

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

Name of responding person:**Professor Fiona Cownie**

Name of organisation (If responding on behalf of an organisation):**Society of Legal Scholars**

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

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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

Name (if different to above):

Tel:

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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 type="checkbox"/> Solicitor/Notary |
| <input type="checkbox"/> Law teacher (school/FE) | <input type="checkbox"/> Trade mark/patent attorney |
| x <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 |
| | <input type="checkbox"/> 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).

1. As the Discussion Paper notes, there is generally a high level of satisfaction with the QLD, both from students and other interested parties (paras 25-27 of Discussion Paper). Whilst the SLS is not in any way complacent about legal education, and indeed supports a range of activities designed to improve the quality of legal education, the Society agrees that overall, the current QLD meets the needs of students, the academy and employers.
2. In terms of the possible changes to the QLD outlined in para 27 of the Discussion Paper, the Society would observe that in the light of the high level of satisfaction referred to above any proposed changes to the QLD would only be justified by clear and substantial evidence that any change would be beneficial.
3. Turning to the specific suggestions listed in para 27 of the Discussion Paper, the Society responds as follows:
 - Writing Skills – any perceived problem with the literacy skills of law graduates in particular is a perception which needs to be justified by clear empirical evidence. It should also be borne in mind that communication and literacy are key skills already addressed by academic providers and regulated in various ways e.g. they are included in the Quality Assurance Agency's Subject Benchmark for Law. Bearing these points in mind, the Society is always open to discussing improvements in legal education.
 - Law of Organisations / Company Law – the Society of Legal Scholars does not support any extension of the 'Seven Foundations' included in the current Joint Announcement. It is always possible to produce a 'shopping list' of potential subjects to add to the 'core', but in the view of the Society this would not be desirable. It is the Society's view that it is best to allow individual students, in the context of their particular law schools, to construct the law degree which best suits their own needs and aspirations. In the context of a rapidly-changing labour market, the Society would regard the preservation of as much flexibility as possible as particularly important.
 - Commercial Awareness – apart from the fact that this concept is at best ill-defined, in so far as it connotes an understanding of the way business and commercial enterprises function in practice, this appears to be a matter which is best dealt with in the LPC/BPTC as part of vocational training. However, before it could be included in vocational training, much thought would need to be given to what precisely lies behind any desire for 'commercial awareness'.
 - Interpreting / Using Legislation – statutory interpretation lies at the heart of much academic study of law. The Society of Legal Scholars fully supports the development of improved ways to develop the skills of law students in this regard, and indeed many of its members engage in imaginative and rigorous teaching practices in order to assist students in using and interpreting statutes. However, the Society does not think that it is necessary to change the QLD in this regard.
4. Para 28 deals with the suggestion that the QLD should be defined in terms of 'outcomes' (cognitive and other skills). The Society of Legal Scholars is unconvinced that any potential benefits of recasting the Joint Announcement in this way would outweigh the considerable amount of time and resources which would need to be devoted to such an exercise. The Society is also concerned about the danger that any such re-drafting would inevitably involve the introduction into the QLD of additional compulsory requirements, and as noted above, the Society would not regard this as being in the best interests of students. Further, the Society is not aware of any persuasive arguments that such a restatement is needed for

regulatory purposes, as opposed to the view of some that it might be desirable from a pedagogic point of view.

5. Paras 29 and 30 rehearse many of the debates about the existence / desirability of the 'Seven Foundations of Legal Knowledge'. The Society's members reflect a similarly diverse range of views. Given the lack of consensus over this issue, the Society would regard it as preferable to maintain the status quo, with which, as stated above, there is general satisfaction.

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?

No. The disadvantages of this approach have been outlined in the answer to question 1, and it carries significant risks, namely that it would be likely to lead to an increase in the number of subjects which a law student needed to study in order to obtain exemptions (as opposed to satisfying the Foundations). Many undergraduates do not know at such an early stage in their lives in which areas they will specialise (indeed, this decision is often dependent upon their future employer). Consequently, there would be a great temptation to 'cover all bases' with the result that the subjects outside the exemptions would not be studied, leading to a decrease in the variety of subjects available for study at undergraduate level, since providers will be unable to devote resources to subjects that are not taken by a reasonable number of undergraduate students. In the context of a rapidly-changing labour market, this decrease in the range of legal subjects available for study would not, in the opinion of the Society, be a desirable outcome. Any increase in the number of subjects which students needed to study to gain exemptions would of course have a knock-on effect on the GDL.

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?

The Society broadly takes the view that the primary focus of the LPC/BPTC should be firmly on skills, and that the amount of substantive knowledge included should be kept to a minimum, since graduates should be able to acquire additional substantive knowledge themselves in areas where they may need it. If a reduction of the core is needed to achieve a clear focus on skills, the Society would support such a move.

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?

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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)?

The Society of Legal Scholars would see analysis of the values within the legal system as a matter which is pervasive throughout the academic legal curriculum. It would therefore regard any specific statement in the Joint Announcement about values as being unnecessary (option a). However, if one were to be included, the Society takes the view that it should be in the form suggested at (b) above.

The Society made a detailed response to the issues surrounding the debate about the introduction of ethics to the undergraduate curriculum in paragraphs 7-10 of its previous Response in May 2012. Please refer to that document.

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?

Yes. The Society is surprised that the detailed suggestions above are all focused on the QLD, and there are no similar detailed suggestion in this question relating to further teaching of values/ethics at other vocational stages of legal education. In terms of regulation, this appears surprising.

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]

In terms of gaps in knowledge and/or skills, the Society is not aware of significant gaps in relation to the QLD. If there are such gaps which are relevant to the occupations regulated by the LSB, the Society does not accept that it is necessary to plug them all by addressing them within the QLD. It would reiterate that law degrees are undertaken by many students who do not enter a legal occupation. Any regulation of the degree must be consonant with what is necessary to achieve regulatory objectives alone, and not go beyond that to enter the territory of pedagogical objectives.

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.

The Society has no objection in principle to outcomes-based regulation. However, as stated above, it is unconvinced that it is necessary to alter the nature of the Joint Announcement in this fashion in order to achieve the regulatory objectives with which the LSB is charged.

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.

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