (open to solicitors and CILEx Fellows who have passed 'the part two exams in family law and practice' (sic)) individuals may specialise in two or more distinct sub-areas of work of which they are required to have 'in-depth knowledge and awareness' in addition to 'general knowledge and awareness' of other areas of law. Assessment is by submission of case reports and successful completion of scenario-based assessments. Re-accreditation is required after five years in each of the specialist sub-areas. There is no additional CPD requirement over and above the SRA/IPS norm.

Family Mediation

(Law Society, 2012b)

The scheme is in the course of redevelopment because of a government initiative for a single standard for both privately and publicly funded family mediators.

The scheme is open to solicitors and FILEx and has both 'general' and 'practitioner' levels of membership. General membership is allowed once only for a non-extendable period of two years, and is a transition to practitioner membership. There are three routes to achieve accreditation:

- passported through the LSC family mediation competence assessment (which involves case reports, reflective account and case study questions and corroborated mediation experience);
- a development route for those who have previously been general members involving mediation experience, CPD, consultancy, writing, reading and submission of case reports;
- a direct route which allows a foundation training course in place of the general member stage.

¹⁰⁶ Including negotiation.

5. Legal Services Education and Training: Fit for the future?

A re-accreditation process is expected to begin in 2013 (after five years). There is a minimum annual CPD requirement of 10 hours of mediation related activity annually.

Immigration and Asylum/Immigration Law Advanced

(Law Society, 2013g)

The immigration scheme is constrained by compliance with Immigration and s. 84 Asylum Act 1999, and membership is mandatory for those (other than the self-employed Bar) providing immigration and asylum services under an LSC contract. This scheme is open to solicitors, CILEx Fellows, self-employed barristers, and non-solicitors employed in a solicitors' firm or OISC regulated entity. There are four levels of membership: probationary, level 1, level 2 and level 3 (advanced) and additional supervisor membership status. Assessments for each level, against competency standards, are carried out by CLT. Assessment methods involve a multiple choice test, written examination, drafting assessment and client interview. Re-accreditation, by written examination, is after three years in the first instance and then every five years.

Mental health

(Law Society, 2013i)

This is open to solicitors, MILEx and FILEx (sic), trainees and others provided that any non-solicitors are employed by a solicitor. Membership is for three years followed by reaccreditation (subsequent re-accreditations are every five years). Admission is conditional on attending a two-day approved training course but there is also an experience threshold based on representing in (or observing) a number of tribunal hearings and submission of case reports. Reaccreditation is by submission for assessment of further details of experience and case reports. At least six hours of relevant CPD is required annually. A number of standards of competence are stated, but these are not necessarily well-formed, and raise questions as to the mode of assessment, eg: 'Commitment to representing clients with mental disorder'.

Personal Injury

(Law Society, 2013j)

This is available to solicitors and CILEx Fellows who have passed the tort and civil litigation papers. There is an experience threshold based on number and to some extent complexity of cases worked on in the previous three years and the application is supported by submission of three case reports. Reaccreditation is after five years (by further submission of case reports) and there is a minimum CPD requirement of eight hours annually on personal injury related topics. Standards of competence are stated under law, ethics, professional skills and trial preparation under a general umbrella of competence given as:

a practitioner who can identify and advise on a wide range of personal injury and related issues and who does not perform work that is outside of his/her current knowledge, skills and expertise. A competent practitioner will seek appropriate advice and assistance as may be required to enable them to provide a full and effective legal service to their client.

Planning Law Accreditation Scheme

(Law Society, 2013k)

This accreditation is available to solicitors and CILEx Fellows. Initial membership is for five years, following which re-accreditation is required. Applicants must demonstrate 'expertise' in planning work (ie at least three years and at least 300 hours a year) and there are two routes: as a legal associate of the Royal Town Planning Institute)¹⁰⁷ or a grand-parenting mechanism involving

¹⁰⁷ Which involves the same degree of experience in the field together with an essay.

assessment of a 5,000 word essay on a planning topic. Reaccreditation involves submission of CPD records. There are 'standards of competence' but these are not in the form of competence statements, (eg, 'listed buildings'), so it is difficult to see objectively what is being assessed.

Examples of other schemes

APIL

(APIL, n.d. a and b)

The APIL Certificate in Personal Injury Law is accredited for CPD by the SRA, BSB and IPS. Its published syllabus is given by reference to a list of content rather than by learning outcome and is validated by the University of Law. It is not tied to an NQF level but the APIL materials define the level as 'introductory/intermediate' by reference to the SRA. Assessment is by multiple choice test at each module attended.

The APIL quality mark can be obtained by individuals (including barristers), or on a corporate or in-house basis. Individuals are revalidated at five-yearly increments and the website refers to the LSB paper (2011) rating the APIL scheme highly. There are very detailed competency standards (covering 'knowledge, know-how, understanding, behaviour and skills') for each of three levels: 'litigator', 'senior litigator' and 'fellow'. Further specialist accreditation in brain injury and clinical negligence is available to those at senior litigator level or above. In principle assessment is carried out by the individual's own supervisor, on the basis for example that:

Evidence of competent performance will come from the day to day work of the candidate. The judgements required to assess competence, for the purpose of achieving Litigator status, are the same judgements that a firm should be making in determining the level of supervision a fee earner requires, and the extent to which they are able to take certain steps in progressing a claim on their own authority

Accredited individuals must acquire at least 16 hours of APIL accredited CPD annually.

Motor Accident Solicitors Society

(MASS, n.d.)

MASS training is focused on paralegals and its Diploma in Accident Management and Personal Injury is accredited by the University of Law. Each module has stated 'objectives'.

Oxford Postgraduate Diploma in Intellectual Property Law and Practice

(University of Oxford, n.d.)

The Oxford Postgraduate Diploma in Intellectual Property Law and Practice uses learning outcomes and is assessed by coursework and examination (it was previously run by the University of Bristol and developed in conjunction with the Intellectual Property Lawyers Association). Students must be trainee or newly-qualified solicitors or barristers with at least a 2:1 or equivalent, although other qualifications may be accepted. The module specification benchmarks it against the QAA Benchmark statement for law, though it is a postgraduate award, and so, likely to have been set at NQF level 7.

Society of Licensed Conveyancers SLS Quality Assured

(CLC, 2011a)

This scheme is available only to licensed conveyancers and was set up as an equivalent to the Law Society Conveyancing Quality Scheme, in the wake of a number of lenders moving to limit conveyancing panel membership to CQS solicitors' firms. It is intended to increase transparency to lenders and reduce the risk of fraud (CLC, 2011). There is very little public information about the operation or standards of the scheme at present.

Annex III

GMC and GDC revalidation schemes

1 GMC scheme (GMC, 2012)

In 2000, in the wake of a range of well-known scandals and instances of egregious behaviour by doctors, the GMC voted by a substantial majority to commence work on creating a revalidation scheme for the whole profession. After much debate and revision the GMC model that is now being implemented builds on the distinction between registration, obtaining a licence to practise, and periodic revalidation of the licence.

The licence to practise is separate from registration. The licence gives doctors authority to undertake certain activities, such as prescribing and signing statutory certificates, which the law restricts to licensed doctors. It also obliges doctors to be familiar and comply with the current Good Medical Practice standards. Licences are generic (not activity-based) and so do not restrict doctors to work in a particular specialty or field of practice.¹⁰⁸ Revalidation of an individual's licence is functionally separate from the disciplinary process concerning fitness to practice which may affect registration under s.29 of the Medical Act 1983. However, concerns at revalidation may trigger a fitness to practise investigation, and, if necessary, lead to de-registration.

Revalidation operates on a five-year cycle, drawing on evidence doctors have gathered about their performance over the preceding five years. It is thus a process rather than point-in-time 'test'. Revalidation is appraisal-based, and thus tied in with local management and appraisal systems. It requires doctors to undertake regular appraisal and compile a portfolio of supporting information which demonstrates how they are meeting the professional values and principles set out in the Good Medical Practice standards. This requires evidence across the four assessed domains: knowledge, skills and performance; safety and quality; communication, partnership and teamwork, and maintaining trust (GMC, 2011).

Revalidation decisions are made by the GMC on the basis of recommendations from each doctor's 'responsible officer' (normally the medical director appointed for the employing organisation, such as a primary care trust or hospital¹⁰⁹). The responsible officer makes their recommendation on the basis of each doctor's appraisal record and portfolio of evidence. The approach taken by the scheme is essentially a 360° feedback model, drawing on six categories of evidence:

- CPD activity;
- Quality improvement activity (eg audit);
- Significant events (ie critical incident analysis where something has gone wrong in the care of a patient);
- Feedback from patients;
- Feedback from colleagues;
- Review of compliments and complaints.

The Responsible Officer may recommend revalidation or deferral of the decision to revalidate, or notify the Registrar of the GMC that s/he cannot recommend revalidation. The final decision rests with the GMC. The Registrar has powers to request further information or hear representations from the practitioner, and may also refer any question arising from revalidation to a GMC Registration Panel for advice.

¹⁰⁸ Registration without a licence enables doctors to retain GMC registration, and to undertake activities not legally dependent on holding a licence: eg using the title 'doctor', practising overseas (subject to local licensure), non-clinical lecturing or research, or providing medical or medico-legal reports.

¹⁰⁹ This structure is set to change in the context of current reforms to the organisation of the health service, but the principles will remain the same.

2 GDC model (proposed)

(GDC, various dates)

The GDC is reviewing its CPD requirements in the context of an overall move towards a revalidation process (see GDC, various dates), which, from 2014, will include assessment around four topics: clinical; communication; professionalism, and management and leadership.

The details of the scheme are still under consultation, but proposals at this stage indicate that the GDC is also considering an evidence-based approach in which dentists will need to gather supporting evidence to demonstrate competence against a set of standards over a five-year cycle. The framework will specify the evidence which will be acceptable, though it is anticipated that one item of evidence may demonstrate compliance with more than one standard. Evidence must be checked by an independent 'approved external verifier', and it is anticipated that the verification function may be met by both commercial organisations (approved by the GDC) and public bodies. It is proposed that verification will include a mechanism such as a practice inspection or individual performance appraisal, and existing voluntary quality schemes may be adaptable for this purpose. Evidence is likely to include patient feedback on individual dentist performance through validated questionnaires (eg on areas where only patient data provides clear evidence, such as informed consent to treatment).

The GDC model proposes a three stage re-validation process:

- A compliance check, which will apply to all dentists who must submit a declaration of compliance; there will be a random audit to check the veracity of declarations. In the random audit, the GDC will ask dentists to send in the certification from the approved external verifier, as evidence that their compliance with standards has indeed been checked;
- A remediation phase, which will provide an opportunity to dentists who do not pass Stage 1 to remedy deficiencies;
- An in-depth assessment, which will apply only to dentists who fail to demonstrate their compliance at the end of the remediation phase.

Introduction

- 6.1 The structural and process changes in Chapter 5, and the other developments in this report, will need to be implemented in concert with the changes in regulation mandated by the LSA 2007. The regulatory objectives of the LSA 2007 play a critical role in setting the future scope of regulation of LSET, which will also need to be determined on a risk basis. This chapter focuses on four key areas where there could be specific risks in meeting the regulatory objectives:
- the need to ensure fair access to LSET;
 - the need to ensure that legal professionals will continue to be competent throughout their practising careers;
 - the question whether to extend regulation into paralegal and currently unregulated work;
 - the importance of addressing information needs for prospective students, potential employers, and prospective clients.

The chapter concludes by linking these to a number of collaborative, structural, initiatives that are intended to support cultural change in the future regulation of LSET.

Fair access and barriers to entry

- 6.2 Fair access to legal education and training underpins both access to justice and other objectives of the LSA 2007.¹ By enabling employers to choose trainees from a wide talent pool that is shaped more by ability than historic opportunity, effective fair access policies have the potential to drive up the quality of those delivering regulated services, and ensure that regulated professionals are representative of the society they serve.
- 6.3 Two overlapping problems exist: specific barriers to access to the sector; and the absence, in some areas, of co-ordinated strategies to support and enhance fair access. These are addressed under four main headings:
- diversity and the cost of LSET;
 - informational barriers;
 - recruitment criteria and processes;
 - the role and impact of diversity schemes.
- 6.4 Access to undergraduate legal education is already regulated as part of the established infrastructure in place within the HE sector as a whole. Universities and further education (FE) colleges undertaking higher education (HE) level work in England must have an access strategy and agreement approved by the Office for Fair Access (OFFA). OFFA is also currently working with the Higher Education Funding Council (HEFCE) to develop a national strategy on access to higher education, which is expected to be published by the end of 2013.² This report therefore considers only those stages of training that are within the primary regulatory responsibility of the frontline regulators.

Diversity and the cost of education and training

- 6.5 The expense of LSET and its potential to function as a barrier to accessing training and employment were a recurrent theme across the LETR research data.

¹ See regulatory objectives (d), (f) and (h).

² See <http://www.offa.org.uk/national-strategy-for-access-and-student-success/> for further information.

The QLD

- 6.6 Widening participation policies over the last two decades have undoubtedly changed the composition of the undergraduate population. The law student population today, is predominantly female with a proportionate over-representation of BME students relative to population norms. In that sense, the sector performs 'well' in terms of those diversity criteria (Literature Review, Chapter 7).³ In other respects, progress has been more limited. As noted in the Literature Review, and in the latest Milburn Reports (2012a, 2012b) progress on widening the socio-economic origins of the student population, particularly within elite universities has been slow, with consequences for social mobility and the diversity of the professions.
- 6.7 It is still too early to assess the likely longer term impact of the 2012 changes to higher education funding in England.⁴ The headline trend for university entrance in 2012-13 showed a fall in demand across the board in England. However underlying data indicate a more complex picture, in which entry rates for 18-year-olds remained close to recent levels and the participation rate among young disadvantaged groups showed some increase, particularly at higher tariff institutions (UCAS, 2012). Furthermore, data on application rates at the end of the initial application cycle for 2013-14 offer some evidence of a potentially rapid bounce-back from 2012. These indicate a 3.5% headline increase in the number of applicants across the UK, as compared to the same point last year, with law applications showing an above average increase of 5.3%. Applications from disadvantaged 18-year-olds⁵ are also running at close to record levels (UCAS, 2013).
- 6.8 The direct effect on recruitment into vocational training will not be apparent for another two years, and the extent of interest in alternative pathways, and alternative legal careers remains somewhat speculative.

The GDL /CPE

- 6.9 The effect of the new undergraduate fees will not reach GDL recruitment until the lead-in to the academic year 2015-16. For non-law graduates the GDL/CPE adds a further year to the qualification pathway at a basic cost (fees only, based on 2012-13 figures) of between approximately £5,000 and £9,500. Some GDL students will obtain financial support or scholarships to assist with the cost of the course, but a significant proportion are self-funding, often reliant on an element of parental support. The GDL population appears to be relatively elite: the Law Society Cohort Study (Shiner and Newburn, 1995) demonstrated that students from lower socio-economic classes and BME backgrounds were less likely to take the CPE than a law degree. More recent data also highlight that the GDL cohort may be less ethnically and socially diverse than the equivalent LLB population.⁶
- 6.10 Central Application Board (CAB) data also demonstrate that GDL student numbers have been expanding steadily since the mid-1990s, virtually doubling between 1996 and 2009. However, the recession has since seen numbers decline by about 13% between 2010 and 2012. The GDL may shrink further in a continuing recession, and possibly become more elite. Changing the duration and cost of the GDL would be likely to have further negative consequences for diversity.

3 The current gender distribution in fact points to the growing challenges of engaging boys and young men in conventional (higher) education, particularly those from some BME backgrounds - see Literature Review Chapter 7. It is notable that among disadvantaged groups, young women are currently 50% more likely than young men to apply to UCAS (UCAS, 2013).

4 The fees of students ordinarily resident in Wales are subsidised by the Welsh government by a tuition fee grant above the threshold of £3,465.

5 UCAS uses two measures of disadvantage, POLAR2 and IDACI. POLAR2 (Participation of Local Areas) classifies small areas across the UK into quintiles according to their level of young participation in HE; it thus maps the chances of young people entering HE by variations in where they live. The Income Deprivation Affecting Children Index (IDACI) is an index calculated from the proportion of children under the age of 16 in an area that live in low income households.

6 Statistics from the CAB for full-time GDL places in 2011/12 indicate that 71% have graduated with a First or 2:1 (compared with less than 60% of law graduates) and around 23% from BME origins (compared with 32% of law graduates). CAB does not identify the degree awarding institution; however, unpublished data from the University of Law, which is the largest full-time GDL provider, indicate that based on its latest five year average, 45% of its cohort have graduated from Oxbridge or a pre-92 university (with 45% from a Russell Group institution). Thanks are due to the University of Law for sharing this unpublished data with the research team.

Cost of training for barristers and solicitors

- 6.11 The high cost of vocational training,⁷ combined with the number of available places on vocational courses, was a particular issue of contention among LETR research respondents. Many were critical of a system which, with LPC fees rising to over £13,000, and BPTC fees as high as £16,000, they saw as operating to the benefit of course providers more than the trainees or employers. This was particularly evident in individual responses to the online survey, in which there were many comments to the effect that, 'providers make substantial profits by giving false hope to many students. This must be stopped'.⁸
- 6.12 Financial risk itself is a potential barrier to entry. It is not known how many graduates are deterred from vocational training by cost. As noted in Discussion Paper 02/2011, there is evidence that the LPC has been relatively market sensitive, with a longer-term tendency towards equilibrium between supply of, and demand for, trainees. This is not true of the BPTC, where student numbers have remained high despite a continuing decline in the number of pupillages.
- 6.13 From a diversity perspective the cost of training is a matter of concern. The current system inflicts the greatest financial burden on those who are at the greater risk of not progressing to a training contract or pupillage: graduates from non-elite universities, and those who have not been able, because of their social or financial circumstances, to build the preferred CV.⁹ By contrast, many of those who are offered training contracts ahead of starting the LPC will be sponsored through the course by their future employer. Similarly the Inns of Court provide scholarships and bursaries, covering all, or more often part, of the course fee, to approximately 500 students each year (BSB, 2008:17). Even allowing for the fact that not all pupillages will necessarily go to scholarship students, in the context of an annual competition for fewer than 500 pupillages, the risks of taking the BPTC must be significantly higher for non-scholarship students.¹⁰
- 6.14 Responses in the research data indicated widespread concerns about the future impact of the funding changes in degree education and increased levels of indebtedness amongst trainees. The prospect of the total debt for English students who have completed a degree and vocational training climbing to £50,000 to £60,000 or even more, could have a disproportionate impact on non-traditional and disadvantaged entrants, who may be more likely to come from social and cultural origins that are more debt-averse.¹¹ This was thought to create particular challenges for the Bar, given the risks of self-employment, and the increased financial pressures on publicly funded work.¹² Respondents also suggested that the increase in university tuition fees¹³ would lead more students to consider CILEx qualifications and apprenticeship-based routes.

7 The cost of the LLB or GDL also needs to be factored in to the total cost of training for these professions - see para 6.14 below. They have been presented separately here in recognition of the fact that they are different cost elements, shaped by different institutional contexts, and because LLB costs are not, with growing numbers of graduates entering CILEx membership and the smaller professions, exclusive to those intending to become solicitors or barristers.

8 Barrister, online survey response.

9 As one participant commented:

I've been to places and I've been told 'Your CV looks good, but you don't speak enough languages. You haven't travelled'. And ... I can't afford to travel places, I'm trying to pay debts. ... I'm sorry: I volunteered for 8 months, I'm sorry I couldn't go to Cambodia. It's like people need to have all these experiences and backpacking in Cambodia!
Paralegal

10 There is a patchwork of scholarships (which may take financial means into account) and merit awards for the GDL, LPC and BPTC. Awards are made by some providers, though the number, values and terms vary widely, and a number offer no awards. The Inns of Court commit substantial funds into BPTC scholarships and pupillage awards, some of which are based on means, and the Law Society also offers both an LPC bursary scheme and around 40 awards annually as part of its Diversity Access Scheme.

11 Variation in cultural attitudes to debt was touched on in Discussion Paper 02/2011, and highlighted by a number of stakeholders. For research evidence of this phenomenon, see Callender and Jackson (2005).

12 See, eg, the response of the Young Barristers' Committee to Discussion Paper 01/2012, and the Advocacy Training Council's written comments:

Saddled with an apparent debt of £50,000 and upwards many may no longer wish to take the risk of embarking on a self-employed career. The diversity and number of new recruits will accordingly suffer. The issues which are regularly raised in criminal trials demand a diverse pool of advocates. The public will be deprived of such a pool of advocates if fresh recruits go to other areas of law which are better remunerated.

13 See fn. 4 above.

- 6.15 The availability of training contracts and pupillages is determined largely by the market and the workforce decisions of individual training organisations. For both solicitors' and barristers' professions there is a relatively strong correlation between the number of training contracts or pupillages available and the number of associate positions/tenancies being offered. There is, thus, in market terms, little shortfall between the number of training opportunities and actual jobs in the market. The problem, highlighted by many participants in the research, is rather the upward supply-side pressure generated by the numbers graduating from professional training for these two professions.

CILEx qualifications

- 6.16 Cost of training issues in respect of CILEx qualifications are less daunting. Qualification, from the start of level 3 to completion of the Fellowship award, costs at current fee levels around £7,000, spread generally over a four to six year period. For law graduates entitled to complete the Graduate Fast-Track Diploma, the cost is approximately £2,000.
- 6.17 The majority of CILEx trainees study part-time whilst working,¹⁴ and a recent (unpublished) survey conducted by CILEx indicated that about 50% of trainees received some financial contribution to their fees from their employer. Government funding policies designed to encourage training had meant that CILEx students aged over 24 and studying at level 3 were required to pay only half the cost of training courses. From March 2013, however, mature students are obliged to meet the full cost of courses, though student loans through the new Further Education Loans (FEL) scheme are being made available. The Department of Business, Innovation and Skills' own impact assessment (2012) suggested that this could take 150,000 adult learners out of the adult and further education system. Because a high proportion of CILEx trainees are in employment, the impact of this change may not be as significant as it is in some areas of training, though at this stage it is too early to say for sure. CILEx level 6 courses do not attract higher education student loans, so trainees must already rely on their employer or self-funding for those.
- 6.18 The greater financial barrier, however, is for those CILEx Fellows who might wish to qualify as solicitors, since they must complete the LPC, either full- or part-time. For many, since this may not be simply a matter of 'progressing' to a solicitor's role in their existing firm, taking the LPC carries risks as well as costs:

[I]n its current regulatory form [the LPC] is for most a major cost and time barrier, and without a prior offer of a qualified solicitor's job at the end of it, it is no surprise that this route appears unattractive to the majority of those [wishing to re-qualify].

LETG response to Discussion Paper 02/2011

- 6.19 The absence of any accreditation of the level 6 practice units and professional skills units against the compulsory elements of the LPC was commented on critically by both CILEx¹⁵ and a number of its members during the research.

¹⁴ 70% of the English CILEx centres are located in postcodes falling within the bottom 50% of the Multiple Deprivation Indices. Some concerns were expressed by participants that the number of centres offering level 6 units was declining, which disadvantaged those who favoured a face-to-face learning environment.

¹⁵ See CILEx response to Discussion Paper 02/2012 (Qu. 3).

6. The Future Role and Scope of Regulation

Informational barriers and needs

- 6.20 Participants generally recognised that entry to the professions is competitive but wanted information and transparency to ensure that applicants could make informed decisions. A recurrent theme from students and young lawyers was lack of knowledge and certainty about the education and training process, and limited awareness of where to go for information:¹⁶

...there was nowhere to really go to, to get some sort of balanced impartial advice on what I should do, what my approach should be, my career options. Maybe I should have gone to the Law Society, maybe that's something they actually do offer. But I never found it.
LPC student

- 6.21 Insufficient advice and information apply to all stages of education and training, but particularly from an early, secondary school, stage. Advice needs to support applicants from quite early on in understanding the processes involved, and employers' expectations. This is most critical for those from non-traditional backgrounds:

People are doing law degrees because they think that a law degree equals a job immediately afterwards and they really need to be taught ... from earlier even ... before degree. But you need to be taught the kind of activities that you need to be doing outside of school that end up being on your CV. ... it's just the wider education that people from BME and working class backgrounds need.
Pupil barrister

- 6.22 A number of participants suggested that there was an expectation that the established path would just work to take them through to qualification, whereas this was not the case:

[I]t's almost like a breadcrumb effect, they're taking the next step without thinking well actually another two years from where I am now, if I don't have a training contract, what am I going to do? I will have got myself into debt, specialising to become a lawyer when there aren't as many opportunities as perhaps I may have been led to believe.
LPC student

- 6.23 As a consequence, many respondents had not explored, or even been aware of, alternative legal careers and pathways to qualification. There needed to be more information available about alternative careers:

I am due to start my training contract in September. I did my A-levels, went to university to study law (QLD) and then did my LPC part time (because of the cost). At no point, until I started working in a law firm was any other route to becoming a solicitor highlighted to me. I knew nothing of CILEx or any other available route which in the long term may have saved me time and money. The only reason I have followed the education path that I have is because I did not know there was another available and even if I had, I would question whether it was viewed in the same way. With the costs of legal qualification rising exponentially, and the abolition of the trainee minimum salary, more should be being done at a secondary school level to explain to people other routes of qualification.
Paralegal (online survey)

¹⁶ After costs and the numbers admitted to the vocational courses, this was probably the most widely raised issue by younger respondents.

- 6.24 A range of specific information needs was also highlighted:¹⁷
- the different routes to qualification as an authorised person;
 - the ‘real’ cost of qualifying, and the prospects for employment;
 - the different types of education and training options available (eg, sandwich courses, exempting degrees, distance learning options);
 - information about paralegal work and internships;
 - better information about the range of scholarships;
 - data from education providers about employment destinations.

Recruitment

- 6.25 Barristers’ chambers, solicitors and other employers should have a high degree of freedom in shaping the workforce they need, subject to proper legal and ethical standards. At the same time these are also crucial training decisions - no less than recruitment to university or college. There were many complaints voiced in the LETR research about the recruitment processes of firms and chambers. Three barriers to access are mentioned: reliance on A-levels and tariff scores; access to work experience, and the focus on recruitment from elite universities.

The use of A-levels/UCAS tariff points as a preliminary or primary selection criterion

- 6.26 Previous academic qualifications are clearly an indicator of certain academic skills and capacities, and so are of relevance to employers where those academic capabilities are important to the role. At the same time, there is clear evidence, highlighted in Discussion Paper 02/2011, that performance at public examinations is also shaped by a range of cultural and economic factors, so that such qualifications may fall short of being objective measures of intellectual ability. Mature students, in addition, suggested that reliance on their distant A-level grades failed to recognise other valuable attributes acquired by experience.
- 6.27 A particular concern is the use of UCAS tariff points as a sifting criterion for access to graduate recruitment programmes. The tariff was not designed for this purpose and using it in this way disadvantages those who may have taken less traditional routes into university, such as mature students and those who have taken access courses. It is notable that the second Milburn report has advised that ‘All employers should stop this practice immediately, as it is both discriminatory and unlikely to be effective as a tool for identifying potential’ (Milburn, 2012a:71).

The significance of prior legal work experience in recruitment decisions

- 6.28 The Milburn Reports (2009, 2012a) on access to the professions have highlighted that work experience is increasingly a prerequisite to securing employment. It may also be a factor in recruiting students to vocational training: at least one BPTC provider makes it a condition of entry to the course (BSB, 2010).
- 6.29 LETR qualitative data suggest that the need for prior legal work experience is growing in the present climate. Respondents to the careers advisers’ survey in particular mentioned the increasing hurdles imposed by recruiters, not just to get a training contract, but to get on vacation schemes, and referred to the demands for more work experience and extra-curricular activities on applicants’ CVs.

¹⁷ Notably by the Young Lawyers’ Forum, and in responses to Discussion Paper 02/2011 from the Young Legal Aid Lawyers and JLD.

6. The Future Role and Scope of Regulation

- 6.30 Work experience raises important equality and diversity issues, including inequality of opportunity (eg, for those with family responsibilities or carers, or for those for whom there may be significant pressure to undertake paid work during vacations) and inequality of access. Discussion Paper 02/2011 highlighted the research evidence which indicates that access to work experience is not equitably distributed. Access to formal work experience is shaped by a mix of credentials and social background: a combination of social capital, high UCAS tariff scores, attendance at a pre-1992 university and prior informal work experience, often achieved through personal or familial connections with the profession (Francis and Sommerlad 2009, 2011).¹⁸ LETR research data have similarly identified the importance of social capital and connections in obtaining access to informal and formal work experience:

Mostly at [Russell Group university] we had all these parents on the phone to their children 'Have you applied for your vacation scheme yet, darling?' ... so it was really the people who were being really looked after got in there.

LPC student

There are significant barriers for students from black and ethnic minorities, students with disabilities and students from low economic backgrounds. They have not had the advantage of family and friends opening doors for them.

Careers Adviser

- 6.31 There is evidence that the requirement for prior work experience is being pushed back, to a point where students who have not undertaken legal work experience at school or informally before the second year at university are at a disadvantage:

[O]ver the last couple of years I've noticed an increase in firms actively seeking previous legal work experience from second year law vacation scheme applicants (ie, it being explicitly included on their 'wish list' and candidates being turned down for not having it).

Careers adviser

- 6.32 This matters because the evidence suggests that access to informal work experience is even more likely than formal experience to be (i) mediated through personal contacts, and (ii) strongly correlated to both attendance at a pre-1992 university, and socio-economic origin (Francis and Sommerlad, 2009).

- 6.33 There is also growing use of unpaid graduate internships in the legal sector. These are now becoming the first rung of the employment ladder in some firms, with the result that the career path is becoming both extended and more uncertain as students are 'starting unpaid [on] internships, converting to poorly paid employment in some cases, and for some, transferring to training contracts or pupillages'.¹⁹ The diversity implications of this change were clearly spelt out by one paralegal:

Many firms are doing that. They call it 'internships' and they're taking on graduates, people with law degrees who have paid the fees for a 3 or 4 year course and are going into voluntary unpaid work. And this benefits only middle-class people, because as a person from a working background, you need to live. You can't go into voluntary work for a very long period of time and it's obviously going to appeal to people who have got ... wealthier parents, who can actually work for free for that long period of time. So, basically, it ... sifts out the working class in a really indirect way. And loads of firms are doing it now. So even to get a paralegal role, people are first working as paralegals for free.

¹⁸ See also Burton (2013).

¹⁹ Careers Adviser (survey response).

Recruitment from elite universities

- 6.34 Recruitment to City firms and the Bar has tended to be dominated by some 10 to 20 'elite' universities. The focus on elite institutions reflects the professions' pursuit of a particular conception of quality, and is justified by claims as to the variability of standards in the university sector, so that, as one solicitor respondent put it, there are actually not enough 'good' law students. The GDL/CPE, which constitutes a significant entry route to the solicitors' profession and the Bar, also plays a part in ensuring the continuing dominance of elite institutions since, although it is used by firms to widen the net for quality recruits, it has tended to have a narrowing effect on the social diversity of the profession. There is a perception that the GDL can operate to the detriment of good graduates from less elite law schools:

[W]hat's happening is that the First class student from [post 1992] is being relegated in order to catch a 2:1/2:2 borderline History student from [Oxbridge].
Academic

Diversity schemes

- 6.35 Discussion Paper 02/2011 noted the substantial level of activity designed to encourage and enable more diverse entry into the traditional professions,²⁰ and recognised the concerns that had been raised as regards the coherence and variable impact of such activities.
- 6.36 Activity includes outreach work both by the universities, and the professions. Concerns have, however, been raised about the lack of evidence of impact for much of this work. The developing national strategy for university activities includes an assessment of the feasibility of a common evaluation framework for institutions to assess the targeting and impact of their access and student success activities. This is due to be published in August 2013.
- 6.37 In terms of profession-led activity, recent initiatives like PRIME, and the Pegasus Access Scheme have been highlighted as models of good practice that take a more co-ordinated and impact-led approach to improving diversity of access. PRIME thus sets out, for the first time, minimum standards identifying those whom work experience should be reaching and what it should achieve. Law firms signed up to PRIME must provide a number of work experience places that is not less than 50% of the number of training contracts they offer each year. In its first year of operation the scheme, which has over 80 law firms now involved, created 751 placements, equating to 60% of the number of training contracts on offer from 20 of the 22 founder firms. The evaluation report of the first year was positive about what had been achieved, noting that 82% of participants fell within the diversity criteria of the scheme, and that the majority of placements worked well, with students reporting increases in confidence, skills and motivation as a result of their experiences (Kettlewell et al, 2012).
- 6.38 The Pegasus Access Scheme is an initiative to provide work placements (mini-pupillages) to school and university students who meet diversity criteria. The scheme was launched by the Inner Temple in partnership with Pathways to Law, the Social Mobility Foundation, the Warwick Multicultural Scholars Programme, and the Inner Temple Schools Project. It currently has 58 participating chambers. Evaluation work on this and other Inner Temple diversity initiatives is being conducted by Keele University.

²⁰ It should be noted that there are currently insufficient data fully to assess performance on diversity criteria by the other graduate professions (IP attorneys and notaries, although see for the current position, Taddia, 2012 and Master of the Faculties, 2012 respectively). The position may be different in other professions, where social mobility is less likely to be an issue - see, for example, the positive references to CILEx in Professions for Good (2012), but inequalities in respect of other diversity markers cannot be ruled out.

6. The Future Role and Scope of Regulation

- 6.39 The critical question for such initiatives is whether they have an appreciable impact on recruitment as well as work experience. It is too early to tell in respect of new initiatives like PRIME and the Pegasus Scheme, and many existing schemes lack formal evaluation. Encouragingly, in its evidence to the research team the BSN reported that:

BSN's Diversity League Table²¹ of the recruitment by the leading firms and Chambers shows that these initiatives are beginning to make a difference in the recruitment of BME trainees.

- 6.40 However, while the BSN League Table shows a significant increase in the proportion of ethnic minority trainees between 2006 and 2011 (from 10% to 16%) that has not (yet) been mirrored by proportionate increases at associate level.²²

Fair access: the way ahead

- 6.41 There are significant limits on what regulation can legitimately do to influence cost in a market-led system of education and training. The proposals in this report seek to address cost, so far as they can, by increasing access to information about the risks of entering high-cost training, and the alternatives that exist, and by encouraging the development of flexible modes of training that will increase opportunities to 'earn while you learn' or complete the qualification pathway by means other than, say, a conventional training contract or pupillage.
- 6.42 Another issue that has been linked to the increasing cost of training is whether there should be a guaranteed normal minimum salary for trainee solicitors and pupil barristers. The SRA decided in 2012 to remove the existing minimum salary requirement for training contracts. The decision was based on a formal consultation exercise and equality impact assessment. It was a controversial and finely balanced decision which generated considerable comment at the time within the profession, and in responses in the LETR research data. So far the BSB has not chosen to follow suit.
- 6.43 The report does not intend to address the question of minimum salaries, despite respondents' reservations about the impact on diversity of such a change. It is not the function of this report to challenge the decision taken by the SRA, other than on clear evidence that its evidential basis was flawed and there has been no suggestion that there was a failure to follow proper process. It is, however, recommended that the decision's impact is kept under review, to evaluate so far as possible whether there is any correlation between removal of the minimum salary and an increase in the availability of training contracts outside the commercial sector and any reduction in the numbers of training contracts obtained by BME applicants.
- 6.44 The data discussed so far indicate a growing awareness of a continuing need to address diversity within the traditional legal professions, and the development of a range of activities intended to broaden access. However, it also highlights the continuation of selection and recruitment practices, including use of tariff scores, internships and informal work experience, which serve, at worst, to block and, at best, to slow down change, and a general lack of coordination and monitoring of diversity activity.
- 6.45 Fair access policies cannot create jobs, as members of the Young Lawyers Forum acknowledged:

²¹ <http://www.blacksolicitorsnetwork.co.uk/diversity-league-table>

²² <http://www.blacksolicitorsnetwork.co.uk/bsn-media/news/289-results-2011-diversity-league-table-and-uk-diversity-legal-awards>.

You can't create more jobs (unless there are in-house jobs where employers would be happy to allow people to qualify if the regulations permitted). So the problem is about who gets the jobs that there are. Different socio economic groups have different attitudes to risk - if you change the bottlenecks, do it to increase the social mix of those who can go into it, not to try create more jobs.

Young Lawyers Forum

- 6.46 However an effective fair access strategy can deliver support for individuals from relatively disadvantaged backgrounds: it can provide more information, advice and guidance about the current situation, and research to monitor the effect of changes and strategic interventions; regulation and guidance on work experience and internships can be introduced or strengthened where required, and flexible, lower-cost, routes into the traditional professions can be developed (cf Professions for Good, 2012). A number of such strategies are proposed in the remainder of this section.

Use of contextual admission data

- 6.47 Contextual data are:
*data used by universities and colleges which puts attainment in the context of the circumstances in which it has been obtained; currently mainly educational, geo-demographic and socio-economic background data.*²³
- 6.48 There was some support for the use of contextual data among respondents, but there is generally a lack of shared understanding across both the HE and legal services sectors as to the nature and purposes of contextual data, the value it adds and the methodologies used. This was reflected in uncertainty and some confusion in responses to Discussion Paper 02/2011.
- 6.49 There is, however, growing pressure on the HE sector to make greater use of contextual data, subject to appropriate safeguards.²⁴ Steps are being taken by UCAS to provide various categories of contextual data to institutions. This initiative has been robustly supported by the Milburn Report (2012b) which draws, among other things, on the established and growing body of evidence showing that students from less advantaged home and school backgrounds do at least as well as their more advantaged peers at university, even when they enter with slightly lower grades. Although the use of contextual data in admission to law - and other - degrees is a matter for other authorities, the evidence available does suggest that it is a development that should be further encouraged.
- 6.50 Developing contextual data for admissions to vocational courses is complex and a matter on which there is much less information and experience. Research and development should be undertaken to establish robust contextual data for vocational training.

²³ Definition provided by Supporting Professionalism in Admissions: <http://www.spa.ac.uk/information/contextualdata/>. Data used may be broadly categorised into four different types:

1. Personal data about the applicant;
2. Area data (eg, postcode or other area data which offers an indicator of disadvantage);
3. School/college data;
4. Participation in aspiration-raising activity (eg, Pathways to Law or other access activity).

²⁴ These include: ensuring institutional policy on the use of contextual data is clear and transparent; ensuring through admissions bodies (UCAS, CAB, etc) that contextual data are provided consistently to institutions; using more sophisticated monitoring and statistical tools to evaluate the impact of contextual data on admissions and retention. Challenges under the Human Rights Act 1998 and Equality Act 2010 may be raised by applicants if contextual data appear to be used in ways that are determinative or override normal admissions criteria; contextual data can only be one of the range of factors taken into consideration as part of normal academic judgement on admissions.

6. The Future Role and Scope of Regulation

Flexible education and training modes

- 6.51 The development of alternative pathways into the legal services sector could play a critical role in enhancing diversity, particularly if they reduce cost and other barriers to LSET. However, it is troubling to note that responses in the research data reveal limited awareness and understanding amongst prospective entrants - and some employers - of the range of pathways that already exist, such as sandwich degrees, suggesting that more should be done to highlight the options that are currently available.
- 6.52 The relative lack of variety in models of vocational training has the potential to restrict development of a more competitive market in vocational training. There is also a lack of information on the performance of vocational providers, including pass rates and data on the diversity profile of the institution or centre. Without such information, the development of a properly transparent and competitive market in vocational training is inhibited.
- 6.53 The divide between academic and vocational providers (for those professions where this is the case) can also be unhelpful as it may restrict the development of alternative provision, such as exempting degrees, that have the potential to reduce the financial burden on prospective trainees.
- 6.54 Alternative routes such as apprenticeship, the development and professionalisation of paralegal roles, and pathways such as work-based learning (discussed below) are likely to be important levers for increasing diversity, and should be supported by regulation.

Access to work experience

- 6.55 Access to work experience continues to be a critical success factor. The commitments by the profession to widen access to work experience are welcomed and encouraged, but problems continue with the accessibility of placements, particularly insofar as access at secondary school level appears to be becoming increasingly important to future career opportunities. The division between formal and informal work experience must be reduced, and proper, transparent and fair processes for selection should be employed in respect of all individual work experience opportunities (as distinct from group or short individual visits to a workplace).
- 6.56 The growth of internships raises a similar concern. Existing practices in some firms clearly run counter to the best practice advice offered by initiatives such as Professions for Good (2012) and the *Common Best Practice Code* (Gateways to the Professions Collaborative Forum, 2011). The Milburn Report (2012a) has also been highly critical of what it perceives to be an 'explosion' in internships in the professions:

Access to work experience is a new hurdle that would-be professionals now have to clear before they can even get onto the recruitment playing field. Given their centrality to young people's career prospects, internships should no longer be treated as part of the informal economy. They should be subject to similar rules as other parts of the labour market. That means introducing proper, transparent and fair processes for selection and reasonable terms of employment, including remuneration
Milburn, (2012a:23)

- 6.57 Accordingly it is proposed that approved regulators have formal guidance in place regarding the offering of internships.
- 6.58 The importance of monitoring and evaluating diversity initiatives was highlighted in Discussion Paper 02/2011; this need has also been highlighted by Milburn (2012a). The commitment to evaluation of PRIME and the Pegasus Access Scheme is welcomed. Whilst this should not be a function of regulation as such, it will be argued in the final section of this

chapter that there is an important co-ordinating function that needs to be addressed, and for which there is some support from the research data.

Access to good quality information

- 6.59 Professions for Good (2012) recommends that professional bodies and regulators should take the lead in providing high-quality information, advice and guidance to school pupils about professional careers. That recommendation is supported, but it is noted that it may do little to assist those mature entrants who are outside the school system. LETR research data highlight the extent to which a lack of access to readily accessible independent and good quality information about opportunities and pathways is a general problem for prospective entrants and advisers. This issue is also addressed in the final section of this chapter.

Assuring competence through supervised practice and CPD

- 6.60 LSET must enable both the initial competence of those entering the regulated sector and also their *continuing* competence throughout their working lives. Professions historically have tended to focus primarily on a combination of initial classroom training and post-hoc legal or disciplinary action as regulatory guarantors of competence. There has been a growing recognition that this no longer suffices. This section considers how supervised practice, acting as the bridge from initial to continuing competence, and CPD - if it can be focused more on the purpose of education, regulation of training environments and audit procedures - can better support and guarantee competence.

Supervised practice

- 6.61 Supervised practice - in the sense of a requirement for a period of workplace learning whilst under training - is a universal feature of the regulated legal services sector. Respondents who commented on this aspect of training were almost universally of the view that some element of supervised workplace training must be retained, yet it performs a varied and sometimes uncertain role in LSET, and experience and quality of supervision remain significant issues for some.
- 6.62 Key issues for regulation are:
- lack of clarity regarding the purpose of workplace learning and its relationship with classroom learning; this is linked to
 - failure to specify outcomes for workplace learning, and the lack of proper procedures for signing-off achievement;²⁵
 - over-prescription of training environments in some professions;
 - lack of effective audit procedures.

Purpose and outcomes

- 6.63 Where purposes and outcomes are not clearly prescribed, there is a greater risk that training will be 'random' (Sherr and Harding, 2002:5) and of uncertain quality, and that workplace requirements are simply time served.

²⁵ Limited training for supervision was addressed in Chapter 5.

6. The Future Role and Scope of Regulation

- 6.64 Specifying outcomes will not necessarily enhance or guarantee the quality of training, unless outcomes are sufficiently specific to be measured, and are referenced and ‘assessed’ as part of the training. Both IWBL (2011) and BMG (2012) reports on the SRA’s WBL pilot independently indicated that WBL provided a more rigorous and more clearly evidenced pathway to competence than the traditional form of training contract. WBL pilot candidates who were employed as trainees reported having to do more work and meet higher levels of evidence than colleagues on standard training contracts. Although initially this was a source of resentment, by the second year of the scheme they were generally more enthusiastic about the WBL approach. Their confidence had increased, they felt they had achieved more than colleagues, and were better able to evidence those achievements (IWBL, 2011). There was also some indication from the reports that it empowered trainees, particularly paralegals, to request development opportunities because they could point to outcomes they needed to meet.
- 6.65 Across the current LSET system approved regulators are not always explicit about the specific functions of the workplace element of training, how it relates to other elements of training, and what outcomes are to be achieved specifically from workplace learning. For example, the BSB pupillage checklists and portfolios focus on four core ‘skills’ - the rules and etiquette of the Bar, advocacy, conferencing and negotiation, and legal research and drafting. Both the SRA WBL pilot and the CILEx Competency Framework involve core outcomes in respect of eight areas:

Table 6.1: SRA and IPS work-based learning competencies

CILEX COMPETENCY FRAMEWORK	SRA WBL PILOT
practical application of the law and legal practice	application of legal expertise
communication skills	communication
client relations	client relations
management of workload	business awareness
business awareness	workload management
professional conduct	working with others
self awareness and development	self awareness and development
working with others	professional conduct

- 6.66 Most of both sets of competencies represent generic professional skills. Some particular points are, however, worth highlighting:
 - Whilst core, technical, knowledge is obviously critical to the professional role, there is some evidence of a failure adequately to address and assess the skills of actual practice (Sherr and Harding, 2002), particularly core communication and client relationship skills. The relationship to the workplace experience can be challenging in some practice contexts where there will be limited client contact in the training phase,²⁶ in which case outcomes may need to be sufficiently flexible to allow for the more incremental development of these skills through initial and continuing professional development.

26 For example, but not exclusively, in commercial solicitors’ and IP practice.

- At the same time it is important to avoid a proliferation of outcomes at this stage, particularly in environments where trainees may still be undertaking substantial amounts of ‘classroom’ learning. Even where classroom training had been completed, a similar point arose in the SRA WBL pilot where there were concerns that it was difficult to evidence the number of outcomes specified over the duration of the period.²⁷
- Much depends on the quality of supervision which can be variable, as evidence from most of the regulated groups attests, even where classroom learning and workplace experience occur in tandem. The quality of supervision and of mentoring is crucial to the value of initial workplace learning as a site of ‘legitimate peripheral participation’ (LPP) (Lave and Wenger 1991; cf Ching 2012). LPP describes how, by directly observing and engaging with the practices of experts, newcomers come to understand the broader context of their work, and become socialised into the values and ethos of the (professional) community.²⁸ They also develop abilities to assess how well they are contributing, and hence the means for self-evaluation.
- The evaluations of both the SRA and IPS pilots (IPS, n.d.a) of a work-based learning scheme also add to the body of evidence which indicates that portfolios and personal learning and development plans make a significant contribution to professional learning. The use of such tools is recommended, linked to specific training outcomes, to assist trainees to complete the educational picture. Where used these should not be overly prescriptive in form. They should be part of a continuing evaluation or appraisal process, even if not formally assessed.
- If a robust outcomes approach is developed, it is advised that approved regulators should consider moving to a fully or primarily outcomes-based approach to periods of supervised practice, such that qualification is permitted on achievement of all the necessary outcomes without regard to time served. It is acknowledged that there may be an argument for retaining, at least as an interim measure, a normal minimum period of service under training. In this context it is crucial the approved regulators have an appropriate audit mechanism in place to ensure that outcomes are properly evidenced and signed off.²⁹

Training environments

- 6.67 Training regulations in respect of the approved professions range from a high level of prescription, through extensive but non-binding guidance to very little prescription. It is recommended that approved regulators review their regulation and quality assurance arrangements for workplace learning and, in particular, evaluate their appropriateness in the light of the regulatory objectives and the development of a more multi-disciplinary and complex legal services environment.
- 6.68 It is important that the regulated community is clear where responsibility for quality assurance rests, and that regulators have procedures and controls in place to assure that training quality is maintained. Where regulation of training is entity-based, the entity should be able to demonstrate the existence of an appropriate training strategy for its regulated workforce and that proper systems for the supervision of trainees are in place, ensuring an appropriate balance between work and training.

²⁷ ‘The learning outcomes were too numerous, overlapping and prescriptive for the intended purpose and took up resources particularly in time causing hesitation about and, in some cases, resistance to adopting such a framework in the future’ (IWBL, 2011, para. 3.16). It was also apparent that an overly prescriptive approach to portfolio contents and evidence could significantly increase the difficulty of the task. A similar evaluation of the challenges of evidencing particular outcomes was carried out in respect of the CILEx pilot (IPS, n.d.a).

²⁸ Interestingly this is highlighted in the IWBL (2011) report in terms of the deepening understanding of professionalism displayed by paralegal participants.

²⁹ There is a risk of abuse here, if employers were to use the concomitant ability to refuse to sign-off on a competency as a way of keeping an individual nominally in training, but effectively as ‘cheap labour’. This points to the importance of regulators’ monitoring both individual supervision records, and longer-term patterns of signing-off by training organisations.

6. The Future Role and Scope of Regulation

6.69 Subject to such safeguards it is proposed that there is scope to revisit:

- **Flexibility of supervision:** Current regulatory constraints on who can supervise are an issue for some, notably in the in-house context for the Bar³⁰ and for solicitors both within firms³¹ and in-house. Government lawyers also highlighted the complexity of wanting to have a barrister supervise a training contract. Such issues are likely to arise increasingly in the context of ABSs.
- **Opportunities to provide training outside approved training organisations:** There was widespread agreement that WBL provided a more flexible approach enabling non-traditional candidates to qualify as solicitors. This was particularly valuable to organisations that did not offer training contracts or could not offer training contracts in the current economic conditions. This was echoed in the LETR research data:

It seems to us that greater flexibility in the routes to qualification as a solicitor are of vital importance not just for diversity and social mobility but also for ensuring high-level legal services professionals in non-commercial areas of law. We recognise that if the training contract remains the 'only' way to qualify as a solicitor (CILEx route noted), it seems inevitable that the number of qualified solicitors working in non-commercial areas will continue to decrease over time given that training contracts are increasingly concentrated around the 'Top 100' commercial law firms.

LETG response to Discussion Paper 02/2011

6.70 A WBL approach, requiring demonstration of achievement against outcomes has been adopted as the approach to qualifying employment for CILEx members. By contrast, some SRA WBL pilot solicitors' firms were not yet ready to see WBL replace the existing training contract model in its entirety. There are clearly challenges in providing a directly equivalent experience, particularly in contexts where it may not be possible to provide the necessary range of practice experience to meet the current requirements for a training contract. At a minimum, some of the SRA WBL tools could be brought in to enhance the consistency of training under the traditional training contract in line with the recommendation of this report that day one outcomes should be adopted. Work-based pathways should also be available as an alternative means of achieving those outcomes.

Audit procedures

6.71 If workplace learning is to be effective, there needs to be a realistic method and likelihood of audit. In a number of contexts it is not clear that such powers are utilised (eg, by the SRA), or exist to a significant extent (eg, under the IPReg schemes). Audit requirements should not be too onerous, but must include the power to access or call for records and make random visits if required. Workplace learning in this context could be usefully developed as part of a system of lifelong learning, linked to CPD.³²

³⁰ This links to the larger issue of the application of the Pupillage Training Organisation regulations to the employed Bar: see BACFI submission and also Europe Economics (2013).

³¹ Where the trainee supervisor must be a solicitor, barrister or experienced legal executive. This appears to set limits on the use of Registered European or Registered Foreign Lawyers as supervisors, as well as creating some regulatory issues around outplacements to clients or overseas branches of firms.

³² Audit powers are important as an externally imposed check. More positively, as part of a wider co-regulatory toolkit, regulated entities could be encouraged to reflect on training needs as part of a collaborative approach to practice review. The practice review model has been developed with some apparent success in New South Wales and Queensland, and merits serious consideration. See Briton, (2011), Parker, Gordon and Mark (2010).

Continuing professional development

- 6.72 Continuing education and training received barely four pages in the Ormrod Report (1971), and in Marre (1988). Ormrod and Benson (1979) saw continuing education very much in knowledge terms. The Benson Commission (1979: para 39.89) asserted:

Persons practising a profession need to keep abreast of changes and it is the function of the governing body of a profession to ensure that every member is properly equipped with up-to-date and comprehensive knowledge.

- 6.73 Although it provided a ground-breaking analysis of the skills needed to be developed across academic and vocational education, the Marre Committee too largely endorsed this knowledge-based view of continuing education (see Marre, 1988:139). ACLEC (1997:15), by contrast, emphasised a broader conception of competence, linked to 'reflection designed to clarify and enhance the effect of practical experience'. Whilst CPD has evolved in legal services since 1997, the sector arguably remains behind best practice,³³ with many practitioners resistant to the need for CPD, and tending to equate CPD strongly with external courses and lectures.
- 6.74 Active practitioners must be under a general obligation to maintain currency in the areas of work that they hold themselves out as practising. Chapter 5 also recommended compulsory CPD on ethics and equality and diversity plus appropriate training for management roles. This section will focus on matters of process, regulation and audit of CPD.
- 6.75 CPD signals the professions' commitment to on-going competence as numerous international statements have emphasised³⁴, and recognition of the requirement to meet the needs of clients and consumers. Focus group discussions highlighted some sophisticated, well-developed and well-resourced career development schemes operated by employers, as well as bespoke specialist programmes delivered by membership and affinity groups. By contrast, generic regulatory CPD schemes have tended to lag behind best practice. At the same time, as Chapter 5 of the Literature Review acknowledged, there are significant challenges in seeking to create a fair CPD scheme that is proportionate in its approach and provides value to members of the professions, as well as reassurance to the public. The following principles emerged from the research as significant to respondents in reforming the CPD system.

Flexibility and relevance

- 6.76 Flexibility and relevance should sit together. Respondents were generally keen to ensure that any CPD scheme should give them (more) flexibility to undertake activities that inform and enhance their practice rather than rushing to do any activity to make up the points or hours required:

There must be a tailored and focused CPD system, which gives solicitors the flexibility to drive their own learning and development, but the structure to ensure that they get as much out of the system as possible. Solicitors need to match their CPD to the needs of their work and their career or to support retraining if required.

Law Society response to Discussion Paper 01/2012

The current scheme for CILEx members (to 2014) in this respect is interesting, since it requires members to do a minimum amount of CPD within their declared specialist field.

³³ See Chapter 5 of the Literature Review

³⁴ See, eg, the ABA's MacCrate Report (1992), ACLEC (1997), CCBE (2003).

6. The Future Role and Scope of Regulation

- 6.77 It is questionable how far any system should seek to police individual relevance, because that would limit choice and flexibility. Respondents' views were highly polarised between those who thought choice was important to enable practitioners to respond to market changes, or to facilitate a return to practice, perhaps in a new area of work, and those who were concerned that it simply allowed people to manipulate the system:

Now we think your CPD could be anything that you need at any particular point in your profession. So if Ms X having done 5 years of litigation decides that she wants to go into mediation, her mediation course should count. And if coming back from having a baby, she wants to relearn her basic skills that should also count. And if Ms. Y suddenly wants to do, God forbid, criminal law, she should be allowed to do so.

Barrister

It should not be possible to earn CPD points from attending any training course available whether or not it is relevant to the person undertaking the training simply to gain the required number of points at the end of the CPD year.

LawNet response to Discussion Paper 01/2012

You want holistic lawyers, however much practices specialise... CPD should be broader and there should be no restriction if I chose to go to a conveyancing course for a few hours... the law is a fast moving target in any event and I think that's useful.

Solicitor

Doing vs learning

[I]f I look at Lawtel because I want to see what the recent cases have been of general interest... I get a CPD point for doing it but if I look at Lawtel because I want to see if there's any particular cases that have been decided at the moment germane to a particular point I'm writing an opinion on then I can't count that - it's just ludicrous.

Barrister

The 'unaccredited hours' aspect of the current scheme could be extended to allow the updating reading/research which all conscientious solicitors do (including reading the internal updating e-mail many firms produce as well as reading journals etc) to count though perhaps with a consequent increase in the required annual hours total.

CLLS submission

- 6.78 Conventional CPD schemes struggle with how far the informal learning that takes place as part of everyday professional activity 'counts'. The conventional logic suggests what a practitioner normally does and gets paid for doing, is not seen as contributing to development, and therefore should not 'count'.
- 6.79 There may be a case for distinguishing entirely incidental learning from that which is organised as part of a conscious process of self- and career-development, properly reflected upon (non-formal in some typologies as opposed to informal learning). At the same time, theories of workplace learning undoubtedly acknowledge the value and significance of informal learning (see, eg, Cheetham and Chivers, 2001), and to disregard it underestimates the extent to which professional work, thoughtfully and competently done, frequently involves acquisition and deployment of new knowledge, skills and strategies. A sensible intermediate position would be to suggest that the appropriate boundary for CPD purposes is such that claims for informal learning may be permitted, so long as they can be evidenced by some further activity or process of reflection.

Input vs output/benefits approaches

An hours based/points only based CPD scheme is a waste of time. We all see people going on totally irrelevant courses just to get their points. There should be some comment/assessment by your employer that you are competent and capable in doing your everyday job. This surely is where competency and ability to do what you are employed to do should be judged.

CILEx member (online survey)

- 6.80 The weaknesses of historically dominant ‘input’ approaches have been rehearsed in Chapter 2. The possibility of moving to an ‘output’ or ‘benefits’ model has been explored in a number of recent reports and approaches that reflect current thinking on CPD. The essence of a benefits model was summarised in evidence to the research team by the LSCP.

Alternative models of CPD, such as ‘benefits models’, attempt to create a culture of individuals leading their own development programmes instead of being told what to do by their employer or regulator. The onus is placed on lawyers to identify personal objectives and provide hard evidence to demonstrate delivery against these objectives on an annual cycle. The corollary is that these increased freedoms are matched with tougher sanctions in the event of non-compliance, with code of conduct obligations providing a hook. Regulators too should be held to account for the success of their CPD regimes by a requirement to publish a report showing progress against performance indicators.

LSCP response to Discussion Paper 01/2012

- 6.81 As noted in Chapter 2, there has already been significant review of CPD schemes in England and Wales. IPS (2012a, 2012b) is progressing with its own outputs-based system based on activity reviews, while the BSB has consulted on its proposals for a hybrid, cyclical, approach, which draws both on inputs - a proposed increase in hours across a broader range of activities than before - and also outputs, evidenced by prior planning and subsequent implementation of what has been learned, supported by a portfolio which may be inspected by the BSB (BSB, 2011a and 2011b). The review commissioned by the SRA (Henderson et al, 2012) has also proposed the development of a cyclical scheme, retaining an element of hours. This pattern is not inconsistent with recent activity in other common law jurisdictions.
- 6.82 In 2008 the Continuing Legal Education Society of Alberta in Canada launched what appears to be the first purely benefits-based scheme in the common law world (Law Society of Alberta, n.d.). It moved away entirely from a set hours approach by requiring lawyers to identify their own learning needs and create a personal CPD plan on an annual basis. The supposed strengths of the scheme were that it was:
- non-prescriptive;
 - permitted (required) lawyers to take responsibility for their own learning;
 - did not convey artificial or arbitrary messages about the sufficiency of a certain number of CPD hours or points;
 - focused attention on learning activities that were relevant to practitioners at that time.
- 6.83 An initial review was conducted by the Alberta Law Society in October 2010, following completion of its second cycle of operation, and a second evaluation in 2012 (see Brower and Woodman, 2012). The scheme was widely regarded as a success but both reviews highlighted the need for changes that would ensure members were held accountable for developing, ensuring the quality of, and implementing their CPD plans and providing greater advice and assistance on how to plan and reflect on CPD needs.

6. The Future Role and Scope of Regulation

- 6.84 The Alberta approach has not been followed by regulators in the other Canadian jurisdictions, which have tended to develop programmes using numbers of hours, at relatively low levels (around 12 hours) and with a wide range of permitted activities.³⁵
- 6.85 By contrast the Law Society of Scotland in its revised scheme of 2011 has moved to more of a halfway house (Law Society of Scotland, 2011b). This scheme has retained a requirement for 20 hours' CPD for solicitors, of which 15 must be verifiable; that is, the activity must have identifiable objectives and learning outcomes, and be supported by evidence that the learning took place and was relevant to the solicitor's development. There are no prescribed learning activities, and solicitors must identify their own learning needs and construct an annual CPD plan.
- 6.86 The cyclical approach is also proposed by the New Zealand Law Society (NZLS) (2012), including:
- an annual CPD plan identifying learning needs;
 - a record of CPD activity undertaken;
 - self-defined learning 'outcomes' (here used to describe what lawyers thought that they learnt);
 - reflections on future learning needs;
 - a requirement of 10 hours per annum;
 - a broad range of specified activities.
- 6.87 The NZLS proposal is notable in that, while it sets the hourly target low, this must all be verifiable activity; non-verifiable activity, which it defines as reading legal materials, listening to non-interactive audio materials or viewing audio-visual material, does not count. However, non-verifiable activity is recognised in the sense that it may be included in the CPD plan, and lawyers are encouraged to plan for up to 50 hours of such self-study per annum.
- 6.88 These examples indicate that there is some shift towards greater use of cyclical/benefits-led approaches, though schemes have also generally been reluctant to give up hours and cede control to the extent permitted in Alberta.
- 6.89 Discussion of the burdens of such approaches in the LETR research data is clouded by the unfounded assumption (particularly among responses from the Bar) that a move to outcomes or outputs necessarily involves some element of formal assessment and hence re-accreditation. As the examples discussed here demonstrate, this is not the case. The benefits were recognised in a limited number of more detailed responses:

The current inputs based model does not seem to promote the kind of activity that is beneficial in all cases. Whilst it is impossible to build a model that ensures that CPD will be valuable to all comers, a focus on what is being learnt from CPD, reflection on how to incorporate it into practice and planning for future activities, may all encourage a more productive culture. CPD has to be done in an effective manner; built in and reinforced over time and at a stretching level.

The Law Society believes that the key to effective CPD is to undertake it within a cycle of planning and objective setting in discussion with an employer or peers and reporting back on these to see what has been learnt, whilst reflecting on how this impacts the plan for the next cycle. In situations where this is not possible, the regulator must take direct responsibility for ensuring that a plan has been completed, and may take a further interest in ensuring that adequate reporting and reflection has been completed.

Law Society response to Discussion Paper 01/2012

³⁵ See http://www.canadian-universities.net/Law-Schools/Legal_Education.html

- 6.90 Some respondents, particularly in-house and from the larger law firms, also discussed the potential for a more cyclical approach to create better linkages between appraisal and review systems and CPD, which they considered would be helpful.

Cost and availability

- 6.91 The need for any reforms to be sensitive to the costs of undertaking CPD was mentioned frequently, especially in the open response section of the survey:

[B]arristers incur a double financial whammy when they enrol on a CPD course - the cost of the course and the loss of income by taking time out of practice to attend the course. I have not seen any plausible justification for increasing the number of CPD hours for barristers.
Barrister (online survey)

My main concern is the cost of post qualifying courses particularly where the employer will not pay for their staff to attend. The quality and relevance of the course varies with the organisation delivering the training; finding good quality training at the right price comes with trial and error.
Solicitor (online survey)

- 6.92 A number of respondents highlighted the risk with current 'input' schemes that, where CPD is paid for by an employer, the employee may be pushed towards inappropriate or unhelpful CPD because it is available free or at a low cost, or has already been paid for:

The individual's need for CPD to maintain their qualification, allied to the employer's desire to spend as little as possible, combines to create a perverse incentive to 'agree' that CPD has been met even if a development event is not adequate to achieve on-going competency.
CILEx member (online survey)

- 6.93 Cost and availability are also a particular issue for the smaller professions:

The cost of post qualification notarial training and regulation must be proportionate to the modest income generated by most general notaries.
Notary (online survey)

[W]e ... practise in cost law only, so... there's only a very limited number of courses that are out there for ... people to attend, so we're a bit more of a niche market.
Costs lawyer

Conclusion

- 6.94 There is a clear case for liberalising what counts as CPD in some professions and moving towards more output-led approaches. Individuals and entities should have increased autonomy to determine their continuing learning needs, but also a greater obligation to demonstrate the personal value of what is learned. This would accommodate more informal learning, greater reflection, and ensure that CPD constitutes purposeful learning for all participants. It would reduce perverse incentives and reflect best practice within the sector without punishing the majority for the infringements of a minority. In some areas existing systems of authorisation may be too ponderous to adapt to changing needs, unduly burdensome and likely to drive up the costs of CPD. There is also a need to make more effective use of audit and sanctions to ensure that these professional obligations are taken seriously.

6. The Future Role and Scope of Regulation

6.95 In summary, current best practice thus seems to indicate that:

- The adoption of predominantly cyclical or benefits-led models of CPD, requiring participants to plan, implement, evaluate and reflect annually on their training needs is increasingly the norm. A wide range of CPD activities may be permitted, including non-verifiable learning, though there are continuing debates about how much non-verifiable learning may 'count'.
- Schemes may continue to prescribe minimum hours, but this should not be obligatory so long as the decision to move away from prescribed hours is considered justified on a risk-based analysis, and there is a mechanism for assuring that a sufficient level of intentional, meaningful learning takes place over the review cycle. Sufficient in these contexts means appropriate at that time to the needs of the learner, his/her clients, and (where relevant) employing organisation.
- Practitioners should be encouraged to demonstrate an appreciation of the role played by informal learning in their development, and to make the most of informal learning opportunities by converting them into structured learning activities. CPD schemes should not, however, enable practitioners substantially to satisfy their CPD obligations by reference to unstructured informal learning.
- All completed CPD activity for the cycle should be recorded, not just the activity required to comply with any minimum requirement.
- Regulators should support their regulated communities by providing initial training, guidance and tools to assist in maximising the value of the required CPD activity.
- Where this is feasible in resource terms, an online system should be created by the regulator for the submission of CPD plans and logs (where this is not already present). This system could be linked, where possible, to any learning portfolio or other records created as part of initial workplace learning. This type of online space thus provides a reviewable record of lifelong professional learning that can constitute a developmental tool in its own right.
- Supervision and primary audit of CPD plans may be delegated to the entity level. Provision should however be made for the annual random audit of CPD plans by the regulator, and for effective trigger powers to review CPD across an entity where random audit highlights reasonable cause to investigate.

The reach of regulation

6.96 One consequence of the pre-eminence of title-based regulation, built around reserved activities, has been the complex relationship between regulated and unregulated work. This has implications for the organisation of work within the regulated sphere. A regulated entity that undertakes both reserved and unreserved activities could organise its personnel and resources differently in respect of the different regulatory risks and obligations of those activities, and for the delivery of entirely unregulated legal services. However, it is not known how far regulated entities differentiate their approach depending on the existence of such reservation of activity. This section looks at: education and training for the unregulated sector, and the regulation and training of paralegals. It is recognised that the LSA 2007 was predicated on the existence and development of a liberalised market with a presumption in favour of open competition. The regulatory objectives themselves are framed in such a way that regulation will only 'restrict [providers] where it is consistent with the regulatory objectives and better regulation principles [to do so]' (LSB, n.d., para. 36).

Unregulated legal services

- 6.97 Chapter 3 demonstrated that reserved legal activity represents the tip of the legal services iceberg. With some exceptions, there is little information about the scope and scale of legal services activity outside the regulated sector. There is potentially a wide spectrum of legal services workers with a range of qualifications that are not currently regulated including:
- LPC/BPTC/law graduates;
 - those with other specific legal/paralegal qualifications (eg, will writers, loP);
 - those with cognate or partly professional qualifications (eg, CIPD);
 - solicitors/barristers/CILEx without a practising certificate;
 - solicitors suspended or removed from the Roll on disciplinary grounds;
 - those without any formal legal qualifications.
- 6.98 It cannot be assumed that consumers of services provided by unregulated individuals and entities are necessarily at greater risk, but the number and complexity of titles and qualifications across the regulated and unregulated sectors does little to reduce the risks of confusion. For example, the terms 'legal consultant' or 'legal consultancy' are used across regulated and, to a lesser extent, unregulated sectors. It is commonly used by OISC regulated immigration advisers, but also by regulated solicitors' firms³⁶ (including contract or locum solicitors), unregulated firms made up of BPTC/LPC graduates,³⁷ other paralegals,³⁸ and will-writers.³⁹ The uncertain status conferred by LPC and BPTC also becomes apparent in the unregulated sector.⁴⁰
- 6.99 Beyond will-writing, and the work of existing paralegal bodies (NALP, loP), there has been little evidence of professionalisation or attempts to co-ordinate or standardise qualifications.
- 6.100 In conclusion, the issues raised by the unregulated sector reach far beyond education and training. There is clearly a need to identify key work products within the sector and evaluate the risks. This in itself is a substantial piece of work given the paucity of existing research and the difficulty of identifying and accessing elements of the market. It is not the function of this research to pre-empt the LSB's review of general legal advice. Nonetheless, within the parameters of the Review, it is suggested that some reform of the paralegal sector may provide an approach that would support quality goals in the delivery of unregulated legal services.

Paralegals

- 6.101 Paralegals currently fall largely outside the scope of regulation and there is no formal definition of 'paralegal' for regulatory purposes in England and Wales. Internationally, there are two models of paralegal work, both of which exist in the UK, and which offer different core definitions, reflecting rather different functions: paralegals as subordinates to the professional lawyers, and paralegals as independent suppliers of legal services.

³⁶ Media Law Consultancy Ltd, at <http://www.medialawconsultancy.com>

³⁷ See, eg, Executive Legal Consultants Ltd, at <http://www.executivelegalconsultants.co.uk>; Nubian Legal Consultants, at www.nubianlegalconsultants.co.uk; Whitehall Legal Consultants, at <http://www.whitehall-legal.com>

³⁸ Avenant Music and Media Law, at <http://www.avenantlaw.com>; Principle Legal Community Consultants, at <http://www.principlelegal.co.uk/Index.html>

³⁹ See, eg, Findon Legal Consultants, at <http://www.findonlegal.co.uk/cms/>; Rainu Legal Consultants, at <http://www.rainulegalconsultants.com/>

⁴⁰ One paralegal firm website thus: 'Our consultants have extensive legal knowledge having completed either the Bar Vocational Course or Legal Practice Course'. A firm of employment advisers offers the rather more ambiguous 'All of our specialists are fully qualified Legal or HR practitioners (BVC, LPC and CIPD)'.

Paralegals as subordinate professionals

- 6.102 This is the dominant model of paralegal work in the USA and most common law jurisdictions. Paralegals have been subject to indirect regulation in the US since the 1970s - in some cases laid down by state legislation, though more commonly via supervision requirements in the code of conduct of the state Bar Associations (National Federation of Paralegal Associations, 2012), and some paralegal associations have set up voluntary certification schemes. In 1997 the American Bar Association published its own model definition of a paralegal or 'legal assistant' as one who is 'qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible'. The reference to 'employed or retained by' emphasises that the condition is one of supervision but not necessarily employment. Consequently 'independent' paralegals and paralegal firms exist, but to provide services to attorneys rather than direct to consumers. In a number of states 'legal document preparers' are regulated as a sub-category of paralegal, or sometimes as a separate category, able to provide legal information in documentary form to the public (without supervision), but not to offer individual legal advice.
- 6.103 This model of subordinate professionalism is also reflected in the Scottish Registered Paralegal Scheme launched by the Law Society of Scotland (LSS) in 2010.⁴¹ A 'Trainee Registered Paralegal or a Registered Paralegal is not entitled to work in his or her capacity as a Registered Paralegal other than in connection with work done in support of a Scottish solicitor' (LSS, 2011a, para.1.3).
- 6.104 The Scottish scheme is not a full licensure model.⁴² It does not provide initial training but enables applicants with appropriate qualifications (including a relevant degree, Diploma in Legal Practice, or specific paralegal qualifications) to apply to be registered as a paralegal competent to practice within a specific 'domain' or domains.⁴³ Registration is dependent on the trainee completing not less than 12 months of training under the supervision of a Scottish solicitor, being certified competent by the supervising solicitor, and receiving a satisfactory assessment of character and suitability. Registered paralegals undertake to practise only within the domains for which they are registered, and are required to obtain not less than 10 hours' annual CPD.

Paralegals as independent legal services providers

- 6.105 This concept potentially captures two very different categories of paralegal: paralegals who are permitted under a licensure scheme to undertake work independently of other legal practitioners; and a range of persons who may or may not be legally qualified who are providing legal services outside a regulated environment.

41 <http://www.lawscot.org.uk/members/paralegals>

42 It is described as a 'registration' scheme, though it is more than that, and relative to the typology used in the regulatory literature (discussed below), it is closer to a certification than a registration scheme.

43 Currently the domains are civil litigation: debt recovery; civil litigation: family law; civil litigation: reparation law; commercial conveyancing; company secretarial; criminal litigation; domestic conveyancing; liquor licensing; wills & executories. Additional domains are being created and will continue to be created in response to demand.

- 6.106 The best known of the licensure schemes is the Ontario scheme that was established in 2007. By virtue of amendments to the (Ontario) Law Society Act, RSO 1990, paralegals in Ontario are now required to be licensed by the Law Society of Upper Canada.⁴⁴ This was the first such scheme to be introduced in North America, and is thus of some significance. Licensure is based on college training, separate assessment, fitness to practise and continuing CPD requirements. There is no substantial element of supervised practice, though the paralegal associations offer some mentoring.
- 6.107 The scheme exists primarily to provide advice and representation across a range of tribunals, small claims, and inferior criminal courts. A key rationale for the regulation of paralegals was that consumers were faced with a mix of both competent paralegals, and a minority of the less competent, incompetent and unethical, with little basis for telling them apart (LSUC, 2012). This was seen as harmful to vulnerable clients, contrary to the public interest, and damaging to the reputation of paralegals in general.
- 6.108 The scheme was reviewed in 2012 and a number of recommendations have been made to re-visit the entry criteria, competencies, standards of learning and assessment in respect of relevant substantive law and communication skills. In addition to reviewing the competency profile for sole practitioners coming out of training, the independent reviewer also suggested a move to activity-based licensing (eg, specific to small claims court, etc) on the back of the proposed more specialised and substantive training (Morris, 2012). Both the scheme and its obvious teething problems offer a useful exemplar to the Review.

The paralegal sector in England and Wales

- 6.109 There has been little research into the paralegal sectors in common law jurisdictions, including England and Wales and Australia, though one study in the early 2000s (Cowley, 2004), indicated that the occupation in both jurisdictions has suffered from a lack of identity and co-ordination, limited training and a lack of recognised qualifications. Nevertheless, it has still managed to become integral to the delivery of legal services, and of growing importance numerically. This conclusion is to a large degree supported by the LETR research data.
- 6.110 Taking ‘paralegal’ in its narrower sense of those operating in a primarily subordinate professional role, there is, as noted in Discussion Paper 02/2012, and Chapter 3, a diversity of specific paralegal qualifications and entry routes, including CILEx level 2 and 3 qualifications, a range of qualifications offered by the National Association of Licensed Paralegals, Institute of Paralegals accreditation, and qualifications validated by a number of individual HEIs. Only the CILEx qualifications offer career progression directly into a regulated occupation.
- 6.111 A proportion of paralegals are known to be foreign-qualified lawyers who have not wanted or sought to re-qualify via the QLTS or BTT; these individuals may lack any UK legal qualifications, but it is not clear that they constitute a particular risk thereby. In addition to the range of specific paralegal qualifications, and foreign lawyers, the evidence points, as noted in Chapter 3, to extensive use of LPC and BPTC graduates as paralegals within the regulated sector and in-house.

⁴⁴ The Act allows for certain exemptions for individuals acting on their own behalf, other regulated professions that engage in paralegal-type activities in their normal course of work, in-house employees preparing documents for their employer, and trade union representatives acting in the interests of their members. It also permits the Law Society to grant other exemptions through its by-laws. A number of these are contained in sections 28 to 30 of Law Society By-Law 4, exempting, amongst others, municipal prosecutors, legal aid societies, NIP providers, and law students acting pro bono from licensure.

6. The Future Role and Scope of Regulation

6.112 A particular issue within the paralegal sector is the growing use of junior paralegals in what might be described as ‘legal technician’ roles. These roles reflect the growth of commoditised work, with legal activity in organisations being distributed across a range of actors. Entities may thus operate with a small number of authorised persons, ‘qualified’ paralegals and a large number of these ‘technicians’: individuals trained to work on very specific tasks or transactions, for which they may have received basic on-the-job training. The view was expressed that with appropriate training,

you can convert these kids into specialist case handlers - rather than lawyers or paralegals. They don't even need a title. But they will be able to run cases, or assist a litigation team. They'll become an integral part of that team, whether they've got a legal qualification or not.
Solicitor

6.113 However, as noted in Chapter 3, the quality of such ‘technicians’ may be highly variable, and there is some concern across the sector that such commoditised operations can represent a real risk to consumers if training and supervision are not adequate. There is thus at least some perceived need to provide greater quality assurance at this end of market.

Reform

6.114 Direct regulation of the paralegal workforce could include a range of measures, including:

- mandatory registration;
- fitness to practise checks;
- prescribed levels of training;
- supervised practice requirements;
- code of conduct;
- CPD requirements;
- disciplinary procedures.

6.115 These need not all be adopted as a package, and a number could be (and to an extent are already) achieved indirectly through regulation of the employer (eg, training standards, supervised practice requirements) without additional direct regulation.

6.116 Cogent arguments may be made both for and against greater direct regulation of the paralegal workforce. Qualitative analysis indicates that the key arguments for and against can be summarised as shown in Table 6.2. The juxtaposition in Table 6.2 highlights that there is no clear consensus one way or the other.

Table 6.2: The case for and against greater regulation of paralegals

FOR	AGAINST
Employment and economic trends are leading to paralegals performing more, and more complex, legal tasks.	The solution is to enhance standards of supervision and training, not increase the regulation of those being supervised.
Regulation would increase consistency of standards of training and performance.	The diversity of and difficulty of defining paralegal functions might represent a challenge for a standardised framework.
Regulation would make employers and individual paralegals more accountable for the standard of service provided.	Further regulation could increase costs to employers and individual paralegals.
Regulation would confer proper recognition on paralegal work in this part of the workforce.	Additional regulation may reduce flexibility
Regulation, if it included fitness to practise and registration checks, would increase consumer protection.	Little evidence that additional safeguards are required to protect consumers specifically from paralegals.

- 6.117 There was no majority in favour of independent regulation amongst responses to the LETR research. In other words there was a clear view that entity-based supervision of paralegals within the regulated sector would continue to suffice.
- 6.118 Discussion Paper 02/2012 asked whether respondents viewed the current system of qualifications as unduly complex, and whether they favoured the development of more coordinated standards of paralegal education. The majority of respondents felt that the system would benefit from greater coordination.
- 6.119 The case for greater coordination was based largely on three related grounds: transparency; enhancing career development and progression for an historically neglected segment of the workforce; and to spur the development of a stronger market in paralegal training and CPD:

Clearer pathways (and less of them), particularly at higher levels, would help to map career development. This growing group of the profession has historically been neglected in development terms. We don't currently have an entry level/standard for paralegals and I'm not sure how we could - not all paralegal roles require CILEx, for example. Our paralegal group is a wide mix of secretaries who've made the shift to paralegal work without qualifications, Paralegals with law degrees who've failed to secure a training contract, and paralegals who are working towards or have the CILEx qualification. Paralegal roles are very varied... and some with very specific, narrow remits. However, it should still be possible to follow a broad career pathway with defined outcomes at particular levels.
Anon law firm

We are often confused by the myriad of training and qualifications that are presented to us. It surely makes sense to have a clear framework of standards available to all practitioners. This would make career progression and career change (training pathways, exit points and off-ramps) much ...clearer as practitioners would be able to swap and change and use previous relevant training and practical work place experience as credits towards different qualifications.

6. The Future Role and Scope of Regulation

We would like to think that a clearer framework would encourage a wider range of training providers to invest in the delivery of training to a wider audience of lawyers and/or deliver efficiencies - and therefore reduce training costs.

Institute of Professional Willwriters

We agree that the current standards for paralegal qualification are fragmented and complex. They are also poorly understood. Greater clarity and consistency would particularly help the profession with the recruitment of paralegals and would enhance their professional standing.

LawNet

- 6.120 Assuming, then, that entity supervision remains the primary basis for regulating paralegals within the regulated sector, it is necessary to consider what greater coordination might look like. It is suggested that there are three potential elements to consider: diffusion of effective or good practice; development of a competency framework; agreement on levels of qualification.
- 6.121 ***Diffusion of effective practice amongst employers:*** the research did not explore this option in any great depth, though it is an approach that has been adopted in the health and social care sectors, where there has been a higher degree of co-ordination of training and setting best practice standards.⁴⁵ Guidance might include matters such as pre-employment checks and supervision and training, though care needs to be taken to ensure that any such guidance does not result in micro-management by the regulator. The imposition of greater mandatory responsibilities would add to the costs of employment, and the risk of a disproportionate impact on smaller employers would need to be taken into account.
- 6.122 ***Development of a common competence framework:*** as a matter of good practice, it is hoped that employers would support staff at all levels to develop themselves, and a coherent competence and qualification framework can assist in this process by enabling employers:
- to support part-time progression into existing title-based qualifications such as those of CILEx or the CLC;
 - to create their own means of internal career progression; or
 - to develop an alternative qualification system by constructing their own qualifications/awards.
- 6.123 The range of NOS for Legal Advice, and, now, for Legal Services (in the context of level 4 apprenticeships) already provides a basis for such a framework. The research indicated some positive support amongst employers and training providers for the development and adoption of NOS as an underlying paralegal competence framework. NOS provide the benchmarks for qualifications, rather than the qualifications themselves, and thus do not overly restrict the market, while providing some baseline of consistency. They can also be used for defining roles at work, and in staff recruitment, supervision and appraisal.
- 6.124 ***Agreement on minimum or normal levels of qualification*** for certain categories of paralegal work is a more difficult issue, given the range and variety of work that might fall within the paralegal remit. There is little clear justification for setting an overall minimum qualification level. For some support workers purely on-the-job training may suffice, and this need not be reflected in formal qualifications. For other legal administration functions, an award at level 2 could be appropriate, whereas for more technically demanding work, higher level awards would be expected, and a substantial proportion of paralegals are in fact qualified at least to level 6.

⁴⁵ There are a variety of approaches in other sectors. Good practice guidance for social care and social work has been developed on a non-statutory basis by the Social Care Institute for Excellence. The National Institute for Health and Clinical Excellence sets quality standards for clinical medicine, and now has a statutory responsibility for producing quality standards and guidance in social care settings as well under the Health and Social Care Act 2012. An employer-led approach was recommended for the more disparate health support sector (De Montfort University, 2000).

- 6.125 There is a quality case for setting a standard for the certification of designated ‘technician’ roles. This exists in other parts of the sector, for example, patent and trade mark administrators, and in other sectors, including accountancy, construction and surveying, and engineering. The Association of Accounting Technicians (AAT) thus sets its awards at level 3 (intermediate) and level 4 (final), at which level an individual can perform most of the non-audit functions of a chartered accountant. The Engineering Council (n.d) also recognises a technician award (EngTech) at level 3.
- 6.126 Level 3 in the Qualifications and Credit Framework (QCF) implies a capacity to undertake work that involves some complexity, and the ability to perform without close supervision. Level 3 assumes and builds on prior experience of the work environment and, in some trade settings, it is used to indicate possession of basic supervisory skills. It is also the level at which advanced apprenticeships are set, and would normally correspond to about a two year work-based training programme. Within the legal services sector, the first stage of the CILEx Fellowship route already corresponds to level 3. Accordingly, taking this range of factors into account, it would seem an appropriate norm for any terminal ‘legal technician’ qualification.

Registration or accreditation schemes

- 6.127 The possibility of introducing a mandatory registration or accreditation scheme was also advanced in the context of Discussion Paper 02/2012. Generally there was no strong support for compulsory registration or accreditation of paralegals within the regulated sector. The costs of creating a registration scheme may be considerable, and registration by itself does not necessarily offer any added guarantee of competence, though it may help exclude those who are fundamentally unsuitable to work in the sector (De Montfort University, 2000:86-94). Any register would need to operate in ways that maintained currency, accuracy and respect for the rights of the applicant. Cost could be reduced by building a register onto one already maintained by an existing regulator, though this might create some difficulties in achieving buy-in if it were to appear to tie paralegals to a specific (regulated) profession, when they might have stronger affiliations with their own representative body or bodies. It is also not clear that the additional burden of registration is proportionate to the risks represented by paralegals.
- 6.128 Voluntary accreditation against a quality mark, akin to the Scottish scheme, may have greater advantages, as it could provide a mechanism for cutting across the increasingly complex range of qualifications that are emerging in the market place. In the light of apparent government reluctance to extend regulation to currently unregulated services, a national quality mark might also have attractions for those seeking to establish themselves as quality providers within that sector.⁴⁶
- 6.129 There are also limitations and risks in relying on voluntary schemes:⁴⁷
- voluntary schemes are not a substitute for regulation of minimum standards, since, by definition, they do not apply to the whole (regulated) workforce;
 - industry control may lead to standards being set too low, or set to benefit a particular group of entrants;
 - any proliferation of voluntary schemes may increase rather than reduce information problems for employers and consumers;

⁴⁶ As this report was being finalised, the Law Society announced its intention to develop an accreditation scheme for paralegal staff in law firms and ABSs. Details are few at this stage. Whilst this is undoubtedly a step in the right direction, it may not necessarily offer the reach that an independent or combined scheme might have.

⁴⁷ See, eg, LSCP (2011).

6. The Future Role and Scope of Regulation

- if membership becomes mandatory to access certain parts of the market, this risks market players, not the regulators, controlling entry standards, contrary to independent regulation principles;
- without independent accreditation, it is not clear that voluntary quality marks are perceived by consumers to be particularly reliable or add value.

These caveats should be borne in mind in developing any future schemes.

Apprenticeships

6.130 The recent resurgence of interest in 'legal apprenticeships' is also of relevance to the future development of paralegal services. Work on legal apprenticeships has moved quickly.⁴⁸ A number of organisations began offering a level 2 apprenticeship in legal administration in 2012. A higher apprenticeship in legal services (level 4) was launched in March 2013, with a level 3 advanced apprenticeship planned to follow by September 2013. There is also an established level 3 (advanced) apprenticeship in criminal prosecution, which enables apprentices to train within the CPS as Paralegal Officers or Paralegal Assistants. The possibility of developing the apprenticeship model to levels 6 (equivalent to final year undergraduate study) or 7 is also under consideration, but no date has been confirmed for this as yet. Outcomes for all of these awards are set in accordance with NOS for Legal Services which were developed in 2011.

6.131 There are no formal entry qualifications required for apprenticeships, and funded apprenticeships are restricted to those with qualifications at level 3 or below. Some exemptions may be available for those with prior qualifications (eg, exemption from functional skills requirements in English and numeracy for those with equivalent GCSEs).

6.132 Apprentices can progress from level 2 to level 4 or follow the full pathway through each level. Apprenticeships at level 4 comprise two diploma courses: a Diploma in Providing Legal Services, which constitutes the generic 'competence-based qualification', plus a 'knowledge-based qualification' in one of commercial litigation; debt recovery and insolvency, or personal injury. The competence-based qualification is assessed around performance in the workplace, while the knowledge-based qualifications are assessed by examination. The higher legal services apprenticeship has been developed by Skills for Justice, the national Sector Skills Council for the justice sector, in partnership with Pearson, CILEx (the accrediting body for the award) and Damar Training. CILEx accreditation means that the higher apprenticeship constitutes a paralegal qualification in its own right, and can be set against elements of the CILEx professional qualifications, thereby offering the potential for further progression to Chartered Legal Executive.

6.133 Apprenticeships are also of relevance in terms of progression beyond the paralegal sphere. The demise of the five-year articling route following Ormrod has meant that the only non-graduate pathway into the solicitors' profession has been via the CILEx route. This has, in fact, generated relatively small numbers of transfers into the solicitors' profession - 130 or 1.5% of admissions in 2010-11 (Fletcher, 2012). However, interest in non-graduate entry has increased, particularly in the wake of higher university fees in England and their potential impact on diversity and social mobility (in the context of a pattern of already declining social mobility in the professions - see Milburn, 2009, 2012a), and there is a groundswell of political and professional support for developing the apprenticeship route independently, to enable qualification as a solicitor at completion of a level 7 apprenticeship.⁴⁹ Support for a

⁴⁸ The technical information in this section draws chiefly on published sources available through the Skills for Justice (www.skillsforjustice.com/Apprenticeships/Legal-Services) and Higher Apprenticeship in Legal Services websites (www.legalhigherapprenticeships.com).

⁴⁹ Additional work and study for levels 5-7 could require between 36 and 54 months, ie, a total time to qualification as a solicitor from level 4 to level 7 of between five and seven years. This compares to a norm of about six years by the traditional degree route. A variety of HE links and exit points can also be created within an apprenticeship framework to enhance the portability of the training.

non-graduate apprenticeship route was also quite commonly offered in the LETR focus groups,⁵⁰ though concerns about creating a ‘two tier’ profession thereby were also expressed.

- 6.134 This initiative aligns well with the liberalising ethos of the LSA 2007 and has the potential to increase social mobility in the legal services sector. The work of CILEx in this area has provided some assurance that apprenticeships will be built on a robust qualification framework. Nonetheless, two areas of concern should be noted.
- 6.135 First, there may be some uncertainty as to whether the balance between competence- and knowledge-based components will enable apprentices to build sufficient breadth and depth in the law to constitute a significant alternative to the traditional pathway into a legal as opposed to paralegal career. Much will depend on how higher levels of apprenticeship, at level 6 or above, are designed to support that transition. Those bodies engaged in developing the higher level apprenticeship should ensure that training provides the opportunity to develop both a sufficient breadth and depth of technical understanding. Without that there is a risk that the apprenticeship will become a ‘second class’ pathway to qualification.
- 6.136 Secondly, it is questionable how much difference the route will make in diversity terms, or whether employers will tend to use it as a mechanism for recruiting high calibre A-level students directly into paralegal roles. If this is so, then apprenticeships may do very little to interrupt the pattern of social disadvantage that is already present by the end of secondary education, and limit its continuation into the professions. It would be extremely useful for monitoring purposes if plans for gathering diversity data on the workforce could be revised to capture legal apprenticeships as a specific category.
- 6.137 In terms of potential benefits in delivering a flexible, tailored system of training, capable of supporting the diversity objectives of the sector and the LSA 2007, it is recommended that development work on the higher levels of apprenticeship should continue. Key challenges in developing the higher apprenticeship are likely to include:
- Ensuring that competency standards are satisfied at the appropriate level: professional skills for solicitors are ‘signed off’ at level 6 or 7 in the LPC. Through the apprenticeship route it might be possible to sign off at levels 4 or 5. Detailed work will need to be undertaken mapping outcomes against the necessary standards at each level to both assure the level and limit unnecessary duplication of assessment.
 - Consistency issues may arise between traditional and apprenticeship pathways as regards level of supervised training and time served. In essence, do apprentices need to undertake an identifiable ‘training contract’ period, or is the training fully integrated? The principled approach must be to ensure that the extent and duration of any period of supervised practice are determined by whether the outcomes of training have been met, regardless of whether the trainee has qualified by the graduate, CILEx or alternative apprenticeship route. So long as the learning outcomes for the work-based component can be satisfied, there seems to be no logical educational basis for distinguishing a training contract period from any other part of the apprenticeship.

50 Eg, The following comments relate to a medium sized regional firm of over 100 employees. More is learnt in the first two years of employment (currently the training contract) than in any previous years of education. At present, legal firms use educational history to help filter potential employees. So long as each employee has a basic legal education (perhaps equivalent to two years of Law Degree / LPC type subjects) then there is no career based skill that can be taught in universities that cannot be learnt quicker in private practice. A 4 year apprenticeship would be of far more value to the profession than the current wasted years at university. In an effort to increase access to the profession, an employment based career path with a living wage is the only solution.

Solicitor (online survey)

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- Delivering the programme as designed will be a significant test of the sector's ability to provide wholly integrated workplace-led training to the level of the LPC. In that regard, it will offer important lessons to the sector as a whole regarding the feasibility of providing work-based learning in law over a long duration and to a high level of achievement.

6.138 It should also be noted that the Government's recent response to the Richard Review of Apprenticeships in England (2012) has introduced a layer of uncertainty by proposing to review the system of apprenticeships, including NOS, in England (DfE/BIS, 2013). It is recognised that there are problems that have accumulated with NOS, both as a methodology and in terms of a poor quality of standards in some industries. The Richard Review rightly challenges the current approach to apprenticeship qualifications for being too complicated, too focused on the ability to complete a set of discrete tasks, rather than the capability to do the whole job, and leading to a process that is assessment rather than training-led.

6.139 Any new system will still involve the development of standards that are industry-led and outcomes-based, so it may be questionable how much will change, but it is important that these messages are considered in preparing standards for any proposed new higher apprenticeships.⁵¹

Summary

6.140 There are four primary conclusions regarding paralegals and the reach of regulation:

- There is not a strong case for requiring registration or individual regulation of those who are currently subject to entity regulation.
- There are arguments for developing a voluntary recognition scheme or paralegal quality mark, akin to the Scottish scheme, which could involve passporting-in individuals with requisite qualifications, or developing a portfolio pathway for those without passport qualifications. A good scheme could create sufficient benefit for demand to carry over into the unregulated sector.
- There is support from within the regulated sector for more co-ordination of standards for paralegal training. This also links with the development of apprenticeships, and there is a view within the LETR research data that NOS or their future equivalent would provide a useful foundation for setting paralegal standards. There is also a case for recognising a minimum 'qualified' paralegal status equivalent to level 3 on the NQF.
- Work should continue on developing higher level apprenticeships as an alternative pathway to authorised practice.

6.141 Further research should be conducted into unregulated legal activities, particularly in the context of any further government review of the scope of legal services regulation, and as the work of paralegals develops.

⁵¹ Rather unhelpfully, the Richard Review extended only to England; consequently, if substantial reforms are introduced, this raises the possibility of organisations

Addressing information needs and regulatory design - from information hub to Legal Education Council

- 6.142 This final section draws together three key elements of this report and the Literature Review: the need to set appropriate standards and outcomes, the need significantly to increase access to information about LSET, and the need to ensure that these activities are set within an appropriate framework of institutional and regulatory design.
- 6.143 It is clear from the LETR research phase that there are elements of the LSET system which, when viewed as a whole system, are not working. The system does not consistently benefit individual consumers, who have limited guarantees of quality, and inevitably lose out to the commercial sector in the competition for legal resources.⁵² It does not necessarily benefit the professions as a whole, by delivering predominantly one-size-fits all training. It does not benefit many would-be entrants who are facing the prospect of paying £35,000-£50,000 in fees to secure paralegal employment at less than £20,000 per annum. It does not benefit society by limiting the opportunities for those with the right talents from accessing a legal career, or developing that career, by virtue of status-based or other artificial barriers to access and progression.
- 6.144 Not all of these problems can be readily ameliorated by regulatory reform to LSET. The move to clearer, more consistent, standards and outcomes is a critical first step in maintaining quality whilst delivering greater design flexibility to the education and training market. Better information will benefit consumers, entrants and employers, and assist regulators in making better, risk-based, assessments. The gathering and publication of information, in this light, can themselves be seen as critical regulatory functions; indeed, gathering information is regulation.⁵³ However, standards and information must be developed in an appropriate institutional setting.
- 6.145 Both standard-setting and information gathering are collaborative activities. Standard-setting involves a regulator working with members of its regulated community, educators and researchers to understand and then describe the context, determine outcomes and the standard or level at which those actions are to be performed. Information-gathering also requires the collaboration of the regulated community; their understanding of why information matters and the purposes for which it is used can impact both the quality and quantity of data obtained. Collaboration is also essential if the culture of education and training and its regulation is to evolve. Regulation is seldom more than a necessary evil. This view is widespread in the legal services sector. The sector is adapting to a new regulatory environment, shaped by regulatory bodies that are still developing and lack, in some cases more than others, mature systems and structures. The sector has the capacity to be an adversarial and low trust environment. This is not to the benefit of LSET. In a rapidly changing environment providers (and regulators) need to learn best practices quickly and effectively. Regulators must facilitate and encourage, not just accredit and monitor.

⁵² Hadfield (2000) argues that the price dynamics of what is, fundamentally a non-competitive market for legal services are such that corporate and individual client interests are drawn into a 'bidding war' for legal resources. Corporations, as holders of far greater aggregate wealth, are not only in a stronger position to bid, but actively attract services to themselves by virtue of the fact that they are 'a richer feeding ground' for wealth extraction. This goes some way to explain why in legal services markets we see, in effect, excessive competition for entry and access to the corporate hemisphere, whilst private plight and social welfare sectors suffer significant levels of unmet need.

⁵³ See Literature Review. Note also Moorhead's observation, in response to Discussion Paper 01/2012:

A better approach than regulating the content may be to research and provide information on legal education and training which could inform the decisions of students, firms and education/training providers and signal risks and the need for regulation as appropriate.

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Meeting information needs

6.146 Clear and correct information about all of legal education and training is essential for all aspiring lawyers. Good information about regulated and unregulated legal services providers is also essential for consumers. More transparency will build a better marketplace for law jobs and qualifications. In particular, information about any bottlenecks and barriers to entry to the professions should be accessible and transparent so that students and trainees are aware of the risks involved and understand what other pathways might also be open to them. This is particularly critical if sustained and greater diversity is to be achieved:

The need for advice and guidance is acute for less advantaged learners, whose parents may not be in a position to offer informed support, and whose schools may be less practised at scrutinising higher education information, and offering specialist advice on applying to more selective courses.

Bridge Group, (2011)

6.147 A range of significant information needs was highlighted in the first part of this chapter. The importance of diversity data in particular stands out and it is therefore recommended that legal education providers should publish annual diversity data in respect of their cohorts across the range of equality characteristics.

Open information

6.148 By comparison with other jurisdictions, notably the USA, statistical data on legal education in England and Wales are sparse and intermittent. Dixon's report to the SRA specifically states that the:

SRA needs to collate and publish more detailed statistical information about students taking the LPC and those taking integrated degrees from the LPC providers in future.

Dixon (2012:15).

Similarly, while the BSB/Bar Council Bar Barometer provides some very useful headline data, it too lacks granularity. For example, its failure to disaggregate BPTC ethnicity data by domicile or intention to practise in England and Wales severely limits the usefulness of those data.

6.149 The provision of appropriate information cannot be left to the individual professions or regulators but needs to be provided in a co-ordinated overview of the whole sector and for the whole sector. Openly available information is fundamental to enabling entrants and training providers to understand the complex LSET system that is developing. Open information would support the different professions and regulators to see the joint gains to be made by working together towards more rationalisation and simplicity in comparative qualification frameworks, to identify barriers to access better, and to facilitate research which would support all of these.

Data archive

6.150 The recommendation is for an archive hosted as an open web-based research database facility in order to allow potential students, trainees, regulators, policymakers, providers, future researchers, general careers advisers, and anyone else interested in understanding the recent history of professional legal education in England and Wales, to gain a real understanding of the historical and current situation and trends. Regulators should provide and make accessible *in searchable form* information such as a 'quarterly summary of performance measures and statistics' (Dixon, 2012:16), data on numbers in training, and

diversity statistics. So far as possible comparable and consistent data categories should be created to ensure year-on consistency and comparability across regulated groups. The information should be provided in a durable format to ensure longevity in the database.

Virtual advice shop (careers)

6.151 Together with the data archive an internet-based service should be set up providing clear, independent, advice on career routes and opportunities, including information on the range of diversity schemes, and funding. The advice shop needs to be designed to high accessibility standards and with discrete packages of age-group-related content. In addition to information about professions, the site could include diagnostic suitability or aptitude tests. Access could potentially, if funding allowed, feed through into individual face-to-face advice on careers. It could under particular conditions, such as where discriminatory systems or decisions are alleged, act as a portal to further information and advice from the regulatory body concerned.

Clearing house function

6.152 The LETR research remit also required consideration of ‘flexible education and training options, responsive to the need for different career pathways, promoting mobility within the sector and encouraging social mobility and diversity’. In order to promote such options a ‘clearing house’ function should also be set up to facilitate fair access to work experience and to regulate movements across the sector. This clearing house could be set up under the aegis of the LSB or as a joint regulatory initiative. Its functions could include:

- providing a quality mark system for work placements that satisfy best practice standards for fair access;
- providing a central location for advertising work experience opportunities across the sector;
- supporting the sector in mapping and monitoring the comparability of qualifications and developing clear transfer protocols;
- hearing of final appeals from individual regulators’ decisions. In effect this would be a system for final decision on cases relating to movement across, between and among the different professional bodies and groupings, so that precedents might be developed in a transparent system for providing future guidance, assistance and planning for such mobility.

6.153 At present the cost of processing applications that might come from lawyers qualified abroad, or those seeking to transfer between different professions or wanting exemption from different parts of the system of qualification, is borne by each of the individual regulators and professional bodies. The proposal is that all costs will be borne by the clearing house, and dealt with on a more efficient basis by a small team constantly involved in assessing such issues. They would be able to take advice from the individual professions and regulators but as experience grows, this would be less necessary.

Legal Education Laboratory

6.154 A more radical suggestion would see the development of a ‘Legal Ed Lab’ to support these other activities and also assess and test changes to the market. This could be a site where new models of innovative entrepreneurship and the like can be encouraged in young lawyers, and where interplay between legal education and legal practice in all its forms can be encouraged. It could be supported by a range of collaborative and contract funding from a variety of sources, perhaps including the Legal Education Foundation.

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- 6.155 Other jurisdictions have shown imagination and creativity in the development of new forms of support for trainees and young lawyers. Such innovation can be developed practically by a legal education provider, as in the Law Incubator Model from City University New York. There, the Community Legal Resource Network supports students who have graduated from City University New York Law School as they set up and run solo or small-group practices devoted in part to serving low-income communities that lack access to legal representation. In addition to legal content training in areas such as immigration law and employment law, the Incubator trains newly-qualified lawyers in the infrastructure of legal practice, eg, professional technologies, accounting, billing, etc. The model is a successful one, and has been adopted by other law schools such as California Western School of Law in San Diego, and the Illinois Institute of Technology in Chicago-Kent College of Law in Chicago.⁵⁴
- 6.156 The Legal Ed Lab could undertake to coordinate research into changing workforce structures and their implications for training needs. The increasing casualisation of parts of the legal services workforce produces some quality risks for consumers, and, longer term, for employers as it threatens to marginalise and alienate a significant number of highly qualified and motivated (mostly) young people who are finding the realities of a legal career very different from their expectations. Entity regulation provides the regulatory mechanism for addressing such issues, eg, through supervision requirements, best practice guidelines, and the auditing of risk-management capability, but this function requires intelligence that the Lab could help provide. The Lab could also stimulate thinking on innovation. Examining the educational models of innovative providers of legal services, including ABSs, could be a starting point. One recent ABS, for instance, has developed a model of training that involves legal assistants starting 'at the bottom, the triage stage, work[ing] up through the process through the managing info stage, up into law, client management...'. This legal services provider envisages a number of routes:

[legal assistants] may also want to go through the client route which is a big part of our business, not only the legal, we want people to get involved with marketing, business development, IT business info analysis, there is the costing...

- 6.157 Such flexible approaches to whole workforce development potentially develop and support the new forms of employment foreseen by Susskind (2010, 2012) and already emerging in the marketplace. An ability to gather quantitative and qualitative data on the changing occupational matrix of regulated legal services would enable regulators to make better risk-based decisions about the regulation of innovative ways of delivering legal services.

A Legal Education Council

6.158 It could be envisaged that the above functions are embedded within a sector-wide Legal Education Council with the remit to support the legal services sector in maintaining the quality of LSET and to assist the regulators in continuing oversight and review of the LSET system. It could have the following roles:

- oversight and expert advice to regulators and the LSB in a continuing review of LSET regulation;
- maintenance of a clear map to show systems of movement within and between different qualification routes;
- creation and dissemination of advice on standards, qualifications and equivalences, with guidance on educational methods;
- quality marks for work placements, and possibly national paralegal (voluntary) accreditation;
- harmonisation of transfer regulations, including AP(E)L for mature students;
- data pooling and publication;
- sustained development of a 'shared space', a community of educators, regulators, policy-makers and professionals working in provision of legal services, drawing information from other jurisdictions, other professions and other regulators to identify best practices in LSET and its regulation.

6.159 The Legal Education Council would bring together education providers, professional bodies, regulators and consumer representatives in order to carry out these functions. It would provide significant expert support to regulators and the LSB (supporting its responsibilities under s.4, LSA 2007) and perform a co-ordinating function within an otherwise complex and potentially fragmented regulatory matrix. The interests of the different stakeholders will be served by membership in the Council and it should therefore not need separate funding.

6.160 The need for greater co-ordination of LSET activity has been highlighted by every major review of legal education since 1934. The Ormrod Committee called for the creation of a standing Advisory Committee on Legal Education to bridge the gap between the universities and the professions; though an Advisory Committee was created, it never fully performed that function. The Benson Commission suggested some improvements, while Marre (1988:143-5) went considerably further in calling for the creation of a Joint Legal Education Council which would perform some of the functions highlighted above. ACLEC, which was intended to be the response to that call, in turn also proposed setting up, as a statutory sub-committee, a Joint Legal Education and Training Standards Committee to review the setting of standards, provide guidelines on minimum standards, and advise on ways of improving those standards (ACLEC, 1996:104-5). After 70 years of debate, progress on this matter alone would be a singular achievement for the LETR.

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Introduction

- 7.1 The LETR research has drawn together an extensive evidence base of both primary and secondary data to inform recommendations on ensuring that LSET is fit for the future. In this final chapter the report offers information and guidance that will support the approved regulators in developing strategy and policy designed to protect standards, assure competence, foster flexibility and promote access and mobility.
- 7.2 This is a detailed task. The preceding chapters have described evidence gathered during the research phase. They have recounted the views of students, law teachers and trainers, as well as the views of legal sector employers and consumers or consumer representatives. They have identified and explained good educational practice, based on research and literature from the UK and internationally, across a range of professional fields, and have sought to synthesise this information into a set of conclusions and recommendations for the future.
- 7.3 The relative failure of previous reports to make substantial changes to LSET has often reflected an inability to mobilise the support of key stakeholders, despite the excellence of many of those reports and no lack of endeavour in the attempts to institute reforms. As this report shows, many of the themes to be addressed by LETR are not new. The impasse needs to be resolved.
- 7.4 The research phase has spent considerable time empirically investigating what a wide range of stakeholders thought was right or wrong with the current LSET system. Research was then carried out with all those involved to identify what they thought would be acceptable in terms of changes. A wide range of views was expressed. It became clear that removing some significant parts of the system such as training contracts and pupillages would not be acceptable. Often participants said 'If it is not broke; don't fix it'.
- 7.5 The recommendations in this report are therefore designed as part of a socially robust, long-term, approach to a limited number of deeply embedded problems. Their primary purpose is to set up a longer-term set of structures and relationships which will work to deal with difficulties in the system in a much more co-operative, 'co-regulatory' way, building upon real evidence and greater transparency.
- 7.6 This chapter focuses on the key conclusions and consequent recommendations from the research team. These proposals are aimed at preparing LSET for a more liberalised legal services market. It is likely to be a market in which the traditional professions of solicitor and barrister will continue to play a significant role, though perhaps one less central than currently. For some new organisations the workforce structure could comprise a smaller core of qualified individuals surrounded by a set of paralegals, trainees of one kind or another, and support staff. New business entities geared to exploit economies of scale may become more important in specific spheres. In the corporate sphere, new technologies, outsourcing, demand for restructured services and other new ways of working will also be transforming the world of practice.
- 7.7 Society will require a legal services sector grounded on an LSET system that is capable of delivering quality, access and mobility, in a flexible and responsive way.

Quality

- 7.8 The quality and international standing of English and Welsh lawyers is widely recognised and reflects well on LSET. However, the evidence demonstrates that there is little room for complacency. The challenge is to maintain and enhance quality and standards in a dynamic and price-sensitive market. LSET needs to support providers to achieve that aim in the public and consumer interest.

- 7.9 To ensure quality, LSET must focus on delivering new practitioners:
- with an understanding of and commitment to high levels of professionalism and ethics;
 - operating at a consistently good level of quality and across an appropriate range, and
 - in a manner that is sensitive to the cost to trainees and consumers.

Professionalism and ethics

- 7.10 The perceived centrality of professionalism and ethics to practise across the regulated workforce is one of the clearest conclusions to be drawn from the LETR research. Legal ethics was rated ‘important’ or ‘somewhat important’ by over 90% of survey respondents and was seen as a defining feature of professional service in the qualitative data. A majority of respondents thought that an understanding of legal values, ethics and professionalism needs to be developed throughout legal services education and training. Views differed as to what that might mean in practice. There was no majority support for the introduction of professional ethics as a new Foundation of Legal Knowledge for the QLD/GDL. This does not prevent a basis for the study of professional ethics being provided at the academic stage. There is general support for all authorised persons receiving some education in legal values, as well as the technical ‘law on lawyering’.
- 7.11 Three other factors are also significant. The LSA 2007 regulatory objectives emphasise the centrality of the core ethical standards captured by s.1 LSA 2007 (‘professional principles’), as well as a wider notion, reflected across the objectives as a whole, of professional responsibility to society and to the rule of law. The development of OFR has also been seen to require a different approach to education and training in ethical values. Lastly, a greater emphasis on ethics would better align England and Wales to international practice, where a growing number of common law jurisdictions have included some element of ethics, professional governance/regulation and professionalism as part of both initial and continuing education and training in recent years. The impact in the US of the MacCrate statement of professional values, and the introduction of a ‘professionalism’ requirement across the Law Society of Scotland’s PEAT 1 and 2, are influential examples. The PEAT definition of professionalism is particularly commended as a way of capturing the wider commitments of legal professionals to society, addressing:
- the interests of justice and democracy;
 - effective and competent legal services on behalf of a client;
 - continuing professional education and personal development;
 - diversity and public service;
 - trust, respect and personal integrity.

Appropriate range of competence

- 7.12 The tasks of establishing, monitoring and enforcing outcomes and standards of competence are central to professional regulation, and education and training are one of the chief means used by regulators to achieve compliance with quality standards. Competence for the purposes of this report has been defined primarily as the cluster of knowledge, skills and attributes necessary for a person to function effectively in a legal role. Following Epstein and Hundert (2002:227), the report has sought to construct an adequate range of legal competence dimensions, which recognise it as a relatively fluid ‘developmental, impermanent, and context-dependent’ concept. This cautions against specifying competences in too great a detail. It also highlights the risk of focusing on basic, cognitive and practical skills at the expense of developing higher level and meta-competencies that characterise professional work. These high level capabilities include the development

7. Conclusions and Recommendations

of composite behaviours like ‘professionalism’, critical thinking skills and capacities for self-evaluation and reflection. The latter are central to ‘reflective practice’ and need to be addressed throughout the continuum of formal training and on into CPD.

- 7.13 A central recommendation of this report is ensuring that competence is, so far as possible, standardised across the sector as a consistent baseline and at an appropriate level. The robust setting of standards is central to assuring quality and maintaining consistency in LSET, and the process by which standards are agreed has consistently been overlooked in past reviews of LSET. Chapter 4 therefore identifies the need for a collaborative process of defining competencies and setting standards in respect of those competencies. The level of qualification may also need to be revisited as part of that process, but as a general norm, the research indicates that any qualification for a person to act in an unsupervised capacity should be set at a minimum exit level of NQF level 6. A minimum level for paralegal functions is more problematic given the breadth and variety of roles. As a general principle, however, it is suggested that level 3 should be required as a norm.
- 7.14 A wide range of specific areas were highlighted as competence ‘gaps’ in parts of the sector. Key, general, areas are highlighted in the following sections, but these do not preclude the existence of other more localised or specialised needs (highlighted in Chapters 2 and 3).

Legal research and digital literacy

- 7.15 There was a consensus that legal research skills need to be addressed at a number of stages in LSET. Although most stages of training make reference to the need to develop appropriate legal research skills, there are concerns that these may not be sufficiently developed as part of the curriculum or tested as part of the specific outcomes at each stage. There were further concerns that research skills were not always taught well. (It is noticeable that the teaching of legal research on the then BVC was revised for this reason.) The intensity of the GDL course in particular has been seen to constrain the development of research skills in that course and more work should be undertaken to ensure that such skills are appropriately grounded. In reviewing outcomes for legal research, consideration should be given to the BIALL legal literacy and SCONUL outcomes statements.

Communication skills

- 7.16 Greater emphasis should be placed on communication skills throughout LSET.
- 7.17 Particular concerns were noted about the development of generic writing skills at the undergraduate stage, and that students may not be gaining sufficient experience of writing for a range of purposes and audiences. Doubts were also expressed about the consistency of writing and drafting training on the LPC and to a lesser extent during the CILEx qualification process. In the latter case the evidence seemed to suggest that at least some of the concern lay with the gap between the skills as taught in the classroom and as used in practice. Similarly, variations between house styles of drafting and opinion writing and the styles adopted by the LPC and BPTC were also mentioned, on the basis that the transition to practice required some unlearning and re-learning of those skills. ‘Writing’, in this context is not confined to spelling, punctuation and grammar but includes aspects of clarity, style, content and the critical thinking and analysis which inform the document drafted.
- 7.18 Standards of advocacy training on the BPTC and through the New Practitioners’ Programme delivered by the Inns of Court were generally well-regarded. IP attorneys and CILEx members all undertake additional training to obtain advocacy rights, whereas advocacy training for trainee solicitors is found in both the LPC and PSC courses and assumed to take place during the training contract. The advocacy components of the PSC and the LPC were not strongly endorsed, with the amount and quality of advocacy training on the LPC coming in for the strongest criticism. Some CILEx members in the online survey expressed a need for additional advocacy training.

- 7.19 A lack of training for the variety of advocacy settings (dealing with telephone and video hearings, tribunals, statutory adjudication, arbitration, mediation) was also highlighted by some respondents. More generally the growth in numbers of self-represented litigants was also seen as a particular challenge for which new advocates need to be better prepared.

Commercial and social awareness

- 7.20 'Commercial awareness' is a composite attribute that includes numeracy, financial literacy, understanding the general commercial environment in which law firms and entities operate, as well as being alive to the business interests of specific clients, and a better understanding of the transformational role technology can play in delivering legal services. The evidence points to a clear need to make commercial awareness a more explicit feature of training at the LPC stage, particularly for those who are following a corporate and commercial pathway.
- 7.21 There was some evidence of a need for 'social awareness', equivalent to 'commercial awareness' for those operating in high street and particularly legal aid settings, involving the need for appropriate communication skills and empathy.

Management skills

- 7.22 The development of business and management skills, whilst widely acknowledged as important, is not well embedded across the formal LSET structures. The LETR research data highlighted the need to develop training in the context of client relationship management, project management and risk management as well as the higher organisational and leadership skills needed by lawyers taking on senior management roles in organisations.
- 7.23 The need to develop appropriate management and financial skills is particularly great in more vulnerable or high risk practice areas: sole practice, small firms, and publicly funded work. Collaborative and grass roots activities may be best provided by special interest and affinity groups, but there needs also to be more formal engagement by the regulatory and representative bodies to address the seriousness of the risks to the range and diversity of the professions. Mentoring schemes, good quality, accessible information, and (low cost or free) CPD activity addressing the risks of these forms of practice pre-emptively are all recommended. The relative concentration of BME lawyers in many of these more vulnerable areas adds to the importance of such support.¹

Equality and diversity outcomes

- 7.24 There was strong support for integrating equality and diversity training into LSET from a range of respondents.
- 7.25 Equality and diversity training may be better embedded initially in appropriate parts of the professional training curriculum (eg, those focusing on professional communication and ethics) rather than as a discrete or generic topic. Additional training should also be required through CPD at appropriate career points, eg, where individuals take on supervisory, leadership or recruitment functions. Significant recruitment responsibilities (eg, chairing short-listing or employment interview panels; selecting candidates for work experience) should not be conducted by persons who lack equality and diversity training.

¹ It is notable that the Ouseley Review (2008, Recommendation 21) also concluded that: *A comprehensive programme of consultation and engagement with BME solicitors and representative groups should be implemented to understand their concerns and expectations and how best to target SRA (and Law Society) support resources.*

Initial and continuing competence

- 7.26 Much of the focus of LSET has been on establishing initial competence: a baseline of knowledge and skills that form the foundation for a legal career. Until relatively recently LSET has paid less attention to *continuing* competence being demonstrated throughout that career. Whilst initial competence is essential, it is not sufficient training for a working life that may span 40 or more years beyond qualification. This report recommends some transfer of the burden of competence from the initial to the continuing stages of training.
- 7.27 CPD seems to work in spite of rather than because of the current system. While there is high quality training available, and many practitioners take their commitments seriously, it is subject to the risks of 'creative compliance', doing the hours without learning much from them. There is a tendency to define CPD in terms of hours and courses. This can fail to develop informal learning and overlook the need for reflection and evaluation, which are central to the development of expertise. CPD needs to be both more flexible and more structured and useful. Moreover, in the majority of regulated occupations, workplace learning could be more closely linked to CPD as part of a more coherent system of lifelong learning.
- 7.28 Consequently the report proposes that approved regulators, where they have not already done so, should adopt a predominantly cyclical or benefits-led model of CPD, requiring participants to plan, implement, evaluate and reflect annually on their training needs and their learning.

Consistency and quality assurance

- 7.29 Concerns about consistency of standards were raised primarily with respect to the solicitors' profession. Absence of consistency is difficult to address, not least because there is uncertainty about the benchmarks to be achieved. The move to a more robust system of outcomes and standards is therefore a first and essential step in demonstrating consistency.
- 7.30 Regulatory focus on quality assurance of LSET has tended to be on classroom-based education and training, with little attention paid to assuring the quality of workplace learning. Considerable resource is committed by the higher education sector into quality assuring degrees, more so than in, eg, the USA. There is no international quality benchmark, though continuing international demand for UK legal qualifications can be seen as a plausible proxy for quality, and law courses continue to recruit strongly in the global market. Insofar as differences in standards exist, these may reflect a variety of causes, including some legitimate institutional differences in approach to matters such as assessment.
- 7.31 Imposing additional quality assurance requirements on the universities would not seem to be a proportionate response to the problem. The QLD outcomes are very broadly stated through a combination of the QAA benchmark and the JASB Joint Statement. The relationship between these two statements requires some clarification and simplification. A moderate increase in prescription of outcomes would be more proportionate than any greater intervention by regulators.

Assessing the outcomes and means of assessment

- 7.32 Assessment demonstrates that outcomes have been met, and offers some indication of quality and consistency. There are a number of areas where LSET would benefit from more robust and more creative approaches to assessment:
- First, legal values should be assessed in some combination of foundation courses at the academic stage, or their equivalent. If adopted, the 'professionalism' outcomes similarly should provide a pervasive context within which professional knowledge and skills are developed rather than addressed as a discrete subject of assessment.

- Secondly and exceptionally, given its crucial importance across academic and professional education and training, there should be a discrete terminal assessment of legal research, writing and critical thinking skills at a minimum of level 5 of the academic stage. Academic stage providers should retain discretion in setting the context and parameters of the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.
- Thirdly, training and assessment providers should ensure that rigorous and realistic methods of assessing professional skills are adopted, particularly in the context of the range of communication skills (interviewing/conference skills, drafting and advocacy).
- Fourthly, consideration should also be given to developing and evaluating² reflection through a portfolio or personal development plan within professional training and as a preparation for CPD. If resources permit, the portfolio could form part of a more substantial portfolio/development planning tool that supports and reflects practitioners' training through their career.

Supervision and teaching in the workplace; monitoring of supervised practice

- 7.33 Requirements for periods of supervised practice were described in Chapter 2. This showed the considerable variety across the sector in supervised practice requirements. Respondents who commented on supervised practice were almost universally of the view that some element of supervised workplace training must be retained; however, consistency of experience and quality of supervision remain significant issues for some. A number of respondents thought that some form of quality control over workplace supervision was desirable, and not just through a CPD requirement for training. It is important that any such requirement is targeted and proportionate, so that enhancing the quality of supervision does not increase the regulatory burden on employers to the extent that the number of viable opportunities for supervised practice is reduced. The experience of a number of law firms who provide in-house training, and of the Inns of Court in developing training for those supervising pupillages, indicates that effective training can be introduced without it becoming too onerous.
- 7.34 Key issues identified included lack of clarity regarding the educational purpose of workplace learning and its relationship with classroom learning; a failure to specify outcomes for workplace learning, and proper procedures for signing-off achievement of those outcomes; over-prescription of training environments, yet a lack of effective audit procedures. Consequently it is proposed that supervisors or their organisations (as appropriate) must be able to demonstrate that proper systems for the supervision of trainees during periods of supervised practice are in place, systems which ensure an appropriate balance between work and training. Subject to such safeguards there is scope to revisit regulatory constraints on who can supervise; and opportunities to provide supervised practice outside approved training organisations (in professions that approve training organisations), and to establish audit procedures that are not too onerous but which include the power to access or call for records and make random visits if required. Where regulation of training is entity-based, the entity should be able to show that it has an appropriate training and supervision strategy for its regulated workforce, not confined to periods of supervised practice.

² It may be desirable to give providers the option to experiment with either assessing or signing-off the portfolio/plan without grading it.

7. Conclusions and Recommendations

- 7.35 Specifying outcomes by itself will not necessarily enhance or guarantee the quality of supervised practice unless outcomes are sufficiently specific to be measurable and are referenced and assessed. Where this is the case there is a stronger likelihood that outcomes will have an impact on quality. Provided that a robust outcomes approach is developed, approved regulators should consider moving to a fully or primarily outcomes-based assessment of periods of supervised practice, such that qualification - or in the case of barristers and notaries, independent licensure - is permitted on achievement of all the necessary outcomes without the current emphasis on time served. Though there may be an argument for retaining, at least as an interim measure, a normal minimum period of service under training, competence to practise should ultimately be determined by satisfaction of the necessary outcomes to a robust standard.

Specialist accreditation

- 7.36 Further, market-driven moves towards specialisation may suggest a trend in the future towards more modularised qualifications and accreditations. It is therefore recommended that suitably robust specialist accreditation be encouraged and recognised as a substantial part of any revised CPD framework.
- 7.37 The majority of specialist accreditation schemes are voluntary, and thus distinct from any system of activity-based authorisation. Under the right conditions, accreditation can achieve positive outcomes for consumers and professionals alike, but it can also send out misleading signals to the marketplace and appear to offer assurances of quality where the evidence is limited. There are risks, particularly where schemes are owned by the group they are assessing, that tensions may arise between raising public awareness, marketing and real quality assurance. Provided specialist accreditation schemes can demonstrate robust membership criteria, and appropriate assessment/audit and review processes, they should be supported by regulation, eg, in terms of evaluating the risks and hence level of oversight applied to a regulated person or entity.

CPD and continuing learning

- 7.38 The aims of consistency and quality assurance should be reflected more clearly at the CPD stage as well. CPD, by definition will be more personalised and needs-led. The focus at the CPD stage should be on quality assurance rather than content. Consequently the report concludes:
- schemes need not, but may prescribe minimum hours across the board;
 - sufficient identifiable hours/activities should be undertaken in the required areas (ethics and professionalism, and, as appropriate, equality and diversity, management and supervision). 'Sufficient' in these contexts means appropriate at that time to the needs of the learner, his/her clients, and (where relevant) the employing organisation;
 - CPD schemes should permit practitioners to use informal learning as evidence, provided that evidence of reflection and learning from the activity is demonstrated;
 - a limit may be set on the amount or proportion of non-verifiable activity that counts;
 - all completed CPD activity for the cycle should be recorded, not just the activity required to comply with any minimum requirement;
 - regulators should support their regulated communities by providing initial training, guidance and tools to assist in maximising the value of the required CPD activity;
 - provision should be made for random audit of annual CPD plans, and for effective trigger powers to review CPD across an entity where random audit highlights reasonable cause to investigate.

Cost

- 7.39 The high cost of professional training in some parts of the sector, notably for solicitors and barristers, are said to be justified by the need to deliver high quality training, often with relatively low staff-student ratios, and significant investment in teaching resources. LETR research data highlight considerable dissatisfaction with cost and the way in which the system thereby limits access to the profession. This is to the detriment of aspiring pupils and trainee solicitors who spend considerable sums in pursuit of a career that they are never likely to achieve. The impact of such a waste of human and economic resources, and the barriers to development of a diverse and socially representative profession is a growing concern. In a market-based system only some elements of this problem are likely to be susceptible to regulatory influence, so a range of strategies may be necessary to address the problem.
- 7.40 The lack of variety in models of vocational training for solicitors and barristers restricts development of a more competitive market in vocational training. The development of more flexible approaches to training would potentially play an important role in ameliorating the cost. Measures to be considered should include:
- the further development of apprenticeships to the level 7 qualification for intending solicitors;
 - development of new forms of training which integrate more of the vocational stage of training with workplace learning;
 - alternative work-based learning pathways through the training contract, and the development of additional alternative pupillages, particularly in the employed sector;
 - assessment of the viability of a three-year exempting degree model (for solicitors and potentially the Bar) which could substantially reduce the cost of qualification;
 - whether regulators should, on equality and diversity grounds, take price, scholarships and financial assistance into account in future tendering or validation cycles.
- 7.41 The impact of the cost of vocational training on the future composition of the regulated workforce is also a matter of concern in the context of the economic and structural changes facing the sector and increased stratification. Cost was perceived as a barrier to taking on trainees in sole or small practices in particular, and in respect of publicly-funded services for solicitors, barristers and possibly costs lawyers as well. The impact of such changes affects not just the kind of work available for the current generation of trainees to do, but longer term access to legal services and choice of providers for consumers of legal services. Where there are fewer training places for particular types of work, fewer people are qualifying into those areas of work.
- 7.42 It is questionable whether the cost of training should be subsidised or borne across the profession. Separately it becomes necessary to consider whether, as in Ontario, supervised and independent paralegal services might offer a more accessible and cost-effective way of developing access to justice where the intervention of a fully qualified practitioner may not be required.

Access and mobility

Access

- 7.43 The limited availability of diversity data at present makes it difficult to generalise about trends across the sector. Data on solicitors and barristers show approximate gender parity in recruitment. BME entry to the professions is above population levels, but below the level of participation in the base graduate population. IP attorneys have historically been predominantly male, reflecting, particularly in the patent profession, the historic under-recruitment of women into science. Notaries are also predominantly male.

7. Conclusions and Recommendations

- 7.44 A number of challenges were identified by mature entrants who felt that they were disadvantaged in recruitment. They thought they were seen to be less malleable and more resistant to shaping into the employer's image. They had competing commitments such as parental responsibility and they felt they were impeded in accessing pre-requisites to employment such as vacation schemes.
- 7.45 CILEx members, costs lawyers and licensed conveyancers are far more socially diverse occupations than barristers and solicitors; CILEx membership is also strongly skewed towards female entrants. The influx into these occupations of graduates who cannot get into the barristers' and solicitors' professions might reduce their social diversity. If those graduates see these roles essentially as stepping stones to other 'more prestigious' licensed titles, that might also cause perturbations in the training market beyond.
- 7.46 The steps taken by the LSB to obtain diversity data from the regulated professions are welcomed, but this also needs to be matched by a better range and quality of data on participation in LSET (this is discussed further, below).

Equality and diversity in entry

- 7.47 There is concern, and sometimes anger, among those who have invested much time and money in the initial stages of education and then been unable to find qualifying employment within the regulated sector. Respondents mentioned a lack of initial information about risks and career options; the potential for unfair treatment in recruitment; being left in a paralegal limbo; potential for exploitation, and a lack of recognition of prior experience.
- 7.48 Cost and bottlenecks obviously have implications for access, diversity and social mobility. Despite the good intentions of many employers, there are distinct barriers to entry. Three overlapping barriers to access in this respect were identified in Chapter 6: reliance on A-levels and tariff scores; access to work experience, and the focus on recruitment from elite universities. The current buyer's market may mean that employers are more averse to taking unnecessary recruitment 'risks', and prospective applicants who lack social and economic capital, may also be deterred by the risk of not succeeding.
- 7.49 A number of responses recognised the importance of diversity and demonstrated commitment to diversity initiatives. There has been limited evidence as to the amount of difference such initiatives actually make to the workplace (BSN data, for example, suggests improvements are apparent in diverse recruitment but not yet in progression). The commitment to proper evaluation of initiatives such as PRIME and the Pegasus Access Scheme is welcomed. Diversity and social mobility data on apprenticeships should be obtained and monitored.
- 7.50 A focus in existing schemes on attracting high achievers from non-traditional backgrounds into the elite universities may create a skewed approach to questions of social mobility, rather than necessarily putting resources into better enabling those non-traditional students who are already in the higher education system to break through into elite employment.
- 7.51 A number of ways of reducing regulatory burdens so as to open up opportunities are identified in Chapter 6: chiefly the use of contextual admission data; flexible education and training models, and access to good quality information. Commitments by the solicitors' profession to widen access to work experience are to be welcomed and encouraged, but problems continue to exist in terms of the accessibility of placements, particularly as access at secondary school level appears to be becoming increasingly important to future career opportunities as a solicitor. The growth in unpaid internships also raises a set of different concerns about employers taking advantage of the difficult market for trainee applicants. Approved regulators should have formal guidance in place regarding the offering of internships.

Aptitude testing

- 7.52 There have been debates over the need additionally to assess skills and aptitude for legal practice. There is difficulty in distinguishing between the growing numbers of graduates and assessing the quality and consistency of outcomes at earlier stages of education. These difficulties have led to an interest in the potential of aptitude testing.
- 7.53 There was some support, particularly from younger lawyers, for such tests as a means of deterring those unlikely to succeed in qualifying from investing time, effort and finance in the LPC and BPTC. On the other hand there were concerns about the value of aptitude testing and its impact on diversity; and these are borne out by much of the literature. These issues have, for example, been acknowledged by the Bar so that the BCAT is explicitly intended to filter out only the least able, rather than positively to test suitability for a successful career at the Bar. One respondent organisation suggested a voluntary aptitude test as a means of educating entrants about the realities of practice.³
- 7.54 It is not clear at this stage that the benefits of aptitude-based admission testing outweigh the costs and potential risks, and this report calls for a moratorium on their development until further research on the BCAT becomes available.

AP(E)L and fast track entry

- 7.55 Some respondents suggested that existing LSET frameworks do not adequately provide credit for prior experience, whether acquired in the legal sector or outside it, with, for example, substantial reliance being apparently placed on A-level results achieved decades beforehand. On the other hand, some younger entrants considered that some form of prior experience was itself an invisible recruitment criterion, privileging older entrants. Transparent criteria for recognising and assessing prior experience and qualifications should be put in place by all approved regulators.
- 7.56 At present the sector demonstrates a complex mix of formal exemption procedures for specified qualifications (Chapter 4, Annex I) and a number of fast-track means of entry:
- the GDL as a substitute for the QLD;
 - the intensive course for intending registered trade mark attorneys as a substitute for the Professional Certificate in Trade Mark Law and Practice;
 - the BTT and QLTS primarily for overseas lawyers seeking to transfer into the Bar or solicitors' profession;
 - the short form LPC for BPTC graduates.
- 7.57 The numbers involved in most of these processes are small, and there are no obvious reasons why they should not continue. Concerns have historically been raised about the diversity impact of the GDL on recruitment into the LPC/BPTC, and it is recommended that the diversity effects of the GDL should be monitored.
- 7.58 The development of a robust system of outcomes and standards, co-ordinated between the professions, would facilitate the accreditation of prior experience and formal learning against those outcomes and increase the fairness and transparency of exemption and fast-track arrangements.

Mobility between routes and professions

- 7.59 A perceived weakness of the current system is poor mobility in terms of transfer between professions, or parts of a profession, dual qualification, mobility between full and partial titles, and partial qualifications under EU free movement provisions.

³ The Women Lawyers Division (previously the Association of Women Solicitors).

7. Conclusions and Recommendations

- 7.60 A system should not create unnecessary barriers to pursuing a career unless those barriers have a risk-based justification. Horizontal mobility is currently limited by lack of intermediate stages of qualification for employment. Mobility may become an increasingly critical issue if the market becomes more fluid. There may be significant equality and diversity effects in restricting vertical mobility between the smaller and larger professions, and in unduly restricting paralegal access to regulated occupations.
- 7.61 Available methods of transfer between regulated routes and professions were mapped in Chapter 4 (Annex I). This exercise reveals that they do not neatly relate to each other and lack transparency and currency. The rationale for accreditation or refusal of accreditation is not always clear. There is a lack of information regarding numbers seeking or obtaining transfer by various routes.
- 7.62 The harmonisation of outcomes and levels of qualification would facilitate greater clarity and dialogue about horizontal transfer. While it would be wrong to assume that transfers will necessarily be from the smaller to larger professions, the BTT and QLTS demonstrate that outcomes can be satisfied by a rigorous, assessment-based process, and, in principle, these models could be extended to manage the range of domestic transfers as well.

Information needs

- 7.63 A recurring theme of respondents has been the extent to which lawyers, students and consumers lack information - or at least readily accessible information - about LSET.
- 7.64 Information that exists, but is inaccessible to young people considering a career in the law will be of limited utility. Information presented by vocational course providers, or representative bodies might not be trusted by some users because those institutions may be suffering a conflict of interests in providing accurate information about numbers of training and qualifying places. The difficulty of searching for some information may be too high. When employers confine their recruitment to known 'brands' of educational provider, there may be a corresponding lack of information about other educational providers and novel approaches that might suit that employer.⁴ Information gaps and uncertainties invariably create or support mis-information and deliver advantages to entrants with prior connections in the sector or with access to developed or 'inside-track' careers advice, vacation schemes and internships.
- 7.65 Data from students and younger lawyers suggested that there was a strong desire for greater transparency about the cost of training, the prospects for employment and the various pathways and training options available across the sector as a whole. This would provide greater clarity for entrants and employers. Young lawyers also had very little information about paralegal qualifications and careers.
- 7.66 The requirements for HEIs in particular to provide key information sets on student satisfaction and other measures, creates a form of market-based incentive within the education system. The lack of an equivalent set of data on the performance of vocational providers, including student satisfaction, pass rates and data on the diversity profile of the institution or centre, is potentially inhibiting the development of a properly transparent and competitive market in vocational training.
- 7.67 The absence of diversity data at the vocational stage also limits the potential to track progression and performance consistently through the LSET system and into employment for research and equality impact purposes.

⁴ A number of responses indicated that lawyers, including some employers, were not well-informed about the current LSET sector, including availability of part-time routes, sandwich and exempting degrees, whether LPC or BPTC providers offer pro bono opportunities, and so on.

- 7.68 Whilst it is not a function of regulation as such, there is also an important coordinating function that needs to be addressed in terms of advertising, monitoring, and evaluating the range of diversity initiatives for entry into the sector.

Flexibility

- 7.69 An important criticism of the LSET system is its relative lack of flexibility and responsiveness to change. Developments over the last four to five years suggest that some moves have already been made to increase the flexibility of legal education and training. This section explores the potential for further enhancement of the flexibility of LSET design and delivery, and considers some of the work, in terms of research and institutional processes and structures, that will be required to sustain that responsiveness over time.

Flexibility in design and delivery

- 7.70 There are three areas where there is potential to enhance the flexibility of LSET: multiple routes to qualification; common professional training; and integrating classroom and workplace learning. Flexibility here will further other ends for LETR, notably enhanced competence or quality for consumers, greater diversity and, where possible, reduced cost and other burdens on employers and trainees.

Multiple routes to qualification

- 7.71 The report proposes a market-led 'mixed economy' approach to training. There should be a presumption that new, flexible approaches should be encouraged and that the burden should be on the regulator, adopting a risk-based approach, to identify why a pathway should not be permitted.

Common professional training

- 7.72 A range of approaches to common training was explored during the research, but there was limited support for these from respondents. The increasing stratification of legal services, and moves to greater rather than less specialised practice was seen by respondents as running counter to common training. While the debate has tended to focus on some element of fused training for solicitors and barristers, the LETR research data demonstrated quite a high level of resistance to complementary or inter-professional training (which at its crudest might involve module-sharing) at this stage. Common, or shared, CPD on the other hand, was considered favourably.

Integrating classroom and workplace learning

- 7.73 The solicitors' and barristers' professions are distinctive in the sector in taking a linear approach to classroom and workplace learning. All other professional groups demand concurrent or integrated training or find that the majority of students train concurrently with study. There appeared to be a growing stakeholder interest in this topic during the research, supported by activity in relation to the SRA work-based learning pilots, the integration of LPC and training contract, and apprenticeships. Even among those occupations that blend classroom and workplace experience, there may be a marked difference between the experience of integrated classroom and practice based learning, and the experience of classroom and practice based learning simply run in parallel. The majority of training systems that operate a 'blended' approach tend to operate concurrently. Some see this as a virtue. The patent attorneys thus argue that their system of modular examinations is highly flexible and modularised, enabling individuals to select their own path through training. CILEx trainees, while commenting on the challenges of an 'earn while you learn' approach, felt the system worked well for them and were keen that it be strengthened and retained.

7. Conclusions and Recommendations

A blended approach has obvious financial and often logistical advantages; it does enable (opportunistic) synergy between classroom and workplace, but it is arguable how much consistency is actively designed in and whether a stronger integration by design would make a greater difference to the learning.

- 7.74 On balance, further experimentation with integrated approaches is encouraged, though the evidence at present is not sufficiently robust to warrant a wholesale move to more integrated learning for those professions which do not currently adopt that approach. The report strongly supports continued work on both the merged LPC/training contract approach and the development of higher apprenticeships. The latter may be particularly important in testing the capacity of the sector to develop a new blended approach, principally in setting levels of learning against existing standards and ensuring appropriate supervision and the space for learning over an extended period of training. The flexibility that this kind of experimentation may invoke in LSET is critical to future workforce development: it supports innovation and diversity and should assist in creating a more competitive legal education and legal services market.

Future processes and research

- 7.75 Richard Susskind (2012) suggested that the LETR itself should be seen as the start rather than the end of a process.
- 7.76 Many of the developments discussed in this report are at an early stage: the development of ABSs, the trend in employment of paralegals, the impact of the latest legal aid changes, and the effect of university fees. Whilst it might be suggested that there will be more clarity on these issues in five years' time, it is equally possible that a further set of currently unforeseen changes will add to the complexity of the picture.
- 7.77 As Susskind argues, the process needs to move into a more continuing review. The LSB, a number of the approved regulators and the LETR research phase itself have commenced the task of drawing together important information about the sector and its views on change. The gathering of quantitative demographic, diversity and progression data must form a central part of the work of on-going review. Evaluation of ABSs will be necessary as that part of the market takes shape over the next three to five years. More needs to be done to understand the complexities of the paralegal workforce and developments in the unregulated sector, which is difficult to identify and access.
- 7.78 Useful contributions were received from the LSCP and from in-house lawyers as buyers of legal services, but there was limited consumer engagement in the LETR research phase. Consumers are less likely to have clear views about the content and structure of legal education and training, whereas they will know what they would prefer in terms of service. The consumer perspective on LSET remains underdeveloped, and should be addressed by ensuring consumer representation in the next phase of the LETR itself.
- 7.79 In support of such continuing review, the report makes a number of recommendations for the creation of tools and locations for collaboration - an information hub, legal education laboratory and data store. These are central, not peripheral, to the rethinking of the role and function of a regulatory body in respect of LSET. This is a model of regulation by design as discussed in the Literature Review.

Recommendations

- 7.80 In conclusion, the report summarises the main recommendations derived from the LETR research phase. These have all been identified in the body of the report and are included here with limited commentary. Many are stated at a level of generality, as this phase of the research focuses on LSET as a whole rather than on any one particular scheme of professional education and training.
- 7.81 The Literature Review has identified (para 1.30) the impact of structural factors (including resource constraints, information asymmetries, fragmentation of legal work and proliferation of regulators and regulations) making it difficult to design and sustain a coherent network of pathways into and between the legal professions. It also identified the need for enhanced, genuine and continuing collaboration between education and training providers, practitioners and regulators, and the need therefore to consider how such collaboration may be designed into regulatory tools and structures for the future, together with input from consumers. These priorities are reflected in the recommendations which follow.
- 7.82 The full recommendations are listed below. They are organised into four groups: outcomes and standards, content, structures, and review process. There is no particular significance to the order in which the recommendations are presented, and no inferences are intended with regard to the priority of any item.

Outcomes and standards

- 7.83 Adjustments to content and structures of LSET will not satisfy the aims of the Review without attention being paid to what is to be learned and to what standard, defined by reference to competent practice. Consequently attention must be paid to outcomes and standards of LSET.

Recommendation 1

Learning outcomes should be prescribed for the knowledge, skills and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.

Recommendation 2

Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.

Recommendation 3

Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required. They should begin with a set of 'day one' learning outcomes that must be achieved before trainees can receive authorisation to practise. These learning outcomes could be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET. Learning outcomes may also be set (see below) for post-qualification activities.

- 7.84 These recommendations flow from the work on competencies, outcomes and standards set out primarily in Chapter 4. The move to outcomes has been explored extensively in the report, but in essence this is central to the future development of the LSET system here envisaged. Outcomes are essential for any form of standard-setting, for equitable access to the profession, and they are amenable to flexible, innovative design and implementation (eg, QLTS). They are also key to the delivery of regulation through design.

7. Conclusions and Recommendations

- 7.85 The methodology prescribed in this recommendation emphasises the need to define day one outcomes as a starting point and to work back to the beginning of training.
- 7.86 Robust systems for standardising the assessment of outcomes should be developed in line with the guidance contained in Chapter 4.

Recommendation 4

Mechanisms should be put in place for regulators to co-ordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes and prescription of standards.

- 7.87 If the public is entitled to expect a single level of competence across at least the range of reserved activities and common core skills, there will need to be some coordination in setting threshold levels of competence. This does not mean that different pathways or qualifications must adopt common learning processes, or that a qualification cannot be set above the threshold, but it does mean that different approaches must have at least equivalent effect. As noted above, it is proposed that the threshold level of competence for a terminal qualification giving authorised practice rights should be set at not less than NQF level 6.

Recommendation 5

Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.

- 7.88 This will be a substantial project to complete, but by creating, in effect, a national framework for the sector, this would simplify transfer and partial authorisation decisions and facilitate the development of specialist activity-based qualifications or accreditations. It could also provide a single framework to support progression from paralegal to authorised practitioner roles.

Content

Recommendation 6

LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.

- 7.89 The treatment of professional conduct, ethics, and 'professionalism' is variable across the sector. In addition to ensuring that professional conduct matters are properly addressed, either through a discrete course or pervasively through professional training, regulators are encouraged to consider developing a broad approach to this subject, rather than a limited focus on conduct rules or principles. For the avoidance of doubt this report is not recommending that professional conduct should become a Foundation of Legal Knowledge or should otherwise be required within the LLB or GDL curriculum.

Recommendation 7

The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.

7.90 The basis for this recommendation has been substantially trailed through the evidence and discussion in this report. It is recognised that the extent and depth of focus on these issues will vary significantly between education and training schemes, and there is no expectation that these different elements are given equal weight. At the core of this recommendation, however, is the importance of developing an understanding and appreciation of legal values, not least as an underpinning to the regulatory objectives of the LSA 2007, in all regulated persons in the legal services sector.

Recommendation 8

Advocacy training across the sector should pay greater attention to preparing trainees and practitioners in their role and duties as advocates when appearing against self-represented litigants.

7.91 Reduction in public funding and changes to litigation funding described in Chapter 3 are likely to change the context in which advocacy skills are exercised. These should be recognised in the appropriate stages of LSET.

Recommendation 9

Learning outcomes should be developed for post-qualification continuing learning in the specific areas of:

- *Professional conduct and governance.*
- *Management skills (at the appropriate points in the practitioner's career. This may also be targeted to high risk sectors, such as sole practice).*
- *Equality and diversity (not necessarily as a cyclical obligation).*

7.92 Although it was not ultimately considered necessary or proportionate to create a continuing obligation to address client relationship skills across the piece, the importance of these skills still needs to be stressed. Within any system of entity regulation, it is recommended that close attention is paid to the entity's ability to link client feedback and complaints data to individual performance and training needs. It follows that entities should be encouraged to be far more proactive than the majority currently are in collecting and using client feedback to enhance performance.

Recommendation 10

The balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed, and the statement of knowledge and skills within the Joint Statement should be reconsidered with particular regard to its consistency with the Law Benchmark statement and in the light of the other recommendations in this report. A broad content specification should be introduced for the Foundation subjects. The revised requirements should, as at present, not exceed 180 credits within a standard three-year Qualifying Law Degree course.

7.93 The extent to which the Foundation subjects should change will be determined by work on the revised outcomes. Though it has been recognised throughout this report that the range of evidence points to the existing Foundation subjects as a reasonable proxy for what is required, it is not the function of this report to pre-empt that process. There may be a case for any revised Joint Statement to recommend the allocation of discrete credit/hours to skills development, particularly in respect of legal research and writing. Though foundation skills courses or components of courses are increasingly common in law schools, there remains a risk that skills are undervalued in the curriculum.

7. Conclusions and Recommendations

Recommendation 11

There should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law. Educational providers should retain discretion in setting the context and parameters of the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.

- 7.94 This assessment requirement is proposed as a necessary and proportionate measure to address the growing concerns that these pervasive skills have not been sufficiently developed. This would also act as a limited proxy for skills that might otherwise be tested via an aptitude test. It is envisaged that such an activity could be integrated into the normal assessment of a substantive module, or could be developed as a free-standing project or writing/research skills task.

Recommendation 12

The structure of the Legal Practice Course stage 1 (for intending solicitors) should be modified with a view to increasing flexibility of delivery and the development of specialist pathways. Reduction of the breadth of the required technical knowledge-base is desirable, so as to include an appropriate focus on commercial awareness, and better preparation for alternative practice contexts. The adequacy of advocacy training and education in the preparation and drafting of wills needs to be addressed.

- 7.95 The quality of education and training in respect of advocacy and wills has been widely mentioned. These are problematic as both are reserved areas of practice, but not relevant to the day-to-day work of a majority of trainees. The quality of both must be improved. A rational approach would be to take both out of the LPC and create them as separate 'endorsements' on the practising certificate which could be obtained following specialist training and experience during the training contract, or subsequently as CPD. This would have the benefit of freeing up space on the LPC for other activities (noting concerns about the relative lack of depth).
- 7.96 It is recognised that this would be an extremely controversial change, so an alternative but less effective solution would be to move advocacy into the training contract as part of a strengthened initial professional development requirement. This still means however that on qualification many trainees could become licensed in advocacy based on a relatively short, potentially simulated, experience. If this approach is adopted for advocacy, a strengthened wills component could be included in the LPC.
- 7.97 Variations in the quality of teaching and in the form of the assessment of drafting skills also result in uneven preparation for practice. A better understanding across the board of effective practice, and greater consistency in the development of realistic assessments of this skill would also enhance standards.

Recommendation 13

On the Bar Professional Training Course (for intending barristers), Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy.

- 7.98 The introduction of ReDOC as a subject of study appropriately reflected changes in the provision of legal services. In line with discussion in Chapter 4, robust assessment with practice validity, suggests that it should be strengthened in terms of enabling BPTC graduates to develop the skills to perform as effective advocates in an ADR context.

Structures

Periods of supervised practice

Recommendation 14

LSET structures which allow different levels or stages (in particular formal education and periods of supervised practice) to take place concurrently should be encouraged where they do not already exist. It should not be mandated. Sequential LSET structures, where formal education is completed before starting supervised practice, should also be permitted where appropriate. In either case, consistency between what is learned in formal education and what is learned in the workplace is encouraged, and facilitated by the setting of 'day one' outcomes.

7.99 This recommendation follows from the preference for a mixed economy. The LETR research data demonstrated a strong interest in enabling further experimentation and more flexible pathways, but insufficient confidence in the advantages of a more integrated approach to make it the norm. It was also recognised that blending would create additional costs for smaller entities, and possibly drive them out of the training market. Where integration takes place, work towards consistency between classroom and practice-based activity should be undertaken.

Recommendation 15

Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes. Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.

7.100 The aim of this recommendation is to permit greater flexibility with respect to periods of supervised practice, particularly, but not exclusively, for solicitors and barristers. This will assist in reducing the bottleneck around training in those professions, and also help to ensure that employers and training organisations have the ability to train individuals in a way that suits their needs and those of their clients. The logic of an outcomes approach suggests that an individual should be 'signed off' at the point they are judged competent, rather than on the basis of time served. Equally, there are risks with the removal of time periods, and with the specification of minima, which may rapidly become a new standard. One approach may be to address these risks through appropriate guidance on review against outcomes, allowing for reduction in the normal period of training, rather than a specified minimum as such. Conversely, proper evaluation against outcomes may (and should) lead to an extension of the training period, or termination in appropriate circumstances.

7.101 Provided training is ultimately signed-off by an appropriate authorised person, it is recommended that unnecessary constraints on the range of individuals undertaking actual supervision are removed. Supervision should be capable of being offered by any person who can demonstrate competence in the requisite activities for that phase of a supervisee's training and the necessary skills and/or training to act as a supervisor.

CPD and continuing learning

Recommendation 16

Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.

7. Conclusions and Recommendations

7.102 This is important but does not need to be unduly burdensome. Training should not just address the regulatory dimension, but support supervisors in developing effective supervisory and mentoring skills. Such training should count towards CPD obligations.

Recommendation 17

Models of CPD that require participants to plan, implement, evaluate and reflect annually on their training needs and their learning should be adopted where they are not already in place. This approach may, but need not, prescribe minimum hours. If a time requirement is not included, a robust approach to monitoring planning and performance must be developed to ensure appropriate activity is undertaken. Where feasible, much of the supervisory task may be delegated to appropriate entities (including chambers), subject to audit.

7.103 Regulators should support their regulated communities by providing initial training, guidance and tools to assist in maximising the value of the required CPD activity.

7.104 It is anticipated that one function of this approach will be to reduce reliance on inappropriate and variable quality course-based CPD. Practitioners should be encouraged to demonstrate an appreciation of the role played by informal learning in their development, and to make the most of informal learning opportunities by converting them into structured learning activities. CPD schemes should not, however, enable practitioners substantially to satisfy their CPD obligations by reference to unstructured informal learning.

7.105 It is suggested that all completed CPD activity for the cycle should be recorded, not just the activity required to comply with any minimum requirement. Where this is feasible in resource terms, it is recommended that an online system is created by the regulator for the submission of CPD plans and logs.

Recommendation 18

There should be regular and appropriate supervision of CPD, and schemes should be audited to ensure that they correspond to appropriate learning outcomes. Audit should be a developmental process involving practitioners, entities and the regulator.

7.106 Supervision of individual activity and record-keeping should be designed in the majority of regulatory contexts as an entity function. 'Audit', it is suggested should also be devised primarily as a co-regulatory activity between regulator and entity, though backed up by more formal investigation powers if required. The use of facilitative compliance or practice reviews, along the lines adopted in New South Wales should be considered as a tool for entity regulation. Whilst these would support other regulatory functions as well, they could support entities in identifying and addressing training needs. The reference to learning outcomes in recommendation 9 does not and should not preclude entities from identifying their own additional outcomes for a CPD scheme.

Recommendation 19

In the short to medium-term, regulators should cooperate with one another to facilitate the cross-recognition of CPD activities, as a step towards more cost-effective CPD and harmonisation of approaches in the longer term.

7.107 A number of responses highlighted the added complexity and cost created for both CPD providers and participants by the need to obtain approval or course accreditation from different regulators. Greater co-ordination would reduce this cost and increase opportunities for practitioners to select from a wider range of options and providers; this may be particularly helpful for smaller professions and niche practices, where the range of CPD may be limited.

Apprentices, paralegals and work experience

Recommendation 20

In the light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.

7.108 A number of issues around fair access were discussed in Chapter 6, including the significance of prior legal work experience in recruitment decisions. This raises important equality and diversity issues, including inequality of opportunity (eg, for those with family or other caring responsibilities, or for those for whom there may be significant pressure to undertake paid work during vacations) and inequality of access. There is a need to mediate the impact of social capital, personal connections, socio-economic origin, and attendance at a pre-1992 university in accessing work experience. The division between formal and informal work experience must be reduced, and proper, transparent and fair processes for selection should be employed in respect of all individual work experience opportunities.

Recommendation 21

Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.

7.109 This recommendation acknowledges and builds on the work already done in developing the higher apprenticeship at level 4. It recognises that, at present, this proposal is geared towards preparation for entry to the solicitors' profession. This should not preclude consideration of developments in other parts of the sector, particularly given that apprenticeship developments are designed to be industry-led. It is also recognised that it might not be feasible for some professions (eg, the difficulty of replicating the patent attorney's breadth of prior scientific learning).

7.110 The apprenticeship potentially adds value as a way of increasing diversity within the solicitors' profession, and in creating competition between training pathways. However, concerns remain that (i) firms' recruitment policies will not necessarily deliver the level of diversity possible for an apprenticeship route and (ii) the knowledge developed at the higher levels is insufficiently broad and robust to avoid the apprenticeship becoming a 'second class' route into the profession. The potential for apprenticeships to support diversity and add value to other professional pathways could also be explored.

7.111 It is recommended that the diversity data required of regulated entities by the LSB include an apprenticeship category to enable disaggregation and tracking of the diversity of apprentices across the sector.

Recommendation 22

Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

7.112 The quality of supervision and training of paralegals, and the lack of progression or professional recognition for paralegal work are highlighted by the research data. This recommendation seeks to respond to those needs.

7. Conclusions and Recommendations

7.113 The range of NOS covering advice workers and apprenticeship standards could provide a useful foundation for a common framework of outcomes and standards. Such a framework could permit passporting into the scheme of those with appropriate qualifications, or individual accreditation directly against the standard.

7.114 In the context of the significant and substantial changes to both the private and public funding of legal services, there may be a role for independent paralegals in delivering well-priced quality services outside the currently regulated market. Further work should be undertaken to explore the potential of licensed paralegal schemes, for example, on the lines offered in Ontario. This may also be an area where, within LSA 2007 regulation, CILEx members with independent practice rights could also make an important contribution.

Recommendation 23

Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.

7.115 There is a considerable diversity of specific paralegal qualifications and entry routes in England and Wales, and this has been identified as a source of confusion and some uncertainty. There is also some evidence of a developing junior paralegal ‘technician’ role. Arguments both for and against voluntary accreditation of paralegals within the regulated sector are explored in Chapter 6. It is not clear that the additional burden of registration is proportionate to the risks represented by paralegals within that sector, but it is argued that voluntary accreditation against a quality mark, akin to the Scottish scheme could provide a mechanism for cutting across that complexity. In the light of evidence of a growing unregulated sector, the extension of such a voluntary quality scheme to the unregulated sector may bring benefits to service providers and consumers, but this requires further research.

Information

Recommendation 24

Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.

7.116 This should include data on examination sittings and performance for those professions which do not regulate course providers. Where at all possible, data should distinguish between home and international students/trainees.

Recommendation 25

A body, the ‘Legal Education Council’, should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice. The Council should also oversee a collaborative hub of legal information resources and activities able to perform the following functions:

- *Data archive (including diversity monitoring and evaluation of diversity initiatives);*
- *Advice shop (careers information);*
- *Legal Education Laboratory (supporting collaborative research and development);*
- *Clearing house (advertising work experience; advising on transfer regulations and reviewing disputed transfer decisions).*

7.117 As noted earlier in this chapter, and in Chapter 6, this recommendation is seen as central to developing the information base that is critical to enhancing access, and also to developing new knowledge and tools that will support LSET in maintaining its fitness for the future. If there is in principle support for this development, a specification and full costings would need to be devised. The virtual nature of the hub is intended to keep costs down, and, as a collaborative venture between regulators, the professions and the universities, it is anticipated that it would draw heavily on existing work and information required for other purposes, so that information costs should be relatively low, with resourcing required primarily for coordination, content, design and management functions.

The review process

Recommendation 26

In the light of the regulatory objectives and the limited engagement by consumers and consumer organisations in the research phase of the LETR, it is recommended that the regulators ensure that appropriate consumer input and representation are integrated into the consultation and implementation activities planned for the next phase of the LETR.

7.118 The report stops short of making specific recommendations, particularly directed to the LSB in respect of the unregulated sector. Although some preliminary research was undertaken, this served largely to highlight the paucity of existing research and information about that sector. With current changes to public funding, etc, it is likely that the unregulated sector will become more not less important subsequently, and further research should be undertaken to enable a more detailed understanding of the role and impact of unregulated service providers on the market.

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Annex I Interim Equality Impact Assessment

- 1.1. An equality impact assessment (EIA) is an analysis of a proposed policy to establish whether it has or may have different effects for individuals with any of the protected characteristics defined by s.4, Equality Act 2010. These are:
- age;
 - disability;
 - gender reassignment;
 - marriage and civil partnership;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- 1.2. Given the remit of this research, this assessment has been extended beyond the statutory requirements to consider issues of social diversity and mobility. The umbrella term of EDSM can be used to describe both concepts. Assessment should identify both positive and negative effects of the proposed policy. It is, of course, possible that a policy designed to have positive effects for one EDSM characteristic inadvertently has negative effects for another.
- 1.3. The usual process is for a policy to be drafted and subsequently to be assessed for possible differential impact, a process which may include the collection of data. The research-led approach of the first stage of LETR has, as described in Chapter 1 and Appendix D, worked from the perspective of developing the recommendations from the data. It is, therefore, possible to conceive of the entire research process as a form of EIA of both existing policies and, as the work progressed, possible solutions which have informed the recommendations.
- 1.4. Equality issues were identified in interviews and focus groups. Responses to Discussion Paper 02/2011 and the work of the Equality, Diversity and Social Mobility Expert Advisory Group chaired by Professor Gus John have also been considered. The members of the Young Lawyers Forum also discussed issues of equality and diversity in some depth. These responses have been woven into discussion of relevant issues as they arise in the chapters of this report.
- 1.5. As has been discussed in earlier chapters, the different professions have very different EDSM profiles and may already be addressing issues in different ways. This interim EIA, then, is at a comparatively high level of analysis, and discusses possible positive and negative impacts of each recommendation on EDSM groups. It is provided as a starting point for the regulators as they consider the implementation and detail of each recommendation.
- 1.6. There are usually four possible outcomes of an EIA analysis (EHRC, 2009:4):
- Outcome 1: No major change: the EIA demonstrates the policy is robust and there is no potential for discrimination or adverse impact. All opportunities to promote equality have been taken.*
- Outcome 2: Adjust the policy: the EIA identifies potential problems or missed opportunities. Adjust the policy to remove barriers or better promote equality.*
- Outcome 3: Continue the policy: the EIA identifies the potential for adverse impact or missed opportunities to promote equality. Clearly set out the justifications for continuing with it. The justification should be included in the EIA and must be in line with the duty to have due regard. For the most important relevant policies, compelling reasons will be needed.*

7. Conclusions and Recommendations

Outcome 4: Stop and remove the policy: the policy shows actual or potential unlawful discrimination. It must be stopped and removed or changed

- 1.7. The approach that has been taken in the table which follows has been to analyse, on the basis of the data collected and by reference to the various EDSM characteristics, anticipated positive and negative implications of each recommendation. Because of the level of abstraction involved the impacts identified tend to be quite generic benefits and risks. Actions required at this stage are, therefore, in the main a combination of EHRC's outcomes 1 and 2, recognising that if the recommendation is to be implemented, further impact assessment will be required in the light of the conditions governing that specific regulated environment. Continued monitoring of possible differential effects is, in a number of cases, also recommended.
- 1.8. The table also includes a number of 'recommendations not made' that are based on policy proposals commonly advanced by respondents in the course of the investigation. Responses here are a combination of outcomes 2 and 3: outcome 2 where the evidence suggests the underlying problem can be addressed more effectively by one of the recommendations; outcome 3 where no change appears to be justified as a proportionate regulatory response.

Recommendations

RECOMMENDATIONS	POSITIVE IMPACT	NEGATIVE IMPACT	ACTION REQUIRED
OUTCOMES AND STANDARDS			
<p>Recommendation 1 Learning outcomes should be prescribed for the knowledge, skills and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.</p> <p>Recommendation 2 Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.</p> <p>Recommendation 3 Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required. They should begin with a set of 'day one' learning outcomes that must be achieved before trainees can receive authorisation to practise. These learning outcomes could be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET. Learning outcomes may also be set (see below) for post-qualification activities.</p> <p>Recommendation 4 Mechanisms should be put in place for regulators to co-ordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes and prescription of standards.</p> <p>Recommendation 5 Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.</p>	<p>Clarity, transparency and consistency of expectations and objective standards for all practitioners and consumers. Provides a consistent benchmark of achievement for those whose choice of study route or location is limited.</p> <p>Co-ordination of outcomes between regulators promotes development of alternative but equivalent routes to qualification and robust transfer routes between professions and activities. Such outcomes also facilitate APL for mature entrants and those with paralegal experience.</p> <p>Where activities fall under the aegis of more than one regulator (eg, conveyancing) with practitioners from different equality or socio-economic groups, coordinated and consistent outcomes facilitate equivalence of treatment by other professionals and aid consumer confidence.</p>	<p>Risk that outcomes have differential impact or that assessment of alternative routes is not demonstrably equivalent, prejudicing for example, non-graduate, part-time or older entrants pursuing those routes.</p> <p>Risk that outcomes have differential impact or that assessment of alternative routes is not demonstrably equivalent, prejudicing for example, non-graduate, part-time or older entrants pursuing those routes.</p>	<p>Outcomes and assessment mechanisms need to be equality impact assessed. Monitor the effect on diversity once outcomes are introduced.</p> <p>Outcomes and assessment mechanisms need to be equality impact assessed. Monitor the effect on diversity once outcomes are introduced.</p>

7. Conclusions and Recommendations

RECOMMENDATIONS	POSITIVE IMPACT	NEGATIVE IMPACT	ACTION REQUIRED
CONTENT			
Recommendation 6 LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.	Emphasis on support for writing and oral skills assists those entering from a wide range of socio economic and educational backgrounds.	Potential additional cost or resource where, for example, individuals and groups, particularly if significantly represented in particular routes, require greater levels of input in, eg, writing.	Outcomes and assessment mechanisms need to be equality impact assessed. Monitor the effect on diversity once outcomes are introduced.
Recommendation 7 The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.	An emphasis on values and ethics enhances equality and diversity awareness in all practitioners and at all levels of service to consumers.	Potential additional cost or resource.	Outcomes and assessment mechanisms need to be equality impact assessed. Monitor the effect on diversity once outcomes are introduced.
Recommendation 8 Advocacy training across the sector should pay greater attention to preparing trainees and practitioners in their role and duties as advocates when appearing against self-represented litigants.	Enhances access to justice for vulnerable members of society. Focus on different advocacy contexts can aid personal plight/small organisations and reduce the burden of subsequent on the job training	If requirements are, or are perceived to involve mandatory attendance at courses, there is a significant cost implication and potential location barriers.	Programme designs and assessment mechanisms need to be equality impact assessed.
Recommendation 9 Learning outcomes should be developed for post-qualification continuing learning in the specific areas of: <ul style="list-style-type: none"> Professional conduct and governance. Management skills (at the appropriate points in the practitioner's career. This may also be targeted to high risk sectors, such as sole practice). Equality and diversity (not necessarily as a cyclical obligation). 	An emphasis on values and ethics enhances equality and diversity awareness in all practitioners and at all levels of service to consumers. Potentially supports those in high risk sub-sectors (e.g. sole practice) in which minority groups may be over-represented. Equality and diversity training embeds awareness and treatment in recruitment, with colleagues and for consumers.	Risk that development of and innovation in the undergraduate law degree is conservatively defined by those institutions traditionally preferred by employers.	Outcomes and continuing learning frameworks need to be equality impact assessed. Monitor the effect on diversity once outcomes are introduced.
Recommendation 10 The balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed, and the statement of knowledge and skills within the Joint Statement should be reconsidered with particular regard to its consistency with the Law Benchmark statement and in the light of the other recommendations in this report. A broad content specification should be introduced for the Foundation subjects. The revised requirements should, as at present, not exceed 180 credits within a standard three-year Qualifying Law Degree course.	Retention of the Foundation subjects provides a protective degree of consistency of coverage for entrants from both high and lower status institutions.		Implement recommendation.

RECOMMENDATIONS CONTENT	POSITIVE IMPACT	NEGATIVE IMPACT	ACTION REQUIRED
<p>Recommendation 15 Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes. Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.</p>	<p>Promotes a wider range of routes to qualification/independent practice that can accommodate a wider range of entrants and a wider range of employers. Reduces risk of exploitation during the period of supervised practice. Provides a consistent benchmark of achievement for those in non-traditional workplaces. Facilitates APL for mature entrants and their employers.</p>	<p>Risk that increase in range of alternatives does not increase access if e.g. lengthy periods of unpaid internship or paralegal work are in fact required as preconditions of access to periods of supervised practice. Risk that requirements for authorisation have a differential impact on small practices, leading to reduction of opportunity rather than increase.</p>	<p>Monitor effect on diversity, whether there is discrimination against those who have followed some pathways as against others and whether inappropriate exploitation within or on the promise of, access to periods of supervised practice or in pressure to reduce the period of supervised practice is present. Monitor support for and take up of opportunities to offer supervised practice for any diversity implications or in appropriate regulatory constraints.</p>
<p>Recommendation 16 Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.</p>	<p>Provides a consistent benchmark of support for all practitioners and students and for consumers. Reduces risk of exploitation during the period of supervised practice. Supports a consistent benchmark of achievement for those in non-traditional workplaces.</p>	<p>Risk that requirements for authorisation and enhancement of supervisory support have a differential impact on small practices, leading to reduction of opportunity rather than increase.</p>	<p>Monitor the effect on diversity once introduced.</p>
<p>Recommendation 17 Models of CPD that require participants to plan, implement, evaluate and reflect annually on their training needs and their learning should be adopted where they are not already in place. This approach may, but need not, prescribe minimum hours. If a time requirement is not included, a robust approach to monitoring planning and performance must be developed to ensure appropriate activity is undertaken. Where feasible, much of the supervisory task may be delegated to appropriate entities (including chambers), subject to audit.</p>	<p>Relaxation of hours and requirements to attend accredited courses reduces cost/travel and facilitates participation by the disabled, part-time workers and those taking career breaks or with caring responsibilities. Allows mentoring and grass roots activities to be developed by and with equality groups and others.</p>	<p>Risk that relaxation allows employers to impede useful learning activity.</p>	<p>Continuing learning frameworks need to be equality impact assessed. Monitor the effect on diversity once introduced.</p>
<p>Recommendation 18 There should be regular and appropriate supervision of CPD, and schemes should be audited to ensure that they correspond to appropriate learning outcomes. Audit should be a developmental process involving practitioners, entities and the regulator.</p>	<p>Facilitates reasonable adjustment and increases access to a wider range of activities (venue, time, mode of delivery, cost) for individuals.</p>	<p>Risk that supervision and audit is or is perceived to involve resource-heavy formal assessments leading to reduction of opportunity rather than increase.</p>	<p>Audit and supervision requirements need to be equality impact assessed. Monitor the effect on diversity once introduced.</p>

7. Conclusions and Recommendations

RECOMMENDATIONS	POSITIVE IMPACT	NEGATIVE IMPACT	ACTION REQUIRED
<p>Recommendation 19 In the short to medium-term, regulators should cooperate with one another to facilitate the cross-recognition of CPD activities, as a step towards more cost-effective CPD and harmonisation of approaches in the longer term.</p>	<p>Increases access to a wider range of activities (venue, time, mode of delivery, cost) for individuals.</p>	<p>Risk that the norm set for cross-recognition is more stringent than current CPD framework, leading to reduction of opportunity rather than increase.</p>	<p>Outcomes and continuing learning frameworks should themselves be equality impact assessed. Monitor the effect on diversity once introduced.</p>
<p>Recommendation 20 In the light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.</p>	<p>Facilitates improved access to a wider range of participants. Reduces risks of exploitation.</p>	<p>Risk that standards and guidance reduce, rather than increase, access to internship and work placement.</p>	<p>Implement recommendation. Monitor the effect on diversity once introduced.</p>
<p>Recommendation 21 Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.</p>	<p>Promotes a wider range of routes to qualification that can accommodate a wider range of entrants and a wider range of employers. Provides a system of career progression that is cost effective for some individuals.</p>	<p>Risk that apprenticeship places are in fact taken up by a wider range of entrants.</p>	<p>Monitor effect on diversity, whether there is discrimination against those who have followed some pathways as against others.</p>
<p>Recommendation 22 Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.</p>	<p>Systems for career progression and voluntary licensing of paralegals provide a cost-effective means of recognition/entry/progression for some individuals (eg, part-time and geographically constrained) individuals and for members of equality groups potentially disadvantaged in traditional recruitment processes. Voluntary registration/licensing of paralegals promotes confidence for consumers, particularly those unable to afford traditional legal services provision.</p>	<p>Risk of uneven implementation if a system of voluntary certification/licensing is implemented.</p>	<p>Monitor effect on diversity, whether there is discrimination against those who have followed some pathways as against others.</p>
<p>Recommendation 23 Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.</p>	<p>Such work has the potential to enhance confidence for consumers, particularly those unable to afford traditional legal services provision. Testing of the extent to which risks of the unregulated sector have differential impact on equality groups and those of differing socio-economic status. Investigation of the extent to which those practising in this sector are members of such groups.</p>	<p>Risk of uneven implementation if a system of voluntary certification/licensing is implemented.</p>	<p>Scheme should itself be equality impact assessed. Monitor the effect on diversity once introduced.</p>

RECOMMENDATIONS CONTENT	POSITIVE IMPACT	NEGATIVE IMPACT	ACTION REQUIRED
<p>Recommendation 24 Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.</p> <p>Recommendation 25 A body, the 'Legal Education Council', should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice. The Council should also oversee a collaborative hub of legal information resources and activities able to perform the following functions:</p> <ul style="list-style-type: none"> • Data archive (including diversity monitoring and evaluation of diversity initiatives); • Advice shop (careers information); • Legal Education Laboratory (supporting collaborative research and development); • Clearing house (advertising work experience; advising on transfer regulations and reviewing disputed transfer decisions). 	<p>Information about differentials in practice. Choice for entrants and triggers for remedial activity by providers and regulators.</p> <p>Information to entrants, consumers and employers about diversity activity, range of pathways to qualification and practice. Reduces risk of individuals embarking on (expensive) and inappropriate routes into practice.</p>	<p>Risk that data will not be collected consistently.</p> <p>Risk that information is not disseminated appropriately and existing inequalities remain entrenched.</p>	<p>Development of a consistent approach to collecting and publishing diversity data needs to be agreed across all providers.</p> <p>Implementation of recommendations and monitoring of usage and access.</p>
THE REVIEW PROCESS			
<p>Recommendation 26 In the light of the regulatory objectives and the limited engagement by consumers and consumer organisations in the research phase of the LETR, it is recommended that the regulators ensure that appropriate consumer input and representation are integrated into the consultation and implementation activities planned for the next phase of the LETR.</p>	<p>Testing of implementation of recommendations in the context of all equality groups and a diverse society. Specific attention can be paid to impacts on those of differing socio-economic groups.</p>		<p>Equality impact assessments will need to include a consumer dimension.</p>

Recommendations

	POSITIVE IMPACT IF RECOMMENDED	NEGATIVE IMPACT IF RECOMMENDED
Cap numbers/providers for BPTC or LPC	Was suggested as a filter to prevent those unlikely to succeed on LPC or BPTC specifically, incurring the cost of those courses personally.	Inability of capacity to respond to the market. May entrench existing differentials in recruitment. Market for LPC is decreasing in any event and increased information about risks, opportunities and alternative routes (see recommendation 25) is likely to shrink it further.
Aptitude test/entrance examinations	Was suggested as a filter to prevent those unlikely to succeed on LPC or BPTC specifically, incurring the cost of those courses personally.	No clear evidence that all forms of aptitude test are neutral in terms of diversity. Additional cost of testing and arguably a developing industry in coaching. Increased information about risks, opportunities and alternative routes (see recommendation 25) and fair access to work experience (see recommendation 20) address aptitude and awareness issues.
Restrict LPC/BPTC/ equivalent entry to those who have already obtained pupillage/ training contract/ supervised practice	Was suggested as a filter to prevent those unlikely to succeed on LPC or BPTC specifically, incurring the cost of those courses personally.	Prejudices those employers who cannot recruit this far in advance. Risk that any discrimination in recruitment by employers becomes entrenched in the system. Increased information about risks, opportunities and alternative routes (see recommendation 25) and fair access to work experience (see recommendation 20) address the issue at the point of entry. Increased alternative routes into the professions (see recommendations 21 and 22); broadening of opportunity for supervised practice (recommendation 15) and concurrent study (recommendation 14) address the risks of obtaining supervised practice opportunities.
Award a title on completion of the LPC	Suggested as a remedy for those who having completed the LPC were in professional limbo and unable to proceed to qualification as a solicitor, either because the market is saturated or because of characteristics/ constraints.	Title - whether 'solicitor (non-practising)' or any alternative title - does not guarantee employment or competence to practise independently and may simply create a different form of limbo. Risk of confusion to more vulnerable consumers if the title includes 'solicitor'. Increased alternative routes into the professions (see recommendations 21 and 22); broadening of opportunity for supervised practice (recommendation 15) and concurrent study (recommendation 14) promote opportunities to obtain full qualification rather than lower status non-practising title..
Single national bar exam in place of existing qualification structures	Regulated status and a title (Graduate member) is available in the CILEX structure to LPC graduates. Suggested as a remedy for those who having completed the LPC, were in professional limbo and unable to proceed to qualification as a solicitor, either because the market is saturated or because of characteristics/ constraints	Differential impacts of form of assessment, cost of assessment and of additional coaching for it. Risk of lack of employment options once assessment completed. Recommendations about outcomes and standards (recommendations 1-5) address issues of consistency between routes. Increased alternative routes into the professions (see recommendations 21 and 22); broadening of opportunity for supervised practice (recommendation 15) and concurrent study (recommendation 14) promote opportunities to obtain full qualification.

Appendix A: Respondents to Discussion Papers and other participants

Respondents to Discussion Papers and other named participants

Accutraine Ltd.
 ADR Group (IDR (Europe) Ltd.)
 Advocacy Training Council
 AGCAS Legal Profession Task Group
 Association of Law Teachers (ALT)
 Association of Personal Injury Lawyers (APIL)
 Bar Association for Commerce, Finance and Industry (BACFI)
 Bar Council
 David Barnard
 Bar Standards Board
 Black Solicitors Network (BSN)
 British and Irish Association of Law Librarians Working Party on Legal Information Literacy (BIALL)
 Cabinet Office
 Central Law Training Ltd. (CLT)
 Chancery Bar Association
 Chartered Institute for Securities and Investment
 Esme Chandler
 Chartered Institute of Legal Executives (CILEx)
 CILEx Law School (previously ILEX Tutorial College)
 City of London Law Society (CLLS)
 City Law School
 Civil Mediation Council (CMC)
 Central Law Training Ltd. (CLT)
 Commerce and Industry Group of the Law Society
 Commercial Bar Association (COMBAR)
 Committee of Heads of University Law Schools (CHULS)
 Costs Lawyer Standards Board (CLSB)
 Council for Licensed Conveyancers (CLC)
 Council of the Inns of Court (COIC)
 Dundee Law School, University of Dundee
 Eastgate Coaching (David Steward Ltd.)
 The Master of the Faculties
 Graham Ferris
 Freshfields Bruckhaus Deringer LLP
 GC100
 Government Legal Service
 Jenny Hamilton (University of London International Law Programme)
 James Hand
 Harcup Consulting
 Herbert Smith LLP
 ILEX Professional Standards Ltd. (IPS)
 Institute of Paralegals
 Institute of Professional Willwriters
 Intellectual Property Regulation Board (IPReg) and members of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA)
 Jane Jarman
 Junior Lawyers Division of the Law Society (JLD)
 Kaplan Law School Ltd.

Kent Law School
Law Society of England and Wales
Law Society of Scotland
LawNet Ltd.
Legal Aid Practitioners Group
Legal Education and Training Group
Legal Services Consumer Panel
Macfarlanes LLP
Sarah Martin
Meyler Campbell
Richard Moorhead
National Association of Licensed Paralegals
National Pro Bono Centre
Office of the Legal Services Commissioner, New South Wales
Sherwood PSF Consulting Ltd.
Skills for Justice
Peter Smith
Society of Visually Impaired Lawyers
Society of Legal Scholars (SLS)
Society of Will Writers
Solicitors in Local Government
Statute Law Society
Technology and Construction Bar Association (TECBAR)
University College London (UCL)
University of Huddersfield
University of Law (previously the College of Law)
Joanne Urmston
Derek Wood QC
Women Lawyers Division (previously Association of Women Solicitors (AWS))
Wragge & Co LLP
Young Barristers Committee
Young Legal Aid Lawyers (YLAL)

Anonymous participants in LETR discussions, surveys, focus groups and interviews

Academics, students and practitioners in London and in the south-east and south-west, midlands, east, north, north-east and north-west of England, and in north and south Wales.

Anonymous respondents to discussion papers and anonymous respondents to the LETR website.

Members of the LETR Young Lawyers Forum.

Participants in the LETR online survey, the careers advisors' survey and the will writers' survey

Participants in the LETR Thought Leaders meetings.

Participants in the National Law Students' Forum.

Participants in the NLS Debate.

Barrister members of diversity and social mobility groups who participated in a discussion with the research team at the invitation of the Bar Council's Equality and Diversity Committee.

We would also like to thank those people and organisations who assisted us with venues, hospitality, information and with finding participants in these exercises. We also thank Natasha Croome (University College Medical School), Danielle Davy and Esther Okeowo (Brunel Department of Psychology) who assisted with initial data analysis.

Appendix B: Membership of the Consultation Steering Panel and the Equality, Diversity and Social Mobility Expert Advisory Group

Consultation Steering Panel

Co-Chairs:

Dame Janet Gaymer

Sir Mark Potter

Participant groups

Advice Services Alliance

Architects Regulation Board

Bar Council

Bar Professional Training Course Providers

Bar Standards Board

Chair, LETR Equality, Diversity and Social Mobility Expert Advisory Group

Chartered Institute of Legal Executives

CILEx Law School (previously ILEX Tutorial College)

Committee of Heads of University Law Schools

Employed Barristers Committee

GC100

General Medical Council

ILEX Professional Standards Ltd.

Joint Academic Stage Board

Junior Lawyers Division

Law Society of England and Wales

Legal Education and Training Group

Legal Ombudsman

Legal Practice Course Providers Association

Legal Services Board (Observer)

Legal Services Consumer Panel

National Union of Students

Office of Fair Trading

Skills for Justice

Society of Legal Scholars

Sole Practitioners Group

Solicitors in Local Government

Solicitors Regulation Authority

Young Barristers Committee

Equality, Diversity and Social Mobility Expert Advisory Group

Chair: Professor Gus John

Participant groups

Bar Council

Black Solicitors Network

Equality Challenge Unit

ILEx Professional Standards Ltd.

Lawyers with Disabilities Division

PRIME

Society for Black Lawyers

Solicitors Regulation Authority

The Human Rights and Equality Consultancy

Women Lawyers Division (previously Association of Women Solicitors (AWS))

Speakers at CSP meetings

David Dixon, Cardiff Law School and Law Society Education and Training Committee

Professor Gus John, Global Development Strategies, and Institute of Education

Sara Kovach Clark, General Medical Council Revalidation Directorate

Emma Matthews, Architects Regulation Board

Professor Richard Moorhead, University College, London

Victoria Purtil, Professional Standards Education Officer, IPS

Charles Welsh, Skills for Justice

Appendix C: Summaries of interim papers and events attended

Briefing Paper 1/2011. Competence

Current legal education and training models in England and Wales rely only in part on loose competence frameworks. Although a revised competence system or outcomes statements will not be a direct output of the LETR research, it is important to understand the basic strengths and weaknesses of competence-based models in evaluating possible ways forward for the regulation of legal education and training. This briefing paper thus provides a guide to the notion of competence and the way it is used in competence-based systems of learning. It outlines the key issues concerning competence and the use of competencies, and cautions against the assumption that competence-based approaches are largely accepted and unproblematic.

Discussion Paper 01/2011. Project Scope, Research Questions and Assumptions

This paper set out for the members of the Consultation Steering Panel an overview of the research team's approach, research questions and proposed methodology. It also introduced a number of assumptions:

- (a) Recommendations for change must, so far as possible, be evidenced-based.
- (b) The focus of the Review is on assuring competence to deliver legal services.
- (c) The Review is shaped by the new regulatory context.
- (d) The Review is sector-wide in its scope.

Discussion Paper 02/2011. Equality, Diversity and Social Mobility

This paper offers a general map of the sector in terms of its demographic composition, drawing primarily on the literature reviewed as part of Phase 1 of LETR. It explores the ways in which existing education and training practices might constitute initial and continuing barriers to access, and are hence a potential constraint on diversity and social mobility, and identifies a range of questions to which we would welcome responses from stakeholders and other interested parties.

Discussion Paper 01/2012. Key Issues I: Call for Evidence

This paper provides a brief description of the context for the Review, focussing particularly on the current regulatory framework, and discusses emerging issues from the work undertaken to date. The paper then describes some of the key strengths and weaknesses of the current system, and seeks to establish a relatively high-level consensus on what needs to change. While comments on any aspect of this paper are welcome, the following are topics on which the research team would be particularly interested in receiving views, analysis and evidence: The extent to which the overarching structure of LSET is or is not 'fit for purpose'; any weaknesses that exist in respect of the existing stages in SET, and the extent to which there is willingness to consider radical change in the LSET system; and the extent to which the objectives and assumptions of the Legal Services Act (LSA) and the moves to Outcomes Focussed Regulation may be creating new or additional problems for the regulation of LSET.

Briefing Paper 1/2012. Knowledge, Skills and Attitudes Required for Practice at Present

This paper draws on previous studies and on current standards and competence frameworks used by a cross-section of regulators, professional bodies and employers in the field to identify a range of knowledge, skills and attitudes for paralegal practice, and for professional practice at point of qualification and post-qualification. The results are presented as a set of broad taxonomies for each of these 'levels' (broadly defined). This initial evaluation also identifies a range of generic skills, knowledge, behaviours and attitudes that may be missing from the existing frameworks and regulatory structure.

Briefing Paper 2/2012. Future Workforce Demand in the Legal Services Sector

This report, produced by Professor Rob Wilson of Warwick Institute of Employment Research (IER), examines the changing pattern of legal employment through employment projections for the legal services sector in England and Wales. The projections are based primarily on official statistics. The paper is divided into two parts: a summary report which highlights the main quantitative findings from this study and speculates on their implications for the future of legal services education and training, and a fuller technical report which sets out a baseline of quantitative information about the changing workforce over the decade to 2020, and identifies some gaps in and limits of existing data on the legal services workforce.

Briefing Paper 3/2012. Provocations and Perspectives

In this paper LETR Consultant Richard Susskind explores a range of issues and challenges facing the Review. He predicts that the next 30 years are likely to offer "immeasurably greater upheaval" in the legal services market. In this context the Review is a critical opportunity to invent the future. In so doing we need to focus on three things: what is changing, what the purposes of education and training should be, and the considerable impact of IT on the delivery of both legal services and legal education and training. The paper goes on to highlight, among other things, the following needs:

- to develop a new generation of 'hybrid professionals';
- to create opportunities for students to study current and future trends in legal services, and to develop new skills, such as risk and project management;
- to address key training problems for the profession as clients become less willing to subsidise training, and traditional trainee work becomes less available as a consequence of outsourcing, etc.;
- to develop tools and cultures that support just-in-time rather than just-in case learning;
- to ensure that all law students have the opportunity to develop a 'thick understanding' of law, its theory, history, structure and impact on society;
- to reduce the missed opportunities for research, collaboration and training that arise from existing gaps between academics and practitioners;
- to create a formal structure that will facilitate the systematic appraisal of the education and training system and training needs every three to five years.

Discussion Paper 02/2012. Key Issues II: Developing the Detail

This paper is the last of the four LETR Discussion Papers to be published as part of the research phase of the Review. It sets out to (a) identify short-term future trends in the delivery of legal services and consider their implications for legal services education and training (LSET); (b) summarise responses to Discussion Paper 01/2012, relate them to findings emerging from the research team's fieldwork and identify key issues for the Review; (c) offer some initial indications of solutions under consideration, and to highlight important aspects of the relatively high-level, structural work the research team is undertaking on the frameworks, standards and tools for regulating LSET, and (d) seek further information, evidence and views from stakeholders on a range of specific questions raised by the research team's work to date, and on the future direction of LSET.

Research Update 12/01. Contextual Analysis: Progress and Headline Findings

This paper describes the methodology and core areas of work conducted as stage 2 ('contextual analysis') of the LETR research phase, and highlights a range of interim findings from work with both the regulated and unregulated sectors. Its aim (and that of the stage 3 report which will follow it) is primarily descriptive. It sets out what the research team have done, how they have done it, and outlines work remaining, without seeking to draw firm conclusions from it.

Research Update 12/02. Workforce Development: Progress and Headline Findings

This paper describes the core areas of work conducted as part of stage 3 ('workforce development' and future training needs) of the LETR research phase. It highlights a range of findings concerning the knowledge skills and attributes required for practice; the role of technology and future forms of practice; paralegal and 'technician' roles within the sector and barriers to entry. The paper concludes with a section on legal developments in Wales and their implications for the LETR.

Briefing Paper 4/2012. Symposium Report

This paper contains keynote papers and summaries of the parallel and workshop sessions from the LETR Symposium held in July 2012.

Presentations at public events: research team

- 24 April 2013: Prof Avrom Sherr, 'L'esperienza del Regno Unito', Conference on Regole Deontologiche Delle Professioni E Principio Di Sussidiarieta'Il Valore Giuridico Dei Codici Deontologici Professionali, Università Degli Studi Di Perugia, Perugia, Italy.
- 12-14 April 2013: Prof Avrom Sherr, plenary opening talk on Legal Education and Globalisation Commonwealth Legal Education Association Conference, University of Kwazulu, Durban South Africa.
- 20-21 June 2012: Jane Ching, presentation to National Law Students Forum, Nottingham Trent University.
- 22 May 2012: Prof Julian Webb, presentation to the Westminster Legal Policy Forum 'Access to the legal profession, and reforming legal education and training'.
- 3 May 2012: Prof Julian Webb, Prof Paul Maharg, Jane Ching, presentation after Nottingham Law School Debate, Nottingham Trent University.

- 29-30 March 2012: Prof Paul Maharg, BILETA 2012 conference, University of Northumbria.
- 25 November 2011: Prof Julian Webb, presentation to the Regulating the Legal Profession Conference, University College, Dublin.
- 19 November 2011: Jane Ching, presentation to the Society of Black Lawyers' Legal Futures event, City University.

Public events attended: Co-Chairs

- 5 February 2013: Law Society Legal Breakfast: The Legal Landscape - Looking Forward.
- 15 November 2012: Lord Upjohn Lecture by Lord Neuberger. Association of Law Teachers.
- 18 October 2012: Westminster Legal Policy Forum - Alternative Business Structures and Legal Services.
- 4 July 2012: Dinner, President of the Law Society.
- 4 July 2012: Bar Council Garden Party.
- 12 June 2012: Society of Legal Scholars - Reviewing Legal Education Conference.
- 31 May 2012: CILEx Presidential Lunch.
- 22 May 2012: Westminster Legal Policy Forum - The Scope and Structure of Legal Services Regulation.
- 10 May 2012: LSB Seminar - Cardiff University: Impact of changes on Welsh jurisdiction.
- 18 April 2012: LSB Seminar - Warwick University: Activity-based Authorisation.
- 1 - 3 April 2012: Association of Law Teachers Conference.
- 27 March 2012: CILEx drinks reception.
- 29 March 2012: LSB Seminar - BPP Law School (Leeds): Pupillage and training contracts.
- 15 March 2012: LSB Seminar - Westminster University: Demonstrating Competence.
- 29 February 2012: LSB Seminar - College of Law (London): The Removal of Barriers.
- 16 February 2012: BME Student Conference - University of Chester.
- 2 February 2012: Westminster Legal Policy Forum - The Future of Legal Aid.
- 24 November 2011: Law Society Legal Breakfast - The Lawyer of the Future.
- 9 November 2011: Legal Services Regulation Forum Conference.
- 12 October 2011: Breakfast Roundtable, organised by the Office of Fair Trading.
- 11 October 2011: UCL debate/discussion on the topic of the Review.
- 6 September 2011: Westminster Legal Policy Forum - The Future of the Legal Services Market - Alternative Business Structures and Challenges for Effective Regulation.
- 14 July 2011: Westminster Legal Policy Forum - Reforming the Courts and Tribunals Service - Challenges for Modernisation and Prospects for Alternative Dispute Resolution.
- 26 May 2011: BSB Clementi Debate: Focus on CPD.

Speakers, facilitators and conveners at the LETR Symposium

James Atkin, Co-Operative Legal Services
Professor Stuart Bell, York Law School
Professor Julia Black, Department of Law and Centre for the Analysis of Risk and Regulation at the London School of Economics
Julie Brannan, Oxford Brookes University
Diane Burleigh, CILEx
Ashley Chambers, National Union of Students
Karl Chapman, Riverview Law
Peter Crisp, BPP
Kate Edwards, Co-Operative Legal Services
Rosy Emodi, Society of Black Lawyers
Dr Rachel Field, Queensland University of Technology
Pamela Henderson, Nottingham Law School
Tony King, Clifford Chance LLP
Dr Julian Lonbay, Birmingham Law School
Taryn Lee QC
Jane Masey, Allen & Overy LLP
Professor Stephen Mayson, Legal Services Institute
Steve Mark, Legal Services Commissioner for New South Wales, Australia
Mark Protherough, ICAEW
Professor Wes Pue, University of British Columbia
Professor Trudie Roberts, Leeds Institute of Medical Education
Alex Roy, Legal Services Board
Joshua Rozenberg
Professor Andrew Saunders, Birmingham Law School
Professor Richard Susskind OBE
Charles Welsh, Skills for Justice
Neil Wightman, Legal Services Consumer Panel
Professor Rob Wilson, Warwick Institute of Employment Research
Tanya Wilkins, OFT
Emily Windsor, BSB

Appendix D: Research Methodology

Introduction

- 1.1 A summary of the approach taken and reasons for the methods used appears in Chapter 1 of this report. The purpose of this appendix is to provide a fuller technical explanation of the research methodology.
- 1.2 As stated in Chapter 1 LSET involves a complex set of research issues. It was necessary to gather data on the experiences and perceptions of those involved in delivering LSET and those benefitting from it, and of other interested persons including clients/consumers. This data included views of the current system and expectations of and desires for the future. An iterative approach was adopted which involved returning to issues as they became better defined. Because much of the data were to be based on perceptions and experiences it was necessary to triangulate information from different data sources so as to increase assurances as to the consistency and reliability of the findings. The LETR research phase uses both qualitative and quantitative data to carry out these tasks. The research team's empirical approach was fourfold: (i) meta-analysis of existing research data and other material, such as existing competence statements, where available; (ii) collection of original qualitative research from interviews and focus groups; (iii) collection of original quantitative data, primarily from online surveys, and (iv) collection of further qualitative data from a range of stakeholder engagement activities.
- 1.3 The LETR research phase has adopted a dual approach adopting full qualitative data enquiry as the primary method, aiming to understand the complexity of the context, content and systems, and with quantitative research data to provide evidence on the strength of different views regarding current context and possible changes. Evaluation and assessment of LSET required evidence based upon the experience and judgement of stakeholders and participants in the provision and consumption of legal education and legal services. While some of these data were captured through questionnaire-based attitudinal surveys, qualitative methods were designed to discover meaning through fine attention to content, so interviews and focus groups allowed for a wider range of responses, with richer description and deeper analysis of the phenomena than would have been achieved by quantitative research.

Ethical issues

- 1.4 Research ethics approval for the empirical elements of the work was obtained through the Institute of Advanced Legal Studies from the School of Advanced Study of the University of London on behalf of the consortium of institutions undertaking the research.
- 1.5 Research ethics require that informed consent is obtained from interviewees and focus group members, and that appropriate agreements are in place as regards confidentiality and the use of data obtained from participants. For reasons of confidentiality, individual interviewees or focus group members are not identified, neither are interest groups, educational institutions, firms, employers or chambers without their explicit consent. Where consent has been obtained, their details appear in the list of participants in Appendix A.
- 1.6 The stakeholder responses to Discussion Papers or other submissions to the LETR research team are identified in common with the usual practice of public consultations. The research team were aware of the sensitivity of some of the issues. Accordingly respondents were permitted to submit either anonymous public responses, or confidential responses, to the research team (though in the event very few respondents selected either of these options).

- 1.7 One consequence of data confidentiality is that the qualitative data is represented by summaries and selected quotations, rather than by complete transcripts, which might lead to identification of individuals or organisations from elements of the discussion. Given the many pages of transcript, this approach also produces something more readable. Quoted comments are selected for a number of possible reasons as indicated in the text. In some cases these are reported as illustrative of a preponderance of views, in others as illustrative of a range of views, or as demonstrating a divergence between different professions or groups. Often a quoted comment will better express a view or theme or demonstrate the strength of feeling behind such a view.

Research activities undertaken

- 1.8 Initial research tasks were revised and adapted as the investigation progressed along with additional research activities. Ultimately a larger number (see table D.1) of interviews and focus groups were carried out than originally planned in order to access a wide range of participants, both by demographic background and by location. In total, 42 interviews were carried out by the LETR research team with 56 individuals and 39 focus groups were held. In addition, Professor Richard Susskind undertook a further series of interviews, not included in the LETR research team's figures, which contributed to his briefing paper *Provocations and Perspectives*.¹ The research activities undertaken were as follows:
- Interviews with City law firms;
 - Focus groups with Legal Education and Training Group members and local Law Society education committees;
 - Interviews with senior lawyers;
 - Exploration of the future role of information technology;
 - The new research collection of information for Solicitors and their Skills study;
 - Analysis of LSB commissioned Legal Services Benchmarking Survey data;
 - Research interviews with Alternative Business Structures;
 - A series of focus groups and interviews on the skills required of individual lawyers and on mobility in the professions;
 - Online survey examining possible LSET frameworks;
 - Additional focus groups and interviews with regulators and targeted groups;
 - Survey with Will Writers;
 - Survey with HEI Careers Advisers.
- 1.9 Table D.1, below, provides an overview of the numbers of individuals and groups that were consulted through in-depth interviews, focus groups, and surveys.

¹ <http://letr.org.uk/wp-content/uploads/2012/10/Susskind-LETR-final-Oct-2012.pdf>

Table D.1 LETR research consultations overview

Note: Numbers do not include large open events such as those hosted by the LSB or the Nottingham Law School debate, conferences, symposium discussions. Nor does it include the 18 respondents to the Young Lawyers Forum; the Solicitors and their Skills participants or spontaneous submission to the LETR website. BDRC Continental consumer data is also treated separately (see Chapter 1).

OVERVIEW OF NUMBER AND TYPE OF RESPONDENTS					
FOCUS GROUP	FOCUS GROUP (number of groups) – treated as 3+ people ²	DEPTH INTERVIEW (number of respondents) – treated as 1-2 people	MAIN QUANTITATIVE SURVEY (number of respondents)	CAREERS ADVISER SURVEY (number of respondents)	WILL WRITERS SURVEY (number of respondents)
Regulators					
Domestic legal sector regulators	Meetings were held with 6 regulators in some form. Sometimes this was a meeting/ interview, on other occasions regulators participated in focus groups			N/A	N/A
Other Regulators		4		N/A	N/A
HEI based respondents					
Academics ³	No of dedicated focus groups ⁴ : 9 Number of respondents in total: 39	14	84	N/A	N/A
Careers advisers	No of dedicated focus groups: 0 Number of respondents in total: 1			19	N/A
Librarians	No of dedicated focus groups: 1 Number of respondents in total: 4			N/A	N/A
Legal sector professionals					
Solicitors (including trainees) ⁵	No of dedicated focus groups: 11 Number of respondents in total: 93	13	326	N/A	N/A
Barristers (including pupils)	No of dedicated focus groups: 4 Number of respondents in total 39	4	312	N/A	N/A
CILEx members (including trainees)	No of dedicated focus groups: 1 Number of respondents in total 9	5	162	N/A	N/A
Paralegals ⁶	No of dedicated focus groups: 0 Number of respondents in total 5	5	34 (+ 2 claims managers)	N/A	N/A
IP attorneys	No of dedicated focus groups: 1 Number of respondents in total 10 (inc regulator)	0	1	N/A	N/A
Notaries		2 (regulator)	43	N/A	N/A
Will writers			2	N/A	139 (28 PILOT; 111 FINAL)

² As seven of the focus groups were mixed, comprising members from more than one occupational category, this table records both the number of focus groups, and the number of respondents in focus groups, from each sector.

³ This term was used to include those teaching on LPC and BPTC. Many academics were thus former practitioners. Two at least were in active practice.

⁴ Includes those organised for academics in which careers advisers, librarians and in one case students, also took part.

⁵ People who introduced themselves as having a training or HR role are included in this total - some were qualified solicitors.

⁶ Employment advisers are treated as paralegals for this purpose, whether or not they were in fact legally qualified.

FOCUS GROUP	FOCUS GROUP (number of groups) – treated as 3+ people	DEPTH INTERVIEW (number of respondents) – treated as 1-2 people	MAIN QUANTITATIVE SURVEY (number of respondents)	CAREERS ADVISER SURVEY (number of respondents)	WILL WRITERS SURVEY (number of respondents)
Licensed conveyancers	No of dedicated focus groups: 1 Number of respondents in total 5 (inc regulator)	2 (regulator)	3	N/A	N/A
Costs lawyers		2 (regulator)		N/A	N/A
Students ⁷					
Foundation degree	No of dedicated focus groups: 1 Number of respondents in total: 16	0	67 students	N/A	N/A
QLD	No of dedicated focus groups: 1 Number of respondents in total: 13	3		N/A	N/A
LPC	No of dedicated focus groups:1 Number of respondents in total: 9	1		N/A	N/A
BPTC	No of dedicated focus groups: 0 Number of respondents in total: 4	0		N/A	N/A
GDL ⁸	No of dedicated focus groups:0 Number of respondents in total 0	0		N/A	N/A
LLM	No of dedicated focus groups:0 Number of respondents in total : 1	0		N/A	N/A
Other stakeholders			87	N/A	N/A
ABS		3		N/A	N/A
Judges	No of dedicated focus groups: 1 No of respondents in total: 3		5	N/A	N/A
TOTAL	No of focus groups: 39 No of respondents in total: 251	56	1128	19	139

- 1.10 'Interview' is defined as a meeting with one or two people. Many were face-to-face although for logistical reasons some were carried out by telephone or by emailed response to questions.
- 1.11 Interviews and focus groups were semi-structured, involving an initial series of prompt questions. Prompt questions were derived from the over-arching research questions and adjusted for the group (eg, students, academics, practitioners, regulators) participating. As the context of the research changed (eg, in relation to development of ABSs and the Welsh jurisdiction consultation) and as data gathered from previous groups was analysed, questions for later groups were refined and developed to focus on gaps or matters of particular interest to the research. Participants were also able to raise issues of concern to them within the overall context of the research, even if not specifically addressed in the interview guides.⁹ An indicative selection of interview guides appears in Appendix E.

⁷ It is worth noting that comments on LLB, LPC, BPTC etc come from graduates as well as current students.

⁸ Information on the GDL comes from employers and graduates rather than current students.

⁹ For example, topical issues during the research period included the removal of the minimum salary for trainee solicitors, CPD for barristers and for solicitors and the consultation on a separate jurisdiction for Wales.

- 1.12 Processes of selection or invitation to interview and focus group participants are described below in relation to each research activity. Selection and invitation was carried out, in large part, 'purposively' in order to gain access to a particular group or geographical region. In some cases additional participants were recruited by 'snowball sampling' in which existing participants suggested or invited others.
- 1.13 Unless otherwise stated, the interviews or group discussions were transcribed (or in cases where recording was not possible, noted), and fed into the thematic analysis of qualitative data (see below). The emerging themes were initially set by readers blind to the aims of the project arising out of initial focus groups and interviews. These themes were followed and enhanced in accordance with grounded theory practice as the research progressed.
- 1.14 A summary of each of the individual research activities is outlined below:

Interviews with City law firms

- 1.15 A total of three interviews were undertaken with representatives of City law firms about developments in the international legal services market and transnational entities as well as issues of training and development for global practice. These participants were initially suggested by the Co-Chairs of the CSP as individuals with a good grasp of the issues and important experience to impart. Respondents also discussed bespoke LPCs and in-house training structures, international qualifications, issues of outsourcing, technology and specialisation and diversity and social mobility in recruitment.

Focus groups with Legal Education and Training Group members and local Law Society education committees

- 1.16 Two focus groups were carried out with members of the Legal Education Training Group (LETG).¹⁰ Participants in the LETG focus groups included representatives of both City and large national firms and a small practice. Practitioners were invited to discuss the changing regulatory landscape, both generally and by reference to specific prompts about, eg, ABSs, outsourcing, the growth of the unregulated sector, and implications of technology.
- 1.17 A number of local law societies were selected for approach by reference to location and situation (eg, city, rural area). Four focus groups were held. Participants in local law society focus groups also discussed the different stages of LSET for solicitors and management and supervision of paralegals.

Interviews with senior lawyers

- 1.18 A total of four specific depth interviews were undertaken with senior lawyers from the Bar, legal aid and national law firm practice examining developments in the international legal services market and trans-national entities. Respondents were approached as a result of discussions at focus groups with the LETG, suggestions by the Co-Chairs of the CSP and balanced with interviewees with different backgrounds and areas of work. This activity was developed to ensure coverage of different sectors and professional groups and there is some overlap of coverage with other research items and events. Interviewees were selected purposively as having a particular expertise and perspective on topics such as international practice or legal aid practice. This material was substantially supplemented by work with other senior lawyers, regulators and groups.

¹⁰ http://www.letg.org.uk/uploads/about/letg_constitution.pdf.

Exploration of the future role of information technology

- 1.19 A series of interviews about the future role of information technology in legal practice and LSET was undertaken by Prof Richard Susskind, and contributed to his briefing paper *Provocations and Perspectives*.¹¹
- 1.20 Professor Susskind drew on four interviews conducted specifically for LETR, a series of interviews across the profession in which he raised LETR, as well as his own on-going research and consultancy activities. These included two extended interviews with experts about professions outside law, six confidential discussions with leading practitioners (including General Counsel and senior partners in major firms) and discussions with academics and students at three seminars (one in England, one in Holland, and one in the US). He also drew on his ongoing collaborative research with Daniel Susskind and 50 face-to-face, interviews carried out last year across the professions, and on insights gained during 2012 from five client consulting projects (three leading law firms and two in-house legal departments).
- 1.21 Themes discussed in interviews included how professional and legal services will be delivered in the future; the remit of law schools and universities in preparing individuals to practise in the law and other professions; the needs and wants of in-house lawyers and other informed commercial clients in the purchase of legal services; the educational value of work allocated to young lawyers; the implications of technology for both practice and education; the place of theory in legal and professional education and the relationship between practitioners and academics; and new skills needed by tomorrow's lawyers.

New research collection of information for 'Solicitors and their Skills' study

- 1.22 This research collected data from practising solicitors in order to determine how they were spending their time on different tasks and skills. It was then possible to compare these findings with the research project originally conducted in 1990 in preparation for the (then) new LPC.
- 1.23 Five days of data were collected from each of 34 practising solicitors across a range of firms. These findings were compared and analysed with each other and against the original work, providing an empirical basis for assessing changes in work of solicitors, and any effects of the increasing influence of ICT, etc. Firms were approached by e-mail from a list of contacts generated from individuals who had been involved in previous LETR interviews and focus groups. They were given a period of over six weeks, and several e-mail reminders to return completed timesheets. Some firms subsequently declined to be involved, others did not respond. Those that did were encouraged to gather responses from a range of fee-earners. A detailed briefing document (Appendix E) was sent to firm contacts for circulation to volunteers and results sent by participants directly to the research team.
- 1.24 The six firms involved range from small regional legal aid firms, to mid-sized firms doing a variety of criminal, civil and commercial work, to large City firms.¹² Individual respondents had between 0 and 26 years post qualification experience, with an average of 4.6 years.

¹¹ Briefing Paper 3/2012.

¹² Specifically two large City firms, one mid-sized City firm, one mid-sized general practice firm, one mid-sized legal aid firm and one small legal aid firm.

Analysis of LSB commissioned Legal Services Benchmarking Survey data

- 1.25 The original research plan included a survey of legal services consumers to explore trends and changes in consumers' needs and requirements. Following discussions with the LSB and Legal Services Consumer Panel, it was decided that it would be more beneficial to access data from the 2012 Legal Services Benchmarking Survey rather than duplicate effort.
- 1.26 The survey was commissioned by the Legal Services Board in 2011 and was undertaken by BDRC Continental, a research consultancy. BDRC contacted a representative sample of adults via an online questionnaire. The questionnaire covered a broad range of legal problems from transactional consumer problems to employment rights issues. A total of 4,017 respondents completed the survey.
- 1.27 The study covered many aspects of the journey individual consumers take, from first identifying that they have a legal need, to the action they take to address this need, ending with the legal service provider used. Each element of the consumer journey was investigated in detail to explore how choices were made, satisfaction with the process chosen and whether the choices made led to a resolution of the problem. Survey respondents were presented with a list of 28 descriptors of potential legal issues. The survey explored up to three legal needs experienced by each of the 4,017 respondents - over 9,800 individual needs in total.
- 1.28 For the purposes of this report, the results of the two largest groups of service providers (solicitors and Citizens Advice Bureaux advisers) in the Legal Service Board/BRDC dataset were analysed, and contrasted with the average results for all providers. The aspects selected for particular analysis, as being under-represented in the main data corpus, were the questions "How satisfied were you that your service provider clearly explained the service being provided?" and "How satisfied were you that your service provider treated you as an individual?"

Research interviews with Alternative Business Structures

- 1.29 Interviews with the first 20 Alternative Business Structures (ABS), to be authorised were planned in order to identify any novel issues in education and training emerging from a new model of legal service delivery. However newly approved ABSs were problematic to engage with. They were by their nature new enterprises focusing on establishing their businesses. Some ABSs contacted advised that they did not have relevant information at this stage. Nevertheless, interviews were undertaken with two new ABSs and one further ABS provided a written response to questions provided by the LETR research team.
- 1.30 Themes arising included rationale for the choice of regulator, implications of ABS status and strategies for education within the ABS. The research team also gained insights into the market that might develop through its interviews with organisations using similar business models.

A series of focus groups and interviews on the skills required of individual lawyers and on mobility in the professions

- 1.31 It proved possible to generate a detailed benchmark list of skills, knowledge and attributes for practice from desk-based analysis of a number of existing competence frameworks which allowed work on this topic to be accelerated.¹³
- 1.32 A total of 16 focus groups and nine interviews involving academics, students/trainees and practitioners were arranged. Academics and student meetings were arranged around institutions by reference to geographical spread and type of institution.¹⁴ Volunteers were then sought from that institution. Focus groups with local practitioners were arranged, as stated above, by asking local law society, Bar circuit and CILEx branches to circulate their members and by direct invitation to firms and chambers in the vicinity. A small number of supplementary interviews and written responses accommodated some respondents who had wished to participate in these focus groups but had been unable to do so.
- 1.33 Participants in this group of focus groups were invited specifically to consider the key skills, knowledge and attitudes required for practice. They also discussed the extent to which those attributes were delivered by existing LSET systems, including CPD. Participants also discussed regulatory constraints and issues of mobility, equality and diversity. Student participants in particular showed a keen interest in progression routes and in the information available to them about entry into the professions.
- 1.34 Participants in Wales additionally discussed the emergence of a distinct Welsh law and its possible implications for practice and for education. Issues that had been identified by participants in Wales were then raised with participants in England.

Online survey examining possible LSET frameworks

- 1.35 The primary source of quantitative data for this phase was the LETR online survey. Between 30 April and 16 August 2012, the LETR research team conducted a large-scale open survey of individuals with an interest in matters relating to legal education. The survey was designed by the research team using the proprietary online research software SurveyMonkey, and promoted through the LETR website, by the commissioning regulators; both social and print media and to organisations represented in the CSP. Participants in focus groups and interviews taking place during the survey period were also invited to participate and to circulate details of the survey to colleagues and members. Shortly before closure of the survey, it became apparent to the research team that solicitors were underrepresented in responses and the SRA issued a reminder on 7 August. By the closing date the survey achieved a broad and statistically robust sample of 1,128 persons.
- 1.36 The survey was designed to obtain both demographic and quantitative attitudinal data from respondents on a range of issues, including the necessary knowledge, skills and attributes required of legal service providers.
- 1.37 The survey was piloted on selected legally qualified academics and informed members of the public. These tests addressed issues of length, cogency and question design, and testers were asked to make comments regarding any aspect of their experience completing the survey. Some changes were made to multiple choice questions as a result of these tests, including the addition of a 'N/A' response option to some forced choice questions.

¹³ Briefing Paper 1/2012.

¹⁴ FE, post-1992, Russell Group, 1994 Group, Oxbridge and private providers.

- 1.38 The survey consisted in large part of questions in the form of statements, which were based on ideas drawn from materials produced by the Legal Services Board, frontline regulators, respondents who had participated in earlier LETR empirical research, leading academics, and others, to capture a number of issues relevant to the research questions. A number of the attitudinal questions linked directly to issues explored in Discussion Paper 01/2012, and thus provided data that could be contrasted to the formal stakeholder responses.
- 1.39 There are necessarily some limitations in designing a questionnaire of this nature. For example, respondents could only answer as a member of a single occupational group, so if for example an individual was qualified and practising as both a solicitor and a notary public, then he or she could only have answered questions as one or the other, without completing the survey twice.
- 1.40 Respondents were invited to indicate the degree to which they agreed or disagreed with a given statement using a Likert scale ranging from strongly positive to strongly negative. The use of forced choice questions does not permit detailed nuancing of responses, but it can provide clarity in terms of strength of particular views experiences.
- 1.41 The survey also gave respondents scope to add free text comments, which were separately analysed as part of the qualitative data. This allowed respondents to express more nuanced responses and to comment on particular questions or on the survey itself. Some responded at length. It was clear that a few respondents feared that the survey had been designed to create an appearance of a false consensus or to justify a series of pre-determined changes directed at limiting professional autonomy, de-skilling practitioners, promoting competition at the expense of quality, or other similar concerns. This was not the case, although the research team carefully evaluated such comments in the course of analysis and has acknowledged issues arising from survey design in the report.

Additional focus groups and interviews with regulators and targeted groups

- 1.42 Five focus groups were held with in-house lawyers (three in the private sector and two in the public sector) who provided informed insight as purchasers of legal services. Participants included solicitors and barristers, trainees and pupils. In the private sector a range of commercial organisations was represented. In this context themes discussed included use of external lawyers (and alternative service providers) and evaluation of the service provided. These participants also discussed themes relating to their own education and training and the extent to which in-house practice might be represented in LSET.
- 1.43 As work progressed, the research team convened a further 23 interviews and 12 focus groups with groups who had not yet been represented. This included meetings with regulators and representatives of the smaller professions, organised through their regulators; with regulators outside the domestic sector and with paralegal organisations (two focus groups and nine interviews). These focused on the interrelationship between education, standards and regulation; the appropriate levels and targets of regulation and challenges to the sector (such as outsourcing, ABSs). Respondents were asked to identify aspects of LSET or regulation used in their profession which could be of wider application.
- 1.44 Three interviews were carried out with employment advisers in the unregulated sector on their work and their training models.

- 1.45 Other interviews and focus groups in this category included:
- academics, library and research professionals and others who discussed aspects of particular LSET models (eight interviews and three focus groups);
 - young lawyer and diversity groups (five focus groups) who discussed issues of mobility, entry, progression and information;
 - CILEx members (three interviews and one focus group) discussing their experiences of the CILEx route(s) in particular;
 - members of the judiciary (one focus group) who discussed standards in advocacy performance.
- 1.46 Obtaining sufficient access to diversity groups proved problematic and the research was supplemented by the Equality and Diversity Advisory Group and the Young Lawyers Forum (see below).

Survey of will writers

- 1.47 A survey of will writers was piloted in paper form at the Institute of Professional Willwriters Annual Conference in February 2012, and subsequently circulated in electronic form to the wider membership of the Society of Will Writers and the Institute of Professional Willwriters by gatekeepers at those organisations who sent the link to their membership. The survey sought to examine attitudes amongst will writers to the move to make will writing a reserved activity. It also canvassed opinion on the form that any regulation should take. Whether there ought to be a prior educational standard for will writers and the adequacy of existing continuing professional development were also examined.
- 1.48 A total of 139 responses were received. No claims are made as to the representativeness of this data, and it should particularly be noted that responses do not include will writers operating outside the voluntary standards imposed by membership of these associations.

Online survey of HEI careers advisers

- 1.49 Between January and March 2012, an online survey was conducted among law careers advisers in higher education. Careers advisers were selected because of their role as knowledgeable intermediaries between the legal services market and students, and hence as a relatively impartial source of triangulation for a range of issues being explored through the qualitative and quantitative data. They were asked in the survey about their perceptions of the skills, knowledge and behaviours sought by recruiters and the deficiencies in new recruits which appeared to be of most concern to prospective employers. Respondents also provided data on extra-curricular activities and the 'social capital' sought by employers; on prospective changes in employers' preferences and possible trends in relation to the CILEx graduate entry programme.

- 1.50 The survey was facilitated by convenors of an online discussion list for HEI careers advisers with an interest in the legal profession, who circulated the link to the survey directly to members. It obtained 19 responses from a cross-section of pre-1992 and post-1992 institutions (out of a possible 124):
- Oxbridge - 1;
 - Russell Group - 5;
 - Private HEI providers - 7;¹⁵
 - Post 1992 - 4;
 - Pre 1992 - 1;
 - Educational charity - 1.

Analysis of submissions to the research team

- 1.51 In addition to solicited submissions in response to specific LETR publications, the project website also invited interested persons to make submissions on any issue at any time up to 28 September 2012. By that closing date six such submissions had been received. All responses to Discussion Papers and unsolicited submissions have been incorporated into the main NVivo database and analysed in conjunction with the main corpus of qualitative data in order to reduce any stakeholder bias involved.

Young Lawyers Forum

- 1.52 The Young Lawyers Forum was convened towards the end of the research to ensure that a cross-section of young lawyers was engaged in the final iterative stage of research, and to test a number of ideas for the future that had emerged from the data. A group of 18 volunteers was identified, including some who had participated in earlier focus groups, and through young lawyers' organisations. The group represented the Bar, CILEx, solicitors and those working as paralegals. Constraints of travel and timing meant that the discussions took place in three separate events, and by a combination of face to face meeting and telephone conference. Some of the volunteers were not able to participate directly in any of the events but commented at a later stage. Participants discussed technology and the future of legal practice as well as a number of issues surrounding the current LSET system: entry, bottlenecks, vocational education; supervised practice; specialist licensure and diversity. Notes of discussions were combined by members of the research team into a report which was circulated in draft amongst members of the group for additional comment and amendment.
- 1.53 The remainder of this Appendix provides a general overview of the approaches adopted in respect of analysis of the main elements of empirical research.

¹⁵ The extent to which the private sector is represented amongst respondents is, given their distinctly vocational perspective, understandable. Numbers are too small for any representative conclusions to be drawn and data from the careers advisers survey has been used in this report principally for its qualitative components including, in particular, understandings of 'commercial awareness'.

Analysis of qualitative data

- 1.54 LETR adopted 'thematic analysis', a form of grounded theory, to analyse qualitative data, such as interviews, group discussions, or written submissions. Grounded theory starts with data collection, and then works backwards to the questions and answers. Once the data has been gathered, it is organised into manageable parts, from which a hypothesis is developed, or on which a theory is based.
- 1.55 Through a process of reading and re-reading transcripts, then identifying, comparing and contrasting relevant components, thematic analysis aims to identify themes within the data, and has become the most commonly used analytic method for qualitative research involving interviews. Ezzy (2002:87) suggests two reasons for this approach, first, it allows for the emergence of themes during the process of data collection and analysis (rather than the researcher setting the themes at the outset, by predefining a hypothesis for example) and second, it makes it possible for emerging themes to guide the remaining data collection.
- 1.56 In the course of this project, wherever possible the interviews and focus groups were audio recorded and transcribed soon after they took place, and in total rather than quoting selectively. This was both to avoid accidental bias, and because it was helpful to the iterative process of refining interview and focus group questions if the research team could feed points of interest back into their data collection as the work progressed. If one group of respondents raised a particular issue, it could be put to other respondents to discover whether it was particular to that first group, or if it was of wider relevance, thus aiding the researchers in their efforts to define the boundaries of the issues in question.
- 1.57 In thematic analysis, important points in the data are identified and tagged with a series of codes, which emerge from the text. The codes are then arranged - thematically - with similar concepts grouped into categories in order to make explicit the key issues and arguments surrounding the matter under investigation.
- 1.58 To preclude the possibility of bias, and ensure that the analysis was truly 'grounded', the research team first used the assistance of appropriately supervised psychology students from Brunel University on a work placement at University College Medical School, and asked them to closely read the transcripts of two early focus group discussions, appending what they perceived to be the important points with thematic codes of their choosing. This activity provided a helpful beginning benchmark and means of cross-checking the developing themes.
- 1.59 The research team amassed a large amount of qualitative data; with 190 items (including comments attached to two open-ended questions in the online survey and responses to discussion papers). A data set of this size is too unwieldy to code reliably unaided, so the research team used NVivo, a qualitative data analysis computer software package, developed by QSR International for use by researchers working with volumes of rich, text-based data. NVivo facilitates the methods of thematic analysis, allowing researchers to tag data with codes that can then be standardised across different texts to draw out relevant concepts. Represented in the NVivo database, the LETR data amounted to in excess of 1200 pages (166MB) of textual information.
- 1.60 Certain key concerns became evident at a relatively early stage and were common across the legal sector; these were explicitly drawn out and explored with later participants. The research team was able to use briefing papers and discussion papers to raise some of these issues with stakeholders, and invite responses that both clarified details and helped sharpen the conceptual focus, and to provide triangulation of the views emerging from the qualitative sources. In order to gain a broad and textured perspective, interviews and group discussions were continued to a point at which new themes ceased to emerge, indicating that a representative, if not exhaustive, set of data had been collected.

- 1.61 While standards such as generalisability and reliability are used to judge the quality of quantitative research, qualitative research is not judged by counting responses. A group response from a number of young lawyers may be different from the response of a senior judge. Qualitative research is validated by, for example, prolonged engagement in the issues, understanding the culture and building rapport with participants; giving more weight to widely evidenced data; confirmation by comparison across a range of sources and approaches ('triangulation'), checking for, recognising and clarifying researcher bias; following up and exploring surprising findings in the research, as well as testing and discussing preliminary findings with an expert panel (the CSP). The experience and expertise of the research team were also relevant in understanding and identifying the import of the emerging findings.

Analysis of quantitative data

- 1.62 All quantitative data were analysed to produce a range of primarily descriptive statistics (frequencies and cross-tabulations of variables). The larger data sets were analysed using SPSS, a powerful proprietary software package designed specifically for statistical analysis in the social sciences.
- 1.63 The primary source of quantitative data was the LETR online survey. LSET reform is a socially complex problem, which takes place in a field where there are multiple stakeholders; there is limited consensus about the legitimacy of stakeholders as problem-solvers; and, in which stakeholders are likely to have different criteria of success. While some had the opportunity to participate in group discussions or interviews, or make submissions through representative groups, and anyone could contact the research team directly, a large-scale online survey was regarded as the most efficient and effective vehicle for involving interested individuals in the research process directly, allowing them the opportunity to make qualitative contributions, but also collecting valuable quantitative data, and biographical information that would allow the research team to compare the experiences of different groups. Individual respondents could therefore choose to participate in the project either by sending in views or information or by being involved in the survey. This provided reassurance in a sector of divided stakeholder interests, as any interested individual was afforded the opportunity to represent their own interests or views.
- 1.64 The online survey, conducted between April and August 2012, generated 1,128 responses. The sample size was assessed against the population of people who might have an informed interest in matters of legal education in England and Wales, to determine whether it was statistically reliable. Yamane (1967:886) provides a simplified formula to calculate an appropriate sample size:

$$n = \frac{N}{1 + N(e)^2}$$

Where n = the number of respondents, N = the population size, and e = margin of error.

- 1.65 The first step was thus to determine the population, that is the group of people who might conceivably want to contribute their opinion to the project. The most generous estimates of the size of the legal sector are about 500,000,¹⁶ including a majority of paralegals, some of whom may have no formal legal training. There are also those who do not work in the legal services sector themselves, but maintain an active interest, such as legal academics, law students, people in government or business, and a minority of consumers. To be safe, half again was added to produce a rough estimate of 750,000 as our N. The population of England and Wales is 56.1 million,¹⁷ which means that it was estimated that about 1.3% of the population would have the knowledge and interest to complete the survey. In reality only a minority within the legal sector and a few others would take part; but the purpose of this exercise was to set an upper limit on the number of people who might be considered part of the relevant population, in order to calculate the appropriate size for a statistically reliable sample. Having determined the maximum population that might be eligible to respond to a survey, and settled on the usual social science standard of a 95% confidence level (thereby giving an e figure of 0.05), Yamane's formula was used to calculate the size of a reliable sample: 399.8.

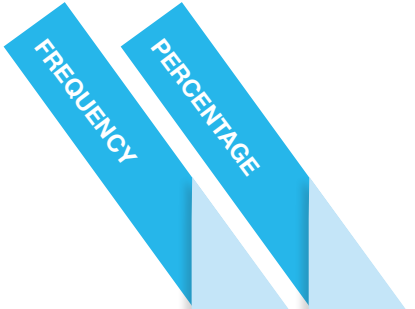
$$R = \frac{N}{1 + N(e)^2} = \frac{750000}{1 + (750000 \times (0.05)^2)} = \frac{750000}{1 + (750000 \times 0.0025)} = \frac{750000}{1 + 1875} = \frac{750000}{1876} = 399.8$$

- 1.66 The actual sample of 1,128 greatly exceeds this, and can thus be safely treated as reliable for statistical purposes. However, this does not guarantee the representativeness of the sample - ie, that respondents accurately represent a cross-section of the target population. Representativeness depends more on the methodology for sampling and gathering data. In this case, as an online survey was used with a largely self-selecting sample, there are a number of sampling biases which cannot be ruled out and may reduce the representativeness of the data. A number of steps taken to address this limitation and to minimise inadvertent bias in using and interpreting the results of the survey are described below. Specific points about the wording of individual questions, or arising from comparison between the qualitative and the quantitative data, are discussed in the main chapters of the report.
- 1.67 A substantial amount of demographic data was gathered as part of the survey for purposes of comparison and as a further indicator of the representativeness of the data relative to its target population. These included a total of 29 occupational categories, which given the focus of this project - and the fact that regulation by title is the effective status quo ex ante within the legal sector - was regarded as the most important basis for comparison between different groups within the sample.

¹⁶ See Briefing Paper 2/2012.

¹⁷ From Office for National Statistics figures drawn from the 2011 Census.

Table D.2 Occupational groups responding



OCCUPATIONAL GROUP	FREQUENCY	PERCENTAGE
Solicitor (including trainees)	326	28.9
Barrister (including pupils)	312	27.7
CILEx member (including trainee legal executive)	162	14.4
Academic/law teacher/training provider (public sector)	64	5.7
Other interested person	53	4.7
Notary public (including trainees)	43	3.8
Paralegal working in a regulated entity	24	2.1
Academic/law teacher/training provider (private sector)	17	1.5
Law student (BPTC)	17	1.5
Law student (LPC)	16	1.4
Legal support staff (including HR)	13	1.2
Law student (university, undergraduate)	12	1.1
Other paralegal or unregulated provider of legal services	10	0.9
Other central or local government employee	10	0.9
Law student (university, postgraduate)	9	0.8
Law student (other)	7	0.6
Law student (GDL)	6	0.5
Member of the judiciary (from a legal professional background)	4	0.4
Client/consumer of legal services	4	0.4
Costs lawyer (including trainees)	3	0.3
Law school support staff (including careers consultants)	3	0.3
Ministry of Justice employee	3	0.3
Will writer	2	0.2
Claims manager	2	0.2
Legal regulator employee	2	0.2
Trade mark attorney (including trainees)	1	0.1
Member of the judiciary (not from a legal professional background)	1	0.1
Courts and tribunal service employee	1	0.1
Police or other law enforcement employee	1	0.1
TOTAL	1128	100

- 1.68 Solicitors and trainee solicitors narrowly constituted the largest group (326 respondents, or 28.9%), followed by barristers and pupil barristers (312 respondents, or 27.7%) and CILEx members and trainees (162 respondents, or 14.4%). There was also a strong response from academics and public sector law teachers (64 respondents, or 5.7%), and notaries public (43 respondents, or 3.8%). Thirty-four paralegals (3.0%, two-thirds of whom work in regulated entities) also responded to the survey. With the exception of notaries, the other smaller legal professions are less well represented. For that reason most data has been analysed using the combined categories given in Chapter 1, and generalisation to the smaller occupational groups has been avoided.
- 1.69 As the respondents to the survey were self selecting the raw data from the survey could not represent the proportionate size of the different professional groups. Consequently the data was weighted to more closely represent the real population. This would make a substantive difference in examination of the mean of all responses. Weighting across all groups would not be possible because of the small number of responses from some groups in the population, and the unknown population size of others. The only viable way to weight responses was thus to strip out those from the smaller occupational groups, and focus on the three major professions, for whom there were an adequate number of responses to make reliable inferences, and for which approximate population sizes exist to enable a proportionate weighting. Where issues of importance arise relating to the smaller professions the unweighted sample is therefore quoted.
- 1.70 To construct a weighting it is necessary to know the size of the base population. Based on the figures provided or published by the three larger professions, a population of 155,000 in England and Wales was taken as the base figure. This comprises approximately 118,000 solicitors (76.13%),¹⁸ 22,000 CILEx members (14.20%)¹⁹ and 15,000 barristers (9.67%).²⁰ The weighting factor was produced by dividing the percentage of a profession in the population, by the percentage of respondents from the profession in the survey sample. In the sample 40.75% of respondents were solicitors, 39.00% were barristers, and 20.25% were CILEx members, therefore:

$$\text{Solicitors} = 76.13/40.75 = 1.868$$

$$\text{CILEx members} = 14.20/20.25 = 0.701$$

$$\text{Barristers} = 9.67/39.00 = 0.248$$

These data were programmed into SPSS which produced an appropriately weighted sample.²¹

18 < [http://www.lawsociety.org.uk/representation/research-trends/annual-statistical-report/documents/annual-statistical-report-2010---executive-summary-\(pdf-392kb\)/](http://www.lawsociety.org.uk/representation/research-trends/annual-statistical-report/documents/annual-statistical-report-2010---executive-summary-(pdf-392kb)/)

19 <http://www.cilex.org.uk/pdf/IPS%20and%20CILEx%20Triennial%20review%20final%20response.pdf>

20 <http://www.barcouncil.org.uk/about-the-bar/>

21 Although because weighting is in the cause of statistical representativeness, rather than microcosmic representativeness, it may still appear at first glance as though the weighted proportions favour barristers or CILEx members over solicitors; this is not the case.

Table D.3: Comparison of 'responses' in the unweighted and weighted Surveys²²

	UNWEIGHTED SURVEY	WEIGHTED SURVEY*
Barristers (including Pupils)	312	312
Solicitors (including Trainees)	326	652
CILEx members (including Trainees)	162	486
Notaries Public (including Trainees)	43	0
Paralegals	34	0
Legal Academics/Training Providers	84	0
Law Students	67	0
Other Interested People	100	0
TOTAL	1128	145

1.71 Another concern may be that with the exclusion of respondents from other occupational backgrounds, there will be insufficient responses left for a reliable sample, and so Yamane's test was repeated. As previously outlined, there are about 155,000 members of the three major professions in England and Wales (so N=155,000), and the standard level of confidence in social science research is 95% (so e=0.05):

$$R = \frac{N}{1 + N(e)^2} = \frac{155000}{1 + (155000 \times (11.03)^2)} = \frac{155000}{1 + (155000 \times 0.0025)} = \frac{155000}{1 + 387.5} = \frac{155000}{388.5} = 399.0$$

1.72 The research team had exactly 800 responses from people identifying themselves as barristers, CILEx members or solicitors. So after excluding all the other respondents to create a weighted sample of the three main professions, there are at least twice as many as would be needed to be satisfied about the reliability of the findings, (and in the weighting process the sample size is artificially adjusted for an effective size of 1,450).

1.73 The sample was in fact generally reflective of the proportions of different identifiable groups in the population as a whole. For instance, there was an even spread of respondents by age.

²² Responses in the 'Weighted Survey' result from the application of a weighting function to the responses of barristers, solicitors and CILEx members to the LETR online survey.

1.74 In terms of gender, 52.7% of respondents were male and 46.7% were female, which is a fairly equal split in the sample as a whole, although within certain occupational groups the results were less evenly balanced, for instance 69.6% of barristers were male, as were 74.4% of notaries, while 75.3% of CILEx members were female. These are, however, representative of the gender distribution in those occupations. Other characteristics are in line with expectations: 6.6% of respondents have some form of disability, 5.4% were lesbian, gay or bisexual, and 8.8% were black or minority ethnic. Respondents were predominantly located in London and the South-East (45.5%), but that reflects the geographical imbalance in the profession. Fewer than 5% of respondents lived in Wales.

Table D.4 Respondents to LETR online survey, by age

AGE GROUP	FREQUENCY	PERCENTAGE
24 or younger	57	5.1%
25 to 29	138	12.2%
30 to 34	162	14.4%
35 to 40	128	11.3%
40 to 44	144	12.8%
45 to 49	145	12.9%
50 to 54	124	11.0%
55 to 59	115	10.2%
60 to 64	68	6.0%
65 to 69	25	2.2%
70 to 74	14	1.2%
75 to 79	3	0.3%
80 or older	5	0.4%

Table D.5 Respondents to LETR online survey, by location

LOCATION

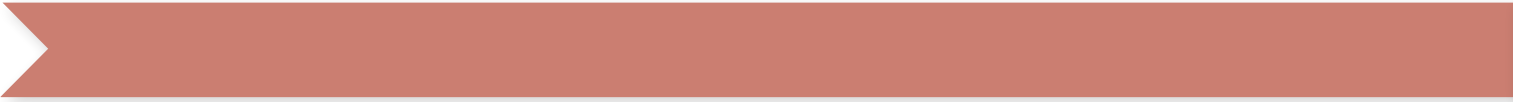
	FREQUENCY	PERCENTAGE
London	298	26.4%
South East England	216	19.1%
South West England	130	11.5%
North West England	103	9.1%
North East England	71	6.3%
East Midlands	69	6.1%
Rest of the World	68	6.0%
West Midlands	65	5.8%
East Anglia	58	5.1%
South Wales	39	3.5%
North Wales	8	0.7%
Scotland	2	0.2%
Northern Ireland	1	0.1%

1.75 Parts of the survey take the form of attitudinal statements, with which the respondents were invited to agree or disagree using a sliding Likert scale. The survey sought thereby to explore a number of quite complex and sometimes controversial issues. The language of a number of regulatory terms of art was retained in some of these statements, as there were perceived risks in attempting accurate 'translations' of these concepts. As a result, a number of respondents expressed concerns that some questions were insufficiently transparent, biased, or presented false alternatives. Contrary to some of those concerns, there is no attempt to fit the results to any predetermined agenda, but it was necessary to ask questions that examined what the regulators were asking, as directly as possible. While there were some 'forced answer' questions, there was always the possibility of disagreement, and the analysis reflects the range of responses received, and has taken account of user concerns.

1.76 The survey data maps against the research questions as follows:

Table D.6: Research questions mapped against key participants and methods

RESEARCH QUESTION	KEY PARTICIPANTS	METHODS
i What legal skills, knowledge and experience are required of different kinds of lawyers and other emerging roles currently? (<i>content</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups Careers advisers (CAs) Consumers	Desk research Interviews Focus groups Online survey Careers advisers survey BRDC Continental survey ‘Solicitors and their skills’ Public consultation (DP 01/2012; 02/2012)
ii What legal skills, knowledge and experience will be required of lawyers and other key roles in the provision of legal services in 2020? ¹² (<i>content</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups Careers advisers Consumers	Desk research Interviews Focus groups Online survey Careers advisers survey BRDC survey ‘Solicitors and their skills’ Public consultation (DP 01/2012; 02/2012)
iii What kind of LSET system(s) will support the delivery of high quality, competitive legal services and high ethical standards (<i>systems and structures</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups	Desk research Interviews Focus groups Online survey Public consultation (DP 01/2012; 02/2012)
iv What kind of LSET systems will deliver flexible education and training options, responsive to the need for different career pathways, promoting mobility in the sector and encouraging social mobility and diversity (<i>context/systems and structures</i>)	Legal service providers Employers Teachers Students/trainees Stakeholder groups	Desk research Interviews Focus groups Online survey Public consultation (DP 02/2011; 02/2012) EDSM Advisory Group report
v What characteristics/processes will enable qualification routes to be responsive to emerging needs (eg, of students, training organisations, consumers)? (<i>context/systems and structures</i>)	Legal service providers Employers Teachers Students/trainees Consumers Stakeholder groups	Desk research Interviews Focus groups Online survey Public consultation (DP 02/2012)
vi To what extent, if any, is there scope (and might it be desirable) to move to sector-wide LSET outcomes (<i>content/systems and structures</i>)	Legal service providers Employers Teachers Stakeholder groups	Desk research Interviews Online survey Public consultation (DP01/2012; DP02/2012)
vii To what extent, if any, should LSET regulation be extended to currently unregulated groups? (<i>context/systems and structures</i>)	Legal service providers Employers Consumers Stakeholder groups	Interviews Online survey Will-writer survey Public consultation (DP01/2012; DP02/2012)

- 
- 1.77 Cross-tabulations allow researchers to 'slice' the data into different groups and compare responses. The most important differences examined in this study were those between professional groups, however, there are other comparisons that may have relevance to issues of legal education and training. For instance looking at the different responses of participants divided according to characteristics such as gender, ethnicity, age, disability, and the like could reveal information pertinent to matters of equality, diversity or social mobility.
 - 1.78 Data from the online survey has been used for triangulation, to assess the strength of particular views, to verify issues raised in the qualitative data, and to cast light on specific research questions. In the context of the current report, there has not yet been sufficient opportunity fully to explore the full depth and richness of the quantitative data, and this will be a research pool available for future work.

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Appendix E: Interview Guides and Evaluation Forms for Solicitors and their Skills

Interviews and focus groups were semi-structured, involving an initial series of prompt questions. Prompt questions were derived from the over-arching research questions and for the group (eg, students, academics, practitioners, regulators) participating. As the context of the research changed (eg, in relation to ABSs and the Welsh jurisdiction consultation and with increasing integration between stages 2 and 3) and as data gathered from previous groups was analysed, questions for later groups were refined and developed to focus on gaps or matters of particular interest to the researchers at that time. Participants were also able to raise issues of concern to them, and within the overall context of the research, not specifically addressed in the interview guides. Reproducing the interview guides for each group would be impracticable and in some cases would prejudice the anonymity of participants. An indicative selection of guides is, therefore, provided. In some cases key questions are emboldened.

LETR Questions for Skills and Mobility focus groups

Key LETR Questions (educators and practitioners)

- What is the role of legal education and training and its relationship to maintaining professional standards and regulation in the sector?
- How do formal education and training requirements work in concert with other regulatory tools to deliver conduct of business regulatory objectives?
- What should be the educational standards for entry to the regulated professions?
- What should be the requirements for continuing education, accreditation and quality assurance for regulated individuals and entities?
- What requirements should be placed on approved providers of legal education and training?
- **What problems do you face regarding issues of equality, diversity and social mobility? How can they be addressed? How might they change in the future?**
- How does our system of legal education and training prepare our lawyers for international work?
- How do you expect the Legal Services Act 2007 to impact on legal education and training in general [and your own training programmes in particular]?

Skills, knowledge and attitudes questions

- **What skills, knowledge and attitudes are relevant now:**
 - At the point of qualification/exposure to the public (see list A);
 - **After** the point of qualification/exposure to the public (see list B)²³? Are there particular roles for which education and training should be mandated? Are there any other useful means of establishing or managing competence after qualification?
- How do these skills emerge (if they do) from university degree courses, GDLs, LPC/BPTC/ equivalents, and/or CPD?
- How do these skills emerge (if they do) from the workplace during the training contract/ pupillage/equivalent or otherwise? What should the relationship between the classroom and the workplace be in an effective legal education and training system?
- How should Welsh law be addressed in the legal education and training system for lawyers? Is there a case for different systems for
 - those practising or intending to practise in Wales; and
 - those practising or intending to practise in England?
- Should there be mobility between professions? If so, how could this be achieved?
- **and what knowledge, skills and attitudes will be needed in the future in the legal services sector, both pre- and post-qualification?**
- How, and to what extent, do you expect ABSs to impact?
 - If regulation was activity-based, would it fracture the professions into a series of “mini professions” (eg. wills, mortgages, tax)? Would your sector still need its own basic qualification(s) first?
 - How, and to what extent, do you expect digital technologies to affect the law?
- If you were the regulator, what would you keep and what would you change about the current system for legal education and training?

²³ These lists appear as appendices 2 and 3 to Briefing Paper 1/2012.

LETR Questions for professional bodies and regulators

Education

- Please tell us about the educational standards and training requirements for entry to your profession. What challenges will need to be addressed in the next 10 years?
- Please tell us about the requirements for continuing education, accreditation and specialist accreditation in your profession. What challenges will need to be addressed in the next 10 years?
- What problems do you face regarding issues of equality, diversity and social mobility? How can they be addressed? How might they change in the future?
- How does the system of legal education and training in your sector prepare your sector for international work?
- To what extent should there be increased scope for mobility between legal professions?

Regulation

- What issues of the regulation of business, or the regulation of education and training, are specific to your sector?
- How does regulation in your sector safeguard the quality of legal services provided to consumers?
- What regulatory risks are there in your sector?
- What is the appropriate level of regulation in your sector necessary to safeguard the objectives of the Legal Services Act? In what ways will such regulation satisfy the principles of proportionality; accountability; consistency; transparency and targeting?
- The Legal Services Act 2007 includes the regulatory objective of promoting “competition in the provision of services”.
 - Do you see scope for competition between regulators?
 - Do you see scope for sector-wide regulation by activity rather than by title?
- What aspects of regulation, or of education and training, developed in your sector do you feel could be of wider application to other parts of the legal services sector?

The future

- How do you see the following affecting your sector:
 - ABSs
 - Changes in funding in higher education
 - Changes in public funding for legal services
 - Expansion of the unregulated sector
 - Increasing divergence between English and Welsh law
 - Competition from abroad (eg EU lawyers practising in the UK; outsourcing of legal services)
 - Developments in IT
- What are your hopes and fears for the future development of your sector?
- What else would you like to tell us?

LETR Questions for Skills and Mobility focus groups (students)

- What do you think of when you are asked to describe a lawyer? What are their characteristics, skills and backgrounds? How do you perceive the professions?
- What would make a student choose law as a profession? Why might a student want to become a lawyer (family, money, prestige, influence, community, etc)?
- What qualities do you think a law student would require?
- What skills, knowledge and attributes do you think a lawyer needs? Would someone feel they could acquire these in the course of a university education? Or during their LPC/BPTC or its equivalent?
- Might fear of not getting a traineeship/pupillage/job discourage students from studying law?
- Do you think that changes in the way legal services are provided (eg through the Co-Op) have any impact on the way law students are educated?
- If you obtained a job in one legal profession, might you be interested in changing to a different legal profession later on? Should it be possible to change between different legal professions?
- How do you think Welsh law should be dealt with in the legal education system? Should there be different systems for those planning to practise in Wales and in England?
- How might the primary and secondary education of a student (the quality of the teaching, the prestige of the school, state vs private, etc) influence their decision to study law?
- Should there be affirmative action policies for students from minority or socially disadvantaged groups, such as recruitment quotas, or acceptance of lower academic standards?
- What are the main barriers to people from different groups in society entering the legal professions?
- What practical steps might be taken to facilitate the entry of more people from minority or socially disadvantaged groups into the legal professions?

Evaluation form for Solicitors and their Skills Solicitors and their Skills

Background

The Legal Education and Training Review (<http://letr.org.uk/>) is a joint project of the Solicitors Regulation Authority, the Bar Standards Board and ILEX Professional Standards. It constitutes a fundamental, evidence-based review of education and training requirements across regulated and non-regulated legal services in England and Wales, to ensure that the future system of legal education and training will be effective and efficient in preparing legal service providers to meet the needs of consumers. As part of this project, the LETR research team is investigating how solicitors deploy their skills. Essentially we want to find out how much time solicitors working in different fields of practice spend on different tasks, and thereby start to establish if there is a set of core skills for solicitors, or if the profession is becoming specialised to the point that those working in different fields of practice employ largely different sets of skills.

Prior to the establishment of the LPC, the original *Solicitors and their Skills* report found that whatever their area of work, the tasks solicitors performed, and the skills they used, were broadly similar (Sherr, 1990). It is notoriously difficult to obtain accurate assessments of how people spend their time, without objective observation, so the original study involved “non-participant observation”; researchers following solicitors around with a stopwatch and recording their activities against a list of tasks. Concerns with cost and confidentiality mean that to replicate this study would be impractical, but developments in electronic timekeeping mean that non-participant observation should no longer be necessary, as there are new ways to identify how solicitors deploy their skills. So now we need your help to investigate if or how solicitors’ skills have changed in the last two decades.

How Do You Spend Your Time?

Concerns for accurate billing and accountability have resulted in a proliferation of time management systems, which record the activities of solicitors in 6-minute increments. We are asking you to pick a 5-day period (preferably Monday-Friday) and at the end of that period (the following Monday perhaps) to go through your timesheets and identify how much time you spent each day on various types of task. The next page features a table for you to complete and return. Please fill it in as illustrated in the example below (times are given in minutes):

	DAY 1	DAY 2	DAY 3	DAY 4
Date	23/07/12	24/07/12	25/07/12	26/07/12
TOTAL TIME WORKED	880	630	551	660
Non-billable/Administration/ Business Development Advocacy	10	205	120	54
Conference with Counsel	0	0	0	0
Client Handling	374	90	40	254
Supervising/Being Supervised/ Discussions with Colleagues	46	120	80	96
Drafting	348	90	60	108
Legal Research				

Where there is uncertainty about which category to put an item into please do not enter it more than once. In particular, where, say, a letter of advice to a client is drafted please put this under “Client Handling” rather than “Drafting”. Any further questions about this research or how to fill in the form should please be directed to Simon.Thomson@sas.ac.uk.

Legal Education and Training Review - Solicitors and their Skills Timesheet

NAME OF FEE-EARNER	FIRM	AREA OF PRACTICE	YEARS PQE				
			DAY 1	DAY 2	DAY 3	DAY 4	DAY 5
Date							
TOTAL TIME WORKED							
Non-billable/Administration/ Business Development Advocacy							
Conference with Counsel							
Client Handling							
Supervising/Being Supervised/ Discussions with Colleagues Drafting							
Legal Research							
Negotiation							
Taking Oaths, Swearing Affidavits, etc.							
Reading/Assessing							
Travelling							
Other (please note)							
Other (please note)							

Please complete this form and return to the person co-ordinating this study for your firm. All data will be held securely, and you will not be identified in any reports.

Glossary

ABS	Alternative Business Structure, licensed by (at present) the SRA or CLC to provide legal services under the Legal Services Act 2007.
Academic stage	the undergraduate law degree or its equivalent (see also 'initial stage').
ACCA	Association of Chartered Certified Accountants.
Accreditation	Of training/specialisation: a 'kitemark' or specialist recognition given to an entity (qv) or individual that attains a specified practice standard. The standard may or may not require periodic re-evaluation or re-assessment. Of CPD providers: system for approving CPD providers adopted by a regulatory or representative body.
ACL	Association of Costs Lawyers, representative body for costs lawyers.
ACLEC	Lord Chancellor's Advisory Committee on Legal Education and Conduct.
Activity-based	(Usually in conjunction with authorisation or regulation). Where the licence to practise is restricted to an 'activity' (eg will-writing, advocacy). An activity can be best understood as a coherent area or field of competence.
Activity-based regulation	used in this report to indicate regulation by field of competence, rather than by professional title.
Admission to the Roll	qualification as a solicitor, following completion of the training contract, QLTS or transfer from CILEx membership.
AP(E)L	Accreditation of prior (experiential) learning.
APIL	Association of Personal Injury Lawyers.
Apprenticeship	Programmes of work-based learning (qv) for those who are 16+ and not currently in full-time education. Apprenticeships involve a structured training programme based on National Occupational Standards (qv). They combine skills training through on-the-job experience, with classroom-based functional skills training in Maths, English, and IT (as required), along with job related qualifications and workplace mentoring and supervision. Work on a legal apprenticeship framework is being led by Skills for Justice (the Sector Skills Council for legal services), with the first funded higher apprenticeships available from spring 2013, with CILEx qualifications being used to provide the job-related knowledge and technical skills. Longer term there is potential within the apprenticeship scheme to develop higher apprenticeships with learning at levels 6-7 (qv) which could permit progression directly into the solicitors' profession.
Authenticity (of assessment)	Assessment is authentic when students are asked to perform real-world tasks that demonstrate the meaningful application of essential knowledge and skills. (See also 'practice validity').
Authorisation	The process by which a person or entity (qv) ('authorised person') is permitted to undertake a reserved activity (qv) by an approved regulator.

Bar Council	the representative body for barristers in England and Wales.
Barrister	a lawyer regulated by the Bar Standards Board.
BCAT	The Bar Course Aptitude Test, now implemented as an entry requirement for the BPTC (qv).
BDRC	BDRC Continental, a research consultancy which carried out a consumer benchmarking survey for the LSB in 2012 and whose data is referred to in this report.
BIS	Department for Business, Innovation and Skills.
Blended/integrated learning	In the LETR context these terms are used to describe a programme of learning that links or integrates learning across the traditional stages of training, eg, by combining academic and vocational education in an exempting degree that satisfies the requirements for the LLB and LPC/BPTC, or involves vocational training concurrently with working under supervision (eg, integrated LPC and training contract; CILEx qualifications and those of the smaller professions). A distinction is made in blended models between learning that simply occurs concurrently with work, and learning that is designed to be consistent between the two environments in order to achieve practice validity (qv).
BME	black and minority ethnic.
BP	LETR Briefing Paper (1/2011, 1/2012, 2/2012, 3/2012, 4/2012).
BPTC	Bar Professional Training Course, postgraduate vocational education for intending barristers.
BRIC(A)	Brazil, Russia, India, China and South Africa.
BSB	Bar Standards Board, regulator of barristers.
BTE	'Before the event'. Legal insurance policies with general coverage, to be contrasted with those taken out once litigation has become contemplated (ATE or 'after the event' policies).
BTT	Bar Transfer Test, an assessment for incoming foreign lawyers and solicitors who wish to transfer into the Bar.
BVC	Bar Vocational Course (precursor of the BPTC), postgraduate vocational education for intending barristers.
Call	qualification as a barrister.
Chartered Legal Executive	a member of CILEx who has attained full fellowship status.
CILEx member	used in this report as an umbrella term for all grades of CILEx membership.
CILEx	Chartered Institute of Legal Executives, representative body for CILEx members.
CIPA	Chartered Institute of Patent Attorneys, representative body for patent attorneys.
CIPD	Chartered Institute of Personnel and Development.
CIPFA	Chartered Institute for Public Finance and Accountancy.
CLC	Council for Licensed Conveyancers, regulator of licensed conveyancers and their entities, including ABSs.

Client	used in this report to denote those who are using specific legal service providers.
CLSB	Costs Lawyer Standards Board, regulator of costs lawyers.
CMC	in this report, a claims management company regulated by the Claims Management Regulator.
COFA	Compliance Officer - Finance and Administration (under LSA 2007).
COLP	Compliance Officer - Legal Practice (under LSA 2007).
Competences/competencies	A set of statements that describe the specific skills, knowledge and understanding needed to undertake a particular task or job competently.
Consumer	used in this report to denote all those who are actual or potential users of legal services in England and Wales.
Continuing learning	used in this report to describe concepts of post-qualification learning and education in a broader sense than is usually understood by CPD (qv).
Costs lawyer	a lawyer specialising in costs work who is regulated by the Costs Lawyer Standards Board.
CPD	Continuing Professional Development. Generally in the legal services sector a regulatory requirement that a certain number of hours of explicit educational activity be undertaken each year.
CPE	Common Professional Examination, more commonly now GDL.
CSP	LETR Consultation Steering Panel.
'Day one' outcomes	A set of outcomes that describe competence at the point of qualification or entry into professional practice. The concept is used in a range of professional contexts. Day one outcomes for solicitors were defined as part of the Law Society/SRA Training Framework Review and are currently used for the SRA Qualified Lawyers Transfer Scheme. Day one outcomes for CILEx members appear in the CILEx Competency framework and for barristers in the outcomes statements for pupillage.
DBA	damages based agreement, a form of contingency fee available under LASPO.
DP	LETR Discussion paper (01/2011, 02/2011, 01/2012, 02/2012).
EDSM	Equality, diversity and social mobility.
Employed barrister	a member of the Bar working in-house in commerce, finance and industry or in local or central government.
Entity	A term that is increasingly used to describe an organisation (commonly a law firm or ABS) that is regulated by an approved regulator. The move to 'entity regulation' by some approved regulators has been triggered by the treatment of ABSs as 'authorised persons' under the LSA 2007, which phrase expressly includes 'a licensable body which... is authorised to carry on the relevant activity by a licensing authority....' (s.18(1)(b) LSA 2007).
EPO	European Patent Office.

Exempting degree	In England and Wales, a QLD which also contains the LPC or BPTC. Degrees may also exempt from or be accredited for other qualifications, such as those of CILEx or paralegal organisations. In Scotland, a law degree which entitles the graduate to proceed into the vocational stage.
F2f	face to face.
FE	further education.
Foundations/Foundation subjects	The required areas of law that must be studied as part of and constitute not less than half the credits for a Qualifying Law Degree (qv) and must be covered in the Graduate Diploma in Law (qv). The Foundation subjects are criminal law, equity and trusts, EU law, obligations (contract, tort and restitution), property law, and public law.
FTP	File transfer protocol. A protocol for transferring files over the internet.
GCSE	General Certificate of Secondary Education.
GDL	Graduate Diploma in Law; a qualification for non-law graduates, or law graduates without a Qualifying Law Degree (qv), which satisfies the initial stage of training for the BSB and SRA. See also CPE.
Gearing	(in a law firm or similar organisation). The ratio of fee-earners who are not profit-sharing partners to profit-sharing partners; higher gearing should indicate higher profitability.
Government lawyer	used in this report as an umbrella term for a regulated lawyers working in local or central government.
Graduateness	The qualities of being a graduate or educated to a graduate-equivalent standard; the knowledge skills and attributes that graduates (etc) will have at the point of exiting that stage of education.
HE	higher education.
HEFCE	Higher Education Funding Council for England.
HEFCW	Higher Education Funding Council for Wales.
HEI	Higher Education Institution (university or HE sector college).
HESA	Higher Education Statistics Agency.
ICAEW	Institute of Chartered Accountants in England and Wales.
ICT	Information and communication technology.
IER	Warwick Institute for Employment Research.
In-house lawyer	used in this report as an umbrella term for regulated lawyers working in-house in commerce, local or central government.
Initial stage	A phrase originally developed by the Advisory Committee on Legal Education and Conduct to include those initial qualifications (the QLD and GDL/CPE) completion of which permitted students to progress to vocational legal education and training for the barristers' and solicitors' professions. See also 'academic stage'.

Inns of Court	professional associations for barristers responsible for calling members to the Bar and some disciplinary functions.
IoP	Institute of Paralegals.
IP attorney	used in this report as a collective term for patent and registered trade mark attorneys.
IPReg	Intellectual Property Regulation Board, regulator of both patent and registered trade mark attorneys and related registered bodies.
IPSILEX	Professional Standards, regulator of CILEx members.
ITMA	Institute of Trade Mark Attorneys.
JASB	Joint Academic Stage Board.
Larger professions	used in this report to refer collectively to barristers, CILEx members and solicitors.
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012.
Law Society	Law Society of England and Wales (unless otherwise stated), representative body for solicitors.
Legal Services Board/LSB	Oversight regulator for legal services under LSA 2007.
LETR	Legal Education and Training Review.
Level (of learning)	Academic, technical and professional qualifications within the national qualification framework for England and Wales are ascribed a level/levels which indicate(s) the range, depth and complexity of learning that must be achieved to obtain that qualification. Levels run from Level 0 to 9. As an indication of equivalence, GCSE = level 2; A level/Welsh Baccalaureate Advanced level = level 3; levels 4-6 = first degree; level 7 = Masters or higher professional qualifications; 8 = doctorate or equivalent.
Licensed conveyancer	a lawyer specialising in property work who is regulated by the CLC.
LLB	Bachelor of Laws. Designator for an undergraduate law degree (although law degrees and QLDs may be designated BA at some institutions).
LLM	Master of Laws, a level 7 qualification.
LNAT	The National Admissions Test for Law: a test of verbal reasoning (aptitude test) for admission to undergraduate law used alongside standard methods of selection such as A Level results and admissions interviews, to assess the student's abilities. The LNAT is currently used by nine UK universities as part their admissions process.
LPC	Legal Practice Course, postgraduate vocational course for intending solicitors.
LPO	legal process outsourcing.
LSA 2007	Legal Services Act 2007.
LSCP	Legal Services Consumer Panel.

LSET	legal services education and training. A term used in this report to indicate education specifically for work in the sector. 'Legal education' can be used to include both this and education in law not necessarily linked to preparation for work in the sector.
LSF	Law Society Finals Examination (precursor of the LPC).
Management Course Stage 1	a mandatory course for solicitors in their first three years post qualification.
MASS	Motor Accident Solicitors Society
Master of the Faculties	regulator of notaries.
MBA	Master of Business Administration, a level 7 qualification.
MDP	multidisciplinary practice.
Modularisation	Where a programme is broken down or disaggregated into discrete units of study, usually to enable more customised or flexible combinations of units.
NALP	National Association of Licensed Paralegals.
National Occupational Standards (NOS)	Nationally agreed statements of the standards of performance individuals must achieve when carrying out functions in the workplace, together with specifications of the underpinning knowledge and understanding - see http://nos.ukces.org.uk/about-nos/Pages/About-NOS.aspx . NOS have been developed by employers in association with relevant Sector Skills Councils.
New Practitioners Programme	mandatory programme for barristers in their first three years of practice.
New York State Bar examination (NYBE)	The examination for admission to the New York State Bar.
NfP	not for profit.
Notary/notary public	a lawyer specialising in preparing and authenticating documents, who is regulated by the Master of the Faculties.
NQF	National Qualifications Framework for England and Wales.
NVivo	proprietary qualitative data analysis software used by the LETR research team.
NVQ	National Vocational Qualification: England, Wales and Northern Ireland. In Scotland, SVQ. See also National Occupational Standards.
OBET	used in this report to describe outcomes-based education and training.
OFFA	Office for Fair Access.
OfQual	regulator of GCSE, A level and some vocational qualifications in England. It liaises with the Welsh Government in respect of qualifications in Wales.

OFRR	Outcomes-focused regulation: a risk-based regulatory regime in which professional standards are based on a system of general principles and high level outcomes which individuals and/or entities must achieve. (See, eg, the regulatory regimes introduced by the Solicitors Regulation Authority and the Council for Licensed Conveyances in October 2011; other regulators are also developing OFRR, or consulting on the extent to which they should adopt OFRR).
OISC	Office of the Immigration Services Commissioner.
Ormrod	(1971) Report of the Committee on Legal Education, Cmnd. No.4595. London: HMSO.
OSCE	Objective structured clinical examination, a form of practical assessment used in medical education and in the QLTS.
Outcome	Learning: a performance statement; statements which define the learning students are expected to have acquired on completion of a module, or course of study. Regulation: statements which define the ends which a regulated person/entity must achieve but which leave that regulated person/entity free (or relatively free) to determine the means. (eg, an SRA client care outcome thus requires that: 'O(1.12) clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them'.)
Output (CPD)	A CPD system that addresses outputs enables the learner to focus on what is achieved that improves competence. In simple terms it contrasts with an input-based system which emphasise inputs to learning such as how much time is spent on each activity, or the types of activity that are permitted, though systems may use a combination of input and output specifications.
Paralegal qualifications	A broad range of qualifications provided by representative bodies, but which do not lead to authorisation under the LSA 2007, or practice under other protected title (Chartered Legal Executive). Such qualifications include CILEx level 2 and 3 (qv) certificates and diplomas, National Association of Licensed Paralegals diplomas, accreditation by the Institute of Paralegals and specific awards in the advice sector.
Paralegal	a role in the legal services sector which is not formally defined but is applied to a person who is not a fully qualified member of one of the regulated professions. It may be applied both to those working in regulated entities and those working in the unregulated sector.
Partial authorisation	Or 'partial access' to a reserved activity (qv). Under proposed revisions to Directive 2005/36/EC, approved regulators or other competent authority in a host Member State shall be required to grant other EU legal professionals partial access to a professional activity in its territory where certain conditions are fulfilled. This could lead to some disaggregation of professional activities from their titles, and hence to an element of activity-based authorisation (qv) 'by the back door'.
Patent attorney	a lawyer specialising in patent work who is regulated by IPReg.

Personal plight	used in this report to indicate consumers who are individuals seeking advice about problems in eg, family or criminal law.
Portfolio	A personal collection of material representing the outcomes (qv) achieved by a learner and the evidence showing how those outcomes were achieved. Portfolios are widely used in technical and professional education, and as a feature of output (qv)-based CPD (eg, in the medical profession).
Post-1992 university	a group of universities in England, Scotland and Wales given that status under (or as a result of) the Further and Higher Education Act 1992. Many, but not all, are former polytechnics.
Practice validity	used in this report to describe educational activities and assessment which are consistent with practice in the legal services sector.
Problem-based learning (PBL)	A style of curriculum and teaching developed originally at McMaster Medical School in Canada which uses relatively sophisticated scenarios or 'problems' as the primary trigger for learning. The method is seen as more student-centred than traditional teaching approaches, relying heavily on small group classes. In the UK York Law School is unique in organising its LLB curriculum predominantly around PBL.
Professional Skills Course	a mandatory programme undertaken during the training contract for intending solicitors.
ProcureCo	a corporate vehicle allowing barristers increased flexibility of practice model. See http://www.barcouncil.org.uk/media/143978/procureco_pack.pdf .
PSC	Professional Skills Course, a mandatory course undertaken during the training contract.
Pupillage	12 month period of supervised practice for barristers prior to independent practice. Also 'pupil barrister', 'pupil supervisor'.
QA	Quality assurance. In education, mechanisms for monitoring the structures and standards of educational activity.
QAA	Quality Assurance Agency for UK higher education.
QASA	Quality Assurance Scheme for Advocates.
QLD	Qualifying Law Degree: a degree that satisfies the BSB/SRA requirements for the initial stage of training. A QLD must address the Foundation (qv) subjects, meet the Quality Assurance Agency's Benchmark standard for Law (prescribed knowledge and transferable skills) and provide training in legal research.
QLTS	Qualified Lawyer Transfer Scheme, an assessment for incoming foreign lawyers and barristers (post pupillage) who wish to transfer into the solicitors' profession.
QLTT	Qualified Lawyer Transfer Test. The precursor of the QLTS.
Qualifying employment	Five year (from 2013, three year) period of supervised practice completed prior to obtaining Chartered Legal Executive status.
Re-accreditation	used in this report as an umbrella term for systems of periodic post-qualification appraisal or assessment.

ReDOC	Resolution of Disputes out of Court is a separately taught and assessed subject on the BPTC.
Registered trade mark attorney	a lawyer specialising in trade mark work who is regulated by IPReg.
Regulated sector	those delivering legal services as authorised persons or as paralegals working under supervision within a regulated environment, such as traditional law firm entities, ABSs and any other licensed entities under the LSA 2007.
Regulatory objectives	The eight objectives specified by s.1(1) LSA 2007 which set out the purposes of lawyer regulation and the parameters for regulatory action.
Reserved activity	A legal activity specified in s.12 and Sched 2, LSA 2007 which can only be undertaken by or under the supervision of an 'authorised person' (see authorisation, qv). The reserved legal activities are the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.
RIBA	Royal Institute of British Architects.
RICS	Royal Institution of Chartered Surveyors.
Russell Group	a group of 24 pre-1992 universities in England, Scotland, Wales and Northern Ireland.
SCQF	Scottish Credit and Qualifications framework.
Scrivener notary	a specialist notary with particular linguistic expertise, who is regulated by the Master of the Faculties.
SES	socio-economic status.
Simulation	Simulated learning is intended to provide more realistic learning experiences than conventional classroom teaching. Simulations may operate through role plays and realistic tasks to mimic legal transactions in real time. IT software (so-called 'serious games' technology) can also be used to deliver transactional learning in a virtual learning environment. Simulation tools are widely used in medicine as a substitute for some clinical training, and are increasingly common in legal education.
Skills for Justice	The Sector Skills Council for law.
SLS	Society of Licensed Conveyancers, a professional association for licensed conveyancers.
Smaller professions	used in this report to refer collectively to costs lawyers, IP attorneys, licensed conveyancers and notaries.
Solicitor	a lawyer who is regulated by the Solicitors Regulation Authority.
SPSS	proprietary quantitative data analysis software used by the LETR research team.
SRA	Solicitors Regulation Authority, regulator of solicitors, solicitors' firms and ABSs.

Standardised client	A standardised client is a lay person trained to role play a client for the purposes of assessment, and to participate in assessment decisions. The client is taken through a rigorous process which enables understanding of the assessment criteria and consensus on assessment standards to be reached. The aim is to achieve greater levels of consistency and authenticity (qv) in assessment than by conventional means. Standardised patients are widely used in medical education and (as clients) are being used by the SRA in the Qualified Lawyers' Transfer Scheme, and in a growing number of other jurisdictions.
Stratification	used in this report to describe the extent to which legal services providers have become differentiated in response to the increased segmentation of the legal services market.
Supervised practice	umbrella term used in this report for required periods of supervised practice prior to qualification (eg the training contract) or, for barristers and notaries, prior to independent practice.
SurveyMonkey	proprietary software used by the research team to create online surveys.
TFR	The Law Society's Training Framework Review.
Trainee	used in this report as an umbrella term for individuals in training for one of the regulated professions (including pupil barristers)
Training contract	Two year (normally) period of pre-qualification supervised practice for intending solicitors. Also 'trainee solicitor', 'training principal'.
Triage	adopted by analogy in this report from the medical practice of prioritising order of treatment of patients by assessment of the severity of their conditions.
UCAS	Universities and Colleges Admissions Service.
Vocational stage	the LPC, BPTC or their equivalents.
Widening participation	An umbrella term used particularly in higher education (HE) to include a range of policies and initiatives to facilitate and increase the participation of groups, which are currently under represented in HE.
Work-based learning (WBL)	There is no consistent definition of WBL; it can be used widely to define any formal (ie, structured, intentional learning) that takes place within the workplace, or more narrowly to describe systems of blended (qv) learning or 'learn while you earn' approaches which combine classroom and workplace learning. In this report the term may apply specifically to the SRA or IPS schemes.

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