

This is the response of the Association of Law Teachers to the Training Framework Review Third Consultation.

The Association represents teachers of law in all education sectors and overseas.

In general, as appears below, while recognising the need to keep the training process under active review in response to developments in the profession, society and the economy, the ALT is not convinced that any compelling case has been made for the abandonment or radical transformation of the present structure of an academic, vocational and professional stage collectively producing a lawyer fit to commence practice.

The ALT's response follows the seven headings requested by the consultation document. However, other concerns should be stated. The consultation requests responses on the 'day one' outcomes and on assessments which are not yet available to us in sufficient detail. Our response can therefore only be tentative and if the Law Society decides to pursue these proposals further we would expect to be consulted further once fuller information is available. This would also enable us and the Law Society to evaluate the most recent changes to the Joint Statement, which are currently working their way through LLB degree programmes.

1. The 'day one' outcomes as set out in annex 1.

We have consistently supported the principle of an outcomes based model. Such a model enables there to be clarity as to the knowledge, skills and attributes required. However, such outcomes cannot be defined in isolation:

- outcomes relating to legal knowledge and skills appropriate to the academic stage are currently effectively specified in the Joint Statement. Because the QLD does not exclusively relate to qualification as a solicitor (and many students change their career aspirations during their studies) it is important that this remains the case. This does not preclude review of the content and focus of the statement by the prescribed process. Defining these outcomes in other language is at best confusing and at worst liable to lead to disagreements between the relevant stakeholders.
- there are several initiatives at an EU level or in the context of the Bologna process to define 'day one' outcomes for lawyers. For the Law Society to specify an inconsistent set of outcomes will hinder the international acceptance of the qualification.

The outcomes in groups A and B are, with the above caveats, broadly acceptable. Those in groups C and D, by contrast, appear to be very ambitious, and in some cases

very difficult to verify. They read as a 'person specification' not as a set of measurable outcomes.

It should also be stressed that outcomes are not free standing. They are the outcomes of a process, in this case of education and training, and are only likely to be achieved if that process is effectively designed and delivered by competent providers.

2. Arrangements for assessing knowledge, understanding and skills and, in particular, the characteristics of an examination and assessment framework that would provide you with confidence that standards of entry were secure.

This question wrongly assumes that assessment is a freestanding activity. While it is *possible* to create a system in which the potential entrant is given a free choice of how to prepare him/herself, and then attends some form of assessment event or submits documents in support of a claim to have demonstrated achievement of the prescribed outcomes, such systems are very rare, particularly in the context of admission to a profession. No European country operates such systems for the legal profession; they are unknown in medical education, architecture and engineering. While there is 'open access' to the Bar exam in the USA, there is a prerequisite of a postgraduate law degree.

It is not possible to assess all the learning outcomes of a course in discrete assessments. This is particularly true of skills assessments. Thus, an approach which relied upon assessments alone to ensure standards of entry to the profession is inevitably selective and involves abandoning existing methods of quality assurance. This can only reduce the confidence that could be placed in the standards of entry.

There is a very grave danger that if there is a centralised system of assessments that candidates will approach these in a purely instrumental manner, and in so far as they attend preparatory classes these will take the form of an attempt to 'second guess' the examiner.

Assessment functions best in the context of a coherent programme allowing for practice and coherent development.

3. Arrangements for assessing performance in the work place including:

- **The supervising solicitor's role**
- **The assessment of the trainee's portfolio**

A portfolio may be a useful assessment vehicle for the practice-based outcomes. Reflective assessment through portfolios is used to a significant extent on degree and other programmes. It requires considerable expertise, and a significant input of effort from student and supervisor throughout the learning period if it is to be effective and to address all twelve learning outcomes. We question whether training providers will have

the resources, expertise or inclination to make such a significant input. Without it, the portfolio will be tokenistic.

Students will also require training in order to make effective use of portfolios which both assist their learning and act as a measure of that learning having taken place. While portfolios are commonly used in higher education, their use in LPCs or courses which might replace them can only be guaranteed if the Law Society continues to act as a regulator of the vocational programmes.

If assessments are to be used at the end of the workplace learning period it is important that the lessons of the recent Scottish attempt to do the same are learnt. There, carefully-designed assessments failed to assess effectively. Any such assessments would therefore need to be piloted before being adopted, and any answer to this question must be premature until effective and reliable assessments have been designed.

4. Proposals to allow individuals to study and prepare for qualification in different ways, including:

- **Any concerns that students might be exposed to poor quality courses and steps that could be taken to mitigate such risks;**
- **Information that might help students make informed choices about their options;**
- **The types of programmes of study students might wish to follow.**

There is already very significant choice. The academic stage can be undertaken full-time, part-time or by distance learning to achieve an LLB or CPE, and by work-based learning via the ILEX route (conspicuous by its absence from earlier consultation documents).

In principle, these routes can be further extended to facilitate access, through foundation degrees and alternative level 4 vocational qualifications.

Similarly the vocational stage has varying modes, and there is room for greater use of integrated vocational and practical stages.

There is already substantial quality control of universities via QAA audit, JASB oversight of the CPE, and OFSTED/ALI inspection of providers in the FE sector and there is no reason to question the overall academic standards of these providers. Clearly any providers not so regulated would need to demonstrate an equivalent level of objective and audited quality assurance process.

Increased flexibility is entirely possible within the present framework, and one key constraint is the level of prescription by the Society over the delivery of the LPC.

While it is impossible to predict and provide for all eventualities, in broad terms entrants will fall into defined groups as in the table below:

Category	Academic Stage	Vocational Stage	Practical Stage
18+ entrant	QLD Non-law degree + CPE	LPC	Training Period
Ditto	Exempting law degree		Training Period
Ditto	QLD Non-law degree + CPE	Integrated LPC and training period	
Legal Executives	ILEX Level 3 and 4 + CPE Foundation degree +QLD top-up	LPC Potential for APEL	Already undertaken
Mature entrants	PT/DL QLD PT/DL CPE Limited APL from other professional qualifications	LPC Potential for APEL	Training Period
Overseas entrants - unqualified	Morgenbesser review and top-up from QLD/CPE	Morgenbesser review and top-up from LPC	Training Period
Overseas entrants - qualified	QLTT or EU reciprocal rights	QLTT or EU reciprocal rights	N/A

Effective and rigorous arrangements to monitor and allow prior learning, whether through formal qualifications or assessment of experience will allow for most of the 'atypical' entrants to be accommodated within this structure.

Maintaining the structure, while accrediting additional providers who can meet quality standards, should ensure that all potential entrants, in particular those unfamiliar with the profession and lacking family or social contacts in the profession, have a clear picture. Allowing substantial deregulation is the surest way to open the door for substandard providers, and it is precisely the potential entrants lacking contacts who will be at risk of patronising them, as they will not be aware of what their deficiencies are.

5. Proposals to allow teachers and course providers freedom to design and deliver courses and programmes to support learning including:

- **The advantages, disadvantages and risks of allowing teachers and course providers freedom to design and deliver courses and programmes of study;**
- **How such freedom might be used.**

If the providers are properly regulated, by the Society, JASB or another suitable regulator, it should be possible to allow them to address the outcomes associated with their provision as they see fit.

The advantages of this approach are:

- To the extent that the very prescriptive framework of the LPC may not suit the learning style of all suitable potential entrants to the profession, a series of alternatives could be developed which retain the essential features of the LPC outcomes, but deliver them more appropriately. In some cases such alternatives may also be cheaper to operate, although it is inescapable that if a good quality educational experience is to be provided, it will entail substantial costs.
- Where students have significant relevant practical experience, but little or no documented prior learning, alternatives to the QLD/CPE/LPC can be designed to draw on this experience, using a process of accrediting the prior experience and learning.
- The continued framework of regulation, no doubt accompanied by guidelines on procedure and content, will provide assurance, particularly for entrants without means of evaluating what is on offer, that they are pursuing a relevant programme of study.
- There will be greater flexibility for different sectors of the profession to negotiate with providers for educational provision appropriate to them. This already happens to a limited extent with bespoke LPCs for large firms, but could also embrace an 'apprenticeship', or 'in service training' model such as that suggested by Irwin Mitchell some time ago. The CPS and GLS may well see such a route as attractive if there is flexibility to link it to their operational and staffing requirements.

There are few inherent risks or disadvantages, provided the regulatory framework is robust and consistently operated, so as to ensure that provision is effective and fit for purpose. A robust process of annual and periodical internal self review, in line with the QAA Code of Practice, and overseen as necessary by the JASB and the vocational stage regulator offers an effective model based on existing processes.

What would be dangerous would be to allow a proliferation of 'small' courses designed to deliver a very limited sub-set of outcomes. The danger is that these could not readily be organised into a coherent whole. Unless students are obliged to stay with the same provider throughout (which largely undermines the argument for allowing a 'patchwork' approach in any event), there will be a major regulatory task in ensuring that all outcomes have been achieved. As noted above, for the large majority of students, there is a clearly defined optimum route, so the patchwork approach is unnecessary.

6. The proposed availability of discrete qualifications set at the level of the newly qualified solicitor or a solicitor moving into a new area of work including:

- **Opportunities to link such qualifications with professional accreditation schemes;**
- **Whether all solicitors should be required to achieve one or more such qualifications before being admitted.**

Legal practice, like other professions, is increasingly specialist, and in general terms a process for recognising and certificating expertise is desirable. Expertise implies not only knowledge, but also the ability to apply that knowledge, and this latter can only be expected to a limited extent on 'day one'. Of course at present by their choice of LLB options and LPCelectives, and seats in training, new entrants are, through their CVs, indicating an orientation, and they may be able to demonstrate both knowledge and sufficient practical experience to warrant the award of at least a preliminary specialist qualification.

Whilst there may be good reasons for introducing discrete qualifications at an appropriate stage, it would be undesirable for these to be seen as an alternative to electives on the LPC. These are a positive feature of the LPC which assist students to apply their knowledge and understanding to new areas.

To make discrete qualifications mandatory at day one will be to increase the move towards separate professions within the overarching solicitor's qualification. A more appropriate time for requiring such a qualification is at the point, currently three years PQE, when the solicitor can practise independently. However this is a sufficiently discrete issue for it to be, in our view, appropriate not to deal with it in the context of the pre-qualification training process.

7. Work-based learning requirements including proposed requirements for trainees:

A period of work-based learning is essential to enable certain outcomes to be met. We agree that some degree of flexibility, particularly in relation to the recognition of prior relevant activity, is desirable. However, we take the view that there should normally be a contract of employment incorporating a training requirement.

Many current training providers lack the resources to become, in effect, educators and supervisors of reflective assessment. If this is mandatory they will decline to continue. These smaller providers are often those who provide opportunities for non-standard entrants, so losing them will tend to harm diversity.

A requirement to demonstrate, through a reflective commentary on a portfolio of cases, that the candidate understands why and how s/he must act ethically and professionally, and exercise proper client care in the broadest sense, would not appear too burdensome. Quality assurance could be secured by sampling, rather than exhaustive external review, and educational providers and/or collaborative arrangements promoted by organisations such as LETG might be a suitable vehicle.

8. Any other issues not otherwise covered including views on the wider context in which the review is taking place.

The Association does not accept the interpretation that has been placed on the *Morgenbesser* decision. This merely requires the Law Society and any other similar regulator in the EC, to provide a means of assessing whether someone meets the criteria it has set for entry to the profession. To achieve that it is not necessary to substitute assessments for a carefully-designed education and training programme. No other national legal profession has felt the same need to respond in this way. Indeed, if regulation of training were to be abandoned, the Society would deny itself a major source of evidence as to the standards to be required of those EU nationals who present themselves for assessment under the *Morgenbesser* principles. The new regime would be particularly short of the controls which currently enable the profession to assure itself of the quality of entrants. This could have implications for its recognition outside the UK in the future.

A development to which the Law Society will shortly need to respond is the draft Services Directive. Commissioner McCreevy, on 17/12/2004, told the Association of European Journalists that "it will reduce differences between regulatory regimes in Member States and eliminate measures that tend to discriminate against foreign service providers". This is contentious, with the French among others concerned about lowering standards. The final version of the Directive is likely to seek both to ensure competition but also to regulate so as to provide a more consistent and coherent qualifications and practising framework. This, therefore, is a particularly inappropriate time to introduce changes which reduce quality control by the responsible professions. There is a serious risk that the regime proposed by the majority report will be seen as not having comparable standards and thus not meet the Commission's requirements.