

Association of Law Teachers Conference April 2012

Legal Education and Training Review (LETR) update

Introduction

The primary objective of the review is to ensure that England and Wales has a legal education and training system which is robust enough to promote the regulatory objectives contained in the Legal Services Act 2007 including in particular the need to protect the interests of consumers and to ensure an independent, strong, diverse and effective legal profession. A website provides all formal updates and papers for responses at www.lettr.org.uk My role on the LETR Steering Group Panel is as academic advisor with a remit which includes, but is not restricted to, views from CHULS and ALT.

The LETR discussion session

Here are consolidated notes taken from Liz Mytton's conference session on the Legal Education and Training Review (LETR) with grateful thanks to Jane Cheng and John Hodgson. These notes are derived from a Q&A format and consist of views from the floor. They should be read in conjunction with the powerpoint presentation (attached) and the discussion paper:

Discussion Paper 01/2012 Key issues (1): Call for Evidence* located at www.lettr.org.uk This is the key paper to note as responses are **required by 10th May 2012. All references given below are to the paper unless otherwise indicated.

Discussion Paper 01/2012 Key issues (1): Call for Evidence

Preliminary points

- This is not a consultation paper
- I urge academic colleagues to read this paper to ensure full appreciation of the points to date. I have identified parts which I feel we need to discuss but of course others may also wish to add further points.
- It is stressed emphatically by the research team that the Review is an evidence-based information gathering project and that the findings will be for the regulators to determine regarding next steps.
- The focus is upon the regulated sector but there are suggestions that the unregulated sector should come within a regulated framework.
- The Review is described as 'a sifting process and a refinement process', after which the regulators take over.
- A consultation process by the regulators will follow the Review
- There are three headline questions:
 1. **Is the overarching structure of Legal education and Training fit for purpose?**
 2. **Is there a willingness/need to consider possible weakness?**

3. How are the objectives of the Legal services Act and the move to outcomes focussed regulation (OFR) to be met?

Key parts of the Discussion Paper considered

(Para 12) States 'The Review is not concerned with the intrinsic qualities of any stage of legal education as such'

(Para 13) The above is only relevant in terms of assessing the effectiveness of legal services.

(P. 15 onwards) 'Emerging Issues'

(Paras 63 -69) Knowledge and skills gap

Questions

1. Is the QLD adequate?
2. Could/should it include other content e.g. ethics, business, clinics, skills, competence?
3. Should the QLD move away from a knowledge-based approach

Responses

- Adequate for what? What is its purpose? Nobody has told us this?
- For purposes of LSA etc

In any cohort of law undergraduates a bit of an assumption that all are intending barristers and solicitors.

In terms of a Qualifying Law Degree (QLD) questions and observations have been made about content over and above foundation subjects.

To date it seems practitioners are not so concerned with what students know, more concerned with what they can do.

Cognitive skills, transferable skills etc. are in learning outcomes because of the NQF and JASB and own institutional requirements. Don't be blind to fact we do employability and cognitive and transferable skills.

Law degree set up as a minority area until after WW2 – set up to serve the professions then pressure to end entry by apprenticeship route because of status. How many people in the room would see it as the academic stage of becoming a practising lawyer?

- For some students? None of us considers this is the primary or sole purpose of a law degree – a very important preliminary point to make – tension with professions, and the heavy regulation. Why are criminal law and equity foundation subjects?
- It's a liberal arts degree in my view

- We are all impliedly saying it is a liberal arts degree by saying it's not for sole purpose of qualifications. If professions want something else and what they prescribe is not the QLD, what market will there be for the LLB as a purely academic approach?
- But I hear people say they are doing a law degree because it is interesting.
- But they'll want the option of QLD as if not a QLD they don't apply for the course.
- Let's talk about 'Purposes' – not 'purpose'. Universities can have a law degree that emphasises philosophical aspects but no student would do them because doesn't keep their options open. Difference between the academic award and the professional qualification. Professional bodies need to oversee early stages of qualification otherwise have to do it at a later stage when will cost more.
- What are just reasons for a law degree?
- Skills is very much the hallmark of the LLB which contains certain skills that employers value. Should LLB be more about skills, in which case does each university decide which knowledge base to use as a context to deliver skills? At the moment we have a prescribed knowledge base. Is harder and more skills based than other degrees. Need to hold onto the skills as valued by both employers and students.
- Assumptions are too narrow, need to explore different models and e.g. non QLD routes exist within existing law degrees.
- **Paras 63-69 important as deal with knowledge and skills gap**
- if you ask what are these skills you are teaching, the response is often "thinking like a lawyer" are we clear about breadth and type of skills? Can we say to this review that across law degrees we are aiming to deal with key skills which include thinking like a lawyer but are we moving on into more sophisticated skills across law degrees?
- We assume we know what an LLB is for and so everyone else does know too. It can't all be about employment.
- Should we have other knowledge areas in the LLB?
- A red herring as we already do it – can include ethics, clinical etc in existing frameworks.
- Question is about whether they have to be mandated – desirable.
- Most institutions have institutional skills requirement which, in law we exceed and need to be more explicit about. A lot of institutions have a mission to be more involved with community – leads to pro bono etc. other factors outside the law school
- If asked of SLS, they would say not more than 7 maybe 7 too many, not ethics and not skills!
- Concerned we're talking about what we want degree to be – issue of what students think they're going to get at the end. Clear what essence is so students who want a career – students in our first year don't know the implications of the LSA and what future holds.
- standards of writing. Difference between social and formal register.
- I am concerned about ethics – many of my students see nothing wrong with lying for gain (in plagiarism examples). Have a different standpoint

- Most effective way I can convey importance is to talk about fitness and suitability.
- Plagiarism – evidence is that it's not happening to a greater extent in different university sectors but pre 1992 universities don't report it but new universities report hundreds of cases. It's the way it's dealt with and treated in new universities – defining it. Looking at equality of access – further disadvantaged by perception they are dishonest because of the ways the universities they have access to treat the issue.
- In the USA ethics is the only prescribed subject.

What about the Foundation subjects and skills?

Get rid of all except contract, judicial review, legal system and method including law making and business and social context of law. Various subjects serve that purpose not ends in themselves. Students badly sold short on drafting. Law they learn will be out of date by the time they practise.

Skills point put better at a practitioner stage

Skills of communication, persuasion etc are needed by all students. Not just practitioner skills.

But could deliver/mandate these in any degree.

Vast majority of my students don't go into the legal profession

But still need basic skills of argument and research. A high proportion of students choose law because they want the option.

But that's what the LPC is for.

If this system is adopted all the real knowledge will have to be taught at the stage skills are currently taught – have to teach knowledge somewhere. Some form of property (real and personal) are fundamental to legal activity.

But essential that eg if go into commercial practice that know criminal?

If foundations were abolished, most law schools would still keep those subjects as compulsory cores. 3rd year options are predicated on students' understanding of the foundation subjects.

Melissa Hardee's Project will be on HEA website any time now. Looking at students who chose to study law - prime reasons were interest. Perceptions of content of law degree – most emphasis on substantive law. Least emphasis on career planning, legal practice and communication. Wanted more emphasis on drafting, negotiation, etc.

I would distinguish between things we think should be on a degree and requiring those subjects to be foundation subjects. We're in danger of being disingenuous about status of QLD – I think we would still teach those subjects and particularly in post 1992 sector would be to retain idea that all law degrees the same. That's why most post-1992s would be in favour of retaining and pre 1992 wouldn't mind. Unknown is how the private sector would respond. Must include the private sector. Not a question of option A or option B but about having a whole range of

backgrounds. Why not have apprenticeships and 2 year degrees. Avoid a situation where if from working class background you're forced into an apprenticeship route.

An extra foundation subject – consumer rights. I think it should be taught at secondary school.

Concluding remarks

The above provides an indication of ALT responses. Clearly, there is a range of views and it will take time for academics to reflect on priorities. Nevertheless, the above provides an indication of current thinking.

I attach below a summary of the three steering group meetings to date.

Part 2: Legal Education and Training Review (LETR) meetings of the steering group: observations/update for CHULS and ALT as at March 2012

Initial comments

This update identifies my observations from the three meetings of the Steering Group to date. The website is the place to check papers for responses, formal meetings, minutes, outcomes, and developments. It is especially important that individuals who would like to respond to the Review documents access the website. Early observations are that the review is significantly more far-reaching than one might have expected. Academics clearly have an important part to play alongside many other stakeholders. So far, I have been able to provide advice and guidance within my role as academic advisor to the Steering Group. It has been nothing short of remarkable realising how much we may think is common knowledge. Yet, the knowledge and experience derived from law schools has proven to be extremely valuable in informing the debates among key stakeholders.

To date, three Review meetings with the steering group have taken place in July and November 2011 and March 2012. The first meeting was essentially introductory and the second had two main parts. Firstly, to consider feedback on a questionnaire and receive views from break-out sessions on a list of questions to contribute to further LETR research. Secondly, the meeting was asked to consider a draft Equality and Diversity paper presented by Julian Webb. The final version is due to be published on the website for responses.

Observations from the November meeting

It should be noted that the Review is an extremely comprehensive exercise and questions are aimed at a wide range of stake-holders. A key question to arise is:

For educators and trainers: what are the key challenges that legal education and training will face in the next five years? How might the regulation of education and training support or hinder your ability to respond to those challenges?

Initial responses to the above question generated a range of ideas and responses which naturally reflect the diverse identities of Law Schools. The two academic advisors on the steering group are from pre (Fiona Cownie) and post (Elizabeth Mytton) 92 universities which serve to ensure a range of perspectives is taken into account. Responses from the group tasked with the above question provided more comment than solution but the following provides an indication of matters raised at **the November meeting**:

1. The future of the GDL
2. The need to establish a single national regulatory framework for those 'practising' law other than barristers and solicitors
3. Access routes to the professions
4. Admissions and selection
5. The locus of decision-making e.g regulators v policy-makers
6. Market changes

An indication of the issues raised through other discussion groups are:

1. The impact of internationalisation - practitioners from other jurisdictions
2. Need to improve 'softer skills' sets
3. Need for risk-based/outcomes focussed regulation for non-qualified
4. Focus on professional ethics re Alternative Business Structures

Observations: Equality and Diversity paper and discussion

The paper is due to be disseminated on the LETR website. It is anticipated the paper will identify a number of key questions for consideration. Preliminary comments were:

1. The extent to which contextual information is or could be used when considering admissions
2. Should diversity data be a condition of validation
3. How might it be possible to provide equitable work experience
4. Impact of 'credentialisation' e.g. social capital, high UCAS points, attendance at pre-92 university, poor informal work experience
5. What might be done to retain professional relevance of LPC/BPTC in the graduate jobs market
6. Opportunities for internships
7. Opportunities for law schools to use curriculum developments and interventions to enhance opportunities for non-traditional students
8. Social stratification creates 'maximally maintained inequality'

From the discussions it is clear that the Review's aspirations are being tested. A realistic view has to be taken to balance those aspirations with the reality of students who are finding success with legal education a real challenge. For example, recent experience at an LLB revalidation brought home to me the reality of 'maximally maintained inequality'. The revalidation was seeking to include credit-based units for work experience, pro bono, mooting, and related practice-based activities to add value to the degree. This seems to fit very well with the aspirations of the Review. However, the LLB course leader stated he had been advised by City law firms that such credit would diminish the academic standing of the degree and students are expected to do pro bono, obtain law work experience and such activities as extra curricular activity. This captures the essence of the challenge. When asked at my own post-92 university whether the university one attends 'matters' my response is always that the range of law firms and law work available reflects the range of abilities of successful law graduates.

The March meeting

This meeting provided the clearest position in terms of the Review and its purpose. Papers are available on the website for responses www.lettr.org.uk . The main parts of the current discussion paper were discussed. This was reviewed by ALT at which responses were invited for submission to the LET Review team by 10th May 2012.

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