

Response: LETR Discussion Paper 02/2012 (Key Issues II: Developing the Detail)

Name of responding person: David Steward, Non-practising Solicitor, CEDR Accredited Mediator, Business Coach

Name of organisation (If responding on behalf of an organisation): Eastgate Coaching
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Your named response will be published (but without contact details) on the LETR website unless you indicate to the contrary, below:

I wish my response to be published wholly anonymously

I DO NOT want my response to be published

If you are willing to be contacted by the research team with respect to any of your responses below, please provide the following contact details

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Are you responding as a:

- | | |
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| <input type="checkbox"/> Barrister | <input type="checkbox"/> Licensed conveyancer |
| <input type="checkbox"/> Barrister's clerk | <input type="checkbox"/> Other non-lawyer |
| <input type="checkbox"/> BPTC/LPC student | <input type="checkbox"/> Other provider of legal activities |
| <input type="checkbox"/> BPTC/LPC tutor | <input type="checkbox"/> Paralegal |
| <input type="checkbox"/> Chartered legal executive | <input type="checkbox"/> Practice manager |
| <input type="checkbox"/> Claims manager | <input type="checkbox"/> Registered foreign lawyer |
| <input type="checkbox"/> Client/consumer of legal services | <input type="checkbox"/> Regulated immigration adviser |
| <input type="checkbox"/> CPD provider | <input type="checkbox"/> Regulator of legal services |
| <input type="checkbox"/> Law student (undergraduate) | <input checked="" type="checkbox"/> Solicitor/Notary |
| <input type="checkbox"/> Law teacher (school/FE) | <input type="checkbox"/> Trade mark/patent attorney |
| <input type="checkbox"/> Legal academic (university) | <input type="checkbox"/> Trainee solicitor/Pupil barrister |
| <input type="checkbox"/> Legal advice worker | <input type="checkbox"/> Trainee legal executive |

Will writer

Question 1: in the light of limited evidence received so far we would welcome further input as regards the preferred scope of QLD Foundation subjects, and/or views on alternative formulations of principles or outcomes for the QLD/GDL (We would be grateful if respondents who feel they have already addressed this issue in response to Discussion Paper 01/2012 simply refer us to their previous answer).

Question 2: Do you see merit in developing an approach to initial education and training akin to the Institute of Chartered Accountants of England and Wales? What would you see as the risks and benefits of such a system?

Question 3: we would welcome views on whether or not the scope of the LPC core should be reduced, or, indeed, extended. What aspects of the core should be reduced/substituted/extended, and why?

Question 4: should greater emphasis be placed on the role and responsibilities of the employed barrister in the BPTC or any successor course? If so, what changes would you wish to see?

Question 5: do proposals to extend rights to conduct litigation and the extension of Public Access to new practitioners require any changes to the BPTC, further education or new practitioner programmes, particularly as regards (a) criminal procedure (b) civil procedure (c) client care, and (d) initial interviewing (conferencing) skills?

Question 6: we would welcome any additional view as to the viability and desirability of the kind of integration outlined here. What might the risks be, particularly in terms of the LSA regulatory objectives? What are the benefits?

Question 7: We would welcome additional evidence as regards the quality of education and training and any significant perceived knowledge or skills gaps in relation to qualification for these other regulated professions.

Question 8: As a matter of principle, and as a means of assuring a baseline standard for the regulated sector, should the qualification point for unsupervised practice of reserved activities be set, for at least some part of the terminal ('day one competence') qualification at not less than graduate-equivalence (QCF/HEQF level 6), or does this set the bar too high? (Note: 'qualification' for these purposes could include assessment of supervised practice). What are the risks/benefits of setting the standard lower? If a lower standard is appropriate, do you have a view what that should be (eg, level 3, 4, etc)?

Question 9: Do you consider that current standards for paralegal qualifications are fragmented and complex? If so, would you favour the development of a clearer framework and more coordinated standards of paralegal education?

Question 10: If voluntary co-ordination (eg around NOS) is not achieved, would you favour bringing individual paralegal training fully within legal services regulation, or would you consider entity regulation of paralegals employed in regulated entities to be sufficient?

Question 11: Regarding ethics and values in the law curriculum, (assuming the Joint Announcement is retained) would stakeholders wish to see
(a) the status quo retained;
(b) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law and the values underpinning the legal system

(c) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values

(d) the addition of legal ethics as a specific Foundation of Legal Knowledge.

In terms of priority would stakeholders consider this a higher or lower priority than other additions/substitutions (eg the law of organisations or commercial law)?

Would you consider that a need to address in education and training the underlying values of law should extend to all authorised persons under the LSA?

Question 12: Do you agree the need for an overarching public interest test in assessing the aims and outcomes of LET? If so do you have any view as to the form it should take?

Question 13: we would welcome any observations you might wish to make as regards our summary/evaluation of the key issues (as laid out in paras. 127-31 of the Paper)

Question 14: Do you agree with the assessment of the gaps (now or arising in the foreseeable future) presented in this paper in respect of the part(s) of the sector with which you are familiar? If not, please indicate briefly the basis of your disagreement. [If you feel that you have already responded adequately to this question in your response to Discussion Paper 01/2012, please feel free simply to cross-refer]

I would like to qualify my response by making two fundamental points.

1. It seems to me that a sound understanding of ethics and an appreciation of the role that providers of legal services play in society are basic requirements (question 11 below). All such providers must view what they learn in that context. This is particularly important when they come to learn about what the discussion paper describes as “commercial skills”; commercial considerations such as profitability must be moderated by ethics.
2. Nothing in my response should be taken as generalising about all providers of legal services, or even about solicitors’ firms, where my own experience lies. There will be many individuals and organisations to whom my comments won’t apply, because they always possessed the skills in question or have learned them.

Subject to those points, my focus will be on skills other than those of a technical legal nature. In particular, the Discussion Paper refers, for example, to relationship management, project management, general team and individual management skills, workflow management and organisational skills. From what I have observed, the following are potential problems:

- a. 30-odd years ago, there was little formal review, appraisal and feedback in solicitors' firms. The general understanding was that, if nothing was said to you, you were doing all right. Now, firms have systems in place, but from what I've observed their lawyers are often not sufficiently aware of how those systems should properly be used. I hear anecdotal evidence of poor feedback, even within those systems. It may be that part of the problem lies in a perception of time pressure on the part of those providing the reviews and delivering the feedback. Some regard them as a drain on their time, rather than a valuable investment of time.
- b. Similarly, good lawyers may be poor supervisors, who don't know how to lead teams well, or to give instructions with a view to getting the best out of people. Again, pressure of time may play a part here: supervisors may feel that, having delegated work, their main concern is that the case-handler should get on with it.
- c. There can also be severe shortcomings in the way that firms discuss their business issues and arrive at decisions on these. For example, partners (or other business owners) may feel disenfranchised by decisions made after poorly run meetings. While there is never one model style of leadership for every organisation, senior lawyers may lack leadership skills, particularly in relation to business strategy.

A person with a strong ability in the academic study of law or the application of the law in practice may have skills of this sort, or they may not. The skills can be learned. For a person with sufficient natural aptitude for them, a course of teaching may be enough. Many will need more, for example a coaching relationship over a sufficient period of time to raise their awareness and help them to embed an appropriate degree of change in their thinking and behaviour. But I am conscious that the question is directed to skills gaps and the content of education and training, rather than the method of its delivery.

If there is to be education and training in management skills (and I would favour these at an early stage in any path into the provision of legal services), then as part of the content I would like to see the express promotion of a coaching culture in management. If, for example, lawyers were educated in the benefits of such an approach to mentoring, reviews, appraisals and feedback, this might help to address the concern about "passive competence" (which I understand to refer to the assumption that a qualified lawyer is competent unless and until they do something that reveals their incompetence). A lack of competence might be recognised and addressed earlier. This approach would encompass team skills, which would have to potential to improve not only the efficiency and cost-effectiveness of case handling for clients, but also the learning experience for the case handlers. Education and training in techniques for managing meetings (for example a "Thinking Environment", as advocated by Nancy Kline) could well improve the way that firms make business decisions and in turn create a greater sense of inclusion for their lawyers.

Question 15: do you consider an outcomes approach to be an appropriate basis for assessing individual competence across the regulated legal services sector? Please indicate reasons for your answer.

Question 16: in terms of the underlying academic and/or practical knowledge required of service providers in your part of the sector, would you expect to see some further specification of (eg) key topics or principles to be covered, or model curricula for each stage of training? If so do you have a view as to how they should be prescribed?

Question 17: Would you consider it to be in the public interest to separate standards from qualifications? What particular risks and/or benefits would you anticipate emerging from a separation of standards and qualifications as here described?

Question 18: Decisions as to stage, progression and exemption depend upon the range and level of outcomes prescribed for becoming an authorised person. A critical question in respect of existing systems of authorisation is whether the range of training outcomes prescribed is adequate or over-extensive. We would welcome respondents' views on this in respect of any of the regulated occupations.

Thank you very much for your contribution. Please now e-mail your responses to letrbox@letr.org.uk, putting 'Developing the Detail response' in the subject line.