

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

Name of responding person: Graham Ferris

Name of organisation (If responding on behalf of an organisation):

**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**

Name (if different to above):

Tel:

Email: graham.ferris@ntu.ac.uk

**Are you responding as a:**

Barrister

Barrister's clerk

BPTC/LPC student

BPTC/LPC tutor

Chartered legal executive

Claims manager

Client/consumer of legal services

immigration adviser

CPD provider

Law student (undergraduate)

Law teacher (school/FE)

x Legal academic (university)

barrister

Legal advice worker

executive

Licensed conveyancer

Other non-lawyer

Other provider of legal activities

Paralegal

Practice manager

Registered foreign lawyer

Regulated

Regulator of legal services

x Solicitor/Notary

Trade mark/patent attorney

Trainee solicitor/Pupil

Trainee legal

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).**

Content specific (in terms of subject matter) foundations seem a little silly in principle. There are perhaps too many foundational subjects given the number of LLB students who do not go on to become lawyers. The familiar set is a little lacking in coherence but not obviously wildly wrong in intention.

**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?**

Some attraction. There is a risk that any cross professional legal culture is lost as the main task of delivery is fragmented and located in work places. It makes is even harder to try and forge an ethical community and gives more influence to employers at a time when we have no clear idea who employers will be in ten years time.

**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?**

See question 1. I would be inclined to see ethics given more importance but not as a core module. The present division of property law is not very coherent. Some attention to legal method and system is probably necessary. One would wish to see:

1. voluntary legal arrangements (contract and property);
2. involuntary legal regulation (tort and crime);
3. disputes (court system or not);
4. law and politics (constitution, human rights, public);
5. law as a form of co-ordination (legal reasoning, legal system, legal profession, law as contrasted with ethics or administrative discretion – this aspect is poorly caught by the present structure); treated in any general academic legal study programme.

**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?**

Outside my area of expertise.

**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?**

Outside my area of expertise.

**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?**

Outside my area of expertise.

**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.**

Outside my area of expertise.

**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)?**

Outside my area of expertise. Also, I doubt the validity of several of the concepts being deployed.

**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?**

A better framework is clearly desirable, and some routes for progression within the sub-sector, and transfer across to more prestigious and better rewarded sub-sectors of legal services

**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?**

I feel the issue requires being brought into legal services regulation and that regulation of entities would be insufficient. FSA model has not fared well in practice. Legal services require more care given the societal values at risk.

**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?**

(a) No; (b) Yes; (c) Yes; (d) No – but I am not very happy with the foundation structure as a model; higher priority than law of organisations or commercial law. I would extend some ethical content education to all legal services providers. Generally see remarks below:

My main concern is with the proposals around ethics in the LLB.

The debate tends to take a reductive and narrow view of ethics (it being the *second* word in the expression “professional ethics” and it should understand its secondary place in legal education). Ethics (or value informed curriculum) are in my view ill served by what has been referred to with approbation as “hard ethics” – for which I think we can read “law like system of norms set out in a code to control the limits of professional practice” – bad man ethics is simply bad ethics! We need ethics in the LLB in part because the system is normative but not law like, it is aspirational in a way most law cannot be.

In terms of ends, informing professional practice and the internalisation of professional ethics can be at most one aim.

The others **must** include:

Concern with the personal development of the students;

Reflection upon the ethics of the rule of law/liberal democratic system/discursive ethics as the ethical origins of the law and legal system in the common-law (and Western) legal tradition;

Learning of argumentative and reflective styles and rules of thought – how to think honestly about matters that touch the core values, how to recognise those common cognitive illusions and errors that cloud our thought, how to reflect upon as well as how to criticise;

Recognition of the pluralistic assumptions that underpin liberal democracies and indeed academic practice;

Awareness of the importance of social role in ethical thought and action;

If we go beyond what must be addressed to what may be addressed we can add **by way of example:**

Ethical effectiveness – how to act ethically;

Ethics in legal practice – legal ethics as codes or conduct

Theory of ethics – jurisprudence or practical ethics or philosophical ethics;

History of ethics – think about racism, foot-binding, status of women etc;

Ethics as identity – reflection upon the internalisation of ethical beliefs in the sense of self.

When the subject is viewed as above obviously there is already some ethics in LLB curricula and teaching – the issues are:

How much? How explicit? How important? Why in this instance? Do we assess? What do we assess?

How do we assess?

Ethics is not only cognitive (it is about doing not just talking – the word for just talking is hypocrisy).

Ignoring ethics is an ethical stance.

The express and reflective integration of ethics into legal education (didactic and clinical and discursive) is what LETR has thrown up as a possibility for the future of legal education. However, the unnecessary and un-argued restriction of concern to: “forced teaching of professional ethics in the LLB” is threatening to obscure the multiple, diverse, and even contradictory reasons behind the pressure for ethics in legal education. To finish, we might note some of the more obvious sources of demand for ethics:

To discriminate between legal professional services and legal services in the market;

To address the distress felt by many law students in their study of law taught in an ethical vacuum (a denial of ethical relevance by assertion of academic authority and imposed through assessment);

To motivate students by allowing them to internalise aspects of their study;

To safeguard democracy by encouraging the internalisation of key ethical principles in the lawyers (and or citizens) of tomorrow;

To strengthen the ethical practices of the profession in the face of increasing market and business pressure upon ethical practice.

No one imposed course of study can encompass all of these aims, and a discourse that tries to argue by assuming a few selected aims encompass the whole will not serve LETR, or legal education well.

Prescribing ethics as a foundation (becoming a core subject) will tend to have a reductive impact on the role of ethics in legal education hence my response to (d) above.

**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?**

The idea seems sensible and principled but I have no idea how to make it useful and effective.

**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)**

I have none.

**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]**

Sorry, nothing useful to offer.

**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.**

I am not very happy with the effectiveness of outcomes based assessments in practice. Nor do I like competence based educational design (it is both too easy to work around, to “show” non-existent competence, and too lacking in inspiration and aspiration to support good educational practice). So for these reasons I am not very enthusiastic about the proposal. However, I have nothing better to offer.

**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?**

I do not know.

**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?**

I would tie them together in order to try and keep the identification of the professional as a central part of regulation (qualifications encourage self- identification e.g. as a Professional solicitor etc). Without this feeling of being part of a valuable group with a shared set of concerns a more instrumental attitude is encouraged. Instrumental about my role leads to instrumental towards my clients very quickly. Instrumental becomes exploitative fairly quickly after that. See the history to date of Financial Services Regulation and the mis-selling scandals that emerge with grim regularity.

**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.**

I have no informed opinion.

**Thank you very much for your contribution. Please now e-mail your responses to [letrbox@letr.org.uk](mailto:letrbox@letr.org.uk), putting ‘Developing the Detail response’ in the subject line.**